

Exit as voice: Transnational citizenship practices in  
response to Denmark's family unification policy

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## **Abstract**

Modern western understandings of citizenship are closely tied to the nation state. This is the political community where members are expected to exercise their freedoms and practice solidarity. When individuals claim rights across borders and move in and out of different polities the state-centric citizenship model is disturbed. Nowhere is this more pronounced than in the European Union where borders are transformed by transnational migration and internal mobility. This has led some scholars to welcome the emergence of a 'postnational citizenship' of human rights. Others argue for the need to protect a comprehensive state membership based on shared identity and active participation. The dichotomy of 'thick and thin' citizenship warrants critical attention, however. It risks romanticizing national or postnational membership, overlooking historical and contemporary power struggles and change.

Agonistic democratic theory offers a particularly promising way of moving beyond the binary. It constructs a dynamic relationship between citizenship rights, participation and identification. Political conflicts over liberties and membership are seen as practices that re-constitute civic actors. By claiming and contesting rights migrants and citizens take part in the ongoing re-founding of polities and develop, reinforce or change their democratic subjectivity. But agonism like its intellectual counterpart deliberative democracy focuses exclusively on public 'voice'. It neglects to explore the civic potential of exit, entry and re-entry so integral to migration and EU citizenship. In the thesis I address this problem and develop an agonistic conception of citizenship and cross-border movement. I do so through a heuristic empirical case study of transnational immigration and EU mobility in the Danish family unification dispute. In response to restrictive national policy many have used the freedom of movement in the EU to sidestep or contest domestic rules. Based on 30 narrative interviews with Danish-international couples I draw out and conceptualize practices of contestatory transnational citizenship.

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## **Preface**

The right to private and family life is central to liberal ideals of citizenship and protected in many state constitutions and international conventions. The same principles are reflected and also increasingly contested in the family unification policies of European countries. These laws regulate to what extent spouses, children and dependent elderly parents can join settled immigrants and citizens in the EU. Family migration has long been one of the most important entry channels but during the past decade states in North-Western Europe have begun restricting access. In this trend, Denmark - my home country and the focus of this study - has been a noticeable 'pioneer'. The development gives rise to a somewhat paradoxical situation which has animated the writing of this thesis. Avowing to guard the political community against real or imaginary costs of immigration democratic states are intervening, in some cases quite drastically, in the freedom of the citizens they claim to be protecting. To safeguard the polity against supposedly 'unwanted' outsiders, the rights of insiders are restricted. The result is a puzzling citizenship that does not entitle its holders to live in their own country with their closest family.

While this reconfiguration of rights and membership warrants attention in itself, the often inventive tactics and strategies developed by many couples and families are perhaps even more intriguing. Danish citizens are moving to Sweden, Dutch nationals go to Belgium and British citizens are leaving for Ireland. This is not due to more liberal policies in the neighbouring countries, although in the case of Denmark and Sweden, which I study here, the differences in domestic regulation are indeed striking. Rather, what prompts this cross-border movement is a complex interplay between national and supranational rules. Freedom of movement in the European Union allows EU citizens to settle in another member state and to bring their partners if they can support them. It also enables European nationals to return again to their home country after a while with their spouse, regardless of domestic regulation. It is the practice, lived experiences and ethico-political significance of such undertakings that I explore in the thesis. Three short vignettes from my narrative interviews with Danish-international couples illustrate some of the key themes and questions discussed.

Let me begin with the story of Grace and Jonas. Grace is a young Filipina woman who came to Denmark to work as an au pair. Although her job in Manila was quite good, the comparatively modest stipend she could earn by leaving was worth more than twice her former salary. As it turned out, her au pair experience was not a very happy one. She felt exploited by her host family who pressed her to work far more than she was supposed to and treated her as a low-paid domestic servant. During her stay, however, she met Jonas, a Danish man in his early twenties, on an online dating site. They became very fond of each other and as their relationship developed the couple began considering how they could stay together after Grace's visa had expired.

Their immediate plan was to get married and apply for family unification. This proved to be rather difficult. For more than a decade, Denmark has had one of Europe's most restrictive regulations of marriage migration with demanding requirements of age and national attachment as well as economic conditions. The best known of these is the 24-years rule which stipulates that both spouses must be at least 24 years old before a residence permit can be granted. Jonas was only 23 at the time and the couple would therefore have to wait. They tried to buy time by applying for a work permit for Grace, but without success. Eventually she and Jonas therefore did what many Danish-international couples have done and went to Sweden to use EU citizenship to realize the family life in Scandinavia they desired. In our conversation Jonas explained that he was 'just *happy* we're in the European Union' but then added that 'it's ... a little bit scaring that you need to use some other rules than your own country's. Just to be with ... your own wife you need to leave your country...' (Interview with Grace and Jonas, p.16) Most of my informants articulate similar views. They report feeling wronged by Denmark and are eager to express their critique. When I met them, Jonas and Grace had tried several times to contact the Danish media to tell their story, albeit without success, but many others have managed to participate in the from time to time vibrant and intense public debate over family unification.

One who has done so is Cecilie. While travelling abroad after graduating high school Cecilie met an Argentinean architect. He went back to Argentina where she visited him twice for a period of three months. Then when she was about to begin her university

studies in Denmark they started exploring how he could join her in Copenhagen. Like Jonas, 21-years-old Cecilie was too young to apply for family unification under Danish national law. She and her partner considered whether he should come with her on a tourist visa, try to find a job and get a work permit. With his high level of education that might be possible. But the financial crisis had just begun, unemployment was growing and it seemed a very risky strategy. Instead, they decided to go to Sweden and then use EU-law to move from there to Denmark. While their preparations were on-going a heated debate began in the Danish press about national and EU rules for family unification. Journalists were eager to find transnational couples willing to tell their stories and Cecilie was one of the many who volunteered. 'I want to sort of *do* something about it or at least have some focus on it' she explained in our conversation (Interview with Cecilie 2011, p.7). During their exile the couple joined a network of Danish-International marriage migrants. Through the friends she met here Cecilie became involved in the civil society activism of an NGO working to help transnational couples and push for a more liberal family migration policy in Denmark.

Helene also took part in the Danish media debate during her brief stay in Sweden. She is a Danish woman in her late forties who on a holiday met her Sudanese husband, Jasper. They decided that he should move to Denmark where she lives with her two teenage daughters from a previous marriage. The couple had no problem with the 24 years rule and with a successful dental practice Helene could easily fulfil the economic conditions. The challenge for them was that they had to prove that their relationship was 'genuine'. This was due to the age difference of about ten years between Helene and Jasper which is generally interpreted by the Danish immigration authorities as an indication of a pro forma marriage. Helene was not so much worried that they would not pass as she was opposed to state practices of intimacy control as such. '[J]ust the fact you had to sit there and roll out your whole life ... I said: "this is not a way." It's *un-ethic* in my opinion or the way I look at the world. So we started to look at the Swedish solution'. (Interview with Helene and Jasper 2011, p.3) Helene went to Stockholm, worked for three months and returned to Denmark where Jasper was given a residence permit as the spouse of a mobile EU citizen. She described their cross-border strategy as a 'philosophical' decision, motivated by her opposition to any state interference in the

marital plans of self-supporting adults: Insisting that ‘I don’t want to participate in a system like this’, she narrated her practice of exit and re-entry as an act resembling conscientious objection (Interview with Helene and Jasper 2011, p.19).

The strategies of cross-border movement, avoidance, resistance and civic activism recounted in these and other stories are worth exploring because they in different ways challenge how we think about rights and membership. Though democratic citizenship as a political concept emerged in the city-states of ancient Greece, its modern grammar is profoundly shaped by the development of the nation-state. It is within the boundaries of this juridical and political space that citizens are expected to exercise fundamental rights and contribute to the common good. Leaving one’s country is sometimes seen as an unpatriotic flight from duty, as in the case of tax evasion, and often entails giving up important social and occasionally political entitlements. Yet in the European Union it is precisely the crossing of borders that enables these couples to activate EU citizenship and effectively claim a right to family life.

What does this tell us about the character and practices of membership emerging through processes of European integration and transnational migration? Is citizenship as a guiding ideal and lived experience losing value or being transformed? What theoretical tools do we need to make normative and political sense of citizenship in a context of migration and cross-border movement? These are questions that inform and motivate this study. With the aim of contributing to a re-conceptualization of citizenship I analyze how EU rules are mobilized when confronted with restrictive national immigration regulation. I investigate what this entails for the civic ethos and sense of belonging of affected couples and how and to what extent, if at all, these strategies of cross-border movement constitute acts of resistance or interplay with public protest and civil society activism. The thesis thus uses the contentious politics of marriage migration in the Danish-Swedish border region as a prism for exploring and engaging with important challenges to democratic membership in today’s Europe where the movement of persons and the diffusion of transnational law make the boundaries of politics profoundly porous and contested.

## **Part one: Conceptualizing citizenship**

## CHAPTER ONE - INTRODUCTION

Contemporary politics is increasingly played out in a world of ‘porous borders’ (Benhabib, 2004, p.3, italics removed). Not only ideas and capital but also people cross frontiers transforming political communities. This is particularly striking in the European Union. Today’s Europe is marked by considerable mobility of persons across political boundaries. Migrants from all over the world arrive in search of refuge, jobs, adventure, or family life. Some obtain a right to work and access to health care and social services. Others live precarious lives at the margins of society while contributing to the economy or engaging in organized protest (Castles and Miller, 2009; Balibar, 2004). Meanwhile, EU integration has made it easier for Europeans to settle anywhere in the union. EU citizenship protects the free movement between member states. Citizens are at liberty to seek employment, study, or enjoy their retirement in any EU country. They can bring their family members if they can provide for them. Mobile citizens may also vote in local and supranational elections, petition EU officials and take part in collective action at home or abroad (Citizenship Directive, 2004; Treaty of Lisbon, 2007, art. 17).

This movement of persons who claim rights and participate in civil society challenges our predominant, nation-state centred understandings of political community (Soysal, 1994; Benhabib, 2004, pp.178-179). Against the backdrop of the modern state citizenship has functioned as the normative ideal which ties together persons and political institutions within a given territory (Guild, 2009, p.35). Viewed from the perspectives of for example liberal nationalism, statist republicanism, or welfare state theories citizens are the subjects of rights bound together by bonds of loyalty and affiliation and constituting the self-governing people (Rousseau, 1968; Marshall, 1950; Rawls, 1993; Walzer, 1983). As an organizing principle of political life citizenship thus combines individual rights, political subjectivity and democratic community. But it does so by establishing a clear distinction between insiders and outsiders (Brubaker, 1992; p.21; Joppke, 2010a, pp.vi). As cross-border movement increases, what then happens to this model of politics?

In academic and public debate there have for several decades been heated discussions about international migration and intra-EU mobility and what this means for citizenship (for a good overview see Joppke, 2010a). Is citizenship an unjust ‘birthright privilege’ separating the global haves and have-nots (Sharchar and Hirschl, 2007; Carens, 1987)? Or is it the indispensable foundation of national political community (Walzer, 1983; Miller, 2008)? Is citizenship in decline (Jacobson, 1996; Spiro, 2008) or merely becoming ‘denationalized’ (Sassen, 2002)? Should we welcome a ‘transnational’ (Bauböck, 1994, 2007a), ‘postnational’ (Soysal, 1994) or ‘anational’ (Kostakopoulou, 2009) form of membership? Or worry about a citizenship which is increasingly ‘flexible’ (Ong, 1999) and instrumental (Bellamy, 2009)?

Citizenship, as we shall see in the following, is both a legal status giving access to a set of rights and a lived experience of identification and participation. Moreover, it is an empirical phenomenon as well as an ethico-political ideal. While the concept thus refers to a state of affairs it is at the same time inherently evaluative. ‘[T]o describe a set of social practices in the language of citizenship serves to legitimize them and grant them recognition as politically consequential, while to refuse them the designation is to deny them that recognition.’ (Bosniak, 2000, p.453) It is therefore not surprising that this problematic of citizenship, migration and mobility has attracted the attention of legal scholars, sociologists, anthropologists and normative theorists alike. It is to this politically invested and profoundly interdisciplinary debate that I wish to contribute. I do so with a study of marriage migration, cross-border movement and European citizenship situated at the intersection between political theory and political sociology. Engaging with agonistic democracy and its deliberative critics I defend and develop further a dynamic conception of citizenship. It captures how rights are claimed or lost, civic identification transformed and political communities re-imagined through practices of cross-border movement. The model sets out how territorial mobility can generate and be facilitated by organized civic activism. It depicts how exit, entry and re-entry can be acts of contestation that transgress political boundaries, construct transnational publics and reconstitute democratic subjects.

### **Citizenship: transformation or decline?**

One of the earliest and most influential as well as contested studies exploring the politics of migration and citizenship is Yasemin Soysal's (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe*. In this seminal work Soysal argued that civil, social and to some extent political rights, which were previously the prerogative of nationals, are now granted to different groups of immigrants in Europe. Especially permanent residents and non-nationals from other EU countries have been given extensive entitlements although they have not naturalized.<sup>1</sup> We are therefore witnessing, she claimed, 'a reconfiguration of citizenship from a more particularistic one based on nationhood to a more universalistic one based on personhood.' (Soysal, 1994, p.137) This allows, she contended, for a differentiated and more inclusionary political order where individual freedoms are universal but modes of belonging particular and multiple.

The empirical plausibility of Soysal's argument has been the subject of considerable debate. An important objection, in my view, is that supranational citizenship in the EU still presupposes full membership in one of the Union's member countries, the allocation of which is a nation-state prerogative. Resident immigrants do not have the same freedoms and the external borders of Europe are tightly regulated (Bosniak, 2000; Maas, 2005; Balibar, 2004). In addition, much has changed in European migration and refugee policies in the two decades since Soysal first formulated her post-national thesis. Immigration has become a contentious political issue in most countries. Access to asylum - perhaps the best candidate for a human rights based, quasi-membership - has been severely restricted (Hatton, 2004). Moreover, as it has become more common for Western European countries to deport even permanent resident immigrants who are convicted of certain crimes, it is clear that citizenship status is still an important legal protection. None of this necessarily denies that significant transformations of

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<sup>1</sup> Soysal clearly cherishes the fact that naturalization is not a precondition for rights, but at the time when she wrote her thesis the Turkish guest workers in Germany and their children - who are in many ways the central case of her study - had serious difficulties acquiring German citizenship even if they wanted to. This was due to Germany's ethnicity based citizenship law (Brubaker 1992), which has subsequently been changed in a liberal direction. For a discussion of Germany's politics of membership in the 1990, see Benhabib (2004).



membership are taking place in Europe, but it does caution us against an overly optimistic view of membership qua personhood (Bosniak, 2000; Benhabib, 2004).

Though there are thus good reasons to be sceptical of the empirical accuracy of Soysal's argument, these are not grounds for dismissing it. Rather, we should read it, as Linda Bosniak (2000, p.453) argues, 'as an aspirational claim, a claim of desire rather than fact.' What Soysal and others are doing is to challenge the implicit assumption that political membership must be national. They are making a normative intervention by opening up a different terrain for thinking about citizenship – not as it actually is, fully and incontrovertibly, but as it might become. Soysal's work has thus inspired a new conversation about political community where different scholars aim to theorize belonging, rights and participation in new ways (see for example Benhabib, 2004; Kostakopoulou, 2009; McNevin, 2011). My thesis seeks to contribute to a re-conceptualization of citizenship outside the confines of a nation-state model which currently has such a strong 'hold upon our political imagination' (Benhabib, 2004, p.178). But before we begin to explore how this is to be done, it is important first to introduce some key objections which have been raised against such an endeavour and which a convincing reinterpretation of citizenship must be able to meet.

In the US, Peter H. Schuck (1989) and David Jacobson (1996) have both expressed concerns over the disentangling of freedoms and entitlements from citizenship status and identity. They argue that citizenship has been devalued by the distribution of rights to immigrants who can enjoy the benefits of membership without fully taking on the duties through naturalization. The risk is a general decrease in civic virtue and identification. Instead of a political community of compatriots united by their commitment to the common good, multiple communal and privatized modes of belonging are emerging (see also Jacobson, 2002<sup>2</sup>). Thus, while the boundaries distinguishing citizens from aliens may become more porous, we could end up with what Michael Walzer (1983) has termed 'a thousand petty fortresses' separating classes

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<sup>2</sup> In *Place and Belonging in America* Jacobson (2002) analyzes the decreasing importance of territory for US membership and connects this to the rise of judicial politics and litigation supplanting republican participation. The public space is shrinking, he argues, while the private sphere (intimate, market-based and ethno-communal) is growing.

and ethnic groups. The cautionary tone of this republican argument is aptly captured by the title of Jacobson's iconic *Rights Across Borders: Immigration and the Decline of Citizenship*.<sup>3</sup> It is important to note, though, especially given a political environment of restrictive immigration policy where immigrants are often blamed for poor integration, that the 'decline' here is not causally attributed to immigration or immigrants as such but to a particular mode of incorporation. Immigration, which is permanent and involves a transfer of political loyalty in line with the US 'melting pot' tradition, need not be a problem. But strong transnational political ties and circular or chain migration are rather more difficult to accommodate within a framework of uniform membership.<sup>4</sup>

In a European context Richard Bellamy (2008, 2009) has put forth similar arguments. His concern, however, is less with international migration<sup>5</sup> than with EU mobility. What worries Bellamy is the expansive development of EU citizenship and in particular the free movement that is such a central part of it. He contends that the Union's supranational membership status, with its focus on private rights and freedoms, is too 'thin' (cf. Walzer, 1994) to serve as a genuine citizenship. Only within the nation state do we find the conditions necessary for democratic identification, solidarity and participation (see also Miller, 1995). Cross-border movement in the EU is valuable as a means of promoting peaceful relations and commerce among member states. But if rights are increasingly granted to mobile Europeans without correlative duties this creates an incentive to 'shop around' in search of the best deal (cf. Scharpf, 1999). Such an instrumental attitude is in itself at odds with the ethos of citizenship and could furthermore undermine the solidarity necessary for an egalitarian political community.

If there are reasons to be sceptical of too optimistic accounts of postnational membership, then decline of citizenship arguments are no less contentious. Christian Joppke, for example, rightly criticizes the nostalgic longing of liberal nationalists and

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<sup>3</sup> A more recent version of this 'decline'-thesis has been articulated by Peter Spiro (2008) who argues that US citizenship as a legal status no longer adequately reflects people's ties, identities and modes of participation. Though his analysis has less of a dystopic ring to it, the contention is still that citizenship is on its way out.

<sup>4</sup> Much the same can be said about emigration as Rainer Bauböck points out (2003, p.719).

<sup>5</sup> Bellamy (2008) argues that immigrants – by which he means non-EU nationals – reinterpret rather than undermine national identity and are thus not a problem provided that they take on the full duties of membership through naturalization.

statist republicans for an idealized model of political community. He points out that ‘the moment of such citizenship, in which rights were balanced by obligations but where, in turn, rights were more exclusive to the status of citizen than they are today, was shorter than commonly believed. Above all, it was tied up with a less commendable world of warfare and interstate violence.’ (Joppke, 2010b, p.30) In my view this is a crucial objection which deserves to be unpacked in some detail. To begin with, while political rights were gradually extended to the male population of Western Europe and the US in return for participation in war, women remained disenfranchised up until the early- and mid- 20<sup>th</sup> century. Moreover, the emancipation of European working classes usually went hand in hand with the subjection of non-western populations to imperial rule (cf. Isin, 2002). In the US, it took the Civil Rights Movement in the 1960s to end the policy of racial segregation in which African-Americans were treated as second class citizens. While the racist doctrines on which these regimes were built have now largely been delegitimized, they continue to cast long shadows in contemporary domestic and global politics. Joppke is therefore right that a citizenship resembling the thick, egalitarian-republican ideal, to the extent it has ever existed, is a very recent phenomenon and not the longstanding model its supporters seem to imply when they point out the current threats it allegedly faces.

However, while I fully endorse the critique of a romanticized conception of nation-state membership, I am not persuaded by Joppke’s broader analysis. He argues that citizenship in contemporary Europe and especially in the EU is bound to be a thin, postnational affair. Joppke is rather cautious in his enthusiasm for this ‘citizenship light’ as he terms it. In particular, he is concerned, like Bellamy, that the free movement of persons within the European Union could undermine social solidarity and thus threaten established welfare rights. Even so, he welcomes what he sees as the emergence of a rights-based, inclusive citizenship in the member states as well as at the EU level as an unavoidable and on the whole desirable trend.<sup>6</sup> In developing his analysis of this ‘inevitably lightening of citizenship’ Joppke (2010b, pp.14-15) discusses recent attempts by European governments to make political membership thicker and more

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<sup>6</sup> The sociological analyses of for example Joppke and Jacobson are not explicitly normative in the same way the political theory arguments of Bellamy are. Even so, their interpretations of empirical trends often reflect implicit normative positions and judgments. See for example Joppke, 2010b, p.30.

selective by, for example, introducing citizenship tests. As part of the argument, he points out that when you look at the values these tests are meant to further, they are nearly all universalistic liberal ideals which are not specific to any particular country. It is thus hard to see how they could help foster a comprehensive and distinct national identity (Joppke, 2010b, p.18; for an intriguing discussion, see Joppke, 2008). This is a reasonable point, but advanced in this context it concedes rather too much to the republican 'decline of citizenship' argument Joppke criticizes. He seems to be saying - echoing sceptics like Jacobson - that for immigrants to become bearers of a thick, participatory citizenship, they would have to demonstrate their allegiance to a specific national political culture and set of institutions in accordance with state requirements. That in turn indirectly reaffirms the uniform model of citizenship where rights, identification and civic practice are all tied to a given political status. The postnational thesis, however, is precisely that this configuration is being disentangled (Soysal) or that it never quite was what it is supposed to have been (Joppke). The arguments of liberal nationalists or statist republicans are thus built on a binary distinction between a thick national and a thin postnational membership, which as we have seen already is questionable, but which is implicitly reproduced by Joppke in his account of a citizenship light.

This dispute between 'decline of citizenship' scholars and some of their central critics thus leaves us with the impression that we must choose between a minimal legal status which can accommodate transnational migration and mobility but at the costs of communal bonds and democratic participation, and a deep national membership that seeks to reduce cross-border movement to preserve established polities. To see the potential limitations of this way of structuring the debate it is helpful to look to the growing body of research across a range of different disciplines that explores the civic agency of migrants. Sociological and anthropological studies show how migrants often develop multiple ties of belonging and engage in politics and civil society across political boundaries. Not all such transnational activism is democratic but some of it clearly is (Levitt, 2001; Smith and Bakker, 2005; Moghadam, 2009). Research within critical borders and migration studies analyzes the 'contested politics of mobility' (Squire, 2011). Asylum seekers and irregular migrants, it is argued, claim rights,

exercise freedom, and push for global democracy by crossing borders and organizing collectively (Mezzadra, 2004; Papadopoulos et al., 2008; Aradau and Huysmans, 2009; Aradau et al., 2010; Nyers and Rygiel, 2012).

In political theory this new agenda has been taken up by liberals (Bauböck, 1995, 2003), post-marxists (Balibar, 2004) and post-structuralists (Rancière, 2004) but has in particular been advanced by scholars working within the traditions of agonistic and deliberative democracy (Honig, 2001b; McNevin, 2011; Glover, 2011; Benhabib, 2004; Means, 2009). Developing dynamic understandings of political membership, these different scholars argue that what we are confronted with is a renegotiation and reinterpretation of civil liberties and identification and that this is itself a citizenship practice. It is to the theorization of citizenship and migration within these two radical democratic theories that I now turn. Agonist and deliberative theorists have already gone some way towards challenging the troubling binary between thick national and thin and postnational membership (see Benhabib, 2004; Honig, 2001b). While this is very helpful I argue that more attention to practices of cross-border movement is needed.

### **Theorizing citizenship and border crossing**

Deliberative and agonistic theories have in the past couple of decades emerged as insightful and influential frames for thinking about contemporary democracy and political membership. Though questions of migration have not always been at the forefront in these bodies of literature, important theoretical and conceptual developments have been carried out through an engagement with the rights claims and actions of immigrants and refugees (see especially Honig, 2001b, and Benhabib, 2004).

Deliberative democrat Jürgen Habermas (2001a) agrees with statist republicans that active participation and collective self-government are essential components of citizenship. But individual rights, he insists, are no less important. The two dimensions are equally fundamental. This is where he parts ways with someone like Bellamy (2008), who, while also in favour of civic rights, presents them as the outcome of and ultimately subordinate to democracy. The universality of rights, deliberative democrats

argue, obliges the people to consider the interests and perspectives not just of all their own members but of outsiders as well. Moreover, as the make-up of the citizenry changes through immigration, newcomers will take part in the reinterpretation of civic freedoms and the ethos of citizenship (Habermas, 1994). Even resident immigrants, who have not yet acquired the right to vote, can participate in these renegotiations by articulating their views and engaging in the exchange of reasoned arguments in the public sphere (Benhabib, 2004, 2011).

This conceptualization has considerable merit in this context, as it allows us to see migrants as potential civic actors who reconstruct rather than undermine a thick citizenship. But the line of argument has important drawbacks as well. Habermasian deliberative democracy has a very demanding, idealized understanding of public claims making, emphasizing the exchange of reasoned argument (Habermas, 1996). This underestimates how difficult it can be for persons in marginal positions, including many groups of migrants and ethnic minorities, not just to get access to public forums for deliberation but, more importantly, to be heard as rational in dominant discourses (Butler, 1995; Young, 1990).

Agonistic democracy has significant advantages in this respect. It offers a similarly dynamic understanding of citizenship which sees individual rights and political identification as objects of ongoing and open-ended political struggle where both insiders and outsiders can take part (Mouffe, 2000; Honig, 2001b). In contrast to deliberative democrats who place reason and understanding at the heart of civic action, agonists like Chantal Mouffe emphasise conflict and political mobilization. This allows for a broader understanding of citizenship practices which stresses passion, rhetoric and contentious claims making. It also draws attention to the importance of organized action as a way of challenging hegemonic constructions of membership that make particular claims and grievances inaudible (Honig, 2009b). In the context of migration, agonists point out how excluded groups such as irregular immigrants increasingly act in concert to challenge political boundaries which deny them basic freedoms (McNevin, 2011; Glover, 2011).

There are also limitations, however, to the way agonistic democrats have so far engaged with the politics of migration and citizenship. Like their deliberative democratic interlocutors, they focus on what Albert Hirschman (1970) famously termed ‘voice’.<sup>7</sup> It is the various forms of public claims making - reasoned or passionate, individual or collective – by citizens and migrants that are analyzed. ‘Exit’ by contrast, where dissatisfaction or disagreement is expressed by leaving one polity and entering another, is largely ignored by both schools of thought due to its apparently silent and individualistic character. This means that despite the emphasis on immigration and ‘porous borders’ (Benhabib 2004) the practice of crossing political boundaries so essential to migration is not given adequate consideration. Or rather its civic and political potential is underexplored (for a partial exception see Honig, 2001b). But in the EU the process of leaving and entering a member-state constitutes a person as a European citizen who can claim extensive rights (Bellamy, 2009; Wind, 2008-09; but see Kochenov, 2011). Here, voice, exit, entry and re-entry would seem to be intimately linked. This inattention to border crossing is not only empirically troubling as it prevents a more comprehensive analysis of contemporary practices of membership in Europe. It is also theoretically problematic because it weakens the attempts by agonists and deliberative democrats to counter the critique from liberal nationalists and statist republicans. What really concerns Bellamy, for example, is the seemingly thin, instrumental moving in and out of European countries facilitated by EU citizenship. If we can show that at least some forms of cross-border movement within the EU and transnationally can be a way of practicing participatory democratic membership, this greatly strengthens the arguments in favour of citizenship beyond the nation-state.

In order to demonstrate more fully the analytical potential of dynamic reconceptualizations of citizenship it is therefore important to explore practices of border crossing. More attention needs to be given to analyzing the meaning of exit, entry and re-entry and how these strategies interplays with voice (cf. Hirschman, 1993) in struggles over citizenship and migration in Europe. A few thoughtful and innovative discussions of the civic character of cross-border movement have been offered by theorists working within liberal cosmopolitan and neo-Marxist frameworks (Cabrera,

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<sup>7</sup> This bias is not exclusive to deliberative and agonistic democracy. As Mark Warren (2011) points out democratic theories have generally neglected to explore the critical potential of exit.

2010; Mezzadra, 2004, 2011). Approaching the problem from the perspectives of deliberative and agonistic democracy has advantages, however. Not only are both of these radical democratic theories strongly committed to citizenship as a mode of democratic participation and identifications.<sup>8</sup> Their defenders also share with statist republican interlocutors a firm belief in the political necessity of boundaries and a profound scepticism of world-government schemes (Mouffe, 2000, 2009; Benhabib, 2004). If a plausible argument can be made for reinterpreting modalities of cross-border movement as civic practices drawing on these theories, then it will present us with a stronger case against objections from ‘decline of citizenship’ sceptics.

The thesis I advance is that agonistic democracy in particular presents a promising frame for re-conceptualizing thick and thin practices of citizenship across borders but that a proper understanding of exit and entry as potential civic strategies is lacking. This weakens the ability of the theory to allow us to go beyond the binary of thick participatory national citizenship and thin post-national rights-based membership. Through a theory-developing heuristic empirical case study of the Danish family unification dispute I thus expand and re-appropriate the dynamic agonistic conception of citizenship. I do so to incorporate modalities of cross-border movement as practices of claiming rights, participating in existing or emerging political communities and affirming and re-constructing democratic identification.

### **The case: marriage migration, border crossing and EU citizenship**

The debate over thick and thin political membership is reflected in on-going migration politics. Joppke focuses, as we have seen, on changes in access to formal membership with the introduction of language and citizenship tests in several countries. I want to draw attention instead to another area, namely the contentious politics of marriage migration. Transnational marriages are interesting in this context because they challenge the distinction so central to state-centric conceptions of political community between insiders and outsiders, citizens and foreigners. When citizens marry spouses from another country, they demonstrate the inevitable porousness of the boundaries of membership. This is not merely because aliens, if they obtain family unification with a

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<sup>8</sup> This is also central to Luis Cabrera’s liberal cosmopolitan theory which explore the ‘the practice of global citizenship’



citizen spouse, gain access to the territory. Rather, the intimate union of spouses disturb the symbolic constitution of the 'body politic'. Through bonds of marriage members and non-members are tied together, and immigrants thus become deeply implicated in the cultural and embodied reproduction of the political community.

Spousal migration has been high on the political agenda in several European countries in recent years. When labour immigration from outside the Common Market was curbed in the early 1970s, family unification was one of the few legal forms of entry left. It continued to be a popular immigration route as the children of former labour migrants grew up and often entered into transnational marriages with spouses from their parents' country of origin (Olwig, 2011; Charsley, 2007; Rytter 2010a). Other groups of citizens also marry across borders reflecting increasing internationalization in tourism, business relations and student life (Rytter and Liversage, 2014). Indeed, what Ulrich Beck (2011) has termed 'the global chaos of love' very nicely illustrates some of the complex economic and socio-cultural developments in the world today. It goes to the heart of the conceptual and political dilemma between the freedom of a self-governing people to determine its own boundaries and the rights of individuals and families.

Across most of Western Europe access to family unification has been tightened in the past ten to fifteen years (Ruffer, 2011, p.936). In public discourse, concerns are expressed that rights to family life are being used instrumentally to obtain residence permits for relatives who do not have a genuine bond to the state or their spouses. Politicians critical of immigration argue that liberal family unification rules have led to mass migration. This is presented as a threat to political values, cultural cohesion and the welfare state. Thus, policies have been introduced in several countries to prevent marriages of convenience or simply reduce immigration altogether and in this way protect a thick national community (Kofman, 2004, pp.254-255; Ruffer, 2011).

Denmark has been a front-runner in this development. For more than a decade successive governments have adopted very restrictive rules for family and marriage migration (Rytter, 2010b, pp.301-302). In 2002 the newly elected centre-right government, with the support of the anti-immigration Danish People's Party (*Dansk*

*Folkeparti*), carried through a comprehensive reform of the Aliens Act (*Udlændingeloven*). This included very significant restrictions on spousal migration. A 24-years-rule was introduced stating that both partners must be at least 24 years old to obtain family unification. This was combined with a requirement that the couple's joint attachment to Denmark must exceed their ties to any other country. Several economic conditions were also launched or tightened. The objectives of the law were to reduce the number of immigrants, promote self-sufficiency and prevent forced marriages (Ministry of Refugee, Immigration and Integration Affairs, 2002, pp.14, 36-39; Aliens Act, 2002). Especially the attachment requirement, distinguishing between different categories of citizens on the basis of their length of residency as well as linguistic, familial, education and labour market ties to Denmark, reflects an ethno-cultural understanding of membership (Rytter, 2010b). Citizenship is thus not merely a formal legal status. Rather, to gain access to the full freedoms that comes with it, individuals and families must demonstrate a thicker socio-cultural form of belonging.

The strict family unification rules have made it very hard for citizens and immigrants to settle in Denmark with a partner from outside the European Union (Rytter, 2010a). In response, some have voiced their grievances or expressed their views in public debate. Many Danes have also made use of their status as EU-citizens and moved with their partner across the border to Sweden.<sup>9</sup> To encourage free movement and thereby promote European integration EU citizens who live for a while in another member-state obtain a number of rights. This includes in particular extensive protection of family life. Crossing an internal border thus enables citizens to sidestep restrictive domestic family unification regulation. It also allows them to return again to their own country with their foreign spouse regardless of national immigration laws (Citizenship Directive, 2004; Rytter, 2007). While precise numbers are hard to come by, a recent study 'suggests that an estimated 2,000-3,000 Danes have moved to Sweden since 2002 in order to obtain

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<sup>9</sup> Denmark has an opt-out of EU cooperation in the area of justice and home affairs. This means that the country is not bound by the EU's Family Unification Directive (2003) applicable to third country nationals residing in a member state who seek to bring in a spouse from outside the Union. Family unification for mobile EU citizens, however, is regulated by the Citizenship Directive and based on the right to free movement – a fundamental principle within the EU. Denmark is thus not exempted from this legislation (Manners et al., 2008, pp.296-297).

family unification' (Rytter, 2010a, p.126; see also Schmidt et al., 2009).<sup>10</sup> Similar cross-border movement is found between for example the UK and Ireland, or Belgium and the Netherlands (Bonjour and de Hart, 2013; Staver, 2013)

The EU route is not an option open to all. Only citizens and not resident immigrants can move freely across borders and bring their partners, and then only if they can provide for the spouse (Citizenship Directive, 2004). Still, compared with Danish national rules EU regulation is considerably less demanding. Some of the Danish exiles are settling permanently in Sweden with their families. Others are returning or plan to do so (Rytter, 2007; author interviews). The options within EU law have been quite controversial in Denmark as in some other European countries.<sup>11</sup> For several years Danish immigration officials interpreted EU law very narrowly and provided little public information about this set of rules (The Danish Parliamentary Ombudsman, 2008; Bøegh-Lervang and Madum, 2010). That in turn made it difficult for couples to use their supranational rights to return to Denmark after a period in Swedish exile. Later, as public debate arose about this administrative practice leading politicians criticized the EU and especially the European Court of Justice for encroaching upon Danish national sovereignty and interfering in Denmark's immigration policy (see chapter four).

The controversy in Denmark over family unification and EU mobility therefore aptly illustrates the political contention concerning post- or supranational rights and the boundaries of democratic community. National identity and popular sovereignty are often presented in this dispute as under siege from immigration and EU integration. As such the case is well suited to explore the tension between thick national and thin postnational citizenship and the limitations of this interpretive frame. From the perspectives of deliberative and agonistic democracy the Danish family unification dispute is also interesting to investigate. On the one hand, the public debate over the meaning and boundaries of citizenship places it firmly within the remit of these

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<sup>10</sup> This estimate is a few years old. In 2010-2011 a new restrictive reform was introduced - see chapter three - which again intensified movement to Sweden. The estimate should be viewed with some caution due to limitations in the government statistics and the high political sensitivity of the topic.

<sup>11</sup> In response to a green paper on family unification from the Europe Commission the Dutch government (2012) recommends restricting not just EU's rules for third country national but also for mobile EU-citizens.

theories. On the other hand, the novel strategies of exit, entry and re-entry challenge implicit assumptions in these perspectives about what forms practices of citizenship may take. This makes it useful for a heuristic case study with the purpose of conceptual development (cf. George & Bennett, 2005, p.75; Lijphart 1971, pp.64-65). Across Europe we find similar cases of contentious mobility and family migration. More broadly, migrants in other parts of the world cross borders to claim rights and challenge state policies that are experienced as illegitimate. The empirical patterns are likely to differ considerably, but a conceptual reinterpretation can open up new ways of analyzing and discussing cross-border movement with broad relevance, even if careful consideration should be given to changes in context, which will influence the character and conditions of such actions.

The thesis thus presents a case study of the Danish family unification dispute. While Denmark's Aliens' Act naturally plays a major role in this controversy, the analysis is not an investigation of national immigration policy or comparative 'citizenship models' (Brubaker, 1992; Favell, 1998). With the complex and dynamic interrelation between Denmark's immigration rules, EU integration, international law and Nordic cooperation the case underlines the importance of adopting what Rainer Bauböck (2010, p.302) has termed 'a transnational constellation perspective' on citizenship. To understand stakes, strategies and actions in the dispute attention must be given, as the analysis will show, to Danish and Swedish domestic rules as well as varying implementation of EU legislation, case law from the European Court of Justice, human rights conventions and even in some cases to the citizenship and migration policies of the foreign spouses' home countries.

### **Research questions**

In this thesis I examine struggles over migration and political membership in the Danish family unification dispute in a study combining political theory and political sociology. I ask what insights, if any, we can draw from the practices of contentious cross-border movement central to this controversy for the conceptual debate over thick and thin citizenship in general and for agonistic and deliberative democracy in particular.

To answer this question I look at how, if at all, citizenship is practiced in and through border crossing when transnational couples faced with the restrictive Danish marriage migration rules use EU law: I examine in what ways these couples claim rights across borders. What ideals of political community are mobilized and contested? How, if at all, are their self-understandings and modes of identification re-constructed? In what ways, if at all, do their actions of exit, entry and re-entry interplay with public voice and collective action?

On this basis, I explore whether citizenship is lost, rediscovered or transformed through modalities of border crossing. If I do find that political membership is enacted rather than abandoned, to what extent can these practices be captured by the framework of thick and thin citizenship? How, if at all, can exit, entry and re-entry support or constitute acts of political contestation enabling us to extend agonistic theories of democracy? How, if at all, can cross-border movement meet the requirements of reasoned debate allowing it to be incorporated within deliberative democracy?

### **Key concepts and methodology**

To answer this set of questions I conduct an in-depth study of family unification and cross-border movement exploring practices of thick and thin citizenship. The Danish family unification dispute is analyzed from the perspectives of agonistic and deliberative democracy, but these conceptual frames are also critically assessed and reinterpreted in light of the case.

### *Style of reasoning*

A study of citizenship practices invites a close conversation between a political theory offering critical and normative conceptions of political community and a political sociology analyzing actual performances and lived experiences of membership across borders. While sociologists and anthropologists have long been investigating migration, political philosophers have generally not shown the same interest. When John Rawls revived the discipline in 1971 with the publication of *A Theory of Justice* he focused on a society perceived as ‘a closed system isolated from other societies’, thus effectively bracketing questions of emigration and immigration (Rawls, 1971, p.8). A few critics

pointed out that this left aside the important issue of political boundaries and their legitimacy (Walzer, 1983; Carens, 1987). As Walzer argued, before we discuss what rights and obligations to distribute among members, we need to confront the distribution of membership itself. Even so, migration remained a largely marginalized issue in political theory. With a few important exceptions (Arendt, 1958b; Walzer, 1983; Carens, 1987; Barry and Goodin, 1992; Bauböck, 1994), it was mostly addressed somewhat indirectly as part of the debate over multiculturalism (see for example Kymlicka, 1995; Barry, 2001; Phillips, 2007). Recently, however, this has changed with theorists increasingly concerned with political boundaries. Migratory movement is now analyzed by a wide field of scholars and from a variety of theoretical perspectives (Abizadeh, 2008; Miller, 2008; Anker, 2010; Ypi, 2012). Various meta-theoretical approaches are employed in these studies of membership and foreigners, ranging from analytical philosophy and applied ethics to critical theory and deconstructive methods (see for example Valadez, 2012; Kukathas, 2005; Benhabib, 2004; Doty, 2006).

The present study, following deliberative and agonistic perspectives, is situated within a broad tradition of immanent critique. These theorists engage with actual struggles, actions, discursive constructions and forms of resistance by contemporary migrants and citizens. The aim is to criticize embedded power relations while drawing out the transformative agency displayed by some persons and groups. That in turn spurs a close interaction with empirical political sociology analyzing how citizenship is lived and contested on the ground (see especially Benhabib, 2004; McNevin, 2011; Glover, 2011).

This approach has, in my view, several merits. The problem with Rawls' bracketing of cross-border human mobility was not merely that the rights of immigrants and emigrants were not attended to, but that their ability to act and take part in political communities disappeared from view. It reflected how our contemporary conceptions of democracy and citizenship have developed in conjunction with the nation-state thus generating a built-in bias (cf. Bosniak, 2000). Exploring how migrants and citizens themselves contest and dispute political boundaries can help us challenge the unreflective nationalism of our political grammar (McNevin, 2013). But this is not the

only virtue of such a mode of inquiry. A growing number of scholars in the analytical tradition, for example, are also reinterpreting key concepts of political theory for a post-national context. Without carefully studying actual practices, however, we risk misrepresenting the stakes in disputes over migration and membership. Moreover, engaging with the claims and actions of immigrants and emigrants reflects an egalitarian respect for and brings attention to actors whose agency and subjectivity has been overlooked and denied (cf. Tully, 2008).

This cross-disciplinary conversation between empirical political sociology and political theory follows an interpretivist epistemology which does not operate with the hard and fast distinction between ‘facts and norms’ (Habermas, 1996) so central to analytical philosophy and positivist social science. The reason for this is quite simple. The conceptual lenses we use are often themselves normative in character. Thus, when we describe a particular set of practices as civic or democratic we are implicitly saying that these are good in some ways. This form of categorizing, necessary to any empirical study of citizenship and migration, is therefore invariably and unavoidably an act of judgment (Bosniak, 2000). There are, however, different ways of reconstructing the relationship between empirics and ethics within the tradition of immanent critique. Habermas (1996), for example, argues that when we engage in communicative practices we implicitly assume rules about reason-giving from which normative principles of justification can be derived. This argument does not reduce moral codes to actually existing customs, but it contends that universal norms, which transcend any given societal ethics, are built into the socio-linguistic practices of the life world. His political theory develops a normative account of liberal democracy based on an idealized reconstruction of such practices, which in turn can be used as a regulative ideal for judging actual deliberation.

The problem with this argument is its reductive view of speech and action particularly in politics. While Habermas recognizes that language has expressive and instrumental aspects as well, he presents these as subordinate to the ‘telos’ of understanding. Yet political communication, as agonists are apt to point out, is as much about mobilizing support through passionate rhetoric, creating collective identities and negotiating who

gets what (Mouffe, 2000). If we take the example of the mass protests in Europe and the US by irregular migrants, these actions undoubtedly demonstrate a wish to have specific grievances, interests and perspectives heard and taken into account, but they are also enactments of dissent through which migrants refuse to be defined as ‘illegal’, ‘paperless’ non-members (cf. McNevin, 2011). They constitute new actors and new ‘forms of being political’ (Isin, 2008, p.37; 2009). It is hard to see why the expressive and constitutive aspects of these actions should be any less important, politically or ontologically, than their communicative side. If anything, the constitution of actors would seem to be logically - though not temporally - prior to the exchange of arguments. The agonistic approach I follow therefore does not seek the transcendence of the Habermasian discourse ethics. It offers instead a situated critique which must always question its own ground, including what constitutes practices of citizenship (cf. Foucault, 1997; Honig 2009b, pp.112-138). Indeed, the object of the thesis is precisely to inquire critically into core assumptions about membership and political action not just within nationalist or deliberative accounts but in agonistic democracy itself. It does so through an iterative engagement with theory and practice where practices are studied and interpreted through normatively laden conceptual lenses but where these theoretical frames are also critically interrogated in light of the empirical findings (Tully, 2008). This in turn raises methodological questions about how best to study performances of cross-border movement and citizenship.

#### *A narrative methodology*

Some political theorists have begun exploring the potential of ethnographic and interview based methods for conceptual work on migration and citizenship (Doty, 2006; Cabrera, 2010; McNevin, 2011; Aradau et al., 2010). I adopt a narrative interview approach which analyzes how meaning is constructed in and through story-telling (Riessman, 2008; Chase, 1995). There are several reasons for this choice. Firstly, it is a fairly unstructured form of interviewing, which while organized around the themes of the research - in this case family migration, cross-border movement and citizenship - gives ample room for informants to shape the conversation and recount their experiences in their own terms and manner. This is important since the point about using interviews for political theory is precisely to pay heed to the voices and



perspectives of cross-border agents themselves. Secondly, it is a form of interviewing attentive to articulations of identification, a central concern for my thesis. The underlying theoretical assumption is that identity is narrative (see for example Benhabib, 2002; Arendt, 1958a). That is to say, we interpret our lives by weaving together occurrences, emotions, bodily experiences and interactions into storylines with actors and plots. In the process we construct who we are. Thirdly, marriage migration and exile, as we shall see, exhibit many features which make them well-suited events for storied accounts (see appendix I). Exploring their narration is thus a very useful way of analyzing how practices of cross-border movement are given meaning as lived experiences.

Narrative interviews have become widely used in sociological and anthropological studies exploring lives of migrants and refugees (see for example Schuman and Bohmer, 2004; De Fina, 2004; Hebing, 2009; Eggebö, 2013). There are several types which differ somewhat with regard to interview technique, style of analysis and meta-theoretical assumptions (Bruner, 1991; Holstein and Gubrium, 1997; Jovchelovitch and Bauer, 2000; for an overview see Chase, 2005). All, however, focus on inviting and analyzing stories rather than discrete answers. Catherine Riessman (2008, p. 24) notes that, '[e]specially when there has been a major disruption in a life – in the normal social biography - ... individuals often want to develop long accounts'. Confronted with events which challenge our routines and expectations narrating our experiences to ourselves and others can be a way of handling the situation by making sense of what has taken place. Typically, these are occasions where we reflectively reassess our assumptions and ideals. We may also come to narratively re-construct our self-understanding. Migration is clearly often such a life-changing event. Individuals who move across borders will usually have to acquaint themselves with customs, climate, language, and institutions which differ from what they are used to. For many, new opportunities emerge, while others experience loss of status and security or suffer in the absence of friends and family members left behind.

I thus use narrative and semi-structured interviews (Riessman, 2008; Holstein and Gubrium, 1997; Kvale, 2007) to examine practices of cross-border movement and

migrant activism among Danish-international family migrants in order to facilitate conceptual development that is attentive to the agency and lived experiences of migrants and citizens. The study is based on 30 interviews with Danish citizens and/or their foreign spouses carried out in 2011-2012. Most of these informants have used their EU-citizenship to move to Sweden and obtain family unification. A description and discussion of the selection of informants and an overview of the interview sample is provided in chapter three and appendix I. A narrative approach is also used to analyze the interviews (Chase, 2005; Riessman, 2008). A central concern here is to maintain the integrity of each story instead of reorganizing the data according to a number of codes. This means re-presenting a number of individual stories throughout the analysis and comparing and contrasting them with the wider data corpus. Appendix I gives an in-depth discussion of how the interviews were analyzed and re-constructed.

### **Argument and structure of the thesis**

The remainder of the thesis proceeds as follows. In *chapter two* I analyze how a dynamic conception of citizenship and migration is articulated by deliberative and agonistic theorists, drawing out and discussing the main points of disagreement. I argue that especially agonistic democracy offers promising tools for challenging the troubling dichotomy of thick and thin post/national membership but that an engagement with cross-border movement as a civic practice is missing. Chapter *three* then sets out an analytical strategy for developing a dynamic conception of citizenship that can incorporate strategies of exit, entry and re-entry. The subsequent chapters analyze the empirical material.

*Chapter four* returns again to the debate about thick and thin citizenship. It engages with an influential and elegant synthesis wherein a thick and deeply rooted national identity is kept in check by a thin rights-based supranational citizenship. Through an analysis of my informants' stories of border crossing I show that this model has some appeal but also important limitations. I argue that a 'European citizenship of last resort' is enacted which both affirms and challenges the primacy of national citizenship on which this synthetic model is based. Borders are crossed to activate EU citizenship where core civic freedoms are at stake and options within national law are not available. But

through these practices of exit and re-entry national belonging is often undermined, civic identification profoundly transformed and national sovereignty deeply disturbed. This, I argue, demonstrates the need for the more radical rethinking of the thick-thin binary found in deliberative and agonistic theories of democracy when conceptualizing citizenship and cross-border movement.

*Chapter five* provides an analysis of how cross-border movement spurs and facilitates deliberation and organized activism in the family unification dispute. I show that transnational publics emerge through the interplay between voice and exit/entry in the case. In *chapter six* I investigate exit to Sweden and return to Denmark as performative acts of dissent and protest. I outline four different storylines of, respectively, liberal anti-politics, civic protest, democratic taking and forum shopping. This is followed up in *chapter seven* with a narrative analysis that develops a concept of ‘transnational civil dis/obedience’. It captures how couples can act simultaneously as ideal Europeans and non-compliant national citizens. In making this argument I draw on agonistic, deliberative and cosmopolitan approaches to civil disobedience to construct an analytics of conscientious and contentious border crossing within a complex legal order like the European Union.

In the concluding *chapter eight* I draw the threads together to argue that specific practices of border crossing in the European Union can be meaningfully re-interpreted as civic acts through a re-appropriation of agonistic and deliberative theories of democracy. That in turn prompts us to critically re-consider key assumptions about democratic agency in these theories. Deliberative democracy - with all its commitment to the potential of discursive practices to transcend specific cultural and political contexts – needs to pay more attention to the generative and constitutive role of migratory movement. The study illustrate how transnational publics can emerge in and through border crossing in Europe, in particular when these strategies of mobility form part of a public political dispute over how to interpret the rights and bonds of citizenship. Agonistic democracy ought to interrogate critically its preference for and understanding of collective action. Individualized practices of border crossing can be facilitated by and generate organized activism through which relations of solidarity and

practices of contestation develop. Furthermore, border crossing can be undertaken as an act of protest and civil dis/obedience wherein ideals of liberty and equality are re-imagined.

The thesis illustrates the merits of challenging the binary of thick and thin citizenship through a dynamic re-construction of the relationship between rights, subjectivity and civic practice. We see that civil rights are indeed re-claimed through cross-border movement and in the process citizens' identification with Denmark often do suffer. While this in some instances leads to a thin or even instrumental approach to citizenship the story is far more complex. Rights are sometimes claimed and reinterpreted as part of an act of political protest. In other cases the protection offered by supranational citizenship in the face of national restrictions enables citizens and migrants to engage in civic practices of public deliberation and collective action. Sometimes exit and entry leads to identification with a Swedish society perceived as liberal and welcoming, or stronger appreciation of the European Union is gained. Other informants experience how their civic solidarity is enlarged through the process of involuntary exile and practices of engagement and they cultivate a cosmopolitan ethos. Finally, the thesis shows how citizenship can be at the same time instrumental and affective. Deprived of the ability to realize the family life they desire within Denmark citizens often come to appreciate the importance of a legal status that offers an effective protection of liberal rights. This is something many had hitherto taken for granted without giving it much thought. Many couples indeed apply for a Swedish citizenship for the non-EU spouse precisely because of the freedom and security it provides. But this pragmatic acquisition often goes hand in hand with a commitment to active and critical participation in the common life of citizens within and across borders.

## **CHAPTER TWO: DELIBERATIVE AND AGONISTIC CITIZENSHIP**

This chapter explores how deliberative and agonistic theories of democracy contribute to the debate over citizenship and migration. I contrast and assess how scholars working within the two approaches develop dynamic conceptions of membership particularly when engaging with the politics of immigration. Rather than seeing citizenship merely as a legal status or a stable political identity, a critical practice is explored: Members and would-be members claim and reinterpret rights and through their participation come to affirm or reinvent a civic ethos. There are, however, significant differences in how this civic practice is conceptualized within the two theories. These in turn are crucial to the insights the perspectives can offer on the dispute over thick national and thin postnational citizenship. I argue that while deliberative democracy goes some way towards challenging this problematic binary, key theoretical commitments prevent it from developing a more persuasive re-conceptualization. Agonistic democracy, by contrast, has the potential for creating a more profound restructuring of the terms of the debate. But a problem remains, which is the insufficient attention to cross-border movement and its civic potential.

In the chapter and the rest of the thesis I follow a classical approach in agonistic scholarship of constructing the argument through a critical engagement with deliberative democracy (see Mouffe, 2000; Honig 2001a; Schaap, 2006; McNevin, 2011; Glover, 2011). These two approaches share important concerns with democratic participation, porous boundaries and transnational politics but also differ markedly in their understanding of the character of ‘the political’ (Mouffe, 2005). Intervening in this on-going dispute and taking seriously the merits and shortcomings of both perspectives is a helpful strategy for drawing out what agonism has to offer a reinterpretation of citizenship across border and for developing the theory further (cf. Tully, 2008). The chapter begins by setting out and discussing deliberative democracy before moving on to agonistic accounts of citizenship and migration. The last part of the chapter then identifies and discusses the neglect of border crossing.

### **Deliberative democracy and the dynamics of citizenship**

Deliberative democracy is a very broad and varied school of thought (Fishkin, 1991; Chambers, 1996; Dryzek, 2000). I focus here on the work of Jürgen Habermas and Seyla Benhabib. The latter has in her appropriation of Habermas' work developed it in a more context sensitive direction and given special attention to questions of migration and citizenship (Benhabib, 1992, 2002, 2004, 2006, 2011).

#### *Habermas: a synthesis of thick and thin citizenship?*

To understand how citizenship is constructed in Habermas' deliberative theory we need to look at his account of constitutional democracy. Habermas argues for a conception of modern democratic polities which is committed to both the individual rights of citizens who are equal under law and to the popular sovereignty of those citizens as a collective body. He criticises liberal constitutionalists who want to privilege the law at the expense of democratic will formation and civic republicans and radical democrats for whom the self-government of the people comes first. Contrary to such approaches Habermas argues that '[p]rivate and public autonomy require each other. The two concepts are interdependent.' (Habermas 2001a, p.767) Without a constitution that secures the personal freedom of all citizens, a majority can suppress a minority. But without a democratically engaged citizenry who legislate for themselves, the law becomes an alien force bereft of legitimacy. A vibrant democracy, he insists, needs both human rights and popular sovereignty, private and political rights. The relation is one of 'co-originality', not of conflict (p.767). Habermas thus presents his conception of citizenship as one which is neither simply thin and rights-based nor thick and republican, but rather in dialectical fashion unites and transcends these two extremes.

This is an alluring thesis but not without complications. Even if we grant that the 'co-originality' argument holds in theory, in practice there is always the risk that a democratic majority may decide to suspend the rights of select minorities. It is therefore important that citizens 'make *appropriate* use of their public autonomy' (p.767, original emphasis) and this requires public deliberation of a particular character. All participants should be willing to take into account the perspectives of others and change preferences if persuaded by the 'forceless force of the better argument' (Habermas, 1999, p.332).

This view underlies the discourse principle, according to which '[j]ust those action norms are valid to which all possibly affected persons could agree as participants in rational discourse' (Habermas, 1996, p.107). When it comes to deciding on legally binding norms Habermas rephrases this moral precept as the democratic principle. It 'states that only those statutes may claim legitimacy which can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted' (p.110). This regulative ideal aims precisely to secure the protection of individual rights in and through public deliberation, while ensuring that these constitutional freedoms are also the product of the will of the people.

This does not solve the dilemma, though. After all, who decides what use of public autonomy is 'appropriate'? What to do if citizens will not listen to each other (Honig, 2001a)? If the popular sovereignty of the people is to be respected then there is no room for experts – whether judges or philosophers – whose arbitration is final and incontestable. It is in his response to this problem that the dynamic character of Habermas' citizenship conception comes out. Drawing on the work of Frank Michelman, Habermas 'argue[s] that the allegedly paradoxical relation between democracy and the rule of law resolves itself in the dimension of historical time, provided one conceives the constitution as a project that makes the founding act into an ongoing process of constitution-making that continues across generations.' (Habermas, 2001a p.768) 'Past mistakes' - such as racial segregation or the exclusion of women from public life - will hopefully over time be overcome through the 'self-correcting learning processes' of ongoing deliberation (Habermas, 2001a, pp.774-775). There can of course be setbacks where liberalizing reforms are opposed and overturned. But the constitution itself provides us with the resources for critiquing such legislation:

...each citizen of a democratic polity can at any time refer to the texts and decisions of the founders and their descendants *in a critical fashion*, just as one can, conversely, adopt the perspective of the founders and take a critical view of the present to test whether the existing institutions, practices, and procedures of democratic opinion- and will-formation satisfy the necessary conditions for a process that engenders legitimacy. (Habermas, 2001a, p.775, original emphasis)

If and when we do so we are on a journey towards greater liberty and equality. With this temporal argument Habermas presents us with a critical, practice-oriented understanding of citizenship as individual rights and collective self-determination. It is dynamic in a dual sense. First, the meaning of individual freedoms is not given once and for all but requires a continuing interpretive engagement. As he puts it, '[a]ll the later generations have the task of actualizing the still-untapped normative substance of the system of rights laid down in the original document of the constitution' (p.774). Second, though this interpretive process is self-referential it is not insular. The universalism of human rights as reflected in the discourse principle obliges citizens to take into account the perspectives of affected outsiders or those not yet fully included in the polity. Thus in the essay 'Struggles for Recognition in the Democratic Constitutional State', Habermas engages with questions about migration and the ethno-cultural pluralisation of European societies. He argues that Germany and other rich countries of Western Europe ought to pursue a liberal immigration policy which considers not just the wishes of their own citizens but also the needs of persons from poor third world countries hoping to improve their life chances (Habermas, 1994, pp.135-148).

While this approach to citizenship is both novel and attractive, it has been the subject of considerable criticism especially from agonistic democrats who question the tenability of the co-originality argument. They point out the teleological understanding of history reflected in the argument about 'self-correcting learning processes' (Honig, 2001a p.795). Agency is no longer located in the people. It is either transferred, in the fashion of enlightenment progress narratives, to a quasi-transcendental History that seeks to realize a built-in objective. Or it is invested in the founders as the ultimate source of law. The metaphor of 'tapping' the constitution for its unrealized surplus value suggests that radical reinterpretations such as extending the rights of citizenship to women were already laid down, however inchoately, in the original document. It reduces the civic agency of the activists who struggled to bring about such changes and ignores the inherent open-endedness of democratic politics. This makes us less well prepared for political contestation and deprives the people of genuine sovereignty by casting conservative and exclusionary policies as inappropriate choices that will eventually be corrected (Honig, 2001a; Mouffe, 2005; Butler, 1995).



This problem has important implications for the contention over thick and thin citizenship with which I am engaging. The more the proper interpretation of universal rights must be theoretically safeguarded - either through historical narrative or the communicative 'telos' of language games - the less room there is for actual democratic politics. If the form and outcome of civic participation is somehow already given in advance then it begins to resemble a staged show rather than a dynamic political practice. Habermas' postnational conception of citizenship, though initially promising, thus ends up looking rather too democratically thin to really challenge the troubling binary in the debate over migration and membership.<sup>12</sup>

#### *Benhabib and democratic iterations*

Benhabib is one of the friendly critics of Habermas who has long tried to grapple with challenges such as these to deliberative democracy (see Benhabib, 1992, 2002, 2004, 2011). In *The Rights of Others* she approaches democratic citizenship from the perspective of migrants as the epitomic outsiders whose presence prompts us to reconsider the ways we think about rights and political communities. Drawing on Jacques Derrida's concept of 'iterability' Benhabib (2004, p.179) coins the term 'democratic iterations'. The point about the concept of iteration, as she explains it, is that:

In the process of repeating a term or a concept we never simply reproduce a replica of the first original usage and its intended meaning; rather every repetition is a form of variation. Every repetition transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there really is no 'originary' source of meaning, or an original to which all subsequent forms must refer. (p.179)

The implication of this appears to be that when we deliberate in the public sphere about the core ideals and constitutional principles of liberal democracy we are therefore not

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<sup>12</sup> Habermas' conception of citizenship with its emphasis on public identification with constitutional rights and principles ('constitutional patriotism') rather than language and shared history is often chided by republicans and liberal nationalists for being too thin. Common political ideals are important to be sure, but not enough, they argue. A sense of shared identity provided by the nation as an imagined community is necessary to bind a people together and ensure their mutual trust and solidarity (see for example Bellamy, 2008; Miller, 1995). Note that this is not the critique developed here where focus is on democratic contestation and mobilization rather than national belonging.

just repeating the acts of our forefathers. This seems to do away with the idea of ‘tapping’ the normative substance as there is no longer a stable original to tap (but see Thomassen, 2011). Rather, as Benhabib puts it, ‘[i]teration is the reappropriation of the original’ (Benhabib, 2004, p.180). In our debates we bring our different contextual understandings and particular experiences and perspectives into play and in doing so we give new meaning to ideals of rights, belonging and citizenship.

Benhabib also acknowledges that while liberal democracy entails a dual commitment to universalist human rights and the popular sovereignty of a particular ‘demos’ there is an irreducible tension between these two constitutive dimensions. She argues that ‘this paradox of democratic legitimacy has a corollary ..: every act of self-legislation is also an act of self-constitution. “We, The people” who agree to bind ourselves to these laws, are also defining our-selves as a “we” in the very act of self-legislation’ (2004, p.45) This means defining who does not count as citizens of a given polity – for example the mentally ill, criminals, foreigners. That in turn brings us to the challenge of immigrants as individuals who are subjected to the law but are not its authors (cf. Walzer, 1983). Benhabib argues that:

[w]hile the paradox that those who are not members of the *demos* will remain affected by its decisions of inclusion and exclusion can never be completely eliminated, its effects can be mitigated through reflective acts of democratic iterations by the people who critically examines and alters its own practices of exclusion. (p.21)

She contends that boundaries are necessary for democratic will formation and representation but that norms which transcend our particular polities are written into the grammar of individual rights obliging us to pay attention to the perspectives and interests of outsiders. The territorial and political borders of a polity must thus be ‘porous’ (p. 3) and open to revision through *democratic* iterations. These she defines as:

... complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in civil society. (Benhabib 2004, p.179)

It is through participation in such deliberative processes that we negotiate what citizenship means, the rights and collective identities that come with it and how it is distributed. With the concept of democratic iterations Benhabib thus engages in critical dialogue with those civic republicans who worry that contemporary migration threatens civic participation and political community. Far from undermining citizenship, she contends that immigrants can contribute actively to the reinterpretation of membership.

To illustrate her point Benhabib analyzes contemporary debates particularly in France over the access to citizenship and the right of Muslim girls and women to wear headscarves in public schools and the work place. Benhabib argues that some girls and women are beginning to reinterpret not just what it means to be Muslim but also what it means to be a French citizen. That is, they are engaging in democratic iterations. In her discussion it is clear how, despite the incorporation of Derridean insights, hers is still a deliberative democratic argument. She stresses that ‘learning processes’ should ensue where participants in this debate make their voices heard and listen to each other (p.192): ‘While the larger French society would have to learn not to stigmatize and stereotype as “backward and oppressed creatures” all those who accept the wearing of what at first appears as a religiously mandated piece of clothing, the girls themselves and their supporters would have to learn to give a justification of their actions with “good reasons in the public sphere”.’ (p.192) This illustrates how Benhabib retains a commitment to moral progress through deliberation. Both immigrants and those critical of migration are positioned as somewhat immature and in need of civic education in so far as their public engagement falls short of the standards of discourse ethics.<sup>13</sup>

Though her concept of ‘democratic iterations’ thus appears to offer more room for democratic contestation it ends up being rather too narrow. Its strong apparent attraction derives from its promise of a universalistic normative political theory along the lines of Habermas’ deliberative democracy but without its shortcomings. But her text is rife with tensions and ambiguities which point either towards a classical deliberative

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<sup>13</sup> As Lasse Thomassen (2011) argues, the two groups – French mainstream society and young Muslim women – are not on a par in Benhabib’s narrative. The former are assumed to already know the language game of democratic deliberation but must learn to include in it also these new prospective participants, thus countering their own prejudices. The latter are implicitly presented as new to this discursive practice of public justification – whether because they are young, Muslim or immigrants.

democratic account or towards something more akin to agonistic democratic theory (Thomassen, 2011; see also Honig, 2009b, pp.112-137). In subsequent books, *Another Cosmopolitanism* and *Dignity in Adversity: Human Rights in Troubled Times*, Benhabib engages with her critics and clarifies key issues somewhat. For example, she concedes that while democratic iterations can foster greater inclusion they may also in some cases prompt hostility against immigrants, a point which while admitted in her earlier analysis had not been given much attention (Benhabib, 2011, p.152; 2004, p.198). This is an important recognition of the open-endedness of democratic politics – a predicament which, as we shall see below, is central to agonistic theorists. This further distances her concept from Habermas’ teleological narrative. The idea of moral learning, however, remains central (Benhabib, 2006; Thomassen, 2011) and with it the somewhat restrictive procedural notion of what constitutes good citizenship.

Taken together, Habermas and Benhabib offer dynamic understandings of citizenship which insist on the democratic necessity of boundaries while emphasising their fluidity and the context-transcending character of civic rights. This re-conceptualization goes some way in challenging the dichotomy of thick and thin membership. We are not presented with a postnational account wherein citizenship is based primarily on individual rights which erases political differences between insiders and outsider (Soysal, 1994). But neither are we faced with a more exclusive national or republican membership where migrants are perceived as potential threats to cultural and political identity (Jacobson, 1996). Rather, citizenship is a critical practice wherein a people exercise sovereignty by reinterpreting the rights, civic identity and political boundaries of membership through deliberation in the public spheres. Even so, the strong commitment to moral progress in both Habermas and Benhabib’s work leaves too little room for democratic politics to provide an effective critique of the thick/thin binary. The political sovereignty of the self-constituting ‘demos’ remains too constricted which makes it easy for republican critics to dismiss this account as yet another thin universalist post-nationalism in disguise.

In the following I set out agonistic conceptions and explore how they can help us engage better with this problematic.

### **Agonistic democracy and the dynamics of citizenship**

Agonistic democratic theory is a rapidly growing body of research which like deliberative democracy includes varying strands and significant differences (for a critical comparison of key agonistic thinkers see Glover, 2012). I focus here on two of the main theorists who have developed this approach, Chantal Mouffe and Bonnie Honig. The latter in particular has explored the relations between democracy, citizenship and migration.

#### *Mouffe and the problem of moralistic politics*

Mouffe constructs her theory of agonistic democracy partly through a critique of Habermas and Benhabib's deliberative democracy. She argues that their work provides us with a flawed understanding of politics and citizenship. Instead, she presents us with a different conceptualization emphasizing contestation rather than reason and consensus (Mouffe, 2000). Following Carl Schmitt, Mouffe sees the creation of friend-enemy distinctions as the essence of 'the political'. Democracy needs a 'demos', and partisan politics needs partisans. We create these collective selves by drawing boundaries and mobilizing passion through evocative and rhetorical discourse. Conflict is therefore an ineradicable part of politics. Instead of seeking to overcome it through deliberation and a search for rational consensus, we should aim to transform it in democratic ways. We do this by treating the other not as 'an enemy to be destroyed, but as an "adversary": i.e. as somebody whose ideas we combat but whose right to defend these ideas we do not call into question' (p.102).

This view of conflict makes Mouffe critical of Habermas' claim to have solved the tension between human rights and popular sovereignty. She shares his commitment to both democratic engagement and individual freedom, but insists that '[t]here is no necessary relation between the two distinct traditions but only a contingent historical articulation' (p.3). Our rights as citizens are always at risk of being curtailed through the collective decisions we partake in as members of the civic body, just as our self-determination as a people can be invaded by the rule of law.

For Mouffe the ‘constitutive paradox’ of liberal democracy is precisely that the tension between liberty and populism cannot ultimately be overcome (p.11). All we can do as democratic citizens, according to Mouffe, is to engage in an ongoing political struggle over how to interpret their relationship, while acknowledging that any articulation is partisan and contestable. This, however, is no cause for despair, she claims. On the contrary, it provides us with a more genuinely dynamic and pluralistic understanding of citizenship. Hence she argues that:

By constantly challenging the relations of inclusion-exclusion implied by the political constitution of ‘the people’ ... the liberal discourse of human rights plays an important role in maintaining the democratic contestation alive. On the other side, it is only through the democratic logics of equivalence that frontiers can be established without which no real exercise of rights could be possible. (p.10)

The constitutive paradox of liberal democracy is thus productive. It enables us to create a community of citizens with equal rights, while keeping open the interpretation of these freedoms and allowing for a re-drawing of the boundaries of the civic body.

Critics wonder, however, why contestation should necessarily be so desirable (cf. Dryzek 2005). Migration is a topic which has in the past two decades become highly contested in European politics yet this does not appear to have served immigrants particularly well. On the contrary, restrictive policies on family unification, asylum and border control have been introduced in several countries and in the EU. This has made it increasingly difficult for refugees and transnational couples to find sanctuary or realize the family life they wish for (Ruffer, 2011; Hatton, 2004; Collinson, 1996). Moreover, the negotiation of sensible and pragmatic solutions to the micro-politics of migration and multiculturalism can easily be obstructed by confrontational discourse (cf. Dryzek, 2005). Contemporary disputes over the display of religious attire in public institutions or the social exclusion experienced by many young citizens and migrant residents in impoverished areas are heated enough already. What is needed, surely, is not more contestation but the prevailing of cooler heads willing to listen to arguments on all sides.

Mouffe's argument turns this critique on its head: It is because of the lack of agonistic social and economic politics in the 1990s and early 2000s that immigration came to dominate the agenda in this troubling way (Mouffe 2005). She argues that in this period politics in Europe and the US was marked by an absence of adversarial contestation. Left-right opposition was deemed outmoded by 'third way' advocates like Tony Blair, Bill Clinton and Anthony Giddens. Instead, Mouffe argues, politics became technocratic or was played out 'in the register of morality' with opponents presented as backwards, irrational or outright evil (p.72). This lack of clearly marked political and ideological differences within mainstream politics left the field open to right wing populist parties. They present alternative storylines and offer powerful constructions of collective identity which define 'the people' through opposition to foreigners, immigrants and the 'establishment'. Mouffe cautions us that a moralistic response to such parties which presents them as quasi-fascist and beyond the pale is not only un-democratic but will also strengthen their popularity. Instead, social-democrats need to rediscover and rearticulate their ideological project so as to provide alternatives to the neoliberal hegemony thus ensuring that there are conflicting political visions of democratic society with which citizens can engage and identify (Mouffe 2000, pp. 121-127). The idea is that if we are not offered partisan democratic projects which can mobilize our passions and channel them in peaceful political directions then it is only too likely that they will find other outlets for example in religious fanaticism or xenophobic movements.

In this way Mouffe presents a dynamic conception of citizenship which in many ways resembles Benhabib's analysis but gives more space to democratic contestation and passionate identification. Her analysis draws attention to the dangers of a citizenship in which legal and moral rights take precedence because this dislocation of politics may engender both passivity and antidemocratic movements. With its emphasis on active engagement and visceral attachments this is an account of porous boundaries better suited to meet the concerns of republican critics.

#### *Honig's democratic taking*

Mouffe analyzes one important, if for leftists and cosmopolitans disturbing, role the invocation of migration can play in democratic politics. Immigrants as the outsiders

inside are easily cast as threats to the welfare, unity, and sovereignty of the people and this in turn can serve as an effective rallying call for popular mobilization. While this is clearly crucial, other more ambiguous stories of migrants form part of the democratic imaginary, as we shall see in the work of Bonnie Honig, which gives more attention to the civic agency of migrants. Where immigration for Mouffe is an area of political contention (and potentially an undesirable one symptomatic of too little socioeconomic adversarial politics), immigrants themselves are vital civic actors in Honig's analysis.

To appreciate Honig's insights into the politics of migration and citizenship it is necessary to set out briefly her version of agonism, which is somewhat different from Mouffe's Marxist and Schmittian approach (see Glover, 2012). Like Mouffe, Honig (1993, 2001a) is sceptical of the overemphasis on reason and consensus in liberal and deliberative conceptions of citizenship. Drawing on Arendt, Nietzsche and Derrida she emphasizes the creative and disruptive qualities of political action. Politics is about collective willing. We come together to make something anew and in doing so constitute ourselves as a people (Honig 1991, p. 99). But this is not simply a moment of harmony and rational agreement. It entails, by necessity, exclusion and transgression. A group of persons invoke - not just any political order - but a specific constitutional regime which facilitates certain forms of subjectivity and suppresses other (Honig 1993, pp. 3-6). And the founders do so in the name of a people 'that does *not* exist before this declaration' or inauguration (Derrida quoted in Honig 1991, p.104, italics in original). This demos in whose name the constitution is enacted therefore cannot serve as the basis of legitimacy for the points of inclusion and exclusion this political act establishes. Consequently, Honig claims, 'every politics has its remainder, [...] resistances are engendered by every settlement even by those that are relatively enabling and empowering.' (Honig 1993, p.3) We should thus 'seek to secure the perpetuity of political contest' in order to challenge the relations of power prevailing in a given regime (p.3).

In *Democracy and the Foreigner* (2001b) Honig intervenes in today's public and politico-theoretical dispute over migration and citizenship. Instead of asking '[h]ow [we] should ... solve the problem of foreignness?' she suggests that we enquire into



*‘what problems foreignness ... solves for us’* (Honig 2001b, p.4, italics in original). By this she means what positions foreigners occupy in the narratives about liberal democracy ‘we’ tell ourselves in the ‘West’. Through careful readings of a selection of religious, literary, and philosophical texts as well as popular culture she draws out an ambiguous figure of the foreigner. Immigrants are cast as redeemers and ‘re-founders’ who bring new life to decaying political communities, but also as troublemakers who pollute the civic body and undermine the bonds of trust and fellowship. Rather than lamenting the ways the myth of the foreigner is employed in the construction of the citizenry Honig reinterprets this ambivalent narrative for her own agonistic democratic purposes. Building on the work of Jacques Rancière she presents us with a view of an immigrant as a *‘democratic taker’* who grasps the civic rights she does not yet possess (Honig 2001b, p.101 italics in original; Rancière 2004). Instead of waiting politely to be granted the status of citizenship with liberties and access to participation, ‘such immigrants have banded together to take or redistribute power.’ (Honig, 2001b, p.101) In doing so they demonstrate the dynamic nature of citizenship, the productive and disruptive effects of democratic political engagement and the ‘porousness’, as Benhabib terms it, of political boundaries.

The concept of democratic taking provides Honig with an inroad into the debate over thick and thin citizenship in the context of migration. In xenophobic discourse, immigrants are often charged with taking something from ‘us’ that is rightfully ‘ours’ - jobs, welfare or even sovereignty. Here taking is a form a stealing with connotations of selfishness, unlawfulness and illegitimacy. But there are other forms of taking - as in taking action or taking a stand - which imply solidarity, engagement and a conscientious attitude. Honig’s re-signification of the term helps her to show that a democratically thick citizenship actually needs such unauthorized collective actions. They challenge the inevitable exclusions of membership and keep contestation alive. She thus agrees with liberal nationalists and statist republicans that democracy requires active participation but reminds us that this often involves performative acts of taking which from the perspective of the existing order are likely to appear illicit and instrumental. As the powerful seldom concede their privileges without a struggle, it may be necessary for the disenfranchised to claim rights in political acts which they do not yet have in law. Even

well-established freedoms need to be appropriated and defended if they are not to be devoid of content (Honig 2001a). This is reflected, for example, in occupy movements where citizens re-claim public spaces that have been privatized by consumerism or securitized by governments.

This conceptual prism is appealing but it runs the risk of glorifying migrants and portraying them again simplistically as ‘heroes’, while downplaying the challenges they face and represent to society. That is a problem often generated by pro-migrant activist scholarship (Ong, 1999; McNevin, 2011; see for example Hardt and Negri, 2000). To counter such interpretations Honig suggests that we read migrant activism and contemporary citizenship not as a love story with a happy ending - the good immigrant was enfranchised and the polity became a better, more inclusive community - but as a ‘gothic romance’. In gothic romance the heroism of the protagonist is checked by her own ambivalence and her dark and uncertain surroundings (Honig 2001b, pp.107-112). The civic engagement of migrants, as of all actors, can be cosmopolitan and conservative, solidaristic and self-serving, and immigrants often find themselves in a hostile political environment where claiming rights is difficult and risky and outcomes hard to predict.

Gothic romance is also helpful for rethinking our relationship to states and international or supranational regimes. As migrants or citizens we seek recognition and rights from political communities in which we in different ways take part. The polity is thus a potential source of protection as well as social and political membership. But it is also a possible and often very real threat which may debar our inclusion or control our intimate lives. Against a romanticized ideal of states or institutions like the EU in nationalist and postnational accounts Honig (2001b, 2009b) stresses the dangers as well as promises of organized power. She calls for ‘a politics that acknowledges our passionate ambivalences and engages them by pluralizing our attachments so that the nation-state is just one of several sites of always ambivalent attachment rather than the sole and single site of romantic love’ (Honig, 2001b, pp.121-122). She thus counters the thick/thin binary by drawing attention to the multiple arenas for democratic engagement while at the same time reinterpreting the civic ethos.

Summing up, agonistic democracy in the work of Honig and Mouffe provides conceptions of citizenship which, like the deliberative versions, are dynamic and combine civil rights, identification and democratic participation. But in this approach emphasis is on conflict and collective action rather than deliberation and consensus. Citizens and migrants participate not in a sober exchange of reasons over how best to interpret our basic freedoms, but in an open-ended, passionate and creative struggle over how to re-imagine these liberties and establish a new hegemonic understanding. The ideals of freedom and equality are shared by partakers, but these are understood differently by adversarial contesters ‘so consensus is bound to be a conflictual-consensus’ (Mouffe 2000, p.103). This perspective is more promising than the deliberative account for a restructuring of the debate over migration and membership that takes us beyond the binary of thick national and thin postnational citizenship. Populist critics of immigration are treated as political adversaries whose ideas should be challenged rather than deemed immoral or immature. Migrants themselves are taken seriously as actual and potential civic actors without first subjecting them to a process of civic education. In this way, a space is opened up for a more radically participatory politics of transnational membership the outcome of which is never given in advance.

### **Border crossing neglected**

Though agonistic democracy presents a conception of citizenship better suited to challenge the binary of thick and thin, it shares with deliberative democracy a troubling neglect of exit-entry as a potential civic practice. Little attention is given to the strategies and lived experiences of cross-border movement which give rise to and are often a focal point for these political disputes. Honig (2001b), for example, indirectly explores the role of migratory entry in an analysis of the biblical figure Ruth who left her home state for Israel. But though she gives a critical re-appraisal of Ruth’s transformative agency, the civic potential of such cross-border movement is not in the end appreciated. Benhabib (2011) in a recent analysis of international law welcomes feminist transnational collaboration where migrant activists support local mobilization, but she does not adequately explore the role cross-border movement plays in the making

of such public debates.<sup>14</sup> This omission is a problem because it weakens the reply agonists and deliberative democrats can offer to their liberal nationalists and statist republican interlocutors. The practices that are deemed most problematic by these critics - ongoing cross-border movement - are insufficiently addressed while the potential of these actions for contributing to democratic life is not properly elucidated.

In public discourse porous borders are often presented as dangerous, representing both a security risk and a threat to popular sovereignty.<sup>15</sup> When access to the territorial and symbolic space of the polity is not tightly regulated 'we' as insiders may be invaded by transnational criminal networks, terrorists and unwanted immigrants all of whom are in different ways seen to endanger the community of citizens. A critical moment in especially agonistic interventions in the politics of migration and membership is to dispute this narrative by showing how the collective mobilizations of irregular immigrants can reinvigorate and transform democratic life (Honig, 2001b; McNevin, 2011; Glover, 2011). Though these residents are not lawfully present let alone passport-holding members their public claims and organized protests can be acts of citizenship. This re-orientation of the debate would carry more weight, though, if agonists could also show how clandestine border crossing in itself might form part of or constitute civic action.

A similar point can be made with regards to academic and public debate over EU citizenship. Some EU skeptical republicans, for example, welcome international immigrants who will settle and go through the process of becoming fully included citizens. What worries them is the free movement of EU citizens: They claim supranational rights but do not trouble to take on the obligations of a comprehensive

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<sup>14</sup> Anne McNevin does engage critically with arguments in the so called 'autonomy of migration literature' - an activist, neo-Marxists strand of critical borders and migration studies - that clandestine cross-border movement is itself a radical transformative practice (see for example Papadopoulou et al., 2008; Hardt and Negri, 2000). She quite rightly criticizes some of these authors for a wildly romanticized conception of migration and for failing to account for what might make such actions political (McNevin, 2011, pp.96-98). While I certainly agree that it would be disingenuous to describe all illicit border crossing as civic, including for example human trafficking, particular modalities of exit-entry might well warrant such an interpretation (for an excellent discussion see Cabrera, 2010). In a recent article McNevin (2013) is more open to exploring the transformative potential of mobility proposing an analytics of 'ambivalence' resonating well with Honig's gothic approach.

<sup>15</sup> For examples from the Danish family unification dispute, see chapter five and appendix II and Rytter, 2010a.

national membership in their new home state. Again, the case for a dynamic re-conceptualization of citizenship would be strengthened if a credible argument could be made for the civic character and import of the cross-border movement that is so central to citizenship in the European Union.

### *Explaining the gap*

This one-sided focus on civic voice at the expense of exit is perhaps to be expected given the theoretical presumptions of deliberative and agonistic democracy. For deliberative democracy public speech is essential. The ‘forceless force of the better argument’ can only prevail if an argument is articulated (Habermas, 1999, p.332; Benhabib, 2002). The citizen who leaves her country out of discontent does not, it would appear, attempt to convince her fellow citizens through reasoned deliberation. She does not engage in public argument over how to improve the political or economic circumstances for all. Nor would she seem to listen to the views of those who disagree with her assessment of the situation. No debate, therefore, takes place through which the boundaries of civic community can be rationally reinterpreted (cf. Benhabib, 2004). Hence, at the face of it at least, the silence of exit challenges the deliberative democratic understanding of civic action.

Agonistic democracy also stresses the importance of voice, albeit for different reasons (Glover, 2011). In order to counter dominant constructions of the people alternative understandings need to be publicly expressed. If new forms of solidarity are to be forged articulations must be made which link together the interests, hopes and grievances of diverse societal groupings through opposition to a common adversary (Laclau and Mouffe, 1985). But agonistic democracy has a different and rather more permissive understanding of civic articulations. Political speech acts are not rational arguments but evocative narratives and statements (Mouffe 2000, pp.80-107, Norval 2007, pp.58-59). This could allow better for symbolic manifestations such as sit-ins. There is, however, a strong commitment to collective action in agonistic democracy, as we have seen. It is by joining together that separate individuals constitute themselves as a democratic political force (Honig, 1993; Mouffe 2000). In cases of mass movement due to for example war or persecution of certain societal groupings exit can, in some

sense, be an organised activity. But the act of leaving is in most cases undertaken by individuals and families as part of their private attempts to improve their lives. From the perspective of agonistic democracy then, what is troublesome about exit is less its silence than its apparently individualistic character.

It is therefore not surprising that border crossing as a civic political strategy has largely been ignored in deliberative and agonistic democracy, despite the considerable interest in migration displayed within this literature. Indeed, it might be argued that this is a desirable consequence of a concern with public action and debate as a defining feature of democracy. If the two theories integrated practices of exit and entry within their understandings of civic action they would, on this reading, compromise essential commitments, weakening thus their overall frameworks. Instead of political theories which seek to cultivate an engaged citizenry who care about the general welfare we would have conceptualized a market-based, libertarian society where individuals opt in and out of politics according to their private interests.<sup>16</sup> There is, however, a considerable and growing body of sociological literature that finds evidence of a fruitful interplay between exit and voice. This suggests that by overlooking practices of exit, entry and re-entry deliberative and agonistic theories risk giving a distorted account of how the porous boundaries of membership are actually negotiated and may fail to grasp the conditions and character of transnational voice.

### *Exit and voice*

To see why this is the case, let us look first at the example of refugees whose moral and legal claim to sanctuary is a central concern for especially Habermas (1994) and Benhabib (2004). International human rights conventions inaugurate the basic rights of all persons to for example religious freedom. In most parts of the world, though, implementation is left almost entirely to states. The norm of state sovereignty in domestic affairs is strong and rights violations must be on a massive scale to - maybe - sanction intervention from outside. If, however, persecuted persons leave their home country and enter into the territory of another state then they can claim protection. The speech act is crucial. The individuals in question must in the presence of an official

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<sup>16</sup> According to Richard Bellamy (2009), this 'liberty of the post-moderns', of which he is highly critical, is already implicated in Benhabib's work.

person say the word asylum. But it is the actual crossing of borders that legally enables them to do so. The act of moving between states constitutes refugees as subjects who may claim a right to protection they did not previously possess (Guild 2009, p.81). Asylum seekers can thus be seen as performing a (minimal) cosmopolitan citizenship that demonstrates the porousness of political boundaries (Benhabib, 2004), but to properly understand this civic action attention must be given to the conjoined practices of exit, entry and voice (cf. Aradau and Huysmans, 2009)

It is not only forced migrants who claim and reinterpret rights of membership by crossing borders. In the EU, European nationals and their families enact a supranational citizenship by moving between member states, as we have seen. As long as a citizen remains within her own home state her national citizenship is meant to protect her. Crossing the borders gives her access to another set of entitlements and fundamental freedoms. The mobile citizen must claim her rights to the authorities of her host country. EU law can be unclear, and member states often differ in their implementation (Falkner et al., 2006). Hence, it is sometimes necessary to take legal action and present the case in court (Kostakopoulou, 2007). Again, it is practices of exit and entry that reconfigure this Union citizen who voices her rights claims and performatively contests the norm of state sovereignty.

In these important cases, cross-border movement is thus constitutive of voice and the one cannot therefore be meaningfully understood without the other. Indeed, when appeals for sanctuary or free movement are articulated it is the crossing of borders that makes these articulations audible within a juridical sphere as the voices of international refugees and European citizens. The transnational nature of such acts is thus intimately bound up with practices of exit and entry. Not all cross-border movement entails a juridical reconstitution. Existing empirical research nonetheless identifies an intricate and often productive interplay between exit, entry, re-entry and voice which I find is important for a dynamic conception of citizenship.

This role of border crossing may appear contra-intuitive. As described earlier, exit looks more like a way of giving up on public debate. In his initial work, *Voice, exit and*

*loyalty: Responses to Decline in Firms, Organizations, and States*, Hirschman (1970) argued that easy access to emigration could undermine democratic debate. The reason was that the discontented would leave rather than voice their concerns. In a later article, however, he revised his views somewhat. Analyzing the case of the German Democratic Republic (GDR) and the fall of the Berlin wall Hirschman (1993, p.177) found that ‘exit (outmigration) and voice (protest demonstrations against the regime) worked in tandem and reinforced each other, achieving jointly the collapse of the regime’. In reaction to the large number of persons who left or wanted out others mobilized around staying. Their slogan “Wir bleiben hier” (quoted in Hirschman, 1993, p.189) was a demand for change directed at the regime. Hirschman points out that though at first ‘the Ausreiser, the partisans of exit, and the *Bleiber*, the partisans of voice, form[ed] separate, even somewhat antagonistic, groups [they] [e]ventually ... merge[d] under the slogan "Wir sind das Volk" (we are the people)’ (p.190). In the case, mass exit prompted organized protest and was an essential part in the peaceful democratic revolution.

Hirschman’s 1993 article has generated a substantial body of research exploring the potentially constructive interplay between emigration and public dissent in the GDR and elsewhere. This literature examines the complex relation between voice, exit, entry and re-entry and probes the conditions for cross-border movement to generate or facilitate public protest (Lohmann, 1994; Joppke, 1995; Torpey, 1995; Pfaff and Kim, 2003; Gammage, 2004; Hoffmann, 2004, 2010; Hughes, 2005). Here I discuss what I take to be the most important of these – the magnitude of exit.<sup>17</sup>

Throughout the history of the German Democratic Republic emigration rates were considerable, never falling below 10,000 per year. The building of the Berlin Wall significantly reduced numbers for a while, but an outflow of people continued. As Hirschman and others point out, this served to dampen rather than generate voice, as potential critics left of their own accord while troubling dissidents were expelled. During the summer of 1989, however, Hungary opened its borders to Austria thus providing discontented East Germans with an easy exit route to Western Europe and a veritable exodus took place. It was this mass emigration that prompted reformists and

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<sup>17</sup> Other conditions discussed in the literature include state policies, constructions of collective identity and societal cleavages (see Torpey, 1995; Hoffman, 2004; Hughes, 2005).



prospective emigrants to voice. It demonstrated to both insiders and outsiders that the regime had lost control and legitimacy (Hirschman, 1993; Joppke, 1993; Pfaff and Kim, 2003). This suggests that the size of exit greatly matters for its ability to generate public protest and transform a regime.

Steven Pfaff and Hyojoung Kim have examined the importance of the scale of outmigration in the GDR. Based on a county-level statistical analysis of emigration and demonstrations in East Germany in 1989 they argue that *'the level of exit has an inverted-U-curve relationship with the frequency and magnitude of protest events.'* (Pfaff and Kim, 2003, p.414, italics in original) For emigration to play a political role it must *'take on the social character of a 'crisis' and spread [...] an unmistakable signal of generalized discontent.* Tens of emigrants do not make a regime crisis, but thousands do.' (p.409, italics in original) According to Pfaff and Kim, a critical mass of exit is thus needed to facilitate voice. But they also argue that if too many people leave this will undermine the social networks necessary for organized voice, thus producing the reverse effect.

That size matters is intuitively plausible but how many is many? Hundreds of thousands left the GDR in 1989 but then that led to revolution, regime change and the dismantling of the East German state. Civic action in democracies typically has more modest objectives. In a society with independent media and freedom of speech, migration on a smaller scale could well be sufficient to draw public attention to socio-political problems and trigger public voice. In the Danish family unification dispute, 2-3000 citizens have left for Sweden and this has indeed spurred intense debate about the effects of the policy, as we shall see in chapter five. Moreover, when border crossing prompts and enables migrants to articulate their concerns in courts the significance of just a few cases can be considerable.

The second part of the u-curve argument also merits close attention. At the face of it at least, the claim that at some point large-scale emigration will undermine the social networks needed for public protest would seem credible. But this contention reflects a conceptual problem of 'methodological nationalism' in Hirschman's (classical and

revised) framework (Hoffman, 2010; cf. Bartolini, 2005, p.5). It is based on the assumption that once you have left you cannot exercise voice. In the GDR case, this was arguably a reasonable expectation since maintaining social networks across state boundaries was very difficult because of the regime's strict border control and massive surveillance. But even there, emigrants from the Eastern Bloc countries could and often did voice their critique in the West. If we move beyond the example of East Germany to contemporary transnational migration, this territorialist framing becomes more troubling, as Bert Hoffman has pointed out. Emigration can not only trigger domestic voice in the country left behind. It can also facilitate individual claims-making and collective action from abroad.<sup>18</sup>

To illustrate the argument, let us return again to the refugee-example. A person whose life and freedom is in danger in her home country is in a very difficult position for critiquing the government and engaging in democratic protest. But fleeing to another state she could find the personal security which would enable her to do so (Hoffman, 2010; cf. Dowding et al., 2000, p.491). Other groups of migrants can also take part in public debate in their host state or country of origin. They could organize themselves in cross-border advocacy networks seeking to raise issues locally and internationally and back domestic opposition groups. Case studies from Central America, the Caribbean, North Africa and the Middle-East finds support for such transnational relations between exit and voice (Hoffmann, 2010; Moghadam, 2009; Smith and Bakker, 2005; Gammage, 2004). Valentine Moghadam, for example, shows how in a struggle for greater freedom for women in Iran, Iranian women's rights activists were supported by

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<sup>18</sup> The argument that high levels of exit undermine social networks in the sending state finds some support in a study of Mexico. Based on survey data and data from the 2000 presidential election, Gary Goodman and Jonathan Hiskey (2008) find that emigration-intensive municipalities have lower voter turn-out and less participation in non-electoral political activism. Membership of other forms of civic organizations, including transnational neighbourhood groups, increases however. On this basis they argue that though migration creates cross-border communities these at the same time undermine national democracy as citizens turn away from the political system of the state. This finding is challenged, though, by two other quantitative studies. Clarisa Péres-Armendáriz and David Crow (2010) find, contrary to Goodman and Hiskey, that non-electoral participation – political and otherwise – increases for citizens with friends and relatives who have migrated or who belong to migration-intensive social networks. Thomas Pfutze (2012) looks at local elections in 2000-2002 and shows that residents in high migration areas were more likely to vote against the ruling party which had dominated Mexican politics for a century thus contributing to a democratic transformation.

‘expatriate feminists’ and transnational women’s rights groups, ‘in partnership with international human rights organizations’ (Moghadam, 2009, p. 266).<sup>19</sup>

Moreover, emigrants sometimes return to their country of origin to take part in public affairs. Or they do, occasionally, engage in politics in their state of birth while remaining fully or partly in their new country (Hoffman, 2010; Smith and Bakker, 2005). In *Citizenship across border: the Political Transnationalism of El Migrante* Michael Peters Smith and Matt Bakker provide a series of interconnected ethnographic case studies of migrant activism in Mexico and the USA. They map the emergence of a ‘simultaneous transnational political practice’ (Smith and Bakker, 2005, p.203). Their key informants are political entrepreneurs who participate in both Mexican and US politics on different levels. These individuals typically mobilize around migrant issues and migrant experiences and stress their dual sense of belonging. Such developments prompt Hoffmann (2010) to question the binary conception of exit; leave or stay. Rather, new spaces of in-between, here-and-there are being constructed.

In a European context this is perhaps especially so. The establishment of the European Union and the gradual removal of internal borders further qualify the character of exit. An EU-citizen is free to leave her country permanently or to resettle for a time in another member-state. But when doing so, she remains within the political Union to which her home country belongs. She leaves and yet she stays. To some extent the same can be said about a citizen of a federation like Germany or the USA who moves internally from one state to another. The legal, political, and cultural differences between Massachusetts and South Carolina or Schleswig-Holstein and Baden-Württemberg are considerable, but when crossing intra-state frontiers the citizen remains in the same ‘nationalized space’ (Favell, 2008, p.19, italics removed). Still, this parallel is potentially misleading as Adrian Favell argues. Europe is not a ‘nation-state-society like the US’ or even a multinational state such as Canada. In his study of mobile European elites Favell shows that a postnational space is created by these ‘Eurostars’ who make extensive use of the freedom of movement in the EU. His informants leave

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<sup>19</sup> Benhabib (2011, pp.132-134) discusses this case in a recent essay, ‘Claiming Rights Across Borders’ but she does not really address the role of cross-border movement in these examples of transnational activism.

their home state not to enter another nation but to become detached from national belonging as such.

Favell stresses that his Eurostars generally pay taxes and take active part in the cultural and social life of the cosmopolitan cities in which they live (Favell, 2008, pp.35-36, 51). But his work does not explore the extent to which they participate in public debate and political action. This raises the question if their border-crossing reflects a disengagement from politics. There are few studies of the relationship between exit and voice in the European Union.<sup>20</sup> The area where it has been most discussed is East-West labour mobility after the recent rounds of enlargement. Here conclusions are largely pessimistic although the picture is mixed. James Hughes (2005) analyzes voice-exit dynamics in the Baltic countries immediately after these states' EU accession. He predicts that entrenched discrimination of Russian minorities combined with new opportunities for EU mobility will lead to a mass exit that does not feed back into political reform at home. Studying the case of Lithuania Charles Woolfson (2010) argues that failure to effect change through voice during the economic crisis has been accompanied by and is likely to intensify large scale outmigration. To the extent that more voice may be generated by this interplay he expects it to take an anti-democratic form.

Neither Hughes nor Woolfson discuss how, if at all, actual and prospective migrants might participate in civil society in the destination countries. Guglielmo Meardi (2007, 2010) addresses this issue in his studies of migration and trade union activism. He finds evidence of a weakening of union power but also some trends towards a revitalisation of local activism and the formation of transnational ties between East and West labour organisations. The emergence of new micro-publics is explored by Alexandra Galasinska (2010) in a case study of Polish migration. She analyzes 'an electronic newspaper forum as an example of a transnational space of participation' and shows how Polish 'migrants and non-migrants' take part (p.309). Marion Ådnanes (2004) compares attitudes and motivation between prospective 'movers' and 'stayers' among the young elite in pre-accession Bulgaria. She does not explore the interplay between

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<sup>20</sup> See Bartolini (2005) for a theory of exit and polity formation in Europe.

migration and activism but rather challenges a simple depiction of voice as civic and exit as private. Although would-be movers express consumerist ideas they also associate leaving with freedom and a critical view on the existing political system. Voice commitments in contrast are accompanied by conservative attitudes towards social and political institutions. Moving beyond an exclusive East-West focus Claudia Aradau, Jef Huysmans and Vicky Squire (2010) discuss how sex workers in Europe have voiced their concerns and articulated a demand for rights as mobile persons. More research is needed, though, to examine the relationship between practices of exit-entry and public voice in the EU.

When exploring dynamics of cross-border movement and civic action in contemporary Europe it is important to look beyond causal relationship and legal constructions of membership. What needs to be addressed is not just how exit may or may not generate individual and collective voice but also that public engagement can take on a different character. Even when we leave the juridical terrain, border crossing might reconstitute agents of voice as transnational activists and thus transform public spaces. Cross-border movement opens up new discursive positions while closing down others. The migrant who takes part, in absentia, in public argument in her state of origin is easily positioned as the *émigré* – the one who left. On the one hand, this can work against her ability to present herself as a credible actor. She chose the (easy) way out and abandoned her fellow citizens. Not sharing in their daily life she risks losing the right to speak about their problems and concerns. On the other hand, she can also mobilize this experience as part of her critical participation. In the US-Mexican context Smith and Bakker, for example, tell the story of a migrant ‘who had fulfilled the Mexican-American dream’ and decided to run for office in his native district (Smith and Bakker, 2005, p.117). They argue that he ‘was successful ... not only because of his image of economic success but also because of his promise to ‘Americanize’ Mexican politics, which meant cleansing them of the vices of corruption and clientelism [sic]’ (Hoffmann, 2008, p.13; Smith and Bakker, 2005, p.118). His personal trajectory of border crossing enabled him to present himself as both outsider and insider. Similar dynamics could well be at play in transnational Europe and would be important for a dynamic conception of citizenship across borders.

## **Conclusion**

I have shown in this chapter how dynamic conceptions of citizenship are constructed in deliberative and agonistic theories of democracy. Citizenship is presented as a critical practice of claiming and reinterpreting rights and civic identification through participation in reasonable deliberation in the public sphere or passionate, collective acts of contestation. In these endeavours both established citizens and migrants can and do take part. This, I argued, is a helpful way of reframing the debate over membership and immigration which all too often is structured around a misleading dichotomy between, on the one hand, a thin, right-based but inclusive status and, on the other hand, a thick, national-democratic but exclusive community. In deliberative democracy, however, a recurring attempt to safeguard the normatively 'right' interpretation of rights against alternative perspectives in democratic contestation made this civic ideal too thin to offer an adequate alternative. Agonistic democracy with its stress on identification, mobilization and the open-ended character of civic action was more promising.

But though agonistic analyses of migration have much to recommend them, they share with deliberative democratic accounts an important shortcoming; too little attention is given to the actual practices of border crossing and what this means for citizenship. This deficiency leaves agonism vulnerable to critique from republicans and nationalists for whom 'exit' is an important concern. It hinders the crafting of a more robust and genuinely dynamic conception of transnational citizenship. There is a complex and fruitful interplay between practices of cross-border movement on the one hand and public articulations and mobilization on the other. Exit, entry and re-entry can spur and enable civic action and transform the character of agents and public spaces. Insufficient attention to these strategies thus means that the conditions for and transnational quality of voice is not properly recognized. The next chapter sets out an analytical strategy for addressing this conceptual challenge.

### CHAPTER THREE: STUDYING PRACTICES OF CITIZENSHIP

Having defended the merits of an agonistic dynamic conception of citizenship while pointing out the limitations within existing research, this chapter develops an analytical strategy based on narrative methodology for addressing the gap. The chapter thus serves as a bridge between the theoretical debates set out so far and the heuristic, theory-developing case study that follows in the next part of the thesis.

I begin by discussing how to operationalize a concept of citizenship practices with the aim of studying border crossing. I then argue for the usefulness of a narrative approach and how we can think of such a method as a critical intervention in a political field. This is followed by a ‘thick description’ (Geertz, 1975) of the Danish family unification dispute drawing out the shifting political battles and legislative changes. The chapter ends with a discussion of the selection of the research participants whose narratives form the empirical core of the following chapters.

#### **Citizenship as practice**

In the previous chapter I discussed conceptions of citizenship as a dynamic and multi-dimensional phenomenon of rights, identity and participation developed in different ways within deliberative and agonistic theory. This in turn shifts attention towards the element of practice which is understood both as a substantive part of citizenship in itself (active engagement) and at the same time as a way of claiming and contesting formal membership, freedoms and entitlements and affirming or re-constructing civic identification. If exit is to become integrated into such a concept it requires an operational discussion of citizenship practices. Where and how to look for civic modalities of cross-border movement in contemporary negotiations of membership?

#### *Agonistic and deliberative models*

Let us start by setting out an initial generic model of dynamic citizenship compatible with both agonistic and deliberative democracy.<sup>21</sup> This is depicted in figure 1 below. The dotted circle symbolizes the porousness of political boundaries and the ongoing

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<sup>21</sup> Note that this is not a generic model of citizenship per se. Other theories and traditions would stress other dimensions of citizenship, such as legal-political institutions, that are not captured by this model.

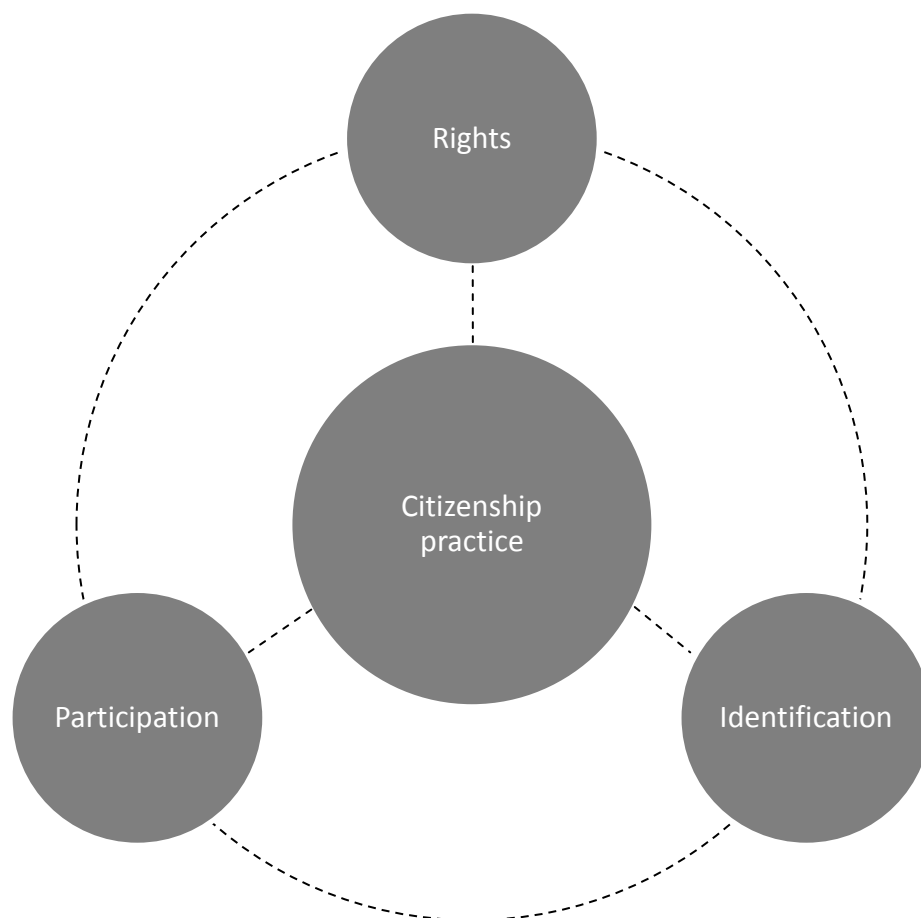
negotiation of membership where each of the three dimensions of citizenship – rights, identification, participation - are contested. The dotted lines connecting the dimensions to the central circle illustrates that citizenship, on this view, is above all a *practice* which unites rights claiming, identification and democratic participation.

**Figure 1**

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**A generic dynamic model of citizenship**

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Notes: Own rendering

This figure does not distinguish between deliberative and agonistic versions but can be specified further following each of these theories or a combination of the two. To illustrate, figure 2 below gives an agonistic democratic account:

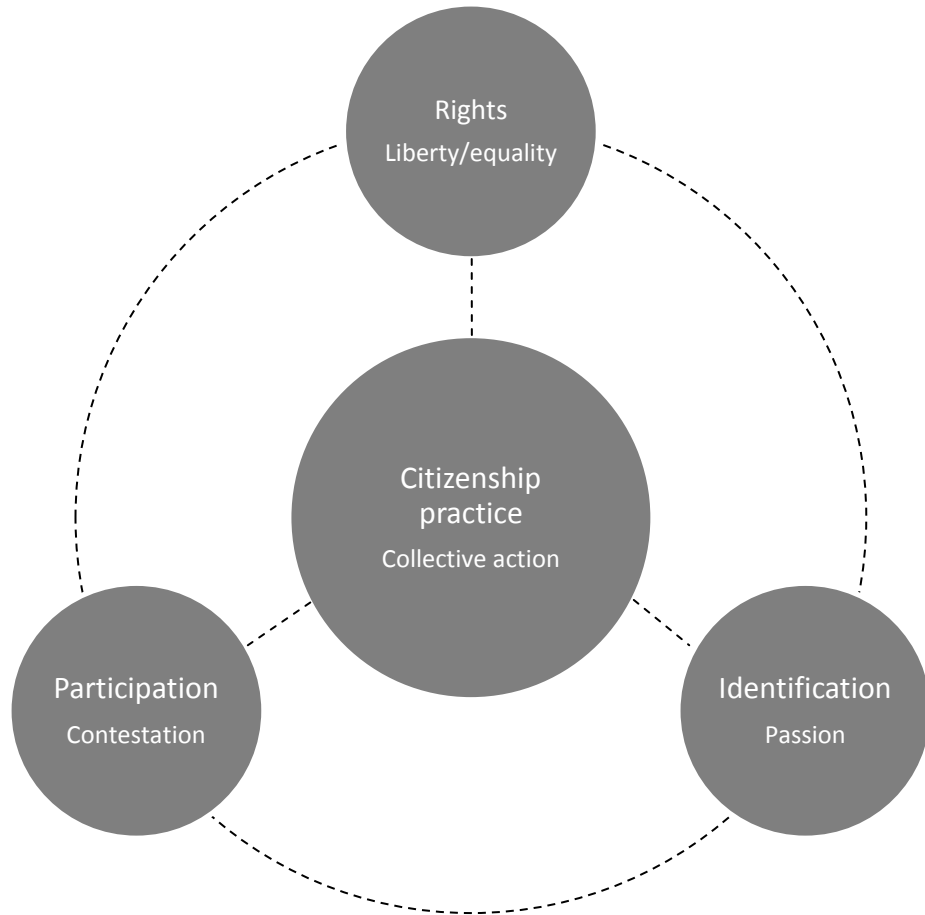


**Figure 2**

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**An agonistic model of citizenship**

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Notes: Own rendering

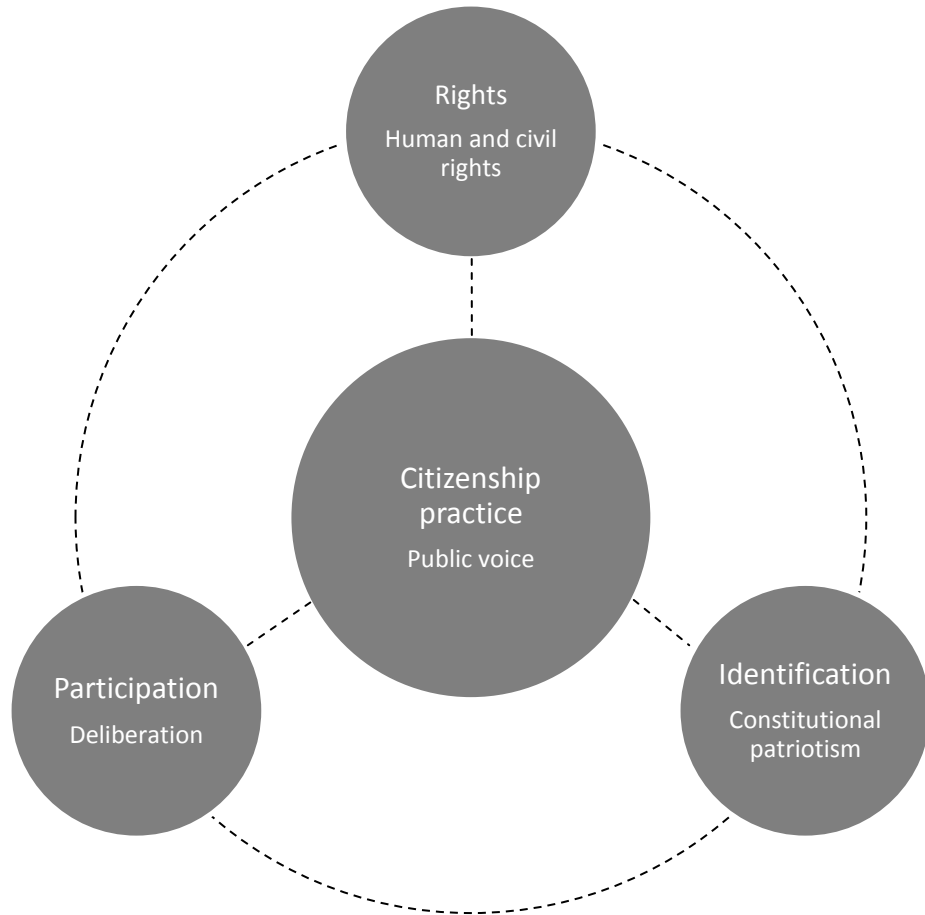
As the figure shows, civic actors – be they migrants or citizens – claim rights by re-articulating the ethico-political ideals of liberty and equality. They do so through collective acts of contestation where passion is mobilized and civic identification affirmed, rediscovered, transformed or lost. A similar model can be constructed for deliberative democracy emphasising instead deliberation, human rights and constitutional patriotism.

**Figure 3**

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**A deliberative model of citizenship**

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Notes: Own rendering

Neither of these theoretically specific models include border crossing as a civic act, however. The aim of the thesis is to find ways to amend this omission and bring in exit as a practice of citizenship. It is to this end that I develop the following analytical strategy. This in turn requires a discussion of what is meant by citizenship practices.

*Practices of citizenship*

Here it is helpful to compare the term with Engin Isin's influential notion 'acts of citizenship' (Isin, 2008; see also Aradau et al., 2010; Rumelli et al., 2011) and draw out important similarities and differences for the practical study of membership. Isin

distinguishes sharply between practices and acts. The former refer in his terminology to sedimented behaviour with which we reproduce and uphold existing regimes. This is practices in a Bourdieu inspired sense (*habitus*) (Isin, 2008, pp.16-21). In the performance of everyday routines we come to inhabit and embody the power relations and social structures in which we find ourselves. Echoing civic republicans, agonists and radical democrats like Hannah Arendt (1958a), Chantal Mouffe (2000) and Jacques Rancière (2004), Isin argues that sociology and political studies have focused on regularity and stability. But citizenship is not merely about order and consensus. It is also and perhaps foremost about the transformative processes ‘through which subjects become claimants when they are least expected or anticipated to do so.’ (Isin, 2008, p.17) It is the element of ‘ruptures and beginnings’ which the conception of acts is meant to capture (p.27). Drawing on Arendt, Isin thus stresses the originality of these performances. ‘To act ... is neither arriving at a scene nor fleeing from it, but actually engaging in its creation.’ (p.27) In the process, new actors come into being. Isin then introduces a further distinction between “‘activist citizens’” and “‘active citizens’”. He explains that ‘[w]hile activist citizens engage in writing scripts and creating the scene, active citizens follow scripts and participate in scenes that are already created. While activist citizens are creative, active citizens are not.’ (Isin, 2008, p.38) These two conceptual pairs – practices/acts, active/activists – are thus intimately linked. Active citizens practice an already given form of membership through established codes of conduct, while activist citizens ‘transform forms ... and modes ... of being political’ (p.39)

This performative (cf. Butler, 1997) understanding of citizenship as enactment in which particular doings constitute actors with a political standing is also central to Honig’s agonistic democracy as we saw in the previous chapter and important for the project I set out here. Even so, I am sceptical of Isin’s conceptualization with its binary of practices and acts, active and activist citizens. To be sure, there are ways of conducting one’s citizenship which are fairly routinized, such as voting in established democracies, while other actions are more dramatic and innovative, like ‘the occupation of [...a] construction crane’ by irregular workers in Italy (Oliveri, 2012, p.800). In that sense the distinction does have some traction. There is a risk, though, of overstating the

difference. Not only do novel and spectacular acts usually presuppose the build-up of resources and experience through existing practices, as Isin recognizes (Isin, 2008, p.17; Oliveri, 2012). More importantly, carrying through the transformations inaugurated in such beginnings requires multiple actions and actors. The latter in turn are not merely understudies faithfully following a script, Arendt reminds us. Rather, such agents often re-interpret the meaning of the original act and take it in unforeseen directions (Arendt, 1958a; Markell, 2006).

My reservations are not just conceptual, however, but also ethical. In the account of active citizens as uncreative - dupes almost - there is an implicit devaluation which I find troubling. Vital and robust democracies do not merely have to be constituted and transformed through extension and reinvention of membership. They also need to be kept alive by old as well new citizens willing to participate in public debate, demonstrations, and community projects (Norval, 2007, pp.136-137). If rights are not continually claimed they risk becoming empty words (Honig 2001) and if governments are not kept in check by an engaged citizenry power may all too easily corrupt. A simple division between creative and uncreative performances which treats this as a 'qualitative difference' (Isin, 2008, p.18) is therefore unhelpful.

This has crucial implications for an operationalization of civic practices. In the next part of the thesis I explore novel ways of doing citizenship in the European Union such as contestatory cross-border movement. But I also analyze classical forms of activism including participation in public debate and civil society organizations and argue that these acquire new meaning in a transnational context. I consider innovation and 'reactivation' as differences 'in degree rather than in kind' (Norval, 2007, pp.134-135) and use the term citizenship practices to capture the broad field of actions.<sup>22</sup> I explore the meaning and interplay between these different practices asking a set of key analytical questions: Cross-border movement may sometimes generate or enable voice, as the previous chapter suggested, but what forms do these articulations take? How and to what extent is civic identification affirmed, discovered, transformed or lost? How might citizens and migrants narrate various strategies of border crossing as practices of

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<sup>22</sup> Isin (2008) also distinguishes between acts and actions.

dissent, disengagement or despair? And what spaces of action and modalities of thick or thin citizenship are constructed in the process?

### **Narrative research**

How then study civic practices of voice, exit, entry and re-entry and the negotiation of membership they are part of? In the introduction I briefly set out the narrative approach I adopt. In the following I discuss why this is a relevant choice for a study of citizenship and what ethico-political commitments it reflects.

#### *Why personal narratives matter: research as participation and intervention*

To engage with citizenship as a lived practice requires attention to the construction of agency and subjectivity. Studying personal narratives is a useful way of exploring how agents interpret and attribute meaning to their own actions and life-experiences. It does not mean, however, that these agents are viewed as sovereign subjects (Maynes et al., 2008). When we make sense of our lives through narrative we do so by drawing on and mobilizing discursive resources available to us in the social worlds we inhabit (Benhabib, 2002). Embedded in networks of signification, we are never the sole interpreters of our actions. How to understand particular acts and events is often intensely contested in the politics of membership (Honig, 2009). In European headscarf affairs, for example, participants debate if specific bodily practices among Muslim girls and woman signify female submission, rebellion or pious devotion. Likewise in family unification disputes where politicians, citizens, migrants and scholars dispute the meaning of transnational marriages, the right to family life and the role of EU citizenship.

This contested field of interpretation is reflected in my study. I situate my narrative interviews in the context of legislative constructions of membership and dominant political discourses. But in this terrain I give special prominence to the narratives of citizens and migrants who have been adversely affected by the regulation and responded with strategies of cross-border movement. This is a deliberate choice. As it is the meaning of this practice I wish to investigate I find it troubling not to explore how these agents experience and make sense of their action. If we do not as researchers invite and

listen to the stories, perspectives and articulations of migrants and citizens we fail to respect their agency (cf. Bloom, 2010; Tully, 2008). This is particularly troubling in a politico-discursive context where it has been very difficult to articulate these experiences as meaningful and valid, as we shall see in chapter five. The power disparity between governing elites and the persons whose intimate lives are acted upon thus warrants such a focus. The thesis is therefore an intervention in this political dispute and most of my informants described their research participation as a form of public voice. I obviously do not aim to settle the debates over family unification and EU citizenship. Rather, the analysis should be read as a theoretically reflexive and empirically embedded contribution to the on-going democratic struggle over the boundaries of citizenship (cf. Tully, 2008).

#### *Narrative interviewing: some caveats*

Narrative interviewing has historical connections with activist research committed to egalitarian politics and critical knowledge production (Chase, 2005). This is a heritage that agonistic and deliberative democratic political theorists endorse and it is important to my thesis. Indeed, it is part of the attraction of the method for this field of research that it stresses the equal dignity and agency of marginalized subjects. There are however a set of objections to this methodology which warrants critical attention.

In early feminist and testimonial studies there was sometimes an aspiration of “‘giving voice’ to previously silenced groups’ (Riessman, 1993, p.8). This has a paternalist ring to it suggesting that family migrants or irregular workers are unable to articulate their perspectives without the aid of academic interviewers. As the many recent demonstrations by migrants show, this is clearly not the case. The terminology of ‘giving voice’, however, not only overestimates the power of the researcher but also, paradoxically, understates her role and the influence of the wider social context on the making of stories. After all, interviewers ask questions and interact to create rapport during the conversation and subsequently interpret and re-present the narrative accounts produced (Riesman, 2008, p.21). Most contemporary narrative studies thus see interviewing as a way - not of speaking for - but of speaking with and listening to informants. This means viewing ‘narratives as socially situated interactive

performances’ - ‘a joint production of narrator and listener’ (Chase, 2005 p.657). That in turn calls for reflexivity and transparency with regards to how stories are invited, told and re-presented in the interactional research process. A detailed discussion of the interview process and analysis is therefore provided in appendix I.

Another objection to the use of narrative research is that not all are equally skilled story-tellers. Intersections of class, gender, age, and culture may in different ways condition how comfortable we are speaking and how narrative our responses are. To give an example, a sociologist exploring family lives of Danish-Pakistani citizens found that while elderly parents generally told long stories his younger research participants gave briefer answers in the interviews. This reflected, he thought, intergenerational norms of authority. His strategy was therefore to mix life story and semi-structured interview techniques to suit his different informants (Rytter 2010a, pp.55-56). Such pragmatic approaches are clearly useful and do not prevent the interviewer from still paying heed to and inviting stories of specific events. At the same time, it is important to be aware that narratives come in different genres. Not all stories have a ‘clear beginning and endings’, or are even temporally structured (Riessman, 1993, p.17). Some are, for example, ‘organized consequentially or thematically’ (p.17). In conducting and analysing the interviews I thus listen for different modes of narration.

Finally, even some defenders of narrative research stress that not all experiences can be meaningfully articulated. Traumatic events could be psychologically blocked from our memories and thus hard to narrate. Some experiences, such as sexual violence and torture, may be so shameful that we are unable tell others about them (Riessman, 1993). Occasionally talking about these events, except with trained therapeutic professionals, might even be harmful. As my focus is on family migrants and not war victims this is not a pressing concern. Still, narrative studies with refugees illustrate that traumatic episodes can be sensitively explored and that some informants are keen to voice their grievances in a safe research context (Hebing, 2009, pp.73-76).

## Contextualizing the case

In the following I introduce the case of the Danish family unification dispute in greater detail, describing the political and legislative context for the practices and narratives explored in the next part of the thesis.

### *The politics of family unification in Denmark*

Family unification policies have been intensely debated and contested in the Danish public as part of a broader struggle over membership and immigration. In 1983 the Danish Parliament adopted a new and very liberal Aliens Act with strong protection of the rights of refugees and family migrants. It had the support of both left and right mainstream parties as well refugee NGOs, but it met with critique from the conservative minister of justice and spurred far right mobilization.<sup>23</sup> Amendments followed a few years later but the legislation was still quite liberal. Subterraneous contentions continued, now in the administrative practice. In the late 1980s and early 1990s a major public scandal developed as it turned out that the Ministry of Justice had not processed applications in accordance with the law but had refused or put on hold requests for family reunification from spouses of Tamil refugees. This controversy (*Tamilsagen*) eventually led to the resignation of the centre-right government and a suspended sentence of four months imprisonment for the former Minister of Justice. This was the first in a series of highly politicized disputes over family unification (Rytter and Liversage, 2014; Mørck, 2004, pp.425-440; Gyldendal, 2013a-b).

In 1995 leading members of the right wing Progress Party (*Fremskridtspartiet*) left and formed the Danish People's Party (Rydgren, 2004, p.480; Meret, 2009). During the late-1990s this new party very skilfully and successfully challenged the established liberal-humanitarian political hegemony and mobilized support by presenting immigration and EU integration as threats to popular sovereignty. Criticizing existing family unification laws played a central part in this endeavour to change dominant discourses and policies.

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<sup>23</sup> The centre-right government had initially proposed a more restrictive law but a majority in parliament consisting of the centre-left parties (the so-called 'alternative majority' dominating Danish foreign policy at the time) succeeded in amending the bill very significantly resulting in the liberal law that was eventually adopted. Their amendments were drafted by Hans Gammeltoft-Hansen who later became parliamentary ombudsman and involved in critically investigating first the minister of justice in *Tamilsagen* (Mørck, 2004, pp.425-440) and decades later the maladministration of EU law in the Immigration Service.



To begin with, the response of centre-left parties, which were then in government, was articulated in what Mouffe calls ‘the moral register’. The social-democratic Prime Minister at the time, Poul Nyrup Rasmussen, famously declared that the Danish People’s Party would ‘never become respectable (*stuerene*)’ (Nyrup Rasmussen, 1999, translation adjusted from Meret, 2009, p.22).<sup>24</sup> This condescending approach only served to boost the DPP’s public image as the suppressed voice of the people in opposition to arrogant elites thus reinforcing their popularity (cf. Mouffe, 2005). Soon the established parties on both right and left changed strategy. The centre-left government began introducing a number of conditions limiting the right to family unification – primarily directed at resident immigrants rather than citizens (Aliens Act, 1998, 2000). They struggled, however, to construct a narrative that would persuade their many immigration-sceptical voters without alienating other supporters (Rydgren, 2004; Karpantshof, 2006).

In the 2002 election, the Danish Liberal Party (*Venstre*), the biggest of the centre-right parties, ran successfully on an immigration critical platform promising severe restriction of asylum and family unification rules. A political coalition was established between the mainstream centre-right parties that came into power and the Danish People’s Party who served as the new government’s parliamentary supporters.<sup>25</sup> This was the beginning of a new hegemony which lasted, almost unchallenged, for a decade.<sup>26</sup> Though some expected a populist party to be unfit for pragmatic, governmental politics, the DPP turned out to be a loyal and effective partner that voted in favour of nearly all government bills with the exception of EU policies in return for successive reforms tightening asylum, immigration and citizenship laws (Meret, 2009, pp.99-100). In this

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<sup>24</sup> The Danish term ‘*stuerene*’ is hard to translate and heavy with connotations. It can refer to dogs which have not yet been house-trained and ought therefore to be kept out the parlour lest they should soil the carpets. When used metaphorically to describe political opponents in this context it is thus deeply demeaning, insulting and exclusionary. It is an excellent example of the kind de-humanization that turns adversaries into enemies (Mouffe, 2005).

<sup>25</sup> The rise to prominence of the Danish People’s Party in many ways resembles the story of the Austrian Freedom Party analyzed by Mouffe (2005). Note, however, that unlike Jörg Haider and the Freedom Party, neither the Danish People’s Party nor the Progress Party from which it descends has any historical ties with fascism or Nazism (Rydgren, 2004).

<sup>26</sup> A prominent member of the Danish People’s Party described it as ‘a change in systems’ using the Danish term ‘*systemskifte*’ (Krarup quoted in Meret, 2009, p.100) which usually refers to the introduction of parliamentarism in 1901 after a long constitutional struggle. This illustrates just much this was a battle over the meaning and boundaries of the polity.

period family unification rules changed frequently, nearly always in a restrictive direction and were often debated in the wider public (Rytter and Liversage, 2014). Newspapers and TV media were important arenas for this contestation but also active partisans themselves. Especially the right wing broadsheet paper *Jyllands-Posten* supported and helped disseminate immigration and Islam critical discourse, while the social-liberal paper, *Politiken*, articulated liberal and multicultural opposition to the government (see appendix II).<sup>27</sup>

In September 2011 a coalition of centre-left parties won a narrow victory for the first time in a decade. They disagreed internally over family unification policies, the social-democrats wishing to continue a fairly restrictive line and the social-liberals arguing for more profound liberalizations. Shortly after their accession to power new legislation was introduced reflecting a compromise which moderated the regulation in important ways without changing the basic structure introduced in 2002.

### *Overview of legislation*

This section gives an overview of key legislative changes in Danish regulation of family unification since the late 1990s. Before this period there were few requirements and it was comparatively easy for Danish citizens, residents and refugees to bring in a spouse from outside the EU.

In response to anti-immigration mobilization, new legislation was introduced by the social-democratic and social-liberal governing coalition in 1998 and 2000 (Aliens Act, 1998, 2000; Siim, 2007). The 1998-reform, among other things, ruled out family unification in cases where the spouses were under the age of 25 and the marriage had been arranged by third parties, for example parents (Schmidt, 2011, p.260). In 2000 this became a general ban of family unification for persons under 25 unless the marriage appeared undoubtedly voluntary. In practice this meant that young couples would be asked to prove that their marriage was undertaken freely. Very few applications were

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<sup>27</sup> Similar advocacy and lines of division in the Danish media characterized the Danish Cartoon Affair in 2005-2006 where 12 cartoons of the prophet Mohammad were published by *Jyllands-Posten*. This affair was another important moment in 'the ongoing *kulturkamp* over Islam, national values and integration that has shaped [Danish] electoral politics for half a decade' (Meer and Mouritzen, 2009, p. 352; see also Lindekilde, 2008; Rostbøll, 2010).

turned down on this ground, however (Ministry of Refugee, Immigration and Integration Affairs, 2002). The 2000 amendment also introduced the first version of the so-called 'attachment requirement'. It stated that immigrants residing in Denmark could only obtain family unification with a foreign spouse, if the couple's affiliation to Denmark was *at least as great* as their attachment to any other country (Aliens Act 2000, Liisberg 2004, p.17, 27).

With the change in government and the Aliens Act of 2002 the 25-years rule became a 24-rule. It barred family unification for any couple under the age limit regardless of whether the marriage was voluntary or not. The attachment requirement was extended to include Danish citizens as well as resident immigrants and the couple's connection to Denmark now had to *exceed* their ties to other countries. The rationale was that since most transnational marriages involved the grown-up children of immigrants, many of whom were Danish citizens, a distinction between citizens and immigrants was no longer sensible if the government were to achieve its objectives of reducing immigration, promoting integration and preventing forced marriages. The 2002 reform also introduced a set of new economic conditions and existing ones were made more demanding. The Danish citizen or resident became obliged to demonstrate ability to provide for the couple. He or she must not have received social welfare payments during the past year before applying or at any time after, until the spouse had obtained a permanent right of residence. A bank-deposit of 50,000 DKK (ca. 6,700 Euros) should also be made (Aliens Act, 2002).

The 2002-reform was highly controversial and especially the revised attachment requirement was criticized (see chapter five and appendix II). Already a year later an amendment was introduced. Persons who had been Danish citizens for at least 28 years no longer had to fulfill this particular condition. Also exempted were individuals born or raised in Denmark since early childhood who had resided legally for 28 years. At the same time the so-called 'presumption rule' was introduced. In cases of marriage between close relations such as cousins the voluntary nature of the union would be considered doubtful (Aliens Act, 2003; Ministry of Refugee, Immigration and Integration Affairs, 2003; Liisberg, 2004).

The rules of 2000, 2002, and 2003 focused on ‘proper’ marital age and practices, socio-cultural attachment and economic independence. Later the ability to integrate and contribute to the Danish economy society became a more prominent concern. Thus in 2005 marriage migration was made conditional on the spouses signing a declaration of integration. Two years later an ‘immigration test’ (*Indvandringsprøven*) was introduced where applicants for family unification had to pass a test of their Danish language skills and knowledge of Danish society. The procedures for fee-based test were adjusted in 2010. That year also saw the introduction of general fees for family unification applications and appeals. In 2011 the language requirements were increased. At the same time applicants from Australia, Canada, Israel, New Zealand, USA, South Korea and Switzerland were exempted from the integration test. The argument was that Western or highly developed countries shared cultural and economic features which made adaptation easier (Aliens Act, 2005, 2007, 2010a, 2010c, 2011; Ministry of Refugee, Immigration and Integration Affairs 2011a-b).

The 2011 changes were part of a larger reform of the regulation where a new point-system was introduced. In this merits-based system a foreign spouse would get points according to, in particular, his or her level of education, language abilities, and work experience. If both spouses were at least 24 years old, 60 points were required. Otherwise 120 points were needed. For extraordinarily well-qualified applicants under the age of 24, family unification would now become possible. For low skilled migrants it became more difficult regardless of age. The attachment requirement was also tightened. The couple’s joint affiliation with Denmark now had to *significantly exceed* their connection to other countries. Furthermore, the bank guarantee was increased to 100,000 DKK (13,500 Euros), and the ‘probation period’ after receiving social welfare payments was raised to three years. Finally, fees were introduced for applications and appeals (Aliens Act, 2011).

The point-system had barely come into force when a new centre-left government came to power. They abandoned this regulatory model and reintroduced the 24-years rule and the 2002-version of the attachment requirement. The 28-years-rule became a 26-years

rule and the collateral was again reduced to 50,000 DKK. The immigration test was abolished. Applicants instead had to pass a Danish language test no later than six months after taking up residence in the country. The test was still fee-based but the general fees for family unification applications and appeals were cancelled (Aliens Act, 2012).

## **Informants**

Since the restrictive reform in 2002, transnational couples have responded to legislative changes by moving to Sweden thus accessing the more liberal EU regulation and Swedish national rules.<sup>28</sup> In the next part of the thesis I analyze how this practice of cross-border movement is interpreted by such couples. The section below describes my informants and how they were selected.

### *Description and selection*

Interviewees were found through self-selection as interested participants responded to my advertisements posted online and at various public institutions in the Swedish city of Malmö. Others I approached or found through snowballing (for a more detailed description of the process, see appendix I). A small interview study based on a combination of self-selection and strategic selection will seldom be representative. It is likely to ‘over-sample’ informants who have strong feelings on the subject, are resourceful and articulate. The objective of this project is thus not to give an account which tells us how widespread certain narratives and practices are among Danish-international couples who have used ‘the Swedish model’ (Rytter, 2010a, p.125). Rather, the aim is to develop a collection of interviews sufficiently rich to allow for theoretical and conceptual development. In this context it is particularly important to steer clear of the Scylla and Charybdis of demonization and romanticizing of cross-border movement. A worry could be, for example, that a sample was created which included only very politically active persons with a strong civic engagement. Such a data corpus would generate theoretical – rather than just empirical – distortions in that it would preclude an inquiry into the open-endedness of the politics of migration and the

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<sup>28</sup> I describe Swedish, Danish and EU rules in different parts of the thesis as I analyze the strategies and stories of my informants. See especially chapter one (the section: ‘The case: marriage migration, border crossing and EU citizenship’), chapter four, (the sections: ‘The boundaries of membership transgressed’ and ‘Limits to European citizenship of last resort’) and chapter six (sections: ‘Exit as liberal anti-politics’ and ‘Pragmatic forum-shopping?’).

ambivalent or ‘gothic’ character of social action. To avoid this problem I follow a strategy of diversification. In my search for informants I have sought to include interviewees positioned differentially in political discourses and socio-cultural worlds and with varying experiences of border crossing.

The majority of my interviewees are in their twenties as young adults are particularly affected by the regulation of family unification. But there are also several informants in their thirties and forties and one who is above sixty. Both genders are well represented, although there are more women than men in the sample. Most of my Danish interviewees come from upper- or lower middle-class backgrounds reflecting that it requires socio-economic resources and self-confidence to use EU-law in this way. Still, I have interviewed two citizens unable to mobilize Union citizenship owing to insufficient economic means and social problems. The foreign spouses come from all regions of the world and from very poor and well off families. I also interviewed four Danish citizens with refugee or migrant background but in general this group was more difficult to establish contact with. To supplement the material I draw on the few existing anthropological studies of marriage migration and the Swedish model among ethnic minorities (Rytter, 2010a; Schmidt et al., 2009; Jensen and Fernandez, 2013). It is important not to overestimate the significance of ethno-cultural differences especially in a context where these are used politically to make simplistic distinctions. There are very considerable similarities in socio-economic positions among exiles across ethnic lines of division, similar articulations of anger and shock and parallel strategies of settlement or return. There is, however, bound to be some variation in experiences and perspectives. A few studies, for example, find cases of young Danish citizens with ethnic minority backgrounds for whom exit to Sweden is both a response to the Danish state and a way of obtaining greater autonomy in relation to their parents (Rytter, 2010a; Jensen and Fernandez, 2013). This is not reflected in my data corpus.

My informants vary with regards to religiosity which is another highly politicized marker of identity in the dispute. A few explain that they are devout Muslims or Christians. One self-identifies as an atheist, while others do not remark on their beliefs. One interviewee recounts being an active member of a political party on the

centre-right prior to his personal encounter with family unification. Another informant has joined a centre-left party upon her return from exile. Some informants describe taking part in civil society work before moving to Sweden, and many have become active in NGOs or participated in public debate after their experiences with immigration control. The sample also includes a majority who have little or no involvement in traditional civic activism.

I have sought diversity with regards to cross-border strategies and experiences as well. The collection of informants include some who moved shortly after the introduction of the 2002 reform, others who moved later; many who had just moved or were about to do so, and two who were unable to move. I have interviewed a few who have lived more than five years in Sweden and others who only stayed shortly; some who planned to settle permanently and some who aimed to return. With regards to actual and prospective returnees there is again a range of pathways followed, opened up by the interplay between Danish and Swedish national rules, Nordic and EU cooperation. These different strategies are explained and analyzed in greater detail in the following chapters.

#### *Informants in a complex regulatory terrain*

The diversity of my informants is reflected in their encounters with the complex and frequently changing Danish immigration and family unification laws which affect them in different ways. For younger interviewees the main problem is the 24-years-rule. Where either spouse is below the age limit the young couple will be unable to obtain family unification. This rule must be seen in connection with the attachment requirement. If a couple in their early twenties decides to live abroad in the home country of the foreign partner until they have both turned 24, their joint ties to that country are likely be considered stronger than their bonds to Denmark. In that case, they will still not qualify for family unification under Danish law. This interrelation between the different statutes is not accidental. The explicit aim of the government when the legislation was drafted was to prevent such strategies of temporary exile by combining different regulatory measures (Ministry of Refugee, Immigration and Integration Affairs, 2002, 2003).

The attachment requirement on its own is also a challenge (see Rytter, 2010a). If a Danish citizen has family ties to the partner's country of origin, has been on frequent family visits and if the spouses share another language than Danish then their attachment to this country may well be considered greater than their ties to Denmark. In that situation, even if both spouses are above the age of 24 they will still not be able to obtain family unification. Only after 28 years of citizenship (or residency since early childhood) will they be exempted. Two of my Danish informants who came to Denmark as refugees at a young age would have found the attachment requirement difficult to meet.

Some interviewees were also barred by economic requirements in Danish law. Two Danish citizens did not meet the requirement of economic self-sufficiency because they were receiving unemployment benefits (*kontanthjælp*). Another had similar problems as she was on a special labour market integration program (*revalidering*) after a period of prolonged illness following an accident.

Unlike unemployed persons, pensioners and students are not precluded from family unification. But like everyone else they have to provide collateral of 50,000 DKK. One informant found this difficult while others managed with savings or help from parents. When the amount was doubled during the financial crisis this became a particularly demanding condition and for at least three of my informants it was a major obstacle.

Some interviewees struggled to prove that their marriage was genuine. Considerable age difference between spouses is treated as an indication of a possible pro forma marriage by the Danish immigration authorities (Liisberg, 2004) who will then call in both partners for separate interviews to test their knowledge of each other. One couple I talked with had their application turned down on this basis. Earlier marriage history is also taken into consideration by the administration. A Danish citizen I spoke with thus worried that her request would be refused because she had previously been in another transnational marriage. Successive applications for family unification might well meet with suspicion. A third interviewee had similar fears but for different reasons. Her



partner had stayed illegally in Denmark and been caught. An application for family unification in that context would be bound to look instrumental.

One informant was affected not by Danish family unification law but by rules for deportation of resident immigrants convicted of serious criminal offences. Her ex-husband and her son's father had been imprisoned and subsequently expelled and debarred from entering Denmark following a conviction of rape of a former partner.

Finally, a smaller group of interviewees were not directly prevented by Danish law from settling in Denmark but responded to restrictive administrative practices, rapidly changing legislation and an often antagonistic political discourse.

## **Conclusion**

This chapter rounds off the first part of the thesis providing an analytical strategy for the empirical study of border crossing in the Danish family unification dispute. It is an approach devised for a narrative analysis with the aim of politico-theoretical development.

To sum up briefly, the objective is to construct a conception of citizenship which reinterprets modalities of border crossing as civic practices through a critical engagement with agonistic and deliberative democracy. It explores classical political acts of collective action and public debate as well as inventive strategies of supranational mobility and analyzes their complex interplay in the narrative interpretations of migrants and citizens. The study is based on 30 narrative and semi-structured interviews with Danish-international couples. They were found through self-selection and strategic selection with the aim of ensuring diversity and empirical richness for the purpose of conceptual development.

## **Part two: Stories of cross-border movement**

## CHAPTER FOUR: EUROPEAN CITIZENSHIP OF LAST RESORT

R: So how come you're moving to Sweden? ... J: Well we were forced to if we wanted to be together (Interview with Julie and Derek 2011, p.4)

The year 2011 was quite eventful for Danish Julie and her Australian husband Derek. They had a son, got married, and had to leave Denmark. For the past decade, Danish-international couples like Julie and Derek have been resettling in neighbouring Sweden because they are unable to meet the quite demanding criteria for family unification in the Danish Aliens Act. These couples are using the freedom of movement for EU citizens and their families within the European Union. By crossing an internal border they mobilize the supranational rights and freedoms of EU citizenship which include a comparatively extensive protection of their family life. This chapter introduces the stories of persons like Julie and Derek. I explore how they make sense of their encounter with immigration control and the tactics and strategies they devise in order to live together in Scandinavia. What do their narratives tell us about EU citizenship and what light do these stories throw on contentious practices of cross-border movement within and beyond Europe?

As the first of four chapters in this second part of the thesis, the analysis engages with the debate over national and postnational citizenship by discussing an important and influential synthesis that promises to unite a thick nation-state membership and a thin supranational status. Examining the case of family unification and drawing on especially agonistic democracy I discuss the attractions but also the limitations of this approach which point to the need for a more radical rethinking of European citizenship and practices of border crossing.

### **European citizenship: a synthesis of thick and thin membership?**

In a time of increased global interconnectedness, where national boundaries are under pressure from cross border movement of 'people and money' (Goodin, 1992), the European Union stands out as the first contemporary example of a non-state polity with a citizenship of its own and, moreover, one based somewhat paradoxically on the practice of cross-border movement. This has understandably caught the attention of a

wide range of academics who argue about how best to make sense of this new civic status. Initially the debate centred on whether or not European Union citizenship was really a citizenship after all (Weiler, 1999, pp.324-325; Kostakopoulou, 2007, pp.6 23-626). Comparing it implicitly or explicitly with nation-state citizenship several scholars noticed its short-comings (Grimm, 1995; Armstrong, 1996; Miller, 1998; Downes, 2001). The key element of EU citizenship as set out in the Maastricht Treaty was the freedom of movement within the union. This right, however, which had long been established in community law, was restricted to economic agents of the internal market. Though interpreted rather broadly it did not display the universality of citizenship which assigns equal entitlement to all citizens. In addition, critics pointed out that EU citizenship contained few political and social rights. Gradually, however, the activist interpretations by the European Court of Justice widened the scope and content of EU citizenship (Besson and Utzinger, 2007). Based on the principle of non-discrimination social entitlements were increasingly granted to EU citizens living in another EU country. The economic requirements for free movement were also interpreted narrowly by the court thus enlarging the group of persons who could use this liberty (Downes, 2001; Kostakopoulou, 2007; Joppke, 2010b, but see Carrera, 2005). The Citizenship directive adopted in 2004 further underlined this tendency (Besson and Utzinger, 2007). It codified and extended the rights of European citizens and their non-citizen family members who can use the freedom of movement. In light of these developments, the current topic of contention is less whether or not EU citizenship is a citizenship but rather what kind of citizenship it is or ought to be.

In this debate about the present and future of EU citizenship, several scholars seek to strike a balance between national and supra-national membership while emphasizing the primacy of the former. European integration, they argue, must respect the multiple 'demoi' with their diverse national cultures and historical trajectories while seeking to promote peaceful cooperation at all levels. EU citizenship should thus supplement but not replace national membership (Bellamy, 2008; cf. Nicholaïdis, 2004; Glencross, 2011). Joseph Weiler has developed an elegant and influential, though also controversial, version of this argument. His analysis is particularly interesting for the thesis I am defending because it promises a harmonious synthesis of thick national and

thin post-national membership, which, if persuasive, could hold considerable potential for a rethinking of citizenship, migration and EU mobility.

Weiler claims, in line with nationalists, that the nation-state remains a crucial site for collective self-identification. Indeed he argues that 'nationhood is not an instrument to obtain belongingness, it *is* it.' (Weiler, 1999, p.338, original emphasis) An EU citizenship based on rights and common ideals cannot provide us with the deep sense of membership believed to be necessary. If this supranational status is promoted at the expense of national citizenship it will therefore generate estrangement and political disaffection (p.347). But though the nation-state is valued in this line of argument, the inherent dangers of national politics are also emphasized. Unchecked, nationalism all too often leads to wars of aggression or xenophobic policies (pp.340-341). For Weiler '[t]he national and the supranational encapsulate ... two of the most elemental, alluring and frightening social and psychological poles of our cultural heritage. The national is eros .... The supranational is civilization.' (p.347)

The solution to this conundrum is not to establish a United States of Europe where Union citizenship overrides or replaces nationality. Such attempts to create national-like membership at a higher European level would only reproduce its vices (p.341) without preserving its virtues of diversity and belonging. But nor should we abandon EU citizenship for that would leave nationalism unconstrained. Instead, it is recommended that we combine national and European citizenship so that each can keep in check the evils of the other. We should 'embrace the national in the in-reaching strong sense of organic-cultural identification and belongingness and ... embrace the European in terms of European transnational affinities to shared values which transcend the ethno-national diversity.' (p.346). We must do so in a way that retains the priority of national membership while allowing for a number of political issues to be decided at the European level (p. 346). Weiler thus provides us with a conception of what Dora Kostakopoulou (2000) in a critique has called 'corrective citizenship' where EU citizenship supplements and perfects but also preserves national membership. The former is wholly dependent on the latter (Weiler, 1999, p.346) and merely 'aspires to keep the values of the nation-state pure and uncorrupted' (p. 341).

The attraction of this conceptualization is that it takes seriously the potential and dangers of both nationalism and supranationalism. We are cautioned against the dual threats of too much passion and too little. Moreover, the Hegelian synthesis promises a way to avoid both evils while incorporating what is valuable in each type of regime. There are notable conceptual problems with this argument, however. Critics like Kostakopoulou (2000) and Joppke (2010b) have questioned the account of nationalism and supranationalism Weiler gives. Drawing on agonistic democracy I want instead to discuss an inherent difficulty in combining the two. Agonists are typically sceptical of such unifying analyses which, while tempting, often gloss over important remaining tensions (cf. Honig, 2001a). This is very much the case in the conception of corrective citizenship. The aim is to domesticate nationalism and save it from itself, but it is not clear why we should expect nationalism to obligingly accept taming. Weiler insists that supranationalism ought to be ‘policing the boundaries of the nation against abuse’ (p.341). Boundary drawing, however, is no minor issue for nationalists. In some ways, defining the scope of the community is exactly what nationalism is all about. Walzer (1983) has developed a left-communitarian political theory defending the kind of rooted organic polity Weiler portrays. He insists that it is essential for the maintenance of such communities that they determine their own membership policy. Some, albeit limited, protection for refugees may be required, but the polity has a right to decide who and how many newcomers it permits and at what speed. Consequently, any inter- or supranational regime that interferes with the drawing of symbolic-political boundaries of a nation-state is not merely trimming the fringes of an otherwise benign order. Such interventions transform the national community in rather radical ways (cf. Kostakopoulou, 2007).

This is illustrated nicely in disputes over family unification, domestic and EU citizenship, as we shall see. Marriage migration brings out very clearly the tension between liberal values and national membership which both animates and troubles a corrective conception of citizenship in Europe. On the one hand, we have the freedom of citizens to form and pursue their own life plans - including in the important area of love and family relations - as long as they respect the equal liberty of others. The liberal

principles Weiler is committed to suggest that nation-states should be wary of interfering in the intimate lives of citizens and leave the choice of sexual practices, relationships and marriage to consenting adults (Mill, [1859] 1974; Hart, 1963). On the other hand, we have the imagined community of the nation (Anderson, 1991) whose symbolic boundaries are challenged when citizens marry across borders. If members bring in spouses from outside then the make-up of the people is affected. ‘We’ are no longer who we thought we were. Family unification therefore potentially endangers what nationalists cherish the most: the freedom of a political community to determine its own membership and admission policies (cf. Miller, 2005). The case is thus well suited to demonstrate in practice the attractions and the limitations of a corrective synthesis.

### **Strategies of last resort: a corrective European citizenship?**

In the following, I take the first steps in the analysis of my interviews with Danish-international marriage migrants. Tracing out key strategies and arguments presented in the data, I show how a corrective thick-thin synthesis resonates rather well, at least on the face of it, with many of these couples’ lived experiences, before exploring in the next section how it nevertheless runs into serious problems.

#### *National membership affirmed?*

The trajectories and courtship stories of my informants vary considerably. Most of my Danish interviewees found their partners while abroad for purposes of study, work, holidays or family visits. Other couples met in Denmark or on the internet. Many began their relationship by visiting each other for shorter periods. Some also lived together rather longer in the partner’s home country or elsewhere. Eventually, though, nearly all couples wanted to move to Denmark and establish a life there together, at least for a time. The reasons they give differ but practical considerations and family ties are typically important. For the Danish spouses, this is their home state where they have their social networks, jobs and citizenship. Many are about to begin or are in the middle of their studies and in Denmark they have access to free higher education of good quality. If they were instead to settle in their partner’s country of origin they would often face economic and linguistic barriers in their educational pursuit. Where the

spouse comes from a developing country, lack of adequate health care, job opportunities and social security are also pressing concerns. Informants who have or plan to have children especially emphasize their wish to give them the best opportunities for a good life by bringing them up in a Scandinavian welfare state. While the importance of Danish citizenship is thus affirmed in these accounts, it is the civil and social rights of this status that are particularly important for the desire to live in Denmark. Weiler's conception of national membership as a deeply rooted and passionate sense of belonging thus appears to have less traction in this part of their stories. A few do, however, stress their emotional attachment to Denmark and their obligation to contribute to the common good of the country when explaining their initial wish to live there with their spouse.

Let us then explore the strategies and tactics my informants develop in order to realize the objective of a family life in Denmark. About a third of the couples I interviewed first sought to obtain a residence permit for their partner using Danish and not EU regulation. This means trying their luck with one or more of the three main entry routes in Danish national law: family unification, labour migration and study. Family unification is, on the face of it, the natural starting point as a programme aimed at their situation. If granted, it enables foreigners who are married to Danish citizens or residents to enter and settle – temporarily at first – in the country. Many of my informants did consider applying for family reunion under Danish law. They contacted the Danish Immigration Service for advice and spent considerable time reading laws and guidelines. Yet because the rules are so strict, most eventually concluded that they would be unable to obtain a residence permit in this way. Particularly for the young couples, where at least one of the spouses is less than 24 years of old, there is little point in trying. In the end, then, only five of the couples I interviewed actually applied.

One who did go through the application process is Derek, the young Australian we encountered in the beginning of the chapter. He first came to Denmark with a Danish girlfriend he had met in New Zealand. The couple went back and forth for a while, but then she got pregnant. When their son was born, Derek applied for family unification. His application was declined because he was unable to meet the age requirement. That



he was the parent of a Danish citizen made no difference. The Immigration Service judged that the baby's attachment to Denmark was not strong enough to warrant an exemption. The family could instead settle in Australia, it was argued. Derek appealed the decision and later appealed the appeal. He used appealing as a temporary tactic for prolonging his stay while hoping to find a more lasting solution.<sup>29</sup> Meanwhile, he did not have the right to work and the family was hard pressed economically. Eventually Derek and his then wife split up, partly owing to the stress and uncertainty of their situation. He had to leave the country, but filed again for family unification to stay with his son.

While the case was under consideration Derek got in contact with Julie on a dating site. They started going out and soon moved in together. Shortly after, Derek got a very highly paid job. This enabled him to get a residence permit as part of the green card program for employees with salaries of at least 375,000 DKK (approximately 50,280 Euros). Then Julie got pregnant. Just after their son was born, however, Derek was fired and had to leave the country. By then the financial crisis had set in. With no education to speak of, his chances of finding another highly paid job were slim. He therefore applied for family unification once more to stay with his new wife and son. But again the answer was negative. Derek had now turned 24 and was thus old enough, but Julie was only 23. The family therefore finally decided to go to Sweden.

Derek tried different tactics but had most success when he became a labour migrant. Various green card programmes exist for highly qualified or highly paid workers. However, as marriage migrants affected by the 24-years rule are typically quite young,<sup>30</sup> they seldom have the necessary qualifications for this entry route. Becoming an au pair is another entry option used for example by Grace, the young Filipina woman introduced in the preface.<sup>31</sup> This program offers an 18 month legal stay with some

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<sup>29</sup> Note that such tactics later became more difficult to use after the centre-right government introduced fees for applications and appeals (see chapter three).

<sup>30</sup> This may sound obvious; to be affected by the 24-years-rule they must surely be less than 24 years old, but that is not the case. Any migrant regardless of age is prevented by this rule from obtaining family unification if his or her Danish spouse has not turned 24. That was the problem for several of my informants.

<sup>31</sup> Grace became an au pair before she met her Danish boyfriend, while Mary Ann, whose story is told in chapter six, used the au pair programme to enter Denmark in order to be near her partner.

remuneration in exchange for what is supposed to be light housework. It is a controversial programme because it often exposes migrants to exploitation from their Danish host families, as Grace also experienced (Stenum, 2010, pp.139-179).

Rather than trying their luck as labour migrants foreign spouses can enter Denmark as students. For my predominantly young interviewees this is an easier way to gain access. Some thus did a high school exchange or spent a semester in a Danish folk high school. This is obviously a short term solution but it allows the couple some respite while they consider their options. Pursuing higher education in Denmark is a longer term strategy and requires more academic and economic resources. Katrine and Mark, a Danish-Canadian couple, chose this route. They met each other during high school in the Netherlands where their respective fathers, both with army careers, were posted. The two teenagers had been dating for about a year when their families were due to leave again. Having just graduated, Mark decided to follow Katrine to Copenhagen and begin his studies there. He found a free degree program in construction management and got a student visa. When he finished four years later Mark had a year to find a job. Though he spoke Danish fluently and had a Danish education it proved difficult due to the onset of the financial crisis and the resulting massive unemployment in the construction sector. Mark tells about the more than 300 applications he sent, most of which never even received an answer. Then, when his job-search permit expired he could prolong his stay for another year owing to a special agreement between Denmark and Canada, but eventually that too ran out. Katrine, meanwhile, had begun her studies and was not keen to move to Canada:

K: Then we were faced with the choice that we didn't have any other option than

M: get married

K: get married and go to Malmö.

M: Yes and choose something called 'The Malmö model'

K: Yes, because ... we were actually denied *all* other options. We ... could either say that [Mark] travels back to Canada or we choose to use the Malmö model and that, then, is what we have decided to do, because what do you do? We have known each other for seven years, right, and [Mark] has lived in Denmark for six years, and it's after all, well

M: ...

K: really hard

M: ...

R: Mm

M: But then now we're in the situation where we've come to the end of those

K: yes

M: what can you say, short cuts, so you don't have any other option ... than the Malmö model. ... (Interview with Katrine and Mark, 2011, pp.3-4)

Mark was fortunate to find a programme which did not have tuition fees for non-EU citizens. Many do, however, thus making it more difficult to use this strategy. In addition he was able to obtain student loans from Canada enabling him to display enough money on his bank account to get a student visa. Again, this is not an option open to all marriage migrants. Even for those who are able to gain entry this way, studying is only a temporary solution which can leave couples vulnerable to market fluctuations, as it did Mark and Katrine.

For this group of couples, then, EU citizenship is presented as a citizenship of last resort. It is activated only after options within national law have been exhausted. If the spouses want to live together and stay close to the Danish partner's network, job and studies in Copenhagen, they have to resort to EU law. The ingenuity they display in their attempts to settle in Denmark again affirm the experienced value of Danish, national citizenship rather than postnational membership, though the importance they attribute to the former, as we have seen, appears to have less to do with what Weiler calls 'eros' and more with rights and opportunities and the personal ties of family and friends.

#### *Claiming basic rights*

While many couples first tried to enter Denmark through the regulation of the national civic order, the majority of my informants moved directly to Sweden. Most couples in this group also present their use of EU citizenship as a strategy of last resort.

This is illustrated in the story of Aimée. She is a young woman with dual Danish and French citizenship.<sup>32</sup> Aimée was born in France but grew up in Denmark. When she was

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<sup>32</sup> Dual citizenship is not usually permitted in Danish law. There are, however, special exemptions for persons who have acquired dual citizenship at birth (Ministry of Refugee, Immigration and Integration Affairs, 2004), as Aimeé had.

19 she wanted to go back to France. She went to Marseille and met a young man from Morocco. He had applied for asylum in France, but the application had been turned down. He was therefore residing illegally. They fell in love and decided to live together, but Aimée also wanted to go back to Denmark to study. After a time in France considering their options they went to stay with his family in Morocco and got married. Aimée was well aware of the Danish family unification rules and knew that at 22 she was too young to apply. She also worried, however, that if they remained in Morocco until she turned 24, they would not be able to meet the attachment requirement. Their joint connection to Morocco or France might exceed their affiliation to Denmark. She therefore resorted to the EU citizenship exit option.

Since Aimée was also a French citizen she thought she could use EU rules to move directly to Denmark and then apply for family unification as an EU citizen living in another member country than her own. After a phone conversation with the Danish Immigration Service she reconsidered. They informed her that the application would in all likelihood be declined. The reason was that her husband had not had legal residence in another EU-country before coming to Denmark. At the time, this was considered by Danish authorities as a condition for using EU rules for family unification.<sup>33</sup> Sweden, however, interpreted Union law differently and did not require prior legal stay. So Aimée went to Sweden and got family unification as an EU citizen. Later she and her husband also used EU law to return to Denmark. In the interview I asked Aimée about her thoughts on this process:

A: ...Denmark has made some very restrictive rules because they want to protect, I think, Denmark and the Danish citizens. But the way I see it I have gotten my protection from the EU because it is the EU that has helped me live with my husband in my own country. Yes, well, helped me ...to use my rights. So in that sense I do feel a bit let down, you know, by my own country that I cannot live here with my husband when I have lived so many years in Denmark and have family here and have paid so much in taxes, worked and studied. There I have thought a lot about how the EU has helped me in a good way (Interview with Aimée, 2011, p.7).

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<sup>33</sup> This interpretation would soon be overturned by the European Court of Justice in the so called 'Metock-case', as we shall see in the next section.

To follow up, I prompt Aimée to reflect on her use of the EU-route which in Danish public debate is often described as a ‘loop-hole’ (*smuthul*) or a way of circumventing national family unification rules (Ritzau 2003, Kræn 2010):

A: Well, so it *is*. Well, we didn’t go to Malmö, you know, because we wanted to live in Malmö. It was something we did out of necessity. So it *is* a way of circumventing the Danish rules. But then that is just a sign that the Danish rules aren’t fair [*rimelige*]. Because, well, I can understand that it is a little unfair if our marriage was pro forma and my husband just wanted a residence permit in Denmark and we ... didn’t love each other. So, well, I can see that perhaps it isn’t fair to do it that way. But that’s not, after all, how our situation is. (Interview with Aimée, 2011, p.7)

Aimée and her husband eventually managed to obtain legal residence for him in Denmark. However, unlike couples like Katrine and Mark, they did not use any short or long term tactics within Danish national law. As she was under 24, an application for family unification would be sure to meet with a refusal. Though Aimée does not discuss this in the interview, it is safe to assume that other entry routes, such as obtaining a student visa or green card, would equally have been closed to them since her husband has no formal education. No matter what reasons Aimée might have had for going straight to Sweden, the point is this: she interprets their temporary stay in Malmö as a necessity. It is not that she wants to spend a year there and explore what it means to be an EU citizen or to enjoy the benefits of Sweden’s lower prices on cars. Rather, EU citizenship has protected them where, in her view, her Danish citizenship failed. This in turn is a perspective shared by most of the couples I have interviewed who moved directly to Sweden. Though some eventually grew fond of Malmö, as we shall see later on, they only went there because they considered this their sole option for living together close to Denmark.

The interview with Aimée brings out another point which applies to nearly all my Danish informants and several foreign spouses, irrespective of the pathways they followed. They feel wronged by the Danish government which, in their view, has denied them a basic liberty. They insist, like Aimée, that a citizen ought to be able to live in her own country with the partner of her choice, no matter where that partner comes from. This does not mean that my informants advocate an unconditional right to

family life. Fraudulent marriages are typically condemned, and most, though not all, interviewees find it reasonable that they are required to provide for their partner. A few restrict their defence to marriages for love while excluding arranged marriage as a justified basis for family unification. Others vaguely suggest that special considerations should be given to couples like them who are supposedly good members of society. Though seldom fully explicit, a subtext here seems to be that some resident immigrants, refugees or ethnic minority citizens are less deserving, whether for economical or cultural reasons. Others clearly refuse such differentiation, insisting that all citizens and residents, regardless of social position or national origin, should have the same rights, including the freedom to live in Denmark with their close family members.

Describing the wrong they find they have experienced nearly all my Danish informants and many of the foreign spouses stress their anger against the Danish government. A few emphasize their surprise or even shock when realizing that national law does not permit them to live in Denmark with their partner. Others explain how they were aware of the rules when they met their spouse, but still found it deeply unsettling to experience in practice how freedoms and protections they had previously taken for granted were not in fact guaranteed. When articulating their frustration they use terms like injustice, unfairness or inhuman treatment – liberal concepts associated with the lack of basic rights. But many also describe a powerful and disturbing sense of exclusion from an imaged Danish community.

My informants' practices of an EU citizenship of last resort throw new light on Weiler's thick-thin synthesis. To begin with, the analysis so far indicates that Joppke (2010b) is right in questioning this romantic conception of a national citizenship based on a deep sense of belonging. After all, what really matters to most of my Danish interviewees are rights and personal relationships, not, it would seem, the deep community of the nation. This looks very much like a thin citizenship light. Indeed, the creative attempts to find alternative routes in domestic and supranational law can be interpreted as a pragmatic or even instrumental attitude to citizenship.

This is not the only plausible reading, though. The anger and sometimes shock many informants experience, when they realize that Danish citizenship is not the guarantee they thought it was, testify to the immense, and taken-for-granted value this status has for them. It suggests that we are better off reading Weiler's conception of national membership not so much as a communitarian affirmation of shared language and culture, though that may also come into it, and more as an existential feeling of home, where home is understood as a place of shelter and safety. This deep sense of belonging is not one we are necessarily aware of in our everyday life. Rather, it becomes an object of reflection in the moment it is threatened; for my informants when it turns out that Danish citizenship does not in fact provide the expected protection.

Weiler's analysis is lent further credit when we consider the relationship between national and supranational citizenship as constructed so far. The freedoms offered by the European Union are mobilized with some reluctance. Moreover, the matter at stake is not a trivial one but an area of profound importance to the personal freedom and wellbeing of these couples. We could thus read the practice of these marriage migrants as an example of Weiler's corrective citizenship. The supranational order is invoked in exceptional circumstances where basic liberal rights are threatened by an excessive nationalism and then only when it is clear that domestic solutions are not available. As I will argue in the following, however, the national civic order is not just invoked and corrected but also transformed by these enactments of EU citizenship (cf. Kostakopoulou, 2007).

### **Transformations of belonging and national sovereignty**

I have shown how important national citizenship is in the stories of Danish family migrants, even though a supranational EU citizenship is mobilized. But while paradoxically re-affirmed by practices of exit, national membership is also contested and unsettled. The juridico-political boundaries of the nation-state are transgressed, and civic identification is profoundly altered.

*The boundaries of membership transgressed*

Moving to Sweden not only enables migrants to obtain a residence permit as the spouses of mobile EU citizens and thus sidestep restrictive Danish rules. It is also allows them to resettle in Denmark after a shorter or longer stay and in that way to actively challenge domestic immigration policies. Below I explore how this is done and discuss what it entails for the negotiation of political boundaries.

My informants' future plans and especially their views on a possible resettlement in Denmark vary quite a lot. Some are so angry and frustrated with Danish immigration politics that they aim to stay permanently in Sweden or maybe move from there to another country. Others are undecided and open to see how things turn out, or they change their plans along the way. Finally, some have returned or are keen to do so. Turning to this latter group, there are various legal routes they can follow in order to relocate on the Danish side of the border. One informant, Charlotte, whose story I explore in the next chapter, stayed for a year in Malmö until she turned 24 and could obtain family unification under Danish national law. This is a tactic used more in the early years after the restrictive reform in 2002 when re-entry options under EU law, as the analysis below will illustrate, were still very restricted. As this practice follows Danish national regulation, it upholds rather than disturbs national sovereignty. Another option is to make use of Sweden's liberal citizenship regulation. After five years of legal residency, a foreign spouse can obtain a Swedish passport. As a European Union citizen he or she is then free to move to another EU country and can thus resettle in Denmark without having to go through a complicated application process. Lastly, couples can use EU free movement and family unification rules to return. At the time of the interviews, about a third of my informants had already done so, tried to, or were planning to do so as soon as possible. It is by using this strategy, in particular, that they contest the boundaries of the polity. Their return means that immigrants, who would not otherwise qualify under national rules, can nonetheless reside lawfully on the territory. A couple who do not fulfil the age requirement, for example, can settle in Denmark in this way. That does not render Denmark's family unification law null and void. It still holds for those who, for economic or other reasons, are unable to use EU rules, as I discuss later in the chapter. Even so, the freedom of the nation to determine the



boundaries of the political community through majoritarian democratic politics is demonstrably challenged.

But how much is it challenged, we might ask? There has been a significant rise in the number of Danish-international couples applying for family unification under EU law. In the period from 2005 to 2008 the Danish Immigration Service on average took 104 decisions per year under these rules. This increased drastically to 818 in 2009 and 705 in 2010 and then fell a little again to 456 and 543 in 2011 and 2012 (The Danish Immigration Service, 2011, p.35; 2013b, p.28). Still, seen in a comparative perspective figures remain low. In 2010 a total of 7105 decisions were made on family unification under both national and EU legislation (p.34). It is thus a relatively small group who try to use their EU citizenship to move to Denmark. Leading politicians have therefore sought to downplay the importance of the EU option (Østergaard, 2011): With such low numbers it is not really a threat to national sovereignty after all. However, the many evasion tactics displayed by the administration suggest otherwise, as we shall see.

Over the years the Immigration Service has interpreted EU law very narrowly. The ministry claimed that only EU citizens who had worked in another member-state could use EU rules and then only if they had a job in Denmark when they returned. This excluded pensioners, students and Danes who lived in Malmö but worked in Copenhagen (Bøegh-Lervang and Madum, 2010, p.108, The Danish Immigration Service, 2006, pp.2-3). In practice it meant that Danish citizens with jobs or studies in Denmark had to quit or take leave of absence. Then they had to find work in the Malmö area where unemployment was high at the time. After a while they could return with their partner provided that they had work and a place to live in Denmark again. On these conditions not many chose this option in the beginning (Interview with Susanne and Lisbeth, 2011, p.8, cf. The Danish Immigration Service 2011, p.35).

Maiken and Selim, a Danish-Turkish couple, are among the few who did. They had met at a beach resort in Turkey. He was working and she was holidaying with her family. They fell in love and lived together for six months in Turkey. After a while Maiken who was then 20 years old wanted to begin her studies in Copenhagen. Hence they decided

to go Denmark. Because of her age, family unification under Danish national law was ruled out. In January 2006 Maiken therefore moved to Malmö. Selim had some savings which enabled them to buy a flat. They got married in a hurry and applied for family reunion in Sweden under EU law. Then they started considering how to come to Denmark:

S: ... first of all we didn't know how long we had to live in Sweden in order to move back, so, yes, she [Maiken] worked about six months in another company in Denmark so that she had to take the train every morning back and forth, and then we found out that she needed to work in Sweden for six months, but that wasn't right either.

M: No.

S: Because there wasn't anybody who knew how, I mean, what you have to, I mean, how long you have to work – not in the, eh what, Department of Immigration Affairs, either.

M: Department of Immigration Affairs. I refuse to call it Immigration Service.

S: [giggles] Yes, Department of Immigration Affairs, they didn't know it either.

M: We got a new reply every single time we called them.

S: Mm

M: Once, it was 14 days in Sweden - that was fine. The next time it was three months. Then it was ten weeks, then it was six months, and then we thought

S: [xxx]

M: belt and braces

S: *Yes.* (Interview with Maiken and Selim, 2011, p.4)

They ended up staying in Sweden for more than a year with Maiken working first in Denmark and then in Sweden. Eventually they left for Copenhagen and Selim got a five year residence permit as the spouse of an EU citizen. Both Maiken and Selim were frustrated with how difficult it was to find out how the rules were interpreted. Not only was it hard to get a straight answer by calling the authorities. On the home page of the Immigration Service the EU-route was just mentioned very briefly (see also The Danish Parliamentary Ombudsman, 2008, pp.44-48).

In 2008 the Danish Parliamentary Ombudsman investigated the administration. He found that the information provided about EU citizens' right to family unification was clearly insufficient. His examination also looked at the actual practice of the

Immigration Service in handling applications. By then a number of judgments from the European Court of Justice had greatly challenged the restrictive Danish interpretation of EU law. The ombudsman concluded that the Immigration Service had been slow to implement several court verdicts (The Danish Parliamentary Ombudsman, 2008). These various ministerial evasion tactics underline how important it was considered to uphold a restrictive family unification policy and to resist liberalizing counter-effects from the citizenship regime of European Union (see Bøegh-Lervang and Madum, 2010).

The symbolic significance of EU citizenship is also clear from the public controversy surrounding the so-called *Metock* case. The ombudsman's investigation was prompted by a series of articles run by a Danish newspaper in the summer of 2008 about the Immigration Service and the sparse information they provided to citizens interested in using EU law (Bøegh-Lervang and Madum 2010, p.92). It raised considerable public debate and brought attention on the possibilities of Union citizenship in this respect. When the dispute was at its most intense the European Court of Justice gave a liberalizing verdict in a case between four family migrants and their spouses and the Irish Minister for Justice (pp.92-93, Carrera and Wiesbrock, 2010).<sup>34</sup> Coming in the middle of the debate over EU citizenship and family unification, the *Metock* case received unprecedented public attention in Denmark. This had little to do with its content which was not of direct relevance to most of the Danish marriage migrants (Bøegh-Lervang and Madum, 2010, pp.132-133). The significance of the judgment lay in the attention it drew to EU law. The public debate around the verdict, the newspaper campaign and the ombudsman investigation led to a liberalization of the Danish implementation of EU law and vastly increased publically available official information about this option. While the real trigger was arguably critical investigatory journalism, *Metock* came to symbolize EU law in the ensuing debate (Bøegh-Lervang and Madum

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<sup>34</sup> The case involved four African men who had applied unsuccessfully for asylum in Ireland. They had subsequently married British, German and Polish spouses working in Ireland and applied for family unification under EU law as the spouses of mobile Union citizens. The Irish Ministry of Justice had declined the application on the grounds that the applicants had not had prior legal stay in another EU country before joining their spouses in Ireland. The applicants and their partners had then taken the case to court and the Irish High Court requested a preliminary reference from the ECJ. In the case the ECJ ruled in favour of the applicants. The court argued that the Citizenship Directive regulating the freedom of movement of European nationals and their spouses does not allow member states to require prior legal stay in another member state (ECJ, 2008). The reason why this had little formal relevance for the Danish dispute is that Sweden, where most Danish-International couples went, did not require prior legal stay anyhow. If it had, the Swedish model would have been a lot harder to use.

2010, pp.132-133). Indeed, political elites used this court case to shift public focus from the Immigration Service's maladministration to the allegedly illegitimate usurpation of powers by the ECJ (Wind, 2008). This controversy again shows that the perceived threat to the national civic order from EU citizenship was considerable.

Despite persistent resistance from national authorities European Union citizenship has enabled citizens and their migrant spouses to circumvent the national civic order. In an area which has been eminently important to Danish public debates about identity, citizenship and migration for a couple of decades, national policies can be bypassed. The boundaries of the nation have thus become more 'porous' (Benhabib 2004) and harder to regulate by insiders. From the perspective of Weiler's corrective citizenship we might see this as a welcome taming of an excessive nationalism. The liberal construction of membership in the Danish nation from before the restrictive migration laws is at least partially rescued and re-established. The apolitical essentialism of this argument is unconvincing, though. Even in the 1980's when Denmark's family unification regime was among the most liberal in Europe (Siim, 2007) it was by no means uncontested, as described in the previous chapter. An agonistic reading, by contrast, draws our attention to the contentious politics of membership displayed in this struggle. What is disputed is precisely the understanding and demarcation of 'genuine Danishness'. The inventive strategies of affected couples and the resistance demonstrated all along by state bureaucracies and government elite show that this is no smooth 'civilizing' process but an intense, transnational and multi-level conflict over the boundaries of the polity.

### *Changes in identification*

It is not only the juridico-political terrain which is transformed. Many of my informants also narrate how their encounter with restrictive family unification rules has affected their sense of belonging and their opinion of Denmark (see also Møller, 2009; Schmidt et al., 2009; Rytter, 2010a). Derek, for example, has learned Danish and passed the highest level language tests for foreigners. He explains that he has stayed so long in the country that he feels a stronger sense of attachment to Denmark than to Australia where he grew up. Still, when we meet, he is so angry about the unfair treatment he has

received that he no longer wishes to speak Danish and hopes to convince Julie to stay permanently in Sweden.<sup>35</sup> She too describes how her ‘view on us as a people [*befolkning*] has worsened’. She finds it ‘embarrassing that we have ... such rules which mean that people who *want* to work, people who want to be here and have met someone and started a family ... that not even *they* are allowed to be here.’ (Interview with Derek and Julie, 2011, p. 19) The frustration and embarrassment this couple expresses are echoed widely by my informants. A particular striking example is Laura, a Danish woman who moved to Sweden because her husband was too young to obtain family unification. Reflecting on her experience, she remarks that:

L: ... in the end, I think it’s going to cost Denmark a lot ... to be so hostile ... *I* personally have lost a lot of respect for the Danish society where previously one was perhaps more of ... loyal [*lydhør*] citizen who wanted to do one’s part for the Danish society - I don’t think like that at all today. Now I think of what is best for me and don’t have those obligations towards Denmark. (Interview with Laura, 2011, p.18)

When I interview Laura, she and her husband have lived four years in and he will soon be able to apply for Swedish citizenship. This is very important to her. Not because she feels particularly well-integrated in their new country of residence. Like many of my Danish interviewees, Laura commutes daily across the Øresund bridge to her job and studies in Denmark. Even before the financial crisis began, unemployment was high in Southern Sweden, so working in the Copenhagen area was often necessary for Danish spouses who are obliged under EU rules to provide for their partners. Though grateful for the friendliness of her neighbours and the welcome they have received from the Swedish immigration authorities, informants like Laura therefore find it hard to develop closer ties to their local community. It is thus not so much affective bonds as practical realities that make her look forward to the day when her husband can obtain a Swedish passport. With a European citizenship he and their family will have the security and freedom of movement which they now lack and which has prompted their involuntary exile. For Laura, being ‘kicked out of Denmark’ (p. 6) has undermined her sense of belonging and her wish to contribute to the collective good. A thick, national citizenship has been replaced by a thin, rights-based membership. Ironically, it is precisely the

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<sup>35</sup> Later, however, the family does move back to Denmark.

political attempt to preserve a thick and selective ideal of Danish citizenship that generates a more instrumental attitude among some citizens and migrants who feel excluded.<sup>36</sup>

Other interviewees, however, describe how they have developed new ties through their cross-border movement. Enrique from Cuba went to Sweden with his Danish wife Maja because of the 24-years-rule. Initially their plan was to move to Denmark as soon as Maja was old enough to apply under Danish law, but by then Enrique had begun to feel at home in Malmö and did not want to be uprooted yet again. They therefore decided to stay at least until he had got Swedish citizenship. Reflecting on the importance of acquiring this status, Enrique, like Laura, stresses its instrumental value: it enables him to travel all over the world and take up work in another European country. Moreover, like many informants, Maja and Enrique emphasize the costs of involuntary exile. After their daughter was born, they were both ill with stress owing at least partly, they think, to the prolonged uncertainty of their situation. Maja was in hospital for several months while Enrique worked long hours and took care of their child. But though the safety and security which Swedish citizenship represents is particularly important in their lives, there is more to it, as Enrique explains:

E: ... Sweden [xx] means, have become something to me, like - of course I will *always* be Cuban, I will always feel that I am Cuban – but Sweden has been *so* nice to me. ... we just came here, we get the paperwork, still I wasn't even Swedish, still they didn't care, they just opened the door for us and ... [Maja] has been in health care here in Sweden, I'm gonna get student support of the Swedish government ... so I am getting to more than *like* ...

M: [you] *love* Sweden [said teasingly]

E: [giggles] I like Sweden very much.

M: [giggles]

E: Yeah, all what I have seen and yeah I like it, it's really, really good here. So... it will be feeling very nice when I get citizenship, of course. (p.26)

Enrique has developed a strong civic identification with Sweden which complements his attachment to his country of origin. Other informants too report warm feelings of

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<sup>36</sup> Note, though, that Laura has participated intensely in Danish public debate, as discussed in the next chapter.

gratitude and appreciation towards this state where they were able to live together. That goes for some foreign spouses, like Enrique, but also for Danish citizens who, angered by the policy of Denmark, turn towards their neighbour country.

It is interesting to note how for many informants the feelings of thankfulness and approval are directed towards Sweden, though it is EU rules and not Swedish national regulation they use to settle there. Of course, EU law is implemented by member state administrations and Sweden has adopted a liberal interpretation in marked contrast to Denmark. Still, it suggests that national political community matters a great deal even for those whose sense of belonging to Denmark has been impaired. There are several who, like Aimée in the previous section, stress how the EU has come to their rescue. But their point is precisely that while they welcome the protection of the Union it ought not to be necessary: a state should guarantee the privacy and family life of its citizens. Some informants' attitudes towards the EU have, however, been markedly affected by their cross-border experiences. A few explain that though they have always been in favour of EU integration, this point of view has been reinforced by their encounter with the challenges of family unification. Two interviewees even describe a change in opinion. One is Line, a young Danish woman who has moved to Sweden with her Egyptian husband Jamil. As she puts it: 'I remember not being a huge EU fan until I experienced personally that EU-legislation saved my ass, basically.' (Interview with Line and Jamil, 2011, p.31)

Line also recounts how her emotional attachment to Denmark has suffered and her appreciation of Danish citizenship is now entirely based on the rights and freedoms it provides. But at the same time she has become politically mobilized, volunteering for the NGO Marriage without Border which helps Danish-international couples:

L: ...I wanted to contribute to the work that was being done because I had benefited from it myself so I felt that I could give something back. ... I had needed it at the time and I knew how valuable it was for me and what it did so I just wanted to help other people at the same situation. I identified *a lot* with people in this situation. We've taken chances a few times having people to stay with us that we didn't know because they were in this situation, they were running out of time and they didn't have a place to live. And yeah, so I mean, there's a level, there's an element of identification, I

think, with people in the same situation who need help, right, so I wanted to give something back. And the other thing of course was purely political interests and that I wanted to try and change things and I didn't just want to sit and accept (Interview with Line and Jamil, 2011, p.29-30).

My informants' stories bring out clearly the problem with Weiler's integration of thick and thin citizenship. While Denmark's restrictive family unification rules may be a pertinent example of a rampant nationalism in need of liberal-supranational constraints, the encounter with invasive domestic regulation and the mobilization of EU-citizenship undermines or drastically alters the very attachment to the nation-state which this synthesis was supposed to preserve and protect. For informants like Laura, Line and Julie, Denmark and Danish citizenship has become disenchanted. Though they still, and perhaps more than ever, appreciate the value of a European passport, their sense of emotional belonging and existential safety has been damaged.

The analysis lends support to a central claim in agonistic and deliberative democracy, namely that in political struggles over the boundaries of the polity civic identification is transformed. It illustrates how the claiming or loss of civil rights is often a passionate and contentious affair which profoundly affects how actors understand themselves. The case, moreover, demonstrates that the ethico-political character and direction of such changes are open-ended – an important point stressed by agonists in particular. For Laura, for example, a sense of political solidarity and community is severely damaged to the point where citizenship becomes merely an instrument for the protection and private freedom of herself and her family. For Line similar transformations from affective national identity to rights-based membership go hand in hand with democratic political mobilization and a powerful identification with other transnational couples.

### **Limits to European citizenship of last resort**

So far I have discussed how EU citizenship is activated and narrated as a strategy of last resort by the majority of my informants and what implications this has for national membership. The wider picture is more complex, however. A smaller group of informants, mainly those above 30 who are not affected by the 24-years rule, describe their recourse to supranational rules as animated by pragmatic considerations, frustration and mistrust in domestic politics rather than as acts of necessity. Or they



interpret their border crossing as practices of conscientious objection, like Helena whom we met in the preface. Such alternative storylines are analysed in detail in chapter six. But it is not all who are able to use EU law – whether as a strategy of last resort or otherwise.

To achieve the protection of EU rules couples and families must be in a position to mobilize this legal framework – usually by residing for a while in another member state. Like social mobility, territorial mobility is stratified. Money, relevant transferable skills and social capital make it easier to move and establish a life elsewhere. Though Union law has few requirements for family unification compared with Danish national regulation, citizens are, as we have seen, obliged to provide for their spouses and children since they must not become ‘an undue burden’ on the social system of their host country (Citizenship Directive, 2004). Not all are able to do so, as the stories of a few of my informants illustrate (see also Schmidt et al., 2009).<sup>37</sup> Eva, a Danish woman in her thirties, has a two- year-old daughter with her Tanzanian fiancé and has at the time of the interview been out of work more or less since giving birth. As a recipient of unemployment benefits (*kontanthjælp*) Eva is not allowed to bring her partner to Denmark under Danish family unification rules. But since she and the child depend on the Danish state for their livelihood Eva feels unable to leave. Even if she did go to Sweden she would still need a job in order to obtain a residence permit for her spouse. Their economic vulnerability also makes moving to Tanzania a very risky option. The family therefore lives apart to the distress of Eva who, aside from missing her fiancé, worries about her daughter growing up without regular contact with her father. Eva’s Danish citizenship has shielded her and her child by providing them with a social safety-net and Eva stresses how grateful she is for that. Still, her socio-economic rights come at the expense of a civil right to family life in Denmark. EU citizenship does not enable her to change this situation in any fundamental sense.<sup>38</sup> For citizens like Eva it is

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<sup>37</sup> This state of affairs where mobile citizens are privileged over static citizens (or where EU citizens from another member state have more extensive rights in their country of residence than nationals of that country) is referred to in the literature as ‘reverse discrimination’ (Staver, 2013). See Bauböck (2007b) for a discussion of potential solutions.

<sup>38</sup> Note, however, that it does offer some minor options. At the time of the interview, family unification under Danish law was ruled out not merely for citizens who were presently receiving unemployment benefits but also for citizens who had done so within the last three years prior to handing in their application as described in chapter three. If anything, this was what really frustrated Eva. Even if she did

therefore not a status they can resort to when other options fail.<sup>39</sup> This underlines how, though exit can be an important strategy for claiming rights, it is not an option equally open to all. Hence, there are noticeable constraints on the extent to which supranational rights can augment and transform national membership.<sup>40</sup>

## Conclusion

This chapter has offered a theoretical and empirical intervention in the debate over thick and thin national and postnational membership. I focused on Weiler's elegant synthesis which promises to preserve the merits of a deeply rooted nation-state membership while keeping its xenophobic dangers at bay with the supplement of a rights-based supranational citizenship. Analyzing the stories of Danish-international couples I found that most interviewees enact an EU citizenship of last resort which both affirms and transforms national membership. They use their status as EU citizens where core rights are at stake and then only when options within national law have been exhausted. This resonates rather well with Weiler's corrective citizenship although the analysis suggests

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find a job she would still need to wait another three years before she could bring her fiancé, thus adding very substantially to the separation between father and daughter. If, on the other hand, she found a job in Sweden she would be able to apply for spousal reunion right away as EU law does not operate with such quarantine periods.

<sup>39</sup> Apart from economic dependency, health issues and care responsibilities are other possible barriers to cross-border mobility. One informant, Nina, is suffering from severe concentration problems following an accident which makes it difficult for her to work full-time. She receives special support (*revalidering*) and is in a situation similar to Eva's where she is unable to bring her partner to Denmark and is very unsure about her ability to establish herself in Sweden. A third interviewee, Aisha, is receiving unemployment benefits (*kontanthjælp*) but also has children with social and developmental problems who need extensive help from the Danish social services. Note that in each of these cases, the informant is unable to obtain family unification for her spouse under both Danish and EU law.

<sup>40</sup> In 2011 the ECJ ruled in the *Zambrano* case that a child who was a Union citizen could claim rights based on EU law even though no cross-border movement had taken place. The case concerned a Columbian citizen, Gerardo Ruiz Zambrano and his Columbian wife, who had both applied for asylum in Belgium. Their applications were rejected but the unstable situation in Columbia meant that they could not be forced to return. The couple stayed on and had two children who were given Belgian citizenship. Zambrano worked illegally and supported the family. He applied for a residence permit and was refused. In subsequent legal proceedings Zambrano claimed a right to family unification as the parent of an EU citizen and the case was referred to the ECJ for a preliminary ruling. The Court found that while the Citizenship Directive was not applicable as no internal movement had taken place, the children had a right to enjoy the opportunities and freedoms of EU citizenship under the Treaty. If the parents and with them the children were expelled this right would be infringed (ECJ, 2011). Some legal scholars have interpreted this as a radical shift in EU case law launching 'a real EU citizenship' no longer dependent on free movement (Kochenov, 2011, p.55). Others are more cautious in their assessment suggesting that the generalizability of the case is limited (Staver, 2013). The interpretation adopted by Danish immigration officials lends support to this latter argument. Only when both parents are third country nationals and the child is a Union citizen is a member state unable to refuse family unification. Eva's case illustrates this limited scope. Her daughter is a Danish citizen but the child's stay and economic protection in Europe is not dependent on her father obtaining a right of residence (Ministry of Justice, 2013).

that nation-state membership is valued at least as much, if not more, for the rights and safety it is assumed to provide than for its more romantic connotations of community.

At the same time, however, I showed how national membership is also radically transformed in this dispute over family unification. Most of my informants, the Danish citizens in particular, reported how their views of Denmark and their civic identification had changed. The national sense of belonging so important to Weiler had been undermined or profoundly altered. Moreover, the legal and political boundaries of the nation-state had been transgressed through the inventive use of EU citizenship. The intense political and administrative struggle over family unification and cross-border movement shows that national and supranational citizenship is not easily reconciled in a harmonious synthesis. The analysis therefore lends credit to the supposition that a more fundamental re-thinking of citizenship is required. This re-conceptualization should be attentive to the contentiousness and transformative character of struggles over migration and membership in a transnational Europe but also to the costs and barriers to action in these on-going disputes. In the next three chapters I set out to develop such a dynamic conception through further careful interpretation of my informants' narratives of family life and cross-border movement while drawing on agonistic and deliberative theories of democracy.

## **CHAPTER FIVE: EXIT AND VOICE**

This chapter contributes to the reconstruction of a dynamic and empirically situated conception of citizenship across borders by exploring the interplay between voice and exit in the Danish family unification dispute. I analyze the relationship between public debate, collective action and cross-border movement from the dual perspectives of deliberative and agonistic democracy.

In the previous chapter we saw how civic identification is transformed through practices of negotiating membership. The following analysis focuses on another dimension of a thick, democratic citizenship: participation in public life. State centric republicans stress how active engagement in the common affairs of the polity takes place within the territorial and symbolic boundaries of the nation-state. Existing studies, however, find that emigration and immigration can sometimes interplay fruitfully with domestic and transnational voice. Yet the civic character of such practices needs further conceptual and empirical analysis. In the following I therefore investigate the conditions, limitations and modalities of this voice-exit nexus in the present case by drawing on deliberative and agonistic theories of democracy.

The first part of the chapter analyzes how border crossing in different ways generates and facilitates public deliberation. The second part explores how practices of exit, entry and re-entry prompt and enable organized agonistic activism.

### **Border crossing and public deliberation**

I begin by examining Maria's story as she recounts it in our conversation. Maria tells me how she met Lweendo, her daughter's father, during an internship in Zambia. They fell in love and decided that he should come with her when she returned home. Just before leaving, Maria became pregnant. It was now all the more important to her that they should live together in Denmark and she began looking into the rules for family unification. This was when she realized that Lweendo, who was only 21 at the time, would not be able to meet the age requirement. But she also read that exceptions could be made in special circumstances. Since the two of them were not only getting married

but also starting a family Maria was confident that they would get permission for him to stay. About six months after their daughter was born the couple thus applied for family unification with a request to be exempted from the 24-years rule. The application was declined but the couple appealed. Lweendo was then told that he had to leave the country while their case was being reassessed.

At this point Maria contacted the press and the couple's story was published in a prominent Danish newspaper.<sup>41</sup> She also appeared in a TV programme together with a member of parliament from one of governing parties who defended the 24-years rule. Reflecting on what made her participate in the media debate, Maria explains: 'I suppose it was anger about us not being able to stay. It wasn't about the fact that [...Lweendo] wasn't allowed to stay during the appeal process. It was just ... that we couldn't get permission to stay in Denmark.' (Interview with Maria 2011, p.9) As it turned out, the couple's public action did have some, albeit very limited, effect on their case. Shortly after, they were informed by the Ministry of Refugee, Immigration and Integration Affairs that Lweendo could remain until the case reassessment was completed. The initial decision to refuse him a procedural residence permit had been a mistake. This was a short respite, though, as the appeal was unsuccessful. Lweendo could not obtain family unification. After a visit to Zambia the family therefore moved to Sweden.

In Maria's narrative, it is thus the prospect of her husband's or the whole family's involuntary exit that prompts the couple to voice. Similar stories are told by other informants who have articulated their discontent before they left, from the Swedish exile or upon their return to Denmark. The immediate stress of migrating can exhaust the energy for voice, but once stability is re-established some find the resources to protest. This 'trigger effect' of exit is interesting. In Hirschman's analysis of the fall of the German Democratic Republic citizens who wanted to get out began to organize demonstrations where they called for a right to leave. In the present case couples are deprived not of the freedom to exit but of the right to stay and in their anger some of them respond by voicing their discontent. This illustrates that when governments regulate border crossing tightly, whether by preventing its citizens from leaving or

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<sup>41</sup> The newspaper article is publicly available but not cited here to protect Maria's anonymity.

compelling them to go, this can spur acts of public protest. Such voice action could take many different forms from the mass protests in East Germany in 1989 to the rather more solitary engagement displayed by informants like Maria, as I discuss below.

In her anger Maria not only participated in the Danish media debate. She also corresponded with a Minister and two MPs from the governing parties.<sup>42</sup> In these exchanges Maria describes the family's situation, stressing in particular her daughter's need to grow up with her father close by and the health risks to a baby in Zambia where child mortality rates are high. She emphasizes the right to privacy and family life as established by human rights conventions. Though focusing on her own family's particular predicament, Maria also offers a more general challenge to the law's legitimacy. Discussing the government's aim of hindering forced marriages she refers to studies which show the number of such marriages to be very small and not always deterred by the 24-years rule. The answers she receives vary. One interlocutor replies with sympathy, but disputes Maria's claim that her human right to family life is in fact at stake. Only couples whose physical safety would be at risk in the partner's home country can be exempted from the 24-years rule on those grounds, she points out. Recalling the response from another MP, Maria says:

... I got a straight answer that ... the 24-years rule was there to hinder forced marriages and she was aware that there was a side-effect of the 24-years rule which affected someone like *me* and that of course was not intended, or it wasn't that we weren't allowed to stay in Denmark, but ... she simply could not have it on her conscience that there were so many girls who were forced to marry and were suffering terribly and she was willing to sacrifice someone like me on that account. (Interview with Maria, 2011, p.9)

Through their public voice and petitioning of parliamentarians Maria and Lweendo thus offer facts, interpretations and arguments querying the legality of the refusal in their particular case as well as the legitimacy of the law itself. This in turn prompts responsible politicians to justify the specific decision and its legislative basis. The couple's appeal to human rights is met with a different, more restrictive understanding of the protection of family life. The latter approach finds some support in case law from

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<sup>42</sup> The following is based both on Maria's account of the experience in my interview with her and on the copies of most the correspondence which she has provided me with.

the European Court of Human Rights that gives states considerable discretion to refuse family unification when pursuing lawful objectives such as protecting the freedom of other citizens or controlling immigration (Staver, 2013, p.72; see especially ECtHR 2008).<sup>43</sup> On the other hand, a recent ruling by the United Kingdom's Supreme Court in a similar case provides a much stronger defence of the right to family life by placing a substantial burden of proof on the state to demonstrate that measures adopted are necessary and proportional.<sup>44</sup> Thus while the outcome of the correspondence is not, of course, what Maria and Lweendo are hoping for, an exchange is taking place with reasonable arguments on both sides where rights are claimed, disputed and balanced against the rights of others and the interests of society. This is thus an example of how the prospect of involuntary exit can generate a deliberative process. Maria's story is not exceptional in this respect. With their interventions Danish citizens and their spouses have sought to bring public attention on how the family unification rules affect Danish-international couples and families. They have pointed out potential inconsistencies and adverse consequences of the regulation and have put pressure on responsible officials to justify their policy choices. This in turn has helped to stimulate and to some extent qualify the democratic debate over membership.

#### *A far-from-ideal speech situation*

About a third of the informants have exercised their citizenship by taking part in public debate and telling their story to Danish, Swedish or international media. But doing so is by no means easy. In the following I examine some of the challenges experienced by my interviewees, which demonstrate how far from the ideals of deliberative democracy the institutional and discursive conditions for civic participation can be.

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<sup>43</sup> Note, though, that the Danish Institute for Human Rights produced a report in 2004 which criticized the Danish family unification regulation, including the 24 years rule, for breaching the right to family life in the European Convention for Human Rights (Lagoutte and Liisberg, 2004)

<sup>44</sup> The case, *Quila and Bibi v. Secretary of State for the Home Department*, concerned two citizens of, respectively, Chile and Pakistan, both married to British spouses, who had been refused family unification under the UK's 21-years rule. This rule had been introduced in 2008 to guard against forced marriages. The court's majority decision supported the claims of the young couples with Lord Wilson arguing that the home secretary 'clearly fail[ed] to establish ... that the amendment is no more than is necessary to accomplish her objective and ... that it strikes a fair balance between the rights of the parties to unforced marriages and the interests of the community in preventing forced marriages. On any view it is a sledgehammer but she has not attempted to identify the size of the nut.' The 21-years rule was subsequently abolished. When comparing it with the Danish 24-years-rule it is important to note that while the stated objective of the former was solely to prevent forced marriages, the latter also aimed to reduce immigration and promote integration.

To begin with there is the problem of access. Affected persons can only speak out in newspapers and on TV if these media are interested in bringing their stories or publishing their letters to the editor. Charlotte, a former activist in the Danish NGO Marriage without Borders (*Ægteskab uden Grænser*), describes the situation in this way:

It was rather difficult to get the media's attention on this ... especially the first couple of years [after the 2002-reform - RW] when it was just accepted, well it was a bit like for or against, well if there was anyone who argued *against* the restrictions then you were told that you were *in favour* of forced marriages, well, a bit like the whole Iraq problematic: 'Would you rather want Saddam Hussein?' Black or white: Are you for or against? So ... there wasn't very much focus on all those who were caught in the rules and besides I think the media soon reached a sort of saturation point ... they couldn't bring some unhappy love story every evening. It's like then there is not news value in it anymore so we had *huge* difficulties getting attention on it. (Interview with Charlotte 2011, p.7)

In some periods, though, Danish media have been quite keen to interview transnational couples. This was particularly so during the summer of 2008 when the maladministration of EU rules was discovered and also in 2010-11 when the point-system was introduced. But even then not everyone has been able to voice their experiences in this way. A few informants tell me about their unsuccessful attempts to contact the press. The supply of angry couples, they suspect, vastly exceed the demand.

Others find that their story does not fit the script of tragic romance which these publicized narratives typically follow. Accounts of the separation of two young, heterosexual lovers by a third party - be it parents or, as in this case, a paternalist state - figure prominently in modern, Western cultural repertoires (Evans, 2003; Singer, 2009; cf. Jensen and Fernandez, 2013). It is this storyline which many couples in cooperation with various media mobilize. The power of the narrative derives from its appeal to our emotions and widely held ideals of romantic love and individual freedom which gives each person the right to choose how to live his or her life. Maria, as we have seen, has participated in such stories with her husband, but when they later divorced, owing in part to the stress of their situation, she found she was not interesting to journalists



anymore. They could no longer use her ‘to show this family that is not allowed to be together’ (Interview with Maria 2011, p.12).

Though not divorced, Laura, whom we met in chapter four, tells about a similar experience. In the summer of 2008, when the Danish debate over family unification and EU-law was at its highest, Laura participated in several interviews with Danish and Swedish media. A reporter interviewing her for a television feature was very keen to film her husband although he had from the beginning declined to take part. Without his visible presence, the TV-channel would be unable to re-present Laura’s voice in accordance with this romantic script. Anja and Miguel, the one couple among my informants who did manage to obtain family unification under Danish law, experienced similar problems. Keen to tell their story publicly to provide a more nuanced account stressing both possibilities and limitations of the Danish immigration policy, they were unable to find interested journalists. A story without the tragic separation of a family was apparently a hard sell. Finally, it seems plausible that couples in arranged marriages are likely to find this dominant media framing difficult to navigate as they cannot so easily appeal to the norm of individualistic, romantic love.<sup>45</sup>

Even those who do fit the script may find it constraining. Maiken and Selim, the Danish-Turkish couple we met in chapter four, describe it this way:

M: I don’t wanna participate in [... media interviews]. Then it’s some feature in *Good Evening, Denmark* [*Go’aften Danmark*, Danish TV program] where you are filmed walking along a beach hand in hand gazing worriedly out over sea and are sad and stuff like that.

S: [giggles]

M: And [someone] is to sit and feel sorry for you in *Good Evening, Denmark* – I don’t care for that.

S: No, I don’t care for that either.

[...]

M: I can’t take those kinds of features, human interest stories ...

S: I think it’s embarrassing to try

M: yes, mega-embarrassing!

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<sup>45</sup> Homosexual couples might also be marginalized, though this is by no means a given. The wide support for gay rights in Danish public discourse makes it possible to fit same-sex relationships into this storyline. The persecution of homosexuals in many countries has been advanced by a few politicians as a reason for making sure these couples can realize their life together in Denmark (Lindquist 2010a-b).

S: to try to participate in such programmes...  
 M: Yes, it's that *victim role* that you don't want, I think. Then you are to be cuddled and, 'oh, it's so hard on us'.  
 S: Yes.  
 M: Well, I *do* think it's super hard on us, but  
 S: but not in that way.  
 M: No. (Interview with Maiken and Selim 2011, pp.18-19)

Exclusionary effects aside, the problem with the 'unhappy love story' framing is that it in some sense individualizes and privatizes the experience. This may not only feel like an exposure of interviewees intimate life – 'emotional porn', as Maria (p.12) puts it – adding to the interference they have already been subjected to by invasive state regulation. It also invokes a humanitarian discourse<sup>46</sup> that makes it difficult to present a properly political critique in which government handling of a shared problem is addressed (cf. Mouffe, 2000). It suggests that while individual narratives appealing to the compassion of fellow citizens is important (cf. Rorty, 1993), there is also need for rhetorical strategies that allow for a more collective and political articulation. Some of my informants, Maiken and Selim included, therefore explain that they prefer to tell about their struggles and express their frustration in a research project. They stress the need for anonymity when relating very personal details, especially if these involve sensitive topics or illegal actions. Or they perceive academic work to provide a more serious treatment of the issue which they hope will carry more weight with decision makers.

There are other reasons as well why some informants 'self-select' out of the media debate. In the previous chapter we met Eva, who was unable to obtain family unification for her partner under Danish and EU law because she relied on welfare support for herself and her daughter. Though deeply frustrated, Eva found it very difficult to articulate her distress publicly because of the social stigma of dependence. As she explains it: 'I think you have a bit of humility when you have received unemployment benefits (*køntanthjælp*) for a while ... [Y]ou feel like a second-class citizen' (Interview with Eva 2011, p.8) Unlike other informants who were able, for example, to invoke

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<sup>46</sup> As Mikkel Rytter and Anika Liversage (2014) point out, a humanitarian discourse was also mobilized to justify restricting access to family unification by presenting this as a means to protect young minority citizens from forced marriages (see also Jørgensen, 2014, and appendix II).

discourses of economic contribution and self-reliance to protest against their exclusion, Eva thus feels shamed into silence.<sup>47</sup> This again illustrates how social norms about what it means to be a ‘good citizen’ greatly shape and constrain what stories can be told in public (cf. Jensen and Fernandez, 2013).

For ethnic minority citizens negotiating conflicting normative codes of membership can be particularly challenging (cf. Schmidt, 2011). Young adults with family ties to, for example, Pakistan or Turkey often find themselves caught between the marital preferences of state and family (Rytter, 2010a). On the one hand, publicly criticizing practices of transnational arranged marriages that are valued by the parental generation and the wider community is arguably difficult. On the other hand, defending arranged marriages is also complicated in the context of legislation and political debates where distinctions between arranged, forced and pro forma marriages are often glossed over or erased (Ministry of Refugee, Immigration and Integration Affairs, 2002; Jørgensen, 2014; Hervik and Rytter, 2004). Additional difficulties arise from the paternalist discourse frequently deployed by supporters of the law both within and outside parliament. The government’s official remarks to the bill introducing the 24 years rule for example states that:

The older one is, the better one can resist the pressure from the family or others to enter into a marriage against one’s will. The purpose of the proposal is thus to protect the young (*de unge*) from a pressure in relation to entering into matrimony and at the same time free the young from a pressure to explain to the immigration authorities that they wish to get family unification even though this is not in reality the case. (Ministry of Refugee, Immigration and Integration Affairs, 2002, p.37, my translations)

These young adult citizens are thus presented as so oppressed by their families that they cannot be relied on to express their own wishes.<sup>48</sup> The paradoxical effect of this

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<sup>47</sup> Eva is thus an example of how some are prevented from exercising voice as well as exit (see also Barry, 1974).

<sup>48</sup> Already in 2000, as noted in chapter three, the then centre-left government introduced a 25-years rule which required all applicants for family unification under the age of 25 to attend an interview with the Danish immigration authorities to ascertain that the marriage was voluntary (Aliens Act, 2000). Very few applications for family unification were turned down as a result of this process. There could be various reasons for this - preemptive effects of the law, self-censure on the part of the applicants or just very few forced marriages in general. The acceding centre-right government, however, interpreted it as an

argument is that ethnic minority citizens are denied a voice in order to ensure their proper emancipation. Articulations confirming the government's construction can be heard as meaningful but oppositional narratives are already discounted as inauthentic.

Apart from the difficulties of access, discursive frames and modes of storytelling in the public debate, several of my informants raise doubts about the efficacy of voice in the media. They worry that the group affected by the regulations is too small and easily ignored by the majority and the political elites. Moreover, the conflict-driven or even antagonistic character of the Danish public debate over family unification is a challenge. In her encounter with the press Laura, for example, found that they kept pushing for a confrontational litigation framing. One TV-channel thus 'wanted [...her] to say that [...she] would sue Denmark' for unlawful administration in her case. But on her own and with little hard evidence she had no desire to make such a statement.<sup>49</sup> The political rhetoric has also been very fierce. We have seen Charlotte compare it to US ex-president George W. Bush's performative statement at the beginning of the Iraq war in 2003 which separated the world into allies and enemies. This militarized analogy is of course over-stating the problem, but it nonetheless has resonance. If we look at the debate over family unification that same year in the Danish parliament and in leading Danish newspapers we do see that positions are very starkly and dramatically opposed (Jørgensen, 2014; appendix II).

On the one side, we have liberal-international critics of the law who insist, like many of my informants, that access to family unification is a basic human or civil right. As one letter to the editor puts it: 'Most Danes, who were given the choice between living in Denmark or giving up their marriage, probably ask themselves what a Danish citizenship is worth in reality when one of the most basic rights is not respected, that is, the right to marry whom one wishes to without being excluded from one's own country.' (Annemarie and Henrik Volborg quoted in appendix II) In their view, the

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unequivocal proof that the rule did not work as intended, hence the need to ban all family unification for young adults under the age of 24 (Ministry of Refugee, Immigration and Integration Affairs, 2002).

<sup>49</sup> It is interesting to note how this juridical framing of contestation again individualizes, positioning Laura on her own against the state (cf. Honig, 2009b; Aradau and Huysmans, 2009). Marriage without Borders did try to prompt and facilitate a joint law suit but without success. Indeed, the absence of litigation in the dispute over EU law is striking. In part this might be explained by the lack of a litigation culture in Scandinavia (cf. Wind et. al., 2009, thanks to Marlene Wind for this observation).

restrictive legislation threatens the very core of a liberal democratic citizenship. On the other side, we find populist-nationalist as well as mainstream party defenders of the legislation. The former see the strict requirements as necessary ‘to protect Denmark against being overrun by the flood of migrants’ as a prominent member of the Danish People’s Party argues (Søren Krarup quoted in appendix II). The latter present the regulation as equally essential but to guard against forced marriages and promote the integration of those immigrants and descendants already here. The answer Maria received from one of her parliamentary interlocutors illustrates this line of argument. It either ignores the adverse impact on couples, who are *not* at risk of being pressured into an unwanted marriage, or construct this as a sad but unavoidable side effect of the fight for the emancipation of young ethnic minority citizens.

Both critics and defenders of restrictive regulation thus present a treasured object - be it citizenship, individual freedom or the nation – as subject to an existential threat. For the proponents of the law, this justifies using extra-ordinary measures, such as limiting the freedom of some other citizens. This ‘securitization’ (Buzan et al., 1998; Rytter 2010a, pp.25-29) enables them to dismiss the claims of affected couples like my informants as a kind of collateral damage, to continue the combat metaphors. It likewise makes it possible for critics of the law to tone down the issue of forced marriages. In such a climate, important nuances and research-based evidence are often missing. During parliamentary debates and in key legislation, differences between arranged and forced marriages are underplayed or discursively erased, although the former is perfectly legal and the latter prohibited under Danish and international law. Reliable information about the extent of forced marriages and the effects of the law to prevent it is also hard to come by in this public dispute (Hervik and Rytter, 2004; Jørgensen, 2014). For opposing voices it can thus be difficult to be heard and given proper consideration. Conditions for the forceless force of the better argument are consequently uncommonly hard.

#### *Deliberation reconsidered*

Hence, while my informants’ stories demonstrate that cross-border movement can spur and enable public voice, they also draw out some important barriers to a deliberative

engagement. As we have seen in the introductory chapter, critics of deliberative democracy often stress how difficult it can be for vulnerable or marginalized groups to voice and be heard in public debates. The discursive positioning of ethnic minorities and citizens on welfare subsidies in the debate suggest that similar dynamics are at play here. But the case also shows that even for resourceful, well-educated citizens, most of whom are ethnic Danes, conditions for deliberation are difficult and very far from ‘the ideal speech situation’ (Habermas, 1996, p.322).<sup>50</sup> The perspectives of some affected persons are thus entirely absent, while the articulations of others’ grievances are severely constrained by dominant cultural norms and media codes for what counts as a good story. Finally, the securitization of family unification enables responsible politicians to dismiss the concerns of many who protest against the adverse effects of the regulation.

That the debate is far more constrained and exclusionary than the rational and egalitarian ideals of deliberative democracy would recommend is deplorable but it is not necessarily a problem for the theory. After all, a deliberative democratic conception of citizenship is at least in part prescriptive. It gives a normative account of membership practices which though seen to be embedded in is never reducible to the social world as we actually find it. It is precisely this relation between what Habermas calls ‘facts and norms’ that is meant to enable us to criticize the conditions for participation discussed above. A deliberative democratic perspective may thus help us to see what is wrong with the public debate over family unification. Such a distorted deliberative process violates regulative ideals of epistemic validity (Habermas, 1996) ‘egalitarian reciprocity’ and ‘universal respect’ (Benhabib, 2002, p.107): Citizens and decision-makers lack potentially important information when debating the policy and are not pressed to consider certain silenced angles of the problematic. Furthermore, though all citizens and residents have the same formal right to free speech, the structuring of the public sphere make access to the effective use of those rights very unequal with the consequence that some affected persons are in practice denied a voice in the public

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<sup>50</sup> Note that for Habermas (1996, pp.322-323) the ideal speech situation is not an abstract ideal ‘to be approximately realized’ in the actual social world but a set of ‘counterfactual presuppositions assumed by participants in argumentation’.

negotiations of laws to which they are subjected. The paternalist construction, moreover, of young adult minority citizens denies them moral autonomy.

Still, the gap between the ideals of a theory and the lived experiences of parties on the ground can be too great. Habermasian deliberative democracy places great faith in the self-correcting learning processes arising over time from the interplay between democratic decision-making in parliaments and ongoing debates in the informal public sphere. But when a debate is gridlocked to such an extent that even privileged and capable citizens find it hard to articulate their experiences freely and have their perspectives given due consideration then conditions are difficult indeed for such progressive transformations.

Here relevant insights might be gained from the growing literature on ‘deliberative democracy in divided societies’ (Dryzek, 2005; Muldoon, 2003; Deveaux, 2004; Gutmann and Thompson, 1996; for an agonistic critique see Schaap, 2006). John Dryzek, for example, advocates detaching deliberations in the public sphere from collective decision-making so that debates do not immediately feed into legislative processes. He points out that in the run up to elections and constitutional referenda the political stakes are very high. In these circumstances listening to the arguments of others often takes a backseat to mobilizing support through divisive rhetoric. By contrast, if public deliberation occurs at distance from policy reform it is comparatively easier to establish some level of understanding across ideological or identity-political lines of division.

Just how such a distance is to be achieved is less clear in Dryzek’s proposal. One avenue he advocates is the design of various micro-publics such as deliberative polls (Fishkin and Luskin, 2005) and citizens’ juries whose recommendations should be purely advisory.<sup>51</sup> A challenge for this recommendation is that citizens whose lives are profoundly and adversely affected by public policies, such as my informants, often want

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<sup>51</sup> Note that Dryzek (2005) is by no means an uncritical advocate of deliberative micro-publics. He points, for example, to studies which find that direct encounters among partisans make it difficult for participants to change their opinion without losing face. It is only given very specific institutional designs that he recommends such forums and then only as part of a broader public sphere.

these regulations altered.<sup>52</sup> Some of my interviewees do stress the importance of changing the hearts and minds of their fellow citizens but they also express a desire to have their experiences taken seriously by responsible politicians. Dryzek also argues in favour of deliberative forums which focus on individual needs rather than political contestation. He cites an empirical study which suggests that this allows participants to reach a degree of mutual understanding on practical issues even if they disagree about fundamental social and political values. A focus on basic needs, however, returns the deliberative process to the terrain of humanitarian discourse which as we have seen is what some interviewees find so problematic. While distancing deliberation from politics might generate a more reasonable and inclusive exchange of views the costs of such depoliticizing moves are considerable.

This is not to deny that the creation of alternative public spaces would be helpful given the constraints within the mainstream media and parliamentary debate. To carry out such institutional experiments, however, requires political will which presupposes precisely the attitude of openness that appears to be lacking.<sup>53</sup> If these forums are to be established in civil society, thus ensuring their genuine distance from the state, organizational resources and collective civic action would be necessary. Yet for all the attention to institutional design, when it comes to the social and political generation of organized activism deliberative democrats have very little to say.<sup>54</sup> In the following I therefore draw on agonistic democracy to analyze stories of civic mobilization and collective engagement among Danish-international couples.

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<sup>52</sup> Dryzek (2005, p.234) does not, of course, argue for a complete decoupling of parliamentary action and the public sphere. He acknowledges that in the case of too much distance 'there is a danger the public sphere may decay into inconsequentiality. Such decay would undermine the legitimacy of the state itself.' But elections, he insists, are generally poor connecting devices.

<sup>53</sup> Ironically, Dryzek makes a similar critique of Any Gutmann and Dennis Thompson. They stress that participants must demonstrate "the capacity to seek fair terms of cooperation for its own sake" (Gutmann and Thompson quoted in Dryzek 2005, p.219). But as Dryzek points out this puts the cart before the horse since it is the absence of such an attitude that makes reconciliation necessary in the first place (see also Schaap, 2006)

<sup>54</sup> Agonistic democrats are often - and not without justification - criticized for neglecting institutions (Dryzek, 2005; Benhabib, 2006; Schaap, 2006). They do, however, give considerable attention to the generation of social movements, revolutions and organized activism that can at times found or transform democratic institutions (Laclau and Mouffe, 1985; Mouffe, 2000).



### **Border crossing and organized activism**

Let us first turn to Charlotte's story. Charlotte met her husband-to-be in Lebanon where she was travelling and following a language course. It was in the year 2000 when family unification policies were on the political agenda in Denmark but before the more drastic restrictions had been introduced. The two kept in contact for a while and in 2002 Charlotte's boyfriend got a work permit in the Netherlands where she joined him. This was not a great success. She did not speak the language, had no job and felt rather isolated. After a year Charlotte was therefore eager to begin her studies and wanted them to move to Denmark. But by then the 24-years threshold had been introduced. Still only 23, Charlotte would not yet be able to obtain family unification under the Danish Aliens Act. Following the public debate she had, however, heard the founder of Marriage without Borders explain that couples could use the freedom of movement in the EU to go Sweden. This then was what the couple decided to do. Charlotte found an apartment in Malmö and her now husband immediately got a residence permit. From there Charlotte commuted daily to her university in Copenhagen until she was old enough to be permitted to return to Denmark with her partner. In the interview she explains how, faced with the stress of moving to Malmö, she was not immediately able to contact Marriage without Borders for advice, let alone to get involved. However, before she came back to Denmark she had joined the organization and would subsequently become very active in its various advocacy and support work. Reflecting on her mobilization, she explains:

C: ...I am already politically interested and so you just get so *vehement* – well fortunately I'm not so angry anymore, but you get so bitter and outraged as I have never been in my life and ... well for some it makes them passive and others it just makes them on fire so you feel that you have to do something to express that dissatisfaction. And then also to get an opportunity to help others because you yourself have been in that situation and been all lost and alone in the world and then it's nice to be allowed to help others who are in the same situation and ... don't know what they should do (Interview with Charlotte 2011, p.6).

Charlotte's story illustrates how cross-border movement can trigger and enable participation in organized activism. Line, who has also been deeply involved in the work of Marriage without Borders, explains that she had no previous experience with

civil society volunteering and had ‘not been brought up very ... politically active and engaged’. Rather, her encounter with exclusion ‘*sparked* something in [... her] because it became very personal’ (Interview with Line and Jamil 2011, p.30). In the narratives of Charlotte, Line and others we see that anger is a key driver. Theirs is very much an agonistic mobilization where individuals come together and take a stand against a policy they passionately disagree with and wish to dissent from. Acting is presented as civic as well as therapeutic. If channelled into democratic activism, frustration can be a source of political change where it might otherwise be a cause for depression or withdrawal, as Mouffe has pointed out. On the other hand, the risk of burn-out is also evident in a hostile and at times almost antagonistic political environment. Maria, for example, describes how she had to leave the board of Marriage without Borders for a while and disengage herself completely from the dispute after a very intense period of participation because following the public debate made her so angry and upset. Charlotte, for all her activism, lost her civic loyalty towards Denmark and wants to leave.

The role of cross-border movement in this political awakening is complex. The prospect of exit and the experience of being excluded from their country prompt engagement. The initial stress of moving is a barrier, but the relative protection of exile once the couple is settled or the safety they achieve upon re-entry makes this civic activism possible. Line explains that she did not volunteer for Marriage without Borders until a few years after they had moved to Sweden when their personal situation had become more settled. This echoes with the accounts by other informants who likewise stress the need for some level of stability in their own lives before they can find the resources to help others. For Charlotte and Maria, this is a respite they find upon returning to Denmark. Either way, exit or re-entry is presented as a strategy which in important ways facilitates this organized civil society activism by enabling couples to establish a reasonably secure life together.

The civic action of Marriage without Borders ranges from public advocacy to phone or online guidance and informal support via the so-called ‘Sweden’s Network’. The classical political activities, which I focus on here, are planned and carried out by the

board of the organization. My informants Charlotte, Line, Maria, Cecilie and Susanne have all been involved in various parts of this work which includes submitting extensive comments on new legislative proposals to Danish public authorities, arranging meetings with immigration officials and organizing socio-political events or happenings. Raising public awareness is also a key element. This is done by writing letters to the editors of newspapers, helping to establish contact between journalists or researchers and couples interested in telling their stories and by speaking out in public on behalf of the organization. In addition, the NGO has conducted and disseminated its own research into the effects of the Danish legislation on its members (Møller, 2010). Finally, Marriage without Borders participates in a wider European network of organisations for transnational couples – the European conference for bi-national and bi-cultural relationships – where representatives from member organisations meet annually to exchange information about domestic and EU regulation. The hope is in future to be able to influence EU policy making in the field of family migration.

This activism aims to change laws and discourse in a more liberal direction but, as my informants readily admit, successes have been few and far between. In the past decade many new restrictive measures have been introduced and only few liberalizing adjustments. The support in parliament for especially the 24 years rule has been pervasive across the political spectrum with only a couple of smaller parties on the centre-left vocal in their critique (Jørgensen, 2014). The landscape of civil society organizations for migrants and ethnic minorities is quite fragmented and Marriage without Borders has not been able to establish bonds of cooperation or mobilize their support, although many Danish citizens from for example the Pakistani community in Copenhagen have moved to Sweden to obtain family unification (Rytter, 2010a). Throughout most of the period the NGO has thus been quite isolated in its endeavour. There have, however, been two important moments where something resembling a broader, liberalizing ‘advocacy coalition’ (Jenkins and Sabatier, 1994) has emerged.

Immediately after the reform in 2002 an intense debate began in the Danish press with critics challenging in particular the new attachment requirement (see appendix II for an in-depth analysis). This rule was explicitly targeted at ethnic minority citizens marrying

partners from their parents' country of origin, but it also prevented many ethnic Danes from settling in Denmark with their foreign spouses. Especially expatriates, who had lived abroad for a while with their partners and families, were affected. Opposition to this regulation was led by the social-liberal newspaper, *Politiken*, and the Danish Social Liberal Party (*Det Radikale Venstre*) with whom the paper has strong, historic ties. Marriage without Borders also took active part as did various expatriates and sympathizing citizens. Ironically, some indirect support came as well from leading members of the Danish People's Party for whom the unintended impact on ethnic Danes married to Americans and Canadians was hard to square with the party's ethno-nationalist discourse. This debate eventually led to an amendment which meant that persons who had held Danish citizenship for at least 28 years would be exempted from this particular requirement as described in chapter three. Given the unlikely political bedfellows in this campaign it is not surprising that the amendment was far from being an unequivocal liberalization and failed to satisfy many of those involved. Danish and international human rights advocates thus argued that the 28-years-rule was an indirect discrimination of naturalized citizens (Ersbøl, 2004; Gil-Robles, 2004), and the Social-Liberal Party opposed the bill in parliament (Jørgensen, 2014). Furthermore, the amendment was accompanied by the introduction of a 'presumption rule' for cousin marriages. It implied that transnational marriages between first or second cousins, an otherwise lawful practice within Denmark, would be presumed to be involuntary. This was a rule aimed at the Turkish and Pakistani communities where such marital practices were fairly common (Rytter and Liversage, 2014).

In 2010-2011 there was again an intense debate over Danish national regulation now focusing on the new point-system for family unification. Coming in the aftermath of the financial crisis this reform rearticulated marriage migration by drawing on predominantly neoliberal, economic discourses of self-reliance and human capital (Ministry of Refugee, Immigration and Integration Affairs, 2011b). Apart from introducing skill-based selection criteria the new law also doubled the required collateral as we have seen. With this partial shift from a culturalist to a socio-economic framing new groups of citizens were affected and a new discursive terrain for opposition and mobilization was opened up. A law which so strongly favoured well-

educated and high-income applicants could easily be presented as a challenge to norms of social equality embedded in Scandinavian welfare states. This was reflected in the newspaper debate. Humanist and anti-Muslim arguments continued to be put forth but were now accompanied by social justice articulations (see for example Trier Mogensen, 2010; Dam Kristensen and Krag, 2010). A Facebook group, Love without Borders (*Kærlighed uden Grænser*), was established by young Danish citizens with political connections to the centre-left parties. This new semi-virtual collective actor arranged demonstrations and happenings with the support and cooperation of Marriage without Borders, the expatriate organization Danes Worldwide, a major trade union and various politicians (Love without Borders, 2013; Marriage without Borders, 2010). Unlike the earlier advocacy coalition, this one brought together a range of actors on the centre-left through the re-articulation of shared interests in opposition to the government (cf. Laclau and Mouffe, 1985). Initially, the Social-Democrats and their partners in the left-wing Socialist People's Party responded to the government's proposal with some cautious interest, although prominent backbenchers and local party members voiced their protest. The two parties then formulated their own alternative point-system (Kræn, 2010). During the following 2011 electoral campaign the social-liberals and the far left party (*Enhedslisten*) continued their opposition to restrictive family unification rules and the latter in particular gained massive popularity at the expense of the more moderate Socialist People's party. After a narrow electoral victory the new centre-left government abolished the point-system. Instead, the previous regulation, including the 24-years-rule, was re-introduced but with minor liberalizing adjustments (see chapter three).

#### *A partisan micro-public and cross-border movement*

Alongside its activities directed towards changing policy and public opinion, Marriage without Borders also provides assistance to couples and families who seek to navigate the complex legal terrain. Through chat forums, e-mail and phone services citizens get or offer advice on everything from how to find an apartment or register with the Swedish tax authorities to how to apply for family unification under Danish, Swedish and EU law. Since the Danish Immigration Service for a long time provided very little or no information about the options created by European Union regulation, as we saw in chapter four, this is a very important enterprise which has helped to make these cross-

border strategies an actual possibility for many Danish-international couples. Most of my informants thus report having found helpful guidance via these services.

In chapter two I argued that the seemingly individual and private character of cross-border movement makes it hard to square them with agonistic democracy. This case study, however, demonstrates how practices of exit, entry and re-entry can be part of an organized endeavour to negotiate the boundaries of membership. Though the actual border crossing is typically carried out by separate couples and families, the process of moving is facilitated and encouraged by this network of civil society activists. There are even examples of how members of the NGO in solidarity with fellow transnational couples have provided temporary housing for persons in acute need of a place to stay in Sweden. Many kinds of border crossing - from human trafficking to forced expulsion of ethnic groups - are of course profoundly organized and collective activities without being in any way civic. What makes the present case an enactment of citizenship is the claiming of basic rights through cross-border movement, the display of solidarity and the engagement of the NGO to contest and reform restrictive policies.

The online forum of Marriage without Borders constitutes a transnational micro-public where citizens and migrants can articulate their concerns and offer support across borders. This is not, however, the kind of communicative space deliberative democrats usually favour. It is a partisan forum used by couples affected by the Danish immigration rules and no exchange of argument takes place with citizens who favour the restrictive family unification regulation. Agonistic democrats also emphasize the importance of establishing alternative public spaces where migrants can tell stories and have their voices heard (Glover, 2011). From this perspective, partisanship is considered a merit which helps the construction of community and solidarity. This resonates with the findings here when protagonists articulate their empathy for strangers who are likewise affected by the regulation, express gratitude for the help they have received or explain their desire to help others in similar distress. Unlike the media debate, this arena is open to all who need advice or wish to share their experiences. The counselling is often done by members of the board but anyone can contribute as indeed several of my

informants have done.<sup>55</sup> Persons who lack the time, resources or inclination for more extensive activism can thus still help others by sharing their insights and know-how. This again offers a way of transforming frustration and resentment into civic engagement.

It might be objected that this micro-public is decoupled from the general public sphere and policy debates with the problematic de-politicization this engenders. This is not the case however. The use of EU law to avoid or contest Danish family unification rules has over the years become a topic of contention in media and parliamentary debates. It is hard to see how that could have happened if there had not been couples who had actually followed these pathways aided and spurred on by fellow travellers in Marriage without Borders. Moreover, the NGO's various counselling services help to empower citizens and migrants not just to claim rights for themselves but also to take part in public debates. Nearly all the present and former activists among my interviewees thus explain how they had received support from this organization which enabled them in time to get their own situation sufficiently sorted out and motivated them to get involved in advocacy and solidarity work.

#### *International community and regenerative spaces*

Apart from its political advocacy and online support Marriage without Borders also organizes an off-line social network in southern Sweden where exiled couples meet on a regular basis. Susanne, one of the pioneers, had experienced it as 'pure therapy to spend time with people who [...were] in the same situation' (Interview with Susanne and Lisbeth 2011, p.5). In cooperation with others she therefore established this informal social forum which has continued to thrive as new members have taken over. The format and atmosphere of these gatherings is nicely described by Maria:

Approximately every sixth week there is a dinner where all couples are Danish-and-something-else, right, and then somebody hosts but all bring a dish ... A delicious buffet with all kinds of food from all over the world. ...

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<sup>55</sup> Counselling is carried out by volunteers who draw on their own experiences or the collective knowledge built up in the organization, but who do not necessarily have a professional legal background. In light of the frequently changing laws and administrative practices as well as the lack of official information on the EU route until 2008 this means that advice may occasionally be inaccurate or out of date.

and then ... you hear others' stories and realize that there are so many people ... well, perfectly ordinary, lovely ... generous people, people with a plan, who want to do something, are in education or have job, who aren't allowed to stay in the country ... and it's ... just so supportive [*givende*] because we got such a community ... we were all the time in the same boat so we had something to share [*være sammen om*]. (Interview with Maria 2011, p.13)

Many informants tell how friends, family and colleagues are often surprised and incredulous when they hear that couples like them are unable to live in Denmark under Danish family unification rules. The network therefore creates a haven where, owing to common experiences, no explanations are required and newcomers can receive valuable practical and emotional support. In addition to the experience of being 'kicked out of Denmark', which as we saw in chapter four is often deeply stressful if not traumatic, many informants also tell about loneliness and isolation in the beginning of their stay in Sweden. While the Danish citizens usually understand some Swedish, they are unfamiliar with the system and little things like how to get a bank account can be a challenge. For the foreign spouses the transition and adjustment period until they have learned some Swedish and found a job is often particularly hard, far away as they are from friends and family and with their partners working or studying in Denmark most of the day. Here the Swedish network offers a valued opportunity to get to know other people. Indeed, for most of my interviewees, who have lived long in exile, this 'international community', as Line characterizes it, has become a crucial part of their social life.

Where the advocacy activism of Marriage without Borders has at times been dominated by especially young, well-educated, Danish women, the Sweden's Network is rather more diverse. As Line points out, the participating spouses often come from 'completely different social levels or educational backgrounds or religions or continents',<sup>56</sup> yet strong bonds of solidarity and friendship often develops (Interview with Line and Jamil 2011, p.17). This again tallies quite well with an agonistic perspective as civic community is constructed less on the basis of pre-given

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<sup>56</sup> This is confirmed in my own research where the informants and spouses who have participated in the Sweden's Network do indeed come from as varied destinations as West Africa, North Africa and the Middle East, Central and South America, North America and Northern Europe and with very diverse socio-economic backgrounds.



characteristic and more through shared experiences in a profoundly politicized and conflict-ridden terrain (White, 2010; Tambakaki, 2011). It also demonstrates, however, that overtly political, organized contestation is not the only form of engagement that warrants attention. Agonistic democrats should also look out for regenerative social spaces where the costs of cross-border movement are ameliorated and civic sensibilities nurtured. In *Democracy and the Foreigner* Honig (2001b) argues that migration often engenders a sense of loss the suppression of which can be psychologically impairing. She suggests that relations of support and solidarity with others who share similar experiences and can witness and legitimize the mourning process are necessary for a successful healing. The intensity and at times antagonistic character of the political dispute these couples and families are entangled in makes this particularly important. Several informants thus point out that although it is Denmark's restrictive family unification regulation that has brought them together in the network, politics does not necessarily dominate their conversations. This is not simply a forum for kindling shared resentment and constructing oppositional identity. Rather, over time bonds of trusts and friendship develop which go beyond their shared predicament.

## **Conclusion**

This chapter has shown how border crossing, public debate and organized activism can interplay fruitfully. As existing studies have established, exit need not undermine voice but can on the contrary help to create it. While East-German citizens articulated their protest and organized collectively in response to a state that prevented them from leaving, it is often the prospect of involuntary exile which prompt transnational couples to voice in the Danish family unification dispute. But exit, however undesired, also has a facilitating effect. It enables affected citizens and their spouses to participate in public debate and engage in various forms of organized civil society work either from their exile, once they have found their feet there, or upon re-entry.

This offers valuable insights to the debate over citizenship, migration and mobility. Against the state-centric, republican view that cross-border movement in the EU reflects and creates a thin, market-based citizenship it demonstrates that important democratic participation is happening across borders. Many of my informants thus practice a thick,

participatory citizenship. They take part in public debate and activism, exchange reasons and mobilize the compassion of their fellow citizens and create new bonds of civic solidarity.

Analyzing the exit-voice nexus I found evidence of democratic deliberation. However, my informants' stories also revealed a public discourse very far from the ideals of inclusive and rational debate. A narrow media framing and an antagonistic political climate constrain what experiences and perspectives can be heard and make the exchange of reasoned arguments very difficult. An agonistic reading had more purchase. In many ways the mobilization of citizens who became active in Marriage without Borders resonated with this theoretical perspective. A negative dialectic was at play where collective action grew out of passion and political dissent and a new affective and participatory civic community was created, although successful political transformation was limited. Acting was important not just in order to create change but also to transform frustration into civic resistance rather than depression. This brought out the importance of supportive, civil society spaces for rest, respite and understanding in a heated politicized environment.

## **CHAPTER SIX: PERFORMATIVE CITIZENSHIP**

So far we have seen how exit, entry and re-entry sometimes spur and facilitate public deliberation, organized contestation and the making of transnational publics. With this chapter and the next I explore more intimate connections between cross-border movement and civic action.

It is well-known in the literature that border crossing in the EU legally reconstitutes citizens. By moving between member-states they mobilize an otherwise largely dormant supranational citizenship-status with the supplementary rights this entail (Bellamy, 2009; Kostakopoulou, 2007). This, of course, is precisely what most of my informants are doing. What I want to show in the following is that practices of exit and re-entry within the union need not be confined to the juridical terrain but can also be performative acts of politicized protest.

The chapter begins by discussing a story of exit as a form of liberal anti-politics where moving to Sweden is presented as a practice of conscientious objection to a politics that has exceeded its legitimate sphere of regulation. This kind of action is then compared and contrasted with a narrative that constructs re-entry as a means of deliberative transformation and a performance of agonistic protest. Both stories, albeit in different ways, draw attention to the political character of acts which are often interpreted within a legalistic frame. I then explore an account of exit and re-entry which shares features with the two previous ones but offers a greater challenge to a juridical lens by drawing attention to transgressive, extra-legal practices of citizenship across borders. This is contrasted with a lawful but seemingly un-civic strategy of forum shopping.

### **Exit as liberal anti-politics**

Carsten is a Danish man in his mid-forties. He comes from a lower-middle class background, has an education in teaching and care work and is at the time of the interview studying to become an engineer. He has been in the Philippines as a tourist several times, encouraged by a good friend who had moved there to live with his girlfriend. This was how he met Mary Ann. She is a Filipino woman in her early thirties

with a university degree in business management and comes from a fairly well-to-do middle class family. In the interview she describes how, as the daughter of prominent local politicians, she was expected to behave impeccably to avoid causing embarrassment. When she went to college the sudden freedom was therefore a bit overwhelming and she spent most of her time having fun and was not serious in her studies. Eventually, her parents had enough and kicked her out, but they later relented and she went back to college, now rather more sombre and hoping to complete her degree. It was about this time she started chatting with Carsten on an internet site. To begin with, she worried a bit that this would shipwreck her studies once again, but as their conversations grew longer and more frequent she found that they were actually able to support each other in this respect. At one point Mary Ann was thinking about quitting college. In her mid-twenties and with mediocre academic results, she feared she would not be able to get a job with her degree in the competitive Filipino labour market which favours very young, high-flyer applicants. Carsten, however, convinced her to stay on, drawing on his own experience with unfinished studies and was also able to support her a little economically. She in turn advised and encouraged him when he was struggling with his engineering programme. By then their relationship had developed. Following a period of long, nightly chats Carsten had visited Mary Ann once or twice and they were talking about finding a way for her to visit him.

After she graduated, Mary Ann came to Denmark as an au pair which, as we saw in chapter four, is one of the entry options. During her stay she became pregnant. At first, her host family assured her that this was not a problem for them, but later they changed their minds and asked her to move out. She called the immigration authorities who informed her that she could remain in the country and look for another au pair position as long as she was careful to leave when her 18-months visa expired. Unable to find another host family she lived with Carsten for the remainder of the period. Just after their son was born, Mary Ann and the baby travelled back to her family in the Philippines, while Carsten began to prepare for them all to move to Sweden. Eventually the family was reunited there. In the interview Carsten explains why this route was chosen rather than applying for family unification under Danish law. In their case, neither the 24-years rule nor the attachment requirement would have been a problem. As

a student, however, he found it difficult to supply the required collateral. Still, there was more to it than that:

C: ... I knew that the demands of getting her to Denmark were very high and one thing was that I *couldn't* live up to them, the other thing was that I definitely didn't *want* to live up to them because, as I say, I think they are, yeah, beyond any reasonable approach, inhumane to people who just want live together and spend their life and don't want to, yeah, just want to live their life without making any, what do you call it, without being a burden, just living our life quietly. (Interview with Carsten and Mary Ann 2011, p.3)

Carsten thus present his act of exit as a kind of conscientious objection; by using EU-law he refuses to submit to an immigration policy that he find morally indefensible. This performative statement resonates with what Christian Joppke (1995, p.121) in a very different context has termed 'anti-politics'. Discussing opposition strategies in a totalitarian state Joppke quotes a Polish dissident who made the following observation: 'This war surprised you in the company of a pretty woman, not while you were plotting an assault on the Central Committee headquarters' (Adam Michnik quoted in Joppke 1995, p.18). The point, I take it, is that many dissidents did not become civic actors because they were particularly politically interested, but because the state prevented them from getting on with their personal lives by regulating tightly the private sphere. The concept of anti-politics not only refers to the mode of mobilization, though. It is also a certain kind of practice. In the Warsaw-pact countries, solidarity, collectivity and public devotion were part of a repressive regime ideology and citizens were compelled to take part in recurring, tightly scripted and choreographed manifestations thereof. Resistance in Poland and Czechoslovakia, Joppke argues, therefore took on the character of dissidence which, while collectively organized in for example the Polish Solidarity Movement, involved an important element of disengagement. Non-participation, in other words, was a way of performatively enacting a right to privacy that was otherwise denied. Applying this reasoning to East Germany where there was a comparative lack of radical critique, Joppke points out that exit served as the equivalent (p.122). By leaving, citizens were expressing their dissent from a political system that did not respect their basic liberal freedoms.

When describing Carsten's exit analogously as 'anti-politics' caveats are obviously required. Denmark, far from being a totalitarian state, is a well-functioning democracy with free speech, a free press and a generally good protection of fundamental rights. But in the area of migration, public discourse and policy have been very harsh. Particularly with regards to family unification, the explicit requirements are clearly invasive, as recognized by supporters and defenders alike, and so too are the implicit norms these reflect about whom and when you should marry in order to be a well-integrated and loyal citizen (cf. Rytter, 2010a). It is in this light that we should read Carsten's profoundly liberal plea to be left alone by the state. When faced with extensive demands to demonstrate the family's capacity and willingness to live their private life in accordance with state sanctioned codes of conduct, interviewees like Carsten prefer to leave. But while he manifests his dissent through exit, Carsten has also articulated his experiences and given advice to others in the chat-forum of Marriage without Borders and at a site for Danish and Filipino citizens. His account of what animates this activism nicely illustrates the paradoxically political and un-political character of anti-politics:

C: ...we are a community of ordinary people that are basically caught in an extraordinary situation by a very unwilling Danish government. I have a strong *political* motivation in this because I hate that way the immigration rules are set up as they are now. I hate that Denmark has a right wing government that is dependent on a very hostile party. (Interview with Carsten and Mary Ann 2011, p.8)

Hence, though Carsten's exit is an act of withdrawal based on the insistence of a right to a normal family life, it is nonetheless profoundly politicized. This is all the more evident when we compare his narrative interventions with Mary Ann's perspective on their experience.

Settled in Sweden, Carsten is eager for them to stay there, partly because he is so infuriated with his own country and partly because this will enable his wife to get a Swedish citizenship with the extra freedom and protection that entails. Many informants, as the previous chapters have already shown, are keen to acquire this status. What makes Swedish citizenship so attractive is not merely that it is so much easier to obtain than Danish nationality with no requirements except five years legal residency in

the country. Since 2001 Sweden has also permitted dual citizenship (Bauböck 2003, p.703) which means, as Carsten points out, that Mary Ann can keep her Filipino nationality. In Denmark, the rules are currently different<sup>57</sup> and foreign nationals generally have to renounce their present citizenship to become full members of the Danish polity.<sup>58</sup>

Mary Ann, though aware of the appeal of a Swedish citizenship, is less sanguine about this plan. While frustrated and puzzled by a policy that prevents them from living together in Denmark she does not altogether share her husband's anger, finding that the Danish Immigration Service actually treated her quite decently during her au pair time. Moreover, she felt safe and comfortable in their old place in Copenhagen, while the town where they now live has many immigrants from Muslim countries which make her a bit ill at ease. Echoing several other foreign spouses, Mary Ann is finding her present life in Sweden lonely and she is eager to get a job in order to escape the confines of her current, domestic routines. She believes, again similar to other interviewees, that this would be easier in Denmark. Not only is Copenhagen's labour market bigger; in many service sector jobs she would not be faced with the same language requirements prevalent in the more tightly regulated Swedish economy. She explains, however, that after many discussions of the issue she has come round to Carsten's point of view. The certainty that their family can always be together no matter what and that her son will not be separated from his father carries more weight, and if she gets a European passport she will also be able to look for work anywhere in the Union.

Consequently, while both Carsten and Mary Ann place immense value on citizenship as a status that guarantees basic rights to family life and free movement, she is more pragmatic in her take on their situation and does not articulate the same ethico-political indignation. Still, it is worth noting that if hers appears to be a more instrumental

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<sup>57</sup> The centre-left government that came into power in September 2011 - just a few months after my interview with Carsten and Mary Ann - has made it one of its stated objectives to amend the rules to allow dual nationality. This in turn would bring Denmark in line with many other Western countries that in recent years have liberalized their nationality law in this respect (Vink and de Groot, 2010; Vink and Bauböck, 2013, p.10). At the time of writing, the idea is gaining support in parliament but also meets opposition, primarily from the Danish People's Party (Vestergaard, 2013).

<sup>58</sup> There are exceptions for refugees and persons whose countries will not permit them to give up their citizenship (Ministry of Refugee, Immigration and Integration Affairs, 2004). See also footnote 32.

approach it reflects a desire to gain social and economic independence by working outside the home in line with the norms of gender equality and good citizenship projected by Danish family unification rules. It shows that the relationship between the instrumentality and the embodied normativity of membership is not as straightforward as the arguments of statist republicans would have it.

### **Deliberative and agonistic democratic re-entry**

It is interesting to compare Carsten and Mary Ann's narrative with the story of Line and Jamil. Line is one of the young activists in *Marriage without Borders* whom we encountered in chapter four and five. She met Jamil when she was spending a semester in Cairo during her university studies. The two began working together and gradually fell in love. Jamil had army service coming up so staying in Egypt would mean a long period of separation early on in their relationship. Family unification in Denmark was not possible since Jamil was too young. Instead, they thought about moving to Kuwait, but then heard of the Swedish model. Line got a job in Copenhagen and took leave from her studies. They got married, went to Malmö and applied for family unification under European Union rules.

At first, the idea was to return to Denmark as soon as possible. EU law not only enables citizens to bring their spouses to another member state, but also to move back afterwards to the home country. But in 2005, when Line and Jamil left for Sweden, this was not generally known in the Danish public, as discussed in chapter four. The initial plan was therefore that Line should change her citizenship from Danish to Swedish. Nordic cooperation would enable her to do so after two years. Then they could use EU rules to go to Denmark in just the same way as they had moved to Sweden. However, the first two years in Malmö were very tough. Jamil, like Mary Ann, was feeling lonely, could not find a job and Line had to work double shifts to make ends meet. She eventually went down with stress and was ill for six months. By the time she got well Jamil had passed his Swedish exams, found temporary work and was thinking about getting an education. Unlike Mary Ann, he had never gone to college. Before he met Line he had imagined himself working all his life in his own shop. Now he had to reconsider and, though not particularly keen on that profession, he began a two year



programme to become a care assistant in the social and psychiatric sector. Thus established, he did not want to go to Denmark just yet and start all over. So they decided to wait another three years enabling Jamil to get citizenship in Sweden. In the meantime, they both finished their studies and found relevant employment. At the time of the interview Jamil had got his Swedish passport and they had started looking for a place to live in Copenhagen. But again they had postponed moving since his employers had now offered him specialization training which he would like to complete first. Their aim, with some uncertainty, was still to move to Denmark. As in Mary Ann's account, we thus see how pragmatic considerations like career plans play an important role in the couple's decision making. Yet their hopes of a re-entry also have a distinctly ethico-political dimension which I explore in the following. To do so I provide a rather lengthy quote wherein Line and Jamil elaborate on their views of return:

J: ... I *really* think that *everyone* should come back to their country and vote. Seriously, this is very, very important because it's

L: Yeah, and show examples. We've talked about that often. I mean, I'm sorry to interrupt you but this is important as well. Because one thing is the whole how the system works, right. So we got thrown out due to a political, to *systems*, but we've had several experiences of, you know, this kind, people telling [Jamil]: 'Are you Muslim? But you're really nice', right. I mean, it's even embarrassing but this has happened quite a lot. Or people, yeah similar things, like, you know: 'I need you to meet my dad because he hates Muslims but you're different', stuff like that. I mean, it's ridiculous but we've had this happening a lot. So one thing is the political level, but another thing is

J: social

L: it's probably even more valuable to show an example that will *shake* peoples understandings a little bit or at least add some grey to the black and white or, you know

J: Exactly. This is what I felt also, like: How you will know me if actually I don't talk to you and I don't have anything to do with you? You understand? I mean - to *know* me you have talk to me. I have to communicate with you. I have to show you and see actually from your side and I show you from *my* side. Then we meet and *then* you know me and then I know you. I mean, Otherwise it will not work, I mean [...] We have to *show* actually who we are to let people understand that actually we are not dangerous, we don't beat, we don't bite people, you know, and, I mean, *hurt* others. We are living as you are. (Interview with Line and Jamil 2011, pp.25-26)

Analyzing the paragraph let me begin by exploring the role of voting stressed by Jamil in the beginning. In the previous chapter I showed how this couple and especially Line has participated in various forms of activism from their home in Sweden with the aim of changing Danish immigration politics. I discussed different informal barriers in connection to the media debate, but there is also one significant formal challenge; the question of political suffrage. ‘External voting’ is today permitted (and in some cases compulsory) in a range of countries across the world and in most EU member states (Bauböck, 2007a; Nohlen and Grotz, 2000). It means that citizens who live outside their own state can vote in domestic elections. This in turn is an important institutional parameter shaping but also often shaped by migrants’ transnational political activism (Bauböck, 2010; Smith and Bakker, 2005; Gammage, 2004). If emigrants can go to the polls then their ability to influence politics in their country of origin quite obviously increases.

External voting rights have gradually been introduced in Denmark in recent years, albeit with reservations. All citizens, who when they leave declare their intent to return again within two years, retain their suffrage for that period. In addition, external voting rights beyond the two years are granted to various specific categories of citizens such as diplomats, students, government officials and employees posted abroad for Danish companies or NGOs (Ministry for Economic Affairs and the Interior, 2013).<sup>59</sup> My Danish informants who live in Sweden but work in Denmark seldom fit into these special status categories. Most Danes who have moved across the Øresund bridge continue to work in Copenhagen or find jobs in the Swedish public or private sector and are thus not posted abroad. Citizens like Line, who stay away for several years, therefore lose their ability to vote for the Danish parliament. This is a source of frustration for several informants. As EU citizens they are allowed to participate in local elections in Sweden and can vote for the European Parliament, but their chances of changing Danish national politics are arguably reduced since responsible politicians have less incentive to listen to their views. Returning to Denmark is therefore an act of

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<sup>59</sup> According to the Danish Constitution (*Grundloven* §29), citizens must reside on the territory to be able to vote in Danish parliamentary elections. The various exceptions mentioned above are regulated in the Election Act (*Valgloven*, §2).

legal-political reconstitution as they regain their suffrage. It is in this light that Jamil presents re-entry as a civic duty.

The significance of return for Jamil and Line goes beyond interest in politics and electoral math. When Jamil insists on dialogical exchanges as ways of generating learning processes, his argumentation has a distinctly deliberative flavour. This is particularly striking in his hope that negative stereotypes and xenophobic fears can be overcome through discursive practices fostering what Arendt (1961) calls ‘representative thinking’ – the ability to imagine oneself in someone else’s situation and look at the world from their perspective. But though Jamil clearly describes an ethics of communication, it is not the disinterested Habermasian reason-giving where interlocutors endeavour to leave their particularities aside. ‘The force of example’ (Ferrera 2008) stressed by Line and Jamil comes from demonstrating – as much through action as through argument – that the views and presumptions of others are in need of critical readjustment. This mode of engagement derives its persuasive power precisely from the individuality manifested which disturbs simplistic ways of labelling others and opens up new interpretive frames for grasping the social world. We are here much closer to Benhabib’s situated and context sensitive approach to deliberation. It is important to note, though, that while both Arendt and Benhabib focus on words and deeds made in public, Jamil and Line also emphasise the importance of interpersonal encounters and relationship among for example friends and colleagues. The underlying assumption appears to be that such micro-processes, though not politically consequential on their own, can help to create a social environment less receptive to the politics of fear. That in turn is another reason why re-entry is so important for them. It not only empowers citizens to influence politics through voting but also enables face-to-face exchanges in civil society with the potential of bottom up transformation this might entail. Quasi-private and public interaction are thus presented as mutually supportive practices of citizenship.

While intercultural dialogue is central to this narrative of cross-border movement, a more agonistic engagement is also articulated. Recounting his reflections on whether or not to remain in Malmö Jamil explains:

J: Basically, we heard a lot from others: ‘Why you want to leave to Denmark? They throw you out. Don’t move back, you know. Here is better. Sweden, like, *welcome* you and you should be here. You should not go back to Denmark. Denmark will not give you anything. They throw you out’. But I thought, I had actually this belief that no, if I don’t go back to Denmark, Denmark will stay the same, you know. So actually one of the reasons we wanna go back to Denmark [is] just to let them know that: ‘Ok, we are back. Whatever you did decide for us, you know, we are back. We decide for our self.’ (Interview with Line and Jamil 2011, p.11)

Here Jamil interprets a future re-entry as an act of civic contestation. The aim is still to renegotiate the boundaries of the polity but through a passionate, symbolic protest rather than by exchanging reasons and learning to see from the perspective of others. Returning to Denmark Jamil hopes to demonstrate and reclaim their freedom and agency in the face of restrictive immigration control. Like Carsten, he thus expresses an unwillingness to accept and submit to the power of the state in matters of love and family life. But his is a different kind of refusal. Rather than turning his back on an illiberal migration regime Jamil insists on the right to be present and take part. This commitment is agonistic because it is animated by disagreement and articulated as an act of political contestation, and civic because it manifests a profound concern not just with individual interests but with the general welfare of Danish society.

While Carsten with his exit thus enacts a politicized, liberal citizenship, Jamil and Line construct re-entry as a deliberative and agonistic democratic practice. Their story is a particularly striking example of how a thick and thoroughly engaged citizenship can be performed across borders. Still, the indeterminacy or what Honig calls the gothic character of civic action is important to emphasise in this context. Though the couple’s past activism is well-documented<sup>60</sup> their return to Denmark has been postponed several times for various reasons, and at the time of the interview it was still uncertain if, how and when it would be realized.<sup>61</sup> Again, this by no means detracts from the merits of their exemplary narrative; it just underlines the open-endedness and multiple

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<sup>60</sup> It is evidenced not only in my own conversation with them and other informants, but also in various sources from *Marriage without Borders* and in newspaper articles where Line is interviewed.

<sup>61</sup> The couple did eventually move back to Denmark, as Line informs me in a later email correspondence.

motivations of politics and cautions us against a simplistic distinction between virtuous national and self-interested transnational membership.

### **Border crossing and democratic taking**

Where Jamil's interpretation of re-entry has both deliberative and agonistic elements, Ajda's narrative is rather more transgressive and contestatory. Ajda came to Denmark when she was very little. She and her parents were refugees from Iraq. They were granted asylum and later Danish citizenship and Ajda grew up in Denmark. On a family visit she met her husband-to-be. They fell in love and kept in touch for a couple of years. When Ajda turned 19 they decided to get married and live together. Family unification under Danish national law was not an option because Ajda was too young, but they had heard about other couples who had used EU law to go to Sweden and chose to do the same. Recollecting this decision, she describes her reaction at the time:

I felt from the beginning very, very angry with the system as a whole and I thought: How unfair that they shall decide who one shall live with and decide that I have to wait. ... I felt like I got thrown out of Denmark. I had really got the kick, that's how I felt it. I was not at all allowed to be in Denmark. And I was really, really upset about it. But I just felt that way, as I said, that I wanted to live where I would decide. Nobody shall decide where I shall live, right. So I just went to Sweden and then I began to feel a bit: Oh, Sweden is better than Denmark. I did, to be honest. Because they are much more, they have some more humane rules, I think. A family unification: If two people get married then they are also allowed to live together. They are not in Denmark. (Interview with Ajda, 2011, p.4)

Like Carsten, Ajda thus present her exit to Sweden as a defiant response to a law that seeks to regulate her intimate life by determining where she can live with whom. It becomes a way of asserting her personal freedom in relation to the state. As she soon realizes, however, there is a fine line between independence and isolation. She reports how her commuter life was often stressful and lonely (see also Rytter 2010a). The few young women she knows in Malmö have decided to settle there permanently and are focused on childrearing and home-making rather than on education and career. She describes how, without her social network in Denmark, it became very hard to uphold an identity as a self-reliant young woman actively involved in civil society. This felt

particularly trying since her experience with family unification had heightened her political awareness, as she reflects on later in the interview:

When we came to Denmark we were refugees. It was 18-19 years ago and then we just got – it wasn't like now – so we just got a residence permit and then we got citizenship. ... But ... after I moved to Sweden I felt how it is for all those 100,000 others who don't have citizenship and have to go through all that ... Because you easily forget when you have got everything sorted out, ... you know that your future is in Denmark and Denmark is such a safe place, right. It's really cool to live in Denmark, actually. You are allowed to do so many things. So ... I began to appreciate it and then I began to think: Oh, but it's such a pity for all the others who aren't allowed - all those who, like me, live in [a refugee camp]. I have lived there myself. They are not even allowed to be here (Interview with Ajda 2011, p. 20).

Ajda, as the quote illustrates, narratively connects her present experience of exclusion with childhood memories of her life as a refugee. The meaning of her past is re-evaluated and her sense of solidarity is enlarged, as she comes to identify with the plight of rejected asylum seekers awaiting expulsion. Had it not been for Denmark's formerly liberal policies, her life would have been very different and she herself might have been a different person: '[T]hen maybe I had not been active and educated and all that. ... [P]erhaps my parents had had to marry me to somebody because ... they didn't know better. Now they know more about society ... because they have gotten the opportunities for that. They know how important it is for a girl that she has her freedom' (p. 20). In this way, Ajda mobilizes a feminist discourse which is central to the defence of restrictive family unification rules in law and public debate (Ministry of Refugee, Immigration and Integration Affairs, 2003; see appendix II). In doing so, she seeks to demonstrate not only that she is *already* an emancipated young woman who therefore does not need the state's protection. She also contends that her capabilities are due not to the current invasive regulations but to prior, enabling, welfare-state conditions. It is this latter, autonomy-enhancing political community which present and future newcomers are prevented from enjoying. The contrast between Danish policy then and now thus becomes an object for critical reflection and civic action.

Hence, while Ajda, like Laura whom we met in chapter four, feels thrown out of Denmark and, at least for a while, turns away in anger, her civic identification is at the

same time reinforced as she develops transnational or cosmopolitan solidarities. Though somewhat constrained in her ability to exercise her citizenship, she has managed to take part in the Danish media debate from her exile. Hers is thus not a thin, but rather a thick democratic citizenship.

When Ajda and her husband moved to Malmö, their intention was to stay five years until he had got Swedish citizenship. Then they would re-settle in Denmark. But the strain of a commuter life became too much and after three and a half years they changed their plan and moved back secretly. They kept their address in Malmö and went there from time to time, but lived *de facto* in Denmark. At the time of the interview their aim is to continue their clandestine residence until her husband can obtain his Swedish citizenship. Then they will be able to choose freely where to settle. This return route transgresses Danish and Swedish immigration and citizenship laws in different ways. With a temporary residence permit in Sweden Ajda's husband is entitled to visit Denmark for up to three months at a time without applying for a visa, but he is not allowed to actually live there. Ajda is still under 24 so the couple would be unable to obtain family unification under Danish national rules. If and when Ajda's husband applies for citizenship in Sweden he will presumably do so under false pretences as he has not lived the required five years in that country.

The couple's 'semi-legal' (Rytter 2010a, pp.131-137) re-entry is obviously a risky enterprise as Ajda is well aware. If discovered, her husband will have to start all over in Sweden and he may be deported. Both Swedish and Danish immigration authorities have introduced measures to control and prevent such strategies (The Danish Immigration Service, 2013a; author interviews). But despite the stressful insecurity of their situation she explains that she finds the return liberating:

[I]n Sweden ... I felt it really trying that I couldn't be active. That was really difficult for me and I felt ... as if there was a part of me that disappeared and ... I became a person that I did not want to be. ... I couldn't be myself and I had to be more, sort of, inward-looking and I didn't like that. So when we moved I just felt: Oh ... now I don't need to think of having to pay 200 DKK [app. 27 Euros] every time I'm going to a meeting or an editorial meeting on the magazine or something. Now I can just do it. (Interview with Ajda 2011 p.19)

Re-entry thus enables Ajda to counter the ‘domestication’ of her life which she, like Mary Ann, is struggling with in her exile and re-establish herself as an independent young woman active in society. Prompted to consider what her complex cross-border life-situation has meant for her sense of belonging, Ajda explains:

...I feel sort of *mentally* homeless. ... Well, I feel I *belong* in Denmark but then not quite. In Sweden I have also had something, so all those who have not been in Sweden they don’t really understand me. They don’t understand how hard it is... I am *homeless*. So I just use, I think I use all the things I do as a kind of safety-net, one might say. Yes, I somehow get a bit of identity that I am a person ... who tries to change something, right, an *activist* [ildsjæl], well, if you can put it like that. (p. 22)

Deprived of a safe space, Ajda’s personal and civic identity is no longer connected to any particular location. Civic practice has taken the place of rights and a more stable form of attachment. Where Jamil, for example, has acquired the full protection of a Swedish passport, Ajda’s citizenship has thus become largely performative (Butler, 1997; Nair, 2012). She therefore needs to re-enact it continually through her civil society participation. This is a precarious strategy. It takes energy, resources and some daring to engage in grassroots activism while her personal situation is so insecure. Her age, gender and ethnicity add to her vulnerability. As she explains, public engagement is generally not considered appropriate behaviour for a young woman in her community. Though Ajda’s husband is more open-minded than most, it can be a difficult terrain to navigate, she points out.

Interpreting Ajda’s story, it is helpful to bring in Honig’s concept of ‘democratic taking’ discussed in chapter two. Danish family unification law has deprived Ajda of the ability to realize the private and family life she desires. In response she moves to Sweden but this in turn limited her opportunities for engaging in grass-root activism and thus endangered her self-identity. Instead of waiting patiently to get back her freedom she grasps it for herself. She acts as if she already had the right to return to Denmark with her husband and participate in civil society. This does not immediately legalize her partner’s stay or give her back her civil rights. Rather, through her strategic performance she re-creates herself as an active citizen. In this way she looks very much



like a democratic taker. A careful engagement with her narrative, however, enables us to critically extend the concept of democratic taking on two dimensions; who can act, and what constitutes action.

Let us begin with the first question, the subject positions of democratic takers. Honig, drawing on Rancière (2004), describes this kind of activism as undertaken by migrants situated ‘so far outside the circle of who “counts” that they cannot make claims within the existing frames of claims making. They make room for themselves by staging non-existent rights, and by way of such staging, sometimes, new rights, powers and visions come into being.’ (Honig 2001b, p. 101) What does it mean to be thus positioned? Looking at Ajda, it is clear that her political freedom has been significantly reduced. Not only is her ability to engage in civil society circumscribed. Without formal residence in Denmark she cannot vote in national election. On the other hand, Ajda has been in the media. Though this is in many ways an exclusionary arena, difficult to enter and navigate, as we saw in the previous chapter, Ajda has managed to voice her critique in the established public sphere. As a Danish and European citizen Ajda could have stayed fairly well-protected in Sweden with her husband. They might also have used some of the lawful channels for re-entry which other informants have employed. Thus while Ajda’s situation is undoubtedly precarious it seems too dramatic to describe her as far outside the circle of who counts. As she clearly resembles a taker of citizenship this suggests that Honig’s theorization needs adjusting.

The metaphor of a circle encapsulating those who count and separating them from those who do not is troubling. It suggests that membership of a polity follows a simple binary logic of either/or, inside/outside. Contemporary European migration regimes are rather more complex with civil, social, and occasionally political rights distributed to some groups of resident EU citizens, transnational immigrants and refugees who have not acquired full national citizenship status (Soysal, 1994; Benhabib, 2004). Moreover, incorporation and exclusion are dynamic processes. Even the formally included with full citizenship status can be deprived of important freedoms and be forced to re-claim their membership performatively (Nyers, 2011). Ajda’s story is a pertinent illustration of this. Honig is more persuasive when she writes elsewhere that ‘[n]ot all takings are

performed by immigrants or foreigners, but they are all performed by subjects who are not *fully* included in the system of rights and privileges in which they live.’ (Honig 2001b, p.99, my emphasis) This, however, directs us towards a much more fluid and multi-dimensional understanding of the juridico-political terrain. Ajda’s story thus demonstrates the analytical and political purchase of the transgressive performativity (Butler 1997) of citizenship which is inscribed in the concept of ‘democratic taking’, but at the same time it cautions us against a too narrow focus on the radically disenfranchised.

If we move on then to the question of what constitutes democratic taking, Honig, as we have seen, emphasizes collective action. Ajda’s story, with her stress on the importance of participation in civil society activism and her identification with the plights of others, again resonates well with this conceptual framework. At the same time it draws our attention to the political significance of the actual cross-border movement in a way Honig’s work, notwithstanding its careful engagement with public narratives of migration, does not really do. Ajda’s exit to Sweden is articulated as a protest and a way of claiming a right to family life that she does not have in Denmark, and it is through her semi-legal re-entry that she re-invents herself as a civic activist. Her complex border crossing strategies *enable* her grass-root activism, *transform* her civic identification and *constitute* an act of democratic discontent. Reading her story thus prompts us to adopt a broader perspective on the possible modalities of ‘democratic taking’ which draws out the civic and political potential of practices of cross-border movement. Through her transgressive border crossing Ajda re-enacts herself as an agonistic democratic citizen.

### **Pragmatic forum-shopping?**

This last section contrasts Ajda’s semi-legal yet civic narrative with a lawful but apparently un-civic practice of forum-shopping. Danish Anja and her Cuban husband Miguel are the only couple among my interviewees who managed to use Denmark’s national rules for family unification to obtain a residence permit. 30-years-old Anja and 26-years-old Miguel were unaffected by the 24-years rule. They had no problems with

the attachment requirement either<sup>62</sup> and were able to meet the economic conditions in place at the time. Three months after submitting their application Miguel was therefore granted a temporary leave to stay. They moved to Denmark, he signed up for a language course and shortly after began studies at a technical school. Notwithstanding the successful outcome of their entry strategy the couple subsequently decided to study a semester in Spain thus enabling Miguel to obtain a residence permit under EU law instead. The reasons they offer for switching rules are partly instrumental. European Union regulation gives spouses a right to stay for five years while a Danish permit will need to be renewed after two years (Citizenship Directive, 2004). At the end of the five year period Miguel will have a right to permanent residency. Family migrants can also apply for indefinite leave to stay via domestic rules but at the time of the interview these had just been severely restricted, making EU rules again far more attractive (Aliens Act, 2010b).<sup>63</sup> Finally, changing to union law would allow the couple to retrieve the collateral of 50,000 DKK which they had had to provide initially, half of which had been supplied by Miguel's not very well-to-do parents.

The activation of EU law carried out here resembles regulative 'forum shopping' and in some sense confirms the worst fears of statist republicans. Unlike citizens unable to use Danish and/or EU law, couples like Anja and Miguel have access to dual systems of rights and can choose whichever is the more advantageous. This is both a challenge to the equality of citizenship and a disenchantment of a significant political status which is reduced to its comparative instrumental value.

Still, the story is more complex. Anja and Miguel, their temporary exit to Spain notwithstanding, articulate a profound commitment to Denmark. Having lived abroad for years has made Anja aware of how much she values Danish society, while Miguel feels a much stronger attachment to his new home country than to Cuba. He explains,

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<sup>62</sup> Anja spoke Spanish fluently and the couple had lived together for a year in Cuba so it is likely that their attachment to this country would have been deemed greater than to Denmark. This was not relevant in their case, however, since the attachment requirement does not apply to persons who have held Danish citizenship for more than 28-years as indeed Anja had.

<sup>63</sup> A point-system was introduced in late 2010 where applicants for permanent residence had to earn points based on their labour market participation, educational skills and civic commitment (Aliens Act, 2010b). The same logic was shortly after introduced also for temporary access to family unification (Aliens Act, 2011).

half-jokingly, that even if Anja were to stay in Spain, he would come back to Denmark because this is where he feels at home. For both of them this is the country they want to live in, raise their children in and be fully part of. Indeed, it is precisely, though somewhat ironically, to achieve this permanence which will enable them to put down roots that they are using EU law. Thus, as subtext to the instrumental arguments presented, a deeper emotional and existential undercurrent runs through the interview:

A: ... I would sleep better at night knowing first he was getting his permanent residence because then I don't have to worry about anything anymore. Right now I am, like, we don't know what happens. I know I am overly preoccupied with this. I wake up at night dreaming that they've kicked him out of the country because now they have made a new law and he doesn't fulfill whatever he has to fulfill anymore and we have to leave. And sometimes it can be a week where I keep dreaming this over and over again, and I'm like: I need to sleep, I need to relax. So that's another reason why. If we go to Spain I just have to be patient for five years. After five years he is gonna get his permanent residence, and in time he is gonna get his citizenship and then, no more worries, no more questions asked. We can just *live* and focus on something else. (Interview with Anja and Miguel 2011, p.11)

This narrative illustrates how stressful a securitized immigration politics and discourse can be for those who are exposed to it. Even someone like Anja, who found her way via domestic law, feels her 'ontological security' (Giddens, 1991; see also Rytter, 2010a) threatened by the lack of reliable policies providing a robust defence of the right to family life. In some respects, then, their exit to Spain is part of a struggle for the basic protections of citizenship. That in turn illustrates the merit of a 'gothic' approach analysing the interplay between thick and thin practices of citizenship and recognizing the multiple motives, desires and aspirations we bring to the politics of membership.

The story also brings out an important paradoxical feature of a dynamic conception of citizenship: Couples who contribute actively and often deliberately to the on-going negotiation of political boundaries find this state of recurring change wearisome and undesirable. To be sure, they prefer it to closed borders, however stable and predictable, but enacting citizenship across borders is often something they would not otherwise have done.

## **Conclusion**

This chapter started off from the observation that while the legally constitutive effects of border crossing within the EU have received considerable academic attention, its potentially political character has been somewhat neglected. Following on from this I explored three different ways in which exit or re-entry was narrated by informants as acts of civic contestation.

The four storylines - liberal anti-politics, deliberative and agonistic protest, democratic taking and forum shopping – show a substantial breadth in how border-crossing can be practiced and narrated. The strategies described range from lawful to semi- or illegal. The discourses mobilized include a liberal defence of privacy and autonomy, democratic norms of civic engagement, cosmopolitan constructions of solidarity, feminist ideals of emancipation and pragmatic-instrumental scripts of convenience.

The analysis showed that deliberative and agonistic democracy, if critically reinterpreted to include acts of contentious border crossing, have important purchase. Both perspectives helped to make sense of practices of citizenship which might otherwise be overlooked as instrumental or outright illegal. But the discussion also showed limitations of this approach. The story of liberal anti-politics highlights that not all politicized border crossing and rights claiming is best captured by this analytics. Rather than seeing this as a problem, I find it demonstrates that these democratic theories can be extended in this way without becoming empty, catch-all frameworks that lack conceptual and analytical distinctiveness.

The chapter contributes to a dynamic reconstruction of citizenship by elucidating how practices of border crossing can be a way of protesting against exclusionary boundary politics and thus participating in transnational, democratic negotiation of rights and membership. Such acts can, I showed, be performed by migrants as well as citizens and is neither the prerogative of the very privileged nor of the radically excluded.

## CHAPTER SEVEN: TRANSNATIONAL CIVIL DIS/OBEDIENCE

In the previous chapter I showed how border-crossing was narrated by a few informants as a deliberative and agonistic protest in the family unification dispute. Building upon this finding I take here the analysis a step further and develop a concept of ‘transnational civil dis/obedience’ helping us to identify key traits of such civic practices. The concept offers an interpretive frame for grasping and assessing cross-border movement within and beyond the European Union where citizens and migrants mobilize international or supranational law to evade and contest national rules considered unjust.

As we have seen, the presence of complex and sometimes conflicting juridico-political orders enables persons and groups to sidestep or openly challenge the legality and legitimacy of one set of rules by appealing to the regulation of another regime (Kostakopoulou 2007, p.645). This is especially but by no means exclusively the case within the European Union. To construct and illustrate my argument I analyze the story of Martha and Guillermo. Martha’s narrative is used as an ‘exemplar’ (Ferrera, 2008) that is particularly well-suited to bring out the central tenets of what I term transnational civil dis/obedience.

Martha’s principled and politicized account of her and her husband’s cross-border movement challenges state-centric, republican accounts which portray EU-citizenship as thin, market-based and instrumental and see free movement as an undesirable invitation to forum shopping. Against such views I argue that Martha’s narrative has a striking ‘family resemblance’ (Wittgenstein, 1953) with forms of civil disobedience (Rawls, 1971, pp.363-393; Arendt, 1972; Cabrera, 2010, pp.131-153). She and her husband, however, do not so much break the law as avail themselves of alternative regulations and are thus not ‘disobedient’ in the way we would usually understand it. I therefore conceptualize their actions as dis/obedient. I argue that in the context of complex legal pluralism it is possible for citizens to act in ways which are at the same time dutiful and transgressive, legal and non-compliant. While such ‘schizophrenic’ practices certainly go against conventional understandings of citizenship and political

community, they also offer new ways of contesting, avoiding and perhaps transforming state power when basic freedoms are at stake.

### **From shopping to dis/obedience**

Since the end of the Second World War we have witnessed a gradual development and expansion of transnational law and institutions. Nowhere is this more pronounced than in the EU where national, international and supranational legal norms coexist in a complex relation of supplementation and competition (Walker, 2008). This has opened up a range of strategies for citizens, social movements and commercial agents. Dora Kostakopoulou, for example, points out that:

...individuals, in both their personal and corporate identities, can shift subject positions and activate their link with a normative system (i.e. the human rights regime or the EU) when their link with another normative system either is blocked or fails to yield a desirable outcome. Individuals are thus no longer locked within a single, unified and finite network commanding unqualified allegiance. (Kostakopoulou, 2007, p.645)

Kostakopoulou's argument implies that we should, on balance, welcome the '*disorder of normative orders*' (Walker, 2008, p.376, original emphasis) which constitutes the legal terrain of contemporary Europe. The ability to move – physically, legally, and symbolically – between different and overlapping political communities helps to guard against the overwhelming power of the state. But this is not merely a negative freedom of leaving each alone. By appealing to human rights or mobilizing our EU citizenship we often also engage in processes which transform the nation-state and push for greater inclusion and more porous borders (Kostakopoulou, 2007, pp.642-646; cf. Benhabib, 2004; Soysal 1994).

This is an interesting contention but one that needs careful examination. A proper appreciation and assessment of the potential of the transnational juridico-political field and the practices it gives rise to calls for further conceptual development and critical analysis. What constitutes a 'desirable outcome'? To whom is it desirable – individual citizens, companies, democratic majorities – and how to weigh their respective concerns? The lack of 'a single unified network commanding unqualified allegiance',

which is here presented as emancipatory, is precisely what worries more state-centric republicans or national-communitarian critics, as we have seen. Free movement, it is feared, will encourage citizens to shop around between different states to get the best deal for themselves reflecting and promoting a thin citizenship. ‘Jumping the waiting list’ in health care, for example, by moving to another country shows a lack of solidarity and could lead to a negative spiral undermining European welfare states (Bellamy, 2009, p.20, 2008; Scharpf, 2009; Joppke, 2010b). In legal studies, the phenomenon described by Kostakopoulou is thus often referred to as ‘forum shopping’. Individuals opt in and out of different juridical systems and litigation forums according to what best serves their private concerns (Juenger, 1988-89; Clermont and Eisenberg, 1994-95).

To understand this line of critique and how to address it let us therefore take a closer look at the concept of forum shopping. The first thing to notice is that forum shopping is often used as a derogatory term. This does not mean that scholars are uniformly critical of the phenomenon. Juenger (1988-89, pp.570-571), for example, who offered the first thorough academic account, points out how such inventive strategies may serve a range of different causes, some admirable and others not. Some scholars directly advocate certain forms of forum shopping as a way to advance international human rights (Helfer, 1999). Still, the term is generally pejorative and acknowledged to be so (Juenger, 1988-89, p.553). Forum shopping portrays individuals as consumers of law rather than subjects and authors of law. It presents us with an image of privatized agents transacting in the market place instead of taking part in a political community. Implicit or explicit is frequently the presumption that individuals act instrumentally to promote their own interest at the expense of justice (see for example Clermont and Eisenberg, 1994-95).

This presupposition is no doubt often justified, yet as a general assumption it is nonetheless problematic. Legal counsel may be obliged to consider the best interests of their clients when deciding on forums for litigation (Juenger, 1988-89, pp.571-572). But if the concept of forum shopping is employed more broadly as a metaphor describing the movement of persons between different legal systems, then a range of other concerns and agendas could enter the picture. In Israel, for example, marriage falls under the jurisdiction of the religious authorities. Many citizens who wish to get a civil



marriage therefore go to Cyprus where they can get a secular process at the registrar's office. But though they are indeed evading their own state's regulation it is not evident that they do so for narrowly self-interested reasons. Upon closer inspection we might perhaps find that the Cyprus strategy has some minor material advantages such as a faster process. Even so, I suspect that this is seldom what is at stake. Nor does it, in my view, make much sense to suggest that the couples simply prefer the goods on sale in another marriage market. That would fail to capture any possible ethico-political significance of their action. It is quite plausible that some spouses at least are engaged in principled action akin to conscientious objection. They refuse to abide by and condone a system that does not permit secular unions.<sup>64</sup>

What this example suggests is not that a concept of forum shopping has no use. It may well have purchase in helping us to capture some undertakings by businesses and citizens in a transnational arena as we saw in the previous chapter. But as an analytical frame it is applied far too broadly and does not provide us with adequate criteria for distinguishing between different kinds of practices. Why, for example, should we accept, as this terminology indicates, that the strategies of an international oil company which seeks to avoid paying damages for the pollution it has created, is comparable in any ethico-politically relevant sense to the actions of the Israeli 'marriage tourist'? Or that such corporate evasion of responsibility is somehow analogous to so-called 'asylum shopping' (Thielemann, 2012, p.30) where refugees travel to Sweden rather than Greece in order to enhance their chances of protection? We need an analytical framework that does not merely assume identity between such cases, but instead enables us to distinguish between forms of action and to critically discuss similarities and differences. This presupposes concepts that do not settle the debate in advance by employing an all-embracing market logic which blinds us to the *political* and *civic* character of some modes of border crossing.

I will argue in the following that we can gain useful inspiration from the literature on civil disobedience. The point is not that this framework in itself is a better interpretive lens, but rather that a critical re-appropriation of it can provide us with insightful new

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<sup>64</sup> I am grateful to Yonathan Reshef and Nimrod Kovner for this example.

analytical tools. This is especially so when civil disobedience is conceptualized drawing on deliberative and agonistic theories with their emphasis on democratic participation.

### **Transnational civil dis/obedience**

The twin concepts of civil disobedience and conscientious objections have been the subject of considerable debate in political theory (compare for example Rawls, 1971, pp.363-393; Arendt, 1972; Dworkin, 1985, pp.104-117; Smith, 2004; Brownlee, 2004; Thomassen, 2007). Though views differ with regards to their precise interpretation, they describe and give meaning to acts within a political system which are conscientious but non-compliant. Henry David Thoreau ([1849] 1991), who is usually associated with the emergence of the term civil disobedience,<sup>65</sup> refused to pay taxes to a government that tolerated slave-ownership and waged a war of conquest against Mexico.<sup>66</sup> In the 1960s, US civil rights activists openly disobeyed laws of racial segregation, they found unjust. Today's Greenpeace activists often violate private property to protest against corporate environmental hazards which in their view are indefensible.

In a recent study Luis Cabrera (2010, pp.131-153) has applied the concept of civil disobedience to irregular migration and cross-border movement. He argues, drawing on in-depth ethnographic research, that migrants who cross the US-Mexican frontier illegally in search of a better life for themselves and their families can be seen as performing acts of civil disobedience or 'conscientious evasion' (cf. Rawls, 1971). They refuse to submit to an unjust global order where place of birth greatly affects (non-)access to the most basic goods and freedoms (see also Mezzadra, 2004). Cabrera suggests that their practice appeals to an 'emerging global normative structure' of human rights. Irregular migrants 'are acting in some ways as though there were in place the sort of fully integrated global institutional structure' of citizenship which cosmopolitans often hope to promote (Cabrera, 2010, p.146).

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<sup>65</sup> As Leigh Jenco (2003, p.358, n.6) points out, this is somewhat misleading; Thoreau's essay was originally titled 'Resistance to Civil Government' but was posthumously renamed 'Civil Disobedience'.

<sup>66</sup> Ironically there is much debate about whether Thoreau's action really qualifies as civil disobedience or is better described as conscientious objection (see Rawls, 1971; Arendt, 1972; versus Rosenblum, 1987; Jenco, 2003).

For my purposes, what makes this argument particularly interesting is how Cabrera critically reinterprets and extends a concept of civil disobedience that is otherwise typically used within the bounded political community of the state (see also Smith, 2004, and Isiksel, 2010). His argument helps us to see that if we accept the view that injustice transcends political boundaries or is even built into the current international system, unwarranted crossing of borders may be legitimate as a protest or remedial act. An objection to this use of the concept might be that civil disobedience, as a *civil* and *political* act, must address a political community of fellow citizens (cf. Rawls, 1971; Arendt, 1972) and in that conversation foreigners are by definition outsiders. This view, however, fails to properly grasp the character of this kind of activism. Historically, civil disobedience has often been employed to question and reinterpret the boundaries of membership - by for example the suffragettes and the US Civil Rights Movement (see for example King, 1991).

While Cabrera's argument denationalizes conceptions of civil disobedience by alerting us to the spread of cosmopolitan moral norms, it does not fully take account of the 'disorder' of legal pluralism especially in the EU.<sup>67</sup> The development of complex transnational regimes like the European Union changes the relationship between obedience and disobedience. New modes of action emerge which are neither simply one nor the other. It is to capture such practices that I propose the term dis/obedience. This re-appropriation (Butler, 1995) changes the meaning of the concept and the action it designates. Acts of civil disobedience are 'suspended between legality and legitimacy' as Habermas (quoted in Thomassen, 2007, p.203) puts it. A law is broken when and because it is considered unjustified.<sup>68</sup> By contrast, acts of dis/obedience are suspended between different *orders* of legality and legitimacy. This makes it possible for an action to be non-compliant without being illegal. The lawfulness and morality of supranational legislation can be employed by citizens and some categories of migrants to challenge

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<sup>67</sup> Though Cabrera's civil disobedience argument focuses on the US-Mexican context, he does offer a comparison with the EU which includes insightful accounts of migration *into* and *within* Europe. But his analysis overlooks the significant interplay between internal and international mobility enabled by EU's legal pluralism (Cabrera, 2010, pp. 181-201).

<sup>68</sup> Please note that while the specific law that is broken may be the one which is deemed illegitimate, it need not be so (Rawls, 1971, pp.364-365). Sometimes it is more convenient or appropriate to violate another set of rules, for example private property rights, to protest against inadequate environmental regulation.

national law and the power of the state. To see how let us turn to the story of Martha and Guillermo.

In the interview Martha explains how she went to Guatemala to work as a volunteer in an orphanage after finishing high school. This is where she met Guillermo, a young local co-worker. The two started dating just as Martha was about to leave. She went home briefly and then returned to Guatemala. The relationship became serious and they decided that Guillermo should come to Denmark. When he was first visiting her they applied for a student permit but were unsuccessful. Martha knew that since she was under 24 they would not be able to get family unification via Danish law. Still, she hoped they might find a way.

But then parliament began debating the new skill-based point-system for family unification. For couples, where one of the parties was under 24, the number of points required was very high. Guillermo had little formal education and thus poor chances of qualifying. Martha therefore decided that they should go to Sweden, stay there for a short while and then use EU law to return to Denmark. She found a job in Copenhagen to provide for them and they moved across the border. At the time of the interview they had lived three months in Sweden and were planning to apply soon for a residence permit in Denmark.<sup>69</sup>

As Martha points out in our conversation, she and Guillermo are not breaking any laws by their action. On the contrary, she is simply using her right as a citizen of the European Union. Freedom of movement is a key feature of EU citizenship (Citizenship Directive, 2004). It is central to EU's internal market and the peaceful interaction among Europeans. By availing themselves of these rights Martha and Guillermo indirectly helped bring to life the supranational legal order on which union citizenship is based. From the perspective of the EU they are thus ideal citizens and their act of leaving could be described as civil 'obedience'.

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<sup>69</sup> In a later email correspondence Martha informed me that she and Guillermo did return to Denmark shortly after the interview and Guillermo was granted a residence permit as the spouse of an EU citizen.

But with regards to Denmark their action looks rather different. A central aim of the 2002-reform was to reduce immigration. By returning Martha and Guillermo would activate EU regulation to counter this objective. It might be argued that Danish law never really aimed to keep out couples such as Martha and Guillermo. The official remarks on the law focus on resident immigrants and descendants. It is their transnational marriages which are constructed as problematic. Ethnic majority citizens like Martha, though affected by the law, are not referred to at all (Ministry of Refugee, Immigration and Integration Affairs, 2002). Moreover, Guillermo is a Christian from a region, Central America, which is seldom mentioned, let alone vilified, in Danish popular debates over immigration.

Even if we grant this, the 2011-reform and its emphasis on economic utility alters the picture markedly. According to the law's extensive scoring system Guillermo, with his limited formal education, is clearly an unwanted immigrant (Ministry of Refugee, Immigration and Integration Affairs 2011b, pp.30-36). By entering Denmark he and Martha are thus acting against the explicit intention of Denmark's family unification rules. Hence, from the perspective of Danish national legislation this is an instance of non-compliance even though it is not unlawful. A contra-factual perspective can illustrate the argument: If it was not for the presence of EU law, which Denmark qua its union membership is obliged to respect, then Martha and Guillermo's return would have been illegal.<sup>70</sup> That this cross-border strategy is indeed undesired by Danish officials is illustrated by the tactics employed by the administration to prevent its use and the depiction of the EU route in public debate as a 'loophole' in the law, as discussed in chapter four.

Through their conjoined practice of exit and re-entry Martha and Guillermo therefore act simultaneously as obedient and disobedient citizens. Their performance is transgressive with regards to Danish law but affirmative with respect to EU regulation. Theirs is an act of dis/obedience.

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<sup>70</sup> Thanks to Christian List for pointing this out.

But is it also civil? Analyzing Martha's story further I hope to show how it follows the wider grammar of civil disobedience. Through a close textual analysis I draw out the conscientiousness, necessity and public character of their performance. These are core criteria for civil disobedience on which there is wide consensus in the literature although opinions vary about their precise interpretation, as we shall below.<sup>71</sup> On this basis I argue that a civil dis/obedience concept enables us to address key statist objections to EU citizenship and free movement and distinguish civic from non-civic practices of border crossing.

### *Conscientiousness*

In the classical tradition of civil disobedience it is underlined that non-compliant acts must also be conscientious. To separate them from ordinary crime a civic ethos is required (Rawls, 1971, pp.363-365; King, 1991; Thoreau, 1991). John Rawls (1971, p.365) in his liberal theory of civil disobedience argues that such acts must be 'guided by and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally'. He contends that especially violations of basic liberties can justify non-compliance while socio-economic inequality is a more problematic contender as it is subject to considerable disagreement (pp. 371-373). Others take a broader view. Cabrera (2010, pp. 143-146), for example, in his argument about irregular migration presents drastically skewed distributions of material wealth or the absence of a basic standard of living as a defensible motivation for acts of civil disobedience. William Smith (2004) in a deliberative democratic account argues that distorted public debates where the perspectives of some affected parties are excluded or where power differentials are overwhelming likewise justifies civil disobedience. For Martha and Guillermo, a reasonable case can be made that basic freedoms, such as the right to private and family life, is at stake just as we can point to a skewed, securitized public debate. Still, as agonistic democracy reminds us, liberties, entitlements and even the discursive rules for debate are not writ in stone. Is US border control an infringement of the moral claims of impoverished Central-Americans? Does the

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<sup>71</sup> A further criterion often discussed is that disobedient citizens 'must be willing to face arrest' (p. 136) to draw public attention to their cause and demonstrate 'fidelity to the law' (Rawls, 1971, p.366; King, 1991; Cabrera, 2010, p.136; Habermas, 1985). Yet legal punishment, while perhaps strategically valuable at times, is not intrinsic to civil disobedience. Publicity and fidelity can be established by others means (Dworkin, 1985, pp.114-116; Smart, 1991, p. 207; Greenawalt, 1991, pp.185-188).

protection of family and private life entail a right to family unification? These are moral and political questions that are just as contested today as the rights of African-American citizens were in the US in the 1960s. Indeed, it is precisely the meaning of basic liberal democratic principles that typically are at stake in struggles over civil disobedience (Thomassen 2007, p.211, cf. Singer 1991, p.125).

From an agonistic perspective it is therefore important to stress that what counts as civil disobedience is itself a political question that cannot be settled in advance. This does not, however, mean that anything goes. A powerful articulation of the ethico-political principles of liberal democracy is required. Persons who engage in this kind of activism must seek to persuade their interlocutors - whether through reasoned arguments, passionate rhetoric or imaginative narratives - that they are not acting for trivial or narrowly self-interested reasons (Rawls 1971, p.365; Brownlee, 2004; cf. Thomassen, 2007). This in turn helps us to see why for example a polluting company that uses cross-border strategies to avoid costs is likely to find it difficult to make a strong normative case for civil dis/obedience. Company representatives would have to convince others that they are wronged by a request to clean up a mess which may greatly harm innocent members of local communities. Unlike the forum shopping framework, a civil dis/obedience analysis thus has the potential for helping us to distinguish politically and conceptually between different kinds of cross-border action.

How then does Martha justify her and Guillermo's cross-border dis/obedience? The couple, as we have already seen, moved to Sweden primarily because of the Danish point-system for family unification. Martha explains that she was very upset when this new set of rules was debated in parliament and the public:

M: ...I was *angry* because they created an atmosphere in Denmark ... of 'we can only use those whom we can get something out of' and 'they just take all our money'. Well, I have *lived* in a developing country. I know that we actually have quite a lot of money, and they don't take that much money after all. I just got so angry because they had to interfere so much in my private life. Well, those rules they after all started out as and had to go against forced marriages, but isn't it also wrong to make, what can you say, forced-non-marriages? That is, to *force* people not to be together – isn't that wrong too? ... I felt it was like in the old days when the parents had to

decide who should get married. Now it was just *the politicians* who should decide who we should marry. (Interview with Martha and Guillermo, 2011, p.50)

Martha is challenging the point-system's utility focus where spouses are admitted or not according to their skills. In developing this critique she refers back to one of the government's main objectives when the first restrictive family unification rules were introduced - hindering forced marriages. It is a justification which has continued to play a key role in public debate, as we have seen, and is emphasized in the new legislation as well (Ministry of Refugee, Immigration and Integration Affairs, 2011b, p.5). Martha accepts this rationale but re-appropriates it ingeniously to criticize the law. Coining the term 'forced non-marriages' she points-out that the regulation in its current form does precisely what it originally aimed to prevent. It forces young adults to act against their own free will in a matter essential to their personal freedom. The parental analogy Martha constructs conjures up an image of the state as a feudal patriarch who wants to use his daughter to obtain beneficial alliances and therefore prevents her from following her heart. This contrast between individualistic romantic love and marriages arranged by guardians without concern for the young adults' wishes is central to the law's delineation of legitimate and illegitimate unions. Martha does not question this conception of 'a proper marriage' (Bonjour and de Hart, 2013). But by playing around with it creatively she draws out the ironies of a law that acts in the same interfering manner as the parents whose rein it seeks to check.<sup>72</sup>

Martha's critique of utility driven migration control is thus closely bound up with her commitment to romantic love. This in turn has consequences for the scope of her argument. Where a few other informants criticize the presence of migration and border control per se and advance cosmopolitan ideals of universal free movement Martha's claims are more constricted. In the interview she thus stresses that she appreciates the need to regulate the intake of unqualified labour immigrants. Not only on account of the receiving society but also because they often end up in vulnerable positions and poorly paid jobs. But she contends that 'when it is our spouses then it is just something different' (Interview with Martha and Guillermo, 2011, p.51). In clarifying her

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<sup>72</sup> On the ironies of the Danish family unification law, see Jensen and Fernandez (2013).



objection Martha notes that she ‘certainly [does not] think that love can *in anyway* be about how long an education one has or how fast one is at learning Danish’ (p.52). She thus objects not to the principle of skill-based selection as such but to its application in the domain of marriage migration. What is considered legitimate in one policy area is deemed illegitimate in another as it conflicts with the ideals of romance and autonomy which ought, on this view, to govern spousal relations. The result of this invasion of market logics into the ‘life world’ (Habermas, 1992, p.112) is an unequal treatment of citizens on the basis of whom they choose to marry.

This commitment not just to the freedom but also to the equality of citizens is central to Martha’s justification of their cross-border dis/obedience. In her critique of forced-non-marriages she concedes that the Danish rules do not strictly speaking compel her and Guillermo to live apart. Though they are unable to settle in her home country they could move to his. This is what the Danish state recommends to couples in their situation (Ministry of Refugee, Immigration and Integration Affairs, 2002, pp.41-42, 2011b, pp. 39-42; author interviews). Yet doing so, Martha argues, would prevent her from enjoying key social rights which Danish citizens are otherwise guaranteed:

M: My parents ... have paid taxes all their lives – well for example in the USA parents save up so that their children can study [...] but in Denmark the parents pay taxes so that the state can pay for their [children’s] education, and my parents have done that too. Why then can’t I be allowed [to study in Denmark]... I just think it was unfair. (Interview with Martha and Guillermo, 2011, p.51)

Martha is pointing out that the intergenerational pact between citizens and the Danish welfare state is violated when a citizen is bereft of a right to education which her parents’ contribution to society has otherwise entitled her to. She is not arguing that free higher education is a basic human right. Nor is she claiming that a citizenship, such as the American one, which does not include this entitlement, is of less value. What she considers unfair is the unequal treatment of her vis-à-vis other Danish citizens on the grounds of her choice of partner. This again is an interesting and ingenuous claim. A central justification of the point-system is that the economic contributions and cultural adaptation of family migrants are low and thus threaten the social contract of the

welfare society (Ministry of Refugee, Immigration and Integration Affairs, 2011b, pp.5-6). Martha's contestation challenges the consistency of this line of argument. The effort to protect the bond between citizens in the welfare state ends up eroding it by unequally curtailing social rights.

To sum up, Martha articulates ideals of liberty and equality by re-appropriating the imagery of romantic love, autonomy, and the welfare contract. In doing so, she defends a civic right to love across borders against state interference and encroachments of market-logics. Her story clearly illustrates how border crossing can be defended on conscientious and political grounds. This does not of course mean that all will be persuaded by Martha's arguments. Civil disobedience is always an appeal to an audience that may or may not be persuaded (cf. Brownlee, 2004). The point is merely that evocative and reasonable arguments and storylines are made which are likely to meet with some agreement as well as contestation.

### *Publicity*

Still, more is required for an act to be civil. Cabrera (2010, p.134), following Rawls' (1971, p.364) concept of civil disobedience, notes that it requires publicity. The rationale is simple: The political potential of secret acts is negligible since few will know that the law is actually being challenged. The hoped for transformations in regulation and public opinion cannot then come about and no protest is enacted (King, 1991; Rawls, 1971; Arendt, 1972). Again, views differ as to the precise form this publicity should take. Deliberative democrats stress the articulation and exchange of arguments (Smith, 2004; Brownlee, 2004). Hannah Arendt (1972), offering an interpretation more in line with agonism, stresses the need for collective action. For her, civil disobedience to be civil rather than private must be a concerted act where individuals come together to re-enact public spaces challenging existing boundaries. Irrespective of the character of public manifestations some caveats are required, though. Take the example of individuals and organizations that aid and hide rejected asylum seekers. These civic actors often act for conscientious reasons in a commitment to the ethico-political principles of liberty and equality. They can voice their critique of restrictive asylum practices and organize demonstrations, but must be careful to avoid

disclosing the identity and whereabouts of the refugees they help (cf. Greenawalt, 1991, pp.185-186).

Returning to Cabrera's analysis, he points out that clandestine Mexican immigrants cross the US border in secret. Yet, as he notes, the massive presence of irregular workers in various sectors of North American society makes it hard to ignore the phenomenon. In addition, large demonstrations by migrants have ensured publicity (Cabrera, 2010, p.135). Much the same can be said about Danish-international couples moving between Denmark and Sweden. The actual act of moving is usually done in private by individual families, although as we have seen often facilitated and promoted by Marriage without Borders. At the same time, many couples have drawn attention to the effects of the rules and the plights of marriage migrants by taking part in public debate, talking to reporters or academic researchers, participating in demonstrations and civil society organizations, or petitioning politicians. During our conversation I ask Martha and Guillermo if they too have considered contacting the press with their story. Martha explains that they were interviewed to a Danish newspaper before leaving for Sweden:

M: [I]t was at the time when they changed the rul[es] ... there was this big debate this autumn about the point-system and all that. And I simply got so *angry* and so it's difficult ... you get so angry and it's so difficult. One has to get it out somehow and then I actually think it's a good opportunity if you get the press to do it. If you just sit and are angry in your own little room then you don't change anything. (Interview with Martha and Guillermo, 2011, p.50)

For Martha, like for many of my other informants as we saw in previous chapters, voice whether in the media or as research participants is about expressing their distress and contributing to political change. Telling their story to outsiders is a way of handling frustration that otherwise threatens to overwhelm and depress as well as a strategy for bringing public focus on experienced inequities in need of redress. In the newspaper interviews Martha and Guillermo also underline that they intend to use EU rules because the restrictive and in their view unduly interfering Danish rules do not allow

them to live together in Denmark.<sup>73</sup> Attention is thus drawn not just to problems of the law but also to the couple's border crossing counter-strategy. That in turn might inspire others to use the opportunities for legally sidestepping and contesting national regulation. This again underlines that exit need not undermine but can sometimes generate voice within and across borders. This challenges the statist and nationalist worry that public democratic participation is threatened by strategies of cross-border movement. All in all, Martha and Guillermo's actions thus fully meet the publicity condition.

### *Necessity*

Finally, justifying non-compliance typically involves an argument about the necessity of the action: The law had to be transgressed in order to prevent a serious wrong and no other adequate remedy was available (Cabrera, 2001, p.143; Rawls, 1971, pp.371-373; cf. Habermas, 1996, pp.382-384). Again, though, it is important to emphasize, in agonistic fashion, the contestability and political character of such claims (Thomassen, 2007, p.16). In the early sixties, many criticized Martin Luther King and his fellow activists for impatience and for not pursuing their cause in the legal system (Cabrera, 2010, p. 144; King, 1991). It is only in hindsight that the righteousness and urgency of the civil rights movement appears to us so entirely beyond dispute. This is worth bearing in mind when assessing contemporary cases (Singer, 1991, p.128). Necessity arguments should therefore be read as 'performative speech acts' (Austin, 1976; cf. Thomassen, 2007). They do not describe an already given situation which can be assessed outside of political struggle but rather seek to create that reality retroactively (cf. Honig, 1991) by appealing to the imagination, principles, and sensibilities of fellow citizens.

So let us examine if and how Martha narrates the necessity of their cross-border dis/obedience. Below, she defends their chosen strategy explaining why they plan to use EU law to return to Denmark rather than moving to Guatemala or settling more permanently in Sweden:

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<sup>73</sup> The newspaper interviews are publically available but are not referenced here to ensure the couple's anonymity.

M: I see it a bit like a *duty* in a way. Sometimes I want to stay in Sweden because it's too much trouble and that sort of thing, but then after all I think that we have to. I think it's really *unjust* the way the rules are in Denmark and we have to *fight* for it. We can't just sit still and let it harm us. We have to fight for us. So I see it as a duty to fight for it. And I think that if all the couples like us disappear in Sweden or [Guatemala] then there is never anyone who sees us and then there is never anyone who discovers that we exist and then we can just continue to have these rules. So I think we need to make ourselves noticed, and we need to get into Denmark again to get to know people and to change their ways of thinking and their minds. (Interview with Martha and Guillermo, 2011, pp.48-49)

This is a necessity argument. It describes the Danish rules as unjust and therefore representing a serious harm. Alternative actions, such as moving elsewhere, are dismissed as ineffectual because they help to uphold rather than change the unacceptable status quo.<sup>74</sup>

In analyzing this statement we can note interesting similarities and differences compared with Cabrera's (2010, pp.143-146) analysis. He argues that many irregular migrants from Central America are justified in violating the immigration laws of the USA as this is often their best if not only way to avoid poverty and hopelessness. The stakes for Danish-international couples are rather different. Their basic livelihood is typically not in danger but their ability to live together in Europe is. Safeguarding their family life is central to all my informants. But in addition a few like Martha also express a strong commitment to wider change when defending their border crossing. It is to alter perceptions and policy by making themselves seen and heard that Martha insists on their returning. This is an argument about preventing harm to all citizens, present and future, who are unable to live with the partner they love in Denmark. It suggests that statist and nationalists sceptics are too hasty in their account of cross-border movement as a threat to civic solidarity.

Such agendas for political transformation as articulated here are typical of iconic exemplars of civil disobedience like the civil rights movement. Indeed, some

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<sup>74</sup> Martha's claim about the necessity of their return gains support from the fact, discussed in the previous chapter, that exiles lose their voting rights in Denmark after two years abroad. This makes it easier for Danish politicians to ignore their grievances even if they do engage in cross-border protest.

commentators insist that only this kind of action falls within the remit of the concept (Rawls, 1971, pp.363-371; Bedau, 1991, pp.6-7; Habermas, 1985, pp.102-106; but see Dworkin, 1985, pp.106-107). That in turn underlines how closely Martha and Guillermo's action follows the grammar of civil disobedience in this respect. This does not mean that their argument is not open to debate. Liberal nationalists might dispute whether preventing family unification really amounts to a serious harm (Miller, 2005, p.196), while cosmopolitans could critique the emphasis on the rights of citizens over immigrants or family members over refugees (Honohan, 2009; Gibney, 2005). These potential objections do not subtract from the civic character of Martha and Guillermo's action but merely underlines the contentiousness and contestability of any necessity claim.

## **Conclusion**

In this chapter I have developed and defended a concept of 'transnational civil dis/obedience'. It designates conscientious acts of border crossing undertaken in order to circumvent and contest domestic rules by mobilizing international or supranational law. These acts are legal yet non-compliant, disobedient yet obedient, civic and contestatory. In the analysis I re-appropriated the concept of civil disobedience adapting it to a context of complex jurisdictions with overlapping, competing and supplementary regulation. Here acts of dis/obedience become possible which are suspended less between legality and legitimacy than between different orders of legality and legitimacy.

I argued that, while legal under EU rules, Martha and Guillermo's strategies of exit and re-entry challenged Danish family unification law. Their undertaking was non-compliant making them disobedient national citizens. At the same time their actions indirectly brought to life a European area of free movement in accordance with the objective of EU-integration. Hence from the perspective of the EU they were ideal, obedient citizens. The analysis showed, moreover, how Martha presented their actions as conscientious and political. Moving to Sweden and back again she and Guillermo contested rules that, in her view, violated the civil right to privacy and family life. Border crossing was articulated as necessary both in order to re-claim these freedoms

for themselves and to help change policy and perceptions in Denmark. In addition, the couple had helped to draw public attention to the effects of Danish family unification rules. In this way their actions met the criteria of conscientiousness, necessity, and publicity of civil disobedience.

The concept of transnational civil dis/obedience has a broader relevance within and beyond the EU, particularly in the area of family life and reproductive rights. As discussed with regards to Israel, mutual recognition of marriage in international law enables couples to sidestep mandatory religious ceremonies and in that way perform a kind of conscientious objection across territorial boundaries. Transnational civil dis/obedience also holds potential for analyzing the well-established journeys from Ireland, where abortion is illegal, to the United Kingdom, where it is not. It likewise offers insights into current struggles within the US where gay couples attempt to evade and contest hetero-normative marriage regulation by moving from conservative to liberal states.

The analytical lens of transnational civil dis/obedience helps us to critically appreciate such practices of territorial border crossing that are made possible by but also enact complex and overlapping constitutional orders. It enables us to address key criticisms from statist or nationalist perspectives which see tactical cross-border movement, particularly in the EU, as thin, private, market-based and instrumental. Against this view, the concept defended here draws attention to the ethico-political character of some forms of mobility. Developed drawing on agonistic, deliberative and cosmopolitan theories it offers criteria for distinguishing civic from non-civic practices. Strategic use of cross-border movement is called for and legitimate when basic freedoms are at stake and other remedies are not available or effective. Publicity is usually required if such practices are to hold a wider transformative potential but secret acts carried out for ethico-political reasons may still qualify as conscientious objection.

## **CHAPTER EIGHT: CONCLUSION**

I began this thesis with three short vignettes of marriage migration and contentious cross-border movement in the European Union. Grace and Jonas, Cecilie, Helene and Jasper have all been deeply affected by Denmark's restrictive family unification laws. Engaging in public debate, organized activism and EU-mobility they have taken part in the politics of membership. Throughout the chapters the narratives of many other transnational couples, singles and families have been re-presented and woven together; Derek who had to leave for Sweden with his wife and son when he got fired; Laura who lost her civic loyalty to Denmark; Charlotte whose anger made her join Marriage without Borders; Jamil and Martha who were so keen to come back and make a difference. In this last concluding chapter I take a step back to find out what this collection of stories tell us about membership and migration in today's Europe. How is citizenship practiced, lost and reinvented in the dispute? To what extent, if at all, do the findings enable us to go beyond the binary of thick nationalism and thin postnationalism? What are the strengths and weaknesses of agonistic and deliberative democracy for grasping and conceptualizing these acts of border crossing and what insights, if any, does the case study hold for the theories themselves?

The chapter begins by summarizing the empirical findings. It then discusses what this study contributes to the debate over migration and membership in Europe, before assessing what insights it offers for agonistic and deliberative theories of democracy. I end by setting out a dynamic agonistic model of citizenship across borders.

### **Cross-border movement in the Danish family unification dispute**

In the thesis I have examined the significance of novel and inventive as well as classical strategies of voice, exit, entry and re-entry in the Danish family unification dispute. By crossing an internal border in the European Union Danish citizens and their foreign partners mobilize supranational law and enact EU citizenship. For European nationals who are capable of supporting themselves and their families this gives access to family unification and hence a protection of private and family life within the Union that they are denied in Danish national law. Exit, entry and re-entry are thus strategies for



practicing a kind of citizenship beyond the nation-state. But what is the character of this citizenship? Is cross-border movement in the European Union merely a way to claim rights, reflecting a thin, juridical citizenship status, as republican nationalists and liberal postnationalists argue? Or can it also contribute to – or even constitute - practices of democratic engagement? This is what I have discussed in the previous chapters.

On the basis of 30 narrative and semi-structured interviews with Danish citizens and/or their foreign spouses, supplemented by existing studies, I explored how this cross-border movement was experienced and articulated. Some described this practice primarily as a way of obtaining the right to lead a normal family life. Many expressed anger and frustration over their involuntary exile from Denmark. Several informants told how they had felt ‘kicked out of Denmark’. This in turn had damaged their sense of loyalty and attachment to that country. Some interviewees recounted how they had come to identify with Sweden where they had been welcomed. Or they expressed gratitude towards the EU for protecting their rights better than their own state had done. For these informants exit-entry was a way of creating a new citizenship often in opposition to Denmark.

Many informants recounted how border crossing prompted and enabled them to take part in public debate and collective action and in that way practice citizenship. The prospect of involuntary exit led some to voice their critique in the media. For others, the relative stability provided by exile, once the initial challenges of resettling were over, facilitated their participation in public debate and/or organized civil society activism. For still others, exit followed by re-entry generated and enabled their civic engagement. Cross-border movement not merely supported practices of citizenship, however, but also transformed their character. Transnational micro-publics and semi-publics emerged where Danish citizens and their foreign spouses could help each other, give and receive advice and create bonds of solidarity and friendship.

A smaller group of interviewees went further and presented exit and/or re-entry as a protest against a law they found unfair and illegitimate. In their narratives cross-border movement became a critical practice of transnational democratic dissent. I identified

and conceptualized different modalities drawing on liberalism, deliberative and agonistic democracy. We thus encountered stories of liberal anti-politics where exit was presented as an act of refusal similar to conscientious objection. This response to state interventions in private life was a paradoxically politicized practice of withdrawal which sought to renegotiate the boundaries between public and private life. This contrasted with articulations of re-entry as a deliberative practice of dialogical engagement and an agonistic enactment of protest. Here emphasis was on transformative and re-constitutive participation in a political community. Similar commitments were manifested in narratives conceptualized as cross-border democratic taking and civil dis/obedience. Semi-legal re-entry was articulated as a way of claiming a right to participate while EU citizenship was mobilized to contest national regulation deemed unjust.

The analysis contributes to our understanding of cross-border movement and what it means for citizenship. First, the study confirms what a growing body of literature has found – that exit, entry and re-entry in some cases spur and facilitate public voice. In that way, migratory movement in conjunction with public debate and collective action can be ways of enacting citizenship across borders. Second, the case shows how exit and re-entry can constitute politicized acts of protest creating new transnational civic actors. Finally, the experience of involuntary exile can lead to loss of loyalty but can also generate new forms of civic identification and bonds of solidarity.

### **Citizenship in Europe: beyond the thick and thin binary**

What does this tell us about citizenship and migration in contemporary Europe – how can we move the debate beyond the stalemate of the dichotomy of thick national and thin postnational membership?

The analysis has shown that Danish citizens and their foreign spouses use EU rules and Swedish national law to practice both thick and thin citizenship across borders. This finding presents an important contribution to the wider debate over migration and membership in contemporary Europe. Where nationally oriented critics often fear that immigration and EU integration threatens a strong, democratic community the case

demonstrates that practices of active and critical citizenship need not be confined to the terrain of the nation-state. Participatory and affective citizenship can be exercised by citizens and migrants crossing borders. At the same time, my informants' stories also illustrate just how valuable even a minimal, rights-based EU citizenship can be for those whose private and family life have been very closely regulated by the state.

As a heuristic, theory-developing case study this research project helps us identify and conceptualize unexpected empirical patterns. Exploring lived experiences of exit-entry in the Danish family unification dispute, it opens up new ways of seeing border crossing as a civic practice. Its critical purchase derives from the reappraisal and re-signification of transnational mobility it enables. The case, however, cannot tell us how widespread such cross-border acts of citizenship are within or beyond the European Union. Exploring general trends requires a different research design. Still, there are good reasons to expect that similar dynamics are at play elsewhere. To begin with, EU citizenship is mobilized to bypass and challenge national family unification rules in other European countries such as the Netherlands, United Kingdom and Norway where marriage migration is also tightly regulated. Although sociological studies of these practices have yet to be conducted, there is considerable case-law from the European Court of Justice and legal analysis suggesting that important civic contestation could be found (ECJ, 2002, 2003, 2007, 2008; Kostakopoulou, 2007). We also know from the present inquiry that organizations similar to the Danish NGO Marriage without Borders exist in other countries (see also Block, 2012) and that they cooperate transnationally.

EU mobility is also of course about other forms of migration. The most extensive internal cross-border movement in recent years is the East-West labour migration that has followed the successive expansion of the Union in the past decade. The political and economic context for this post-Cold-War emigration is very different from the controversies of transnational immigration and the politics of intimacy in North-Western Europe. Comparisons and conceptual analogies should thus be carried out with considerable caution. Existing research suggest that finding civic practices of mobility in this area is less likely (Hughes, 2005; Woolfson, 2010). Still, one study of prospective Bulgarian elite emigrants shows that ethico-political considerations do play

a role alongside instrumental interests (Ådnanes, 2004), while case research on Polish labour migration present evidence of some participation in public debate and civil society networks across borders (Galasinska, 2010; Meardi, 2007). If we turn to the area of irregular migration into Europe and the US there are likewise studies which resonate with the empirical findings of the thesis. In the US-Mexican border region, for example, organized solidarity work takes place supporting migrants on their dangerous cross-border journeys (Cabrera, 2010; Doty, 2006). Again, though, it is important to pay heed to contextual differences, especially as we move beyond the European Union and its complex terrain of national, international and supranational law. While EU citizens have a right to move across borders and can claim support from national bureaucracies and supranational courts, irregular migrants can only seldom invoke the protection of international law and their struggle with state sovereignty is profoundly unequal and precarious.

While more research is clearly called for there are thus grounds for believing that the empirical findings and conceptual arguments have a wider relevance. Having said this, it is important to stress that not all border crossing practices are civic. Even within the EU, where mobility is formally an enactment of supranational citizenship, not all such acts reflect or manifest a participatory democratic membership. The thesis precisely seeks to develop conceptual frames such as civil dis/obedience for distinguishing between different kinds of exit, entry and re-entry. Here Honig's gothic agonism is particularly helpful in that it draws attention to the gray areas, multiple motives and open-endedness of civic action both within and beyond the nation-state.

### **Insights for agonistic and deliberative democracy**

What are the theoretical implications of the case study for the two theories? I have argued that the civic potential of cross-border movement has been overlooked or given insufficient attention in agonistic and deliberative democracy because this kind of action often appears silent and private owing to the hold state-centric conceptions of membership still have on us. But as we have seen, this classical view of exit, entry and re-entry is in need of correction. When we appreciate that acts of border crossing can generate, facilitate and transform organized action and public debate and reconstitute

civic actors then there is no immediate barrier for incorporating such practices within these theories of democracy. The analysis shows that both deliberative and agonistic democracy offer analytical resources for reinterpreting cross-border movement. This, however, required a critical engagement with the theories where concepts such as democratic taking were re-appropriated.

I began the thesis with the assumption that both agonistic and deliberative theories of democracy have important insights to contribute to the rethinking of migration and membership but that agonism holds greater purchase for a thoroughly dynamic re-conceptualization. On balance, this contention found support in the case study.

Deliberative democracy drew attention to the exchange of reasons in the public sphere and I did find evidence of such practices which were prompted by exit. This theory also offered a helpful interpretive lens for understanding narratives that defended cross-border movement as a strategy for civic dialogue. Finally, deliberative democratic theorization of civil disobedience proved helpful for the development of a concept of transnational dis/obedience. However, the analysis also identified a very marked gap between the normative ideals of deliberation and the actual conditions of debate as experienced by my informants. When even resourceful and in many ways privileged citizens find it difficult to articulate their views and have their perspectives given due considerations by responsible politicians it is difficult to see how those learning processes are to take place which deliberative democrats place so great faith in.

Agonism also proved to be a very illuminative interpretive frame. I identified agonistic mobilization prompted and enabled by cross-border movement. For key informants, passion, anger and identification played an important role for their engagement in collective action. Partisan transnational micro-publics and semi-publics were created. Furthermore, agonistic democracy provided conceptual resources for capturing the enactment of protest and the taking of rights through cross-border movement. It highlighted the importance of contestation and imaginative re-appropriation rather than reasoned argument in civil disobedience and dis/obedience as illustrated by Martha's story. Finally, emphasis on the open-endedness and gothic character of civic action

proved very useful in analyzing my informants' complex narratives, strategies and justifications. This aspect in particular helped challenge the dichotomy between thick and thin civic action. It draws out how even heroic civic practices contain elements of pragmatism, while seemingly instrumental strategies often also reflected ethical principles or existential belonging.

But neither agonism nor deliberative democracy or a combination of the two theories could encompass all civic practices reflected in the collection of narratives. The articulation of exit as a strategy of conscientious objection was better captured by a liberal framework of anti-politics. This limitation serves to remind us of the complexity of social and political action which is likely to exceed the confines of any theoretical perspective. It also demonstrates that deliberative democracy and agonism continue to offer distinct conceptual frameworks directing our attention to some aspects of the social world rather than others. Incorporating border crossing have not turned these theories into analytically irrelevant catch-all frameworks or undermined their identity and integrity as specific lenses of interpretation.

Still, it necessary to consider how radical a rethinking of the theoretical perspectives is entailed by the inclusion of cross-border movement. Is it simply a question of adding exit-entry as a new form of civic action or should we revisit key conceptual assumptions? Deliberative democracy is greatly concerned with the promotion of transnational or postnational publics both within Europe and elsewhere (Habermas, 2001b; Oddvar Eriksen, 2005; Dryzek, 2005). Here it is important to grasp cross-border movement as an integral part in their emergence. In her recent work, Benhabib (2011) has taken a first step towards doing so, but a deeper understanding of and engagement with the dynamics of voice, exit, entry and re-entry is called for. In so far as border crossing is merely conceived as an enabling (or constraining) condition for debate this leaves the theory's constitutive commitment to voice intact. If some modalities of cross-border movement should also be seen as symbolic acts of protest this would require a more fundamental reconsideration of the theory. Whether or not this is possible or desirable is an interesting question which further deliberative democratic scholarship could take up.

For agonistic democracy, we can note that border crossing can in fact be an organized activity of claiming rights. In this respect it tallies well with existing views of what constitutes practices of citizenship within that theory. Likewise, when we explore individual narratives of border crossing we see that these contribute in different ways to collective acts of solidarity and contestation. But I also analyzed articulations of cross-border action as civic protest and dis/obedience which, although taking place within a context of organized activism were not reducible to these collective acts. One response would be to exclude such action, deeming it to fall outside the remit of agonistic democracy. Another option is to take this as an invitation to interrogate critically the relationship between individual and collective engagement and how best to make sense of it from an agonistic perspective.

Although agonistic democracy rests on a strong commitment to concerted action and social movements we also find other configurations and undercurrents in this school of thought. It comes out, for example, when we note the centrality of a range of iconic characters in Honig's writing. Her work is replete with individual 'exemplars' populating our public mythologies (Finlayson, 2013; Honig, 2009b). In *Democracy and the foreigner* insightful and detailed analyses are given of the biblical figures of Moses and Ruth. Both, albeit in different ways, are what Honig terms 'foreign founders'. Outsiders, immigrants who in spite of - or rather because of - their alienness are credited with the founding or re-founding of a political community. Moses, to be sure, is a leader of a large-scale *movement* (in more than one sense) but Ruth is presented to us as a rather more solitary figure. Much the same can be said of another of Honig's exemplars, Antigone, the Greek princess who violates the law of the polity in order to bury her dead brother in Sophocles' classical play (Honig, 2009a). Indeed, while Honig does, in *Emergency politics* discuss one social movement – the Slow Food movement – her exemplars are otherwise all extraordinary individuals. This suggests that there is something about individual subjectivity and agency that animates Honig's work despite her insistence on the collective character of democratic political action. From the perspective of citizenship as a lived practice this seems to me to be very valuable and worth exploring further.

Honig's use of exemplars, reflecting her indebtedness to Nietzsche and Arendt, holds potential for a reinterpretation of civic action. Iconic acts and actors “‘manifesting another way” are always singular, yet in their singularity they facilitate the glimpsing of a universal, another way of doing things.’ (Norval 2007, p. 190) That is to say, though individual action is situated and particular, it often projects an image of a different way of living together which would transform the lives of others as well. Exemplary individuals are persons whose unusual, courageous or compassionate actions we admire and may seek to follow so as to improve ourselves and the world we inhabit. But if this was just a form of hero worship the democratic quality of exemplars would be doubtful. We would be conceding our independent judgement to an authoritative figure and merely seeking to repeat somebody else's project. This is not the aim of Honig's narrative reconstructions. It is in the ability to ‘disclose new vistas’ (Ferrera, 2008, p.3) and stimulate the cultivation of a critical and self-critical ethos that stories of iconic characters have their merit (Norval, 2007, pp.193-194; Finlayson, 2013).

On an agonistic reading exemplars are not simply out there. Rather, ‘the exemplar [has] to be constituted as an exemplar’ (Norval, 2007, p.196) in and through political struggle. Thus, when Honig appropriates and retells the stories of figures like Ruth and Antigone she is making a normatively invested intervention in an interpretive field (Finlayson, 2013). She does so in order to nurture our sensibilities and project her vision of an ‘agonistic cosmopolitics’ (Honig, 2009b, p.129) which might inspire others to acts in new ways. The collection of stories analyzed here offers rich material for exemplary thinking. The narratives of Jamil and Martha, for instance, may be interpreted as exemplars reflecting a dialect relationship between individual and collective action. Individual exemplary action can be promoted by social movements or organizations like Marriage without Borders in an attempt to influence the political agenda, appeal to the passion and compassion of co-citizens and mobilize support. It can also inspire to collective action and the formation of political movements. Whether or not this happens is never given in advance. This is re-conceptualization that still holds on to the importance of concerted action. Without this the theory would hardly be recognizable



and would lose important critical edge. But more space is given to certain kinds of individual acts of citizenship within the construction of social movements.

### **A dynamic conception of citizenship across border**

Throughout this thesis I have sought to develop and defend a dynamic conception of citizenship drawing on especially agonistic democracy that can incorporate cross-border movement as a civic practice. Building on my empirical findings and theoretical arguments I set out such a concept in this last section. In chapter three I presented a general analytical model of dynamic citizenship. Figure 4 below depicts the revised agonistic conception which I have developed here where exit, entry and re-entry are included as practices of citizenship:

**Figure 4**

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**An agonistic model of citizenship across borders**

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Notes: Own rendering

In this model cross-border movement and collective action are modes of practicing citizenship. The arrows between the two symbolize their interrelation: border crossing can be facilitated and prompted by collective action, but can also reversely inspire to organization. Exit, entry and re-entry can be strategies for claiming rights in commitment to the always contested ideals of liberty and equality; participating in passionate contestation and creating, losing or reimagining civic identification. A similar figure can be devised for deliberative democracy.

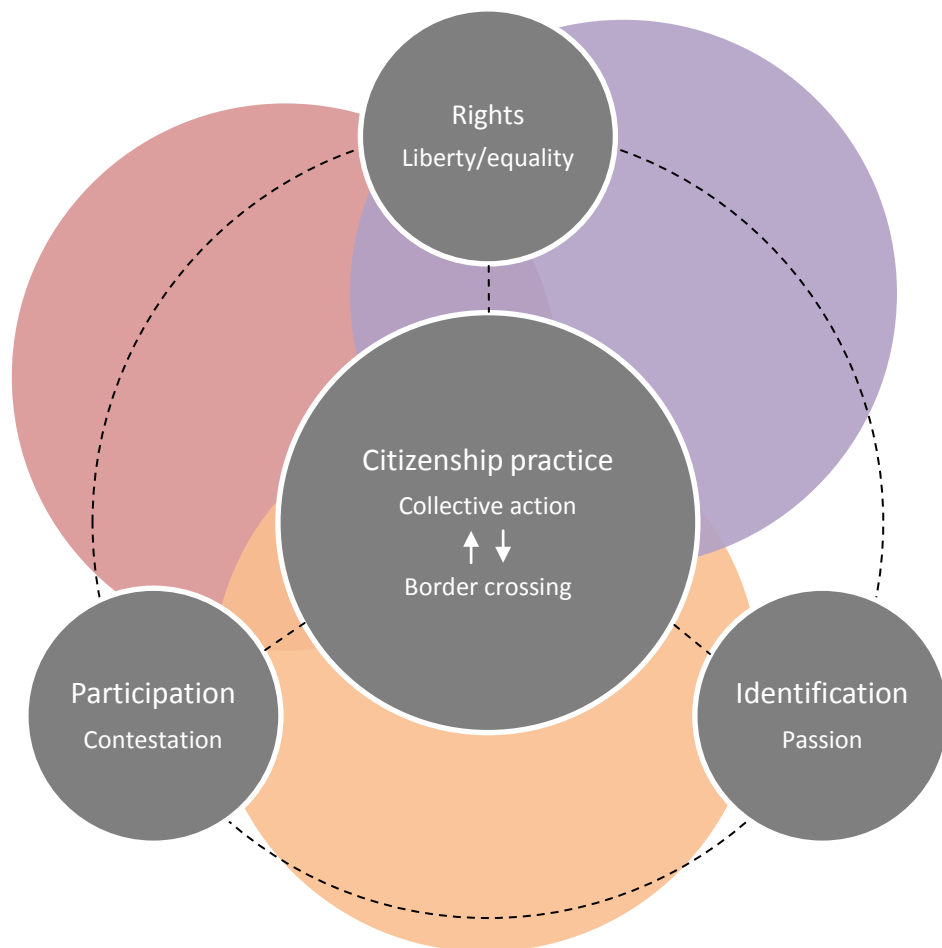
This revised model illustrates the core of the argument I have presented here, but is still too simplified. It does not take account of the complex terrain of nested and overlapping transnational membership particularly within the EU (Bauböck, 2003). This is especially important to consider when we incorporate border crossing. Figure 5 therefore presents a final version of this model of citizenship:

**Figure 5**

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**An overlapping agonistic model of citizenship across border**

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Notes: Own rendering

The shaded circles illustrate how a dynamic citizenship is practiced across borders thus connecting different political communities. My informants invoke national,

international and supranational rights in Sweden and Denmark. They participate in cross-border collective action and identify as Danes, Cubans, Europeans and cosmopolitans. Their narratives show that democratic citizenship is not confined to the nation-state and demonstrates how important it is to open up different ways of understanding political membership. The revised dynamic conception outlined here contributes to this task. It helps us to map out and make sense of the complex juridico-political spaces and imagined communities that emerge in and through cross-border movement. As an agonistic model it does not provide us with a blueprint for institutional reform or tell us what rights to distribute to whom. These are questions that are part and parcel of the ongoing and open-ended democratic struggle. Rather, what the model offers is a critical interpretative lens that enables us to see cross-border movement in a different light grasping its affirmative, transgressive and transformative character and central role in the making and remaking of democratic life. It provides a grammar of transnational citizenship for debating and critically engaging with political mobilization and contestations of liberty and equality across borders.

## **Appendices and bibliography**

## APPENDIX I: ON METHODOLOGY

### Fieldwork in a border region

In July 2000 the Øresund bridge opened connecting Denmark and Sweden. It is a beautiful 16 kilometres long suspension bridge with a tunnel. The building of it was part of a wider strategy of regional integration. Like many border areas, Øresund and the land on both sides have a complex history of political contest, economic and cultural exchange.

**Figure 6**

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**The bridge of Øresund**

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Source: Photo by Stern 2002-07, Wikimedia Common, [www.wikimedia.org](http://www.wikimedia.org)

From the early middle ages until 1658 the region of Scania in Southern Sweden was part of the Danish Kingdom. Denmark later tried to win back the lost territory from Sweden but without success. During the Second World War when Denmark was occupied by Nazi Germany it was over Øresund's narrow strait of water that Danish Jews were ferried to safety in neutral Sweden. After the war, a passport union was established between the Nordic countries enabling citizens to travel freely between Denmark, Sweden, Norway, Finland and eventually Iceland and the Faroe Islands. This was followed later by a right to take up work in any of these neighbour countries (Norden 2012a-b). In 1972 Denmark had joined the European Common Market and in 1993, albeit with some reservations, the European Union. When the following year Sweden also acceded Øresund became an internal EU-border. The rights to free

movement which Danes and Swedes already enjoyed through Nordic cooperation were now supplemented with the entitlements attached to their EU-citizenship. As commuting was eased by the establishment of the bridge, cross-border integration gradually increased. Swedes from Scania went to Copenhagen where, prior to the financial crisis, jobs were plenty and the options for studying better. Danes meanwhile availed themselves of the lower prices of houses in southern Sweden. Yet there were also some who moved for rather different reasons, as this thesis has explored (Rytter 2010a, p.125-126).

In 2002 Denmark's newly elected centre-right government introduced a comprehensive reform of immigration law. It restricted, in particular, access to family unification. This legislation marked yet another chapter in the region's changing politics of boundaries. Unintentionally, it came to give renewed significance to the Danish-Swedish border through the exit, entry and re-entry practices by transnational couples analyzed in the thesis.

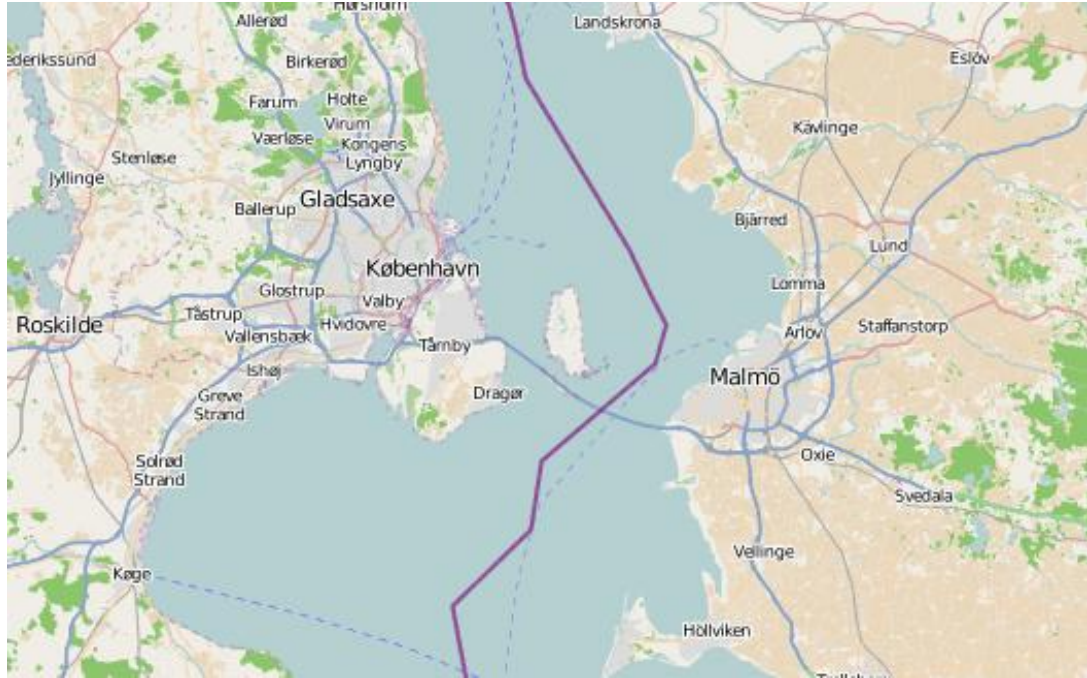
A few remarks on my own positionality in this dispute: I am, as a Danish and EU citizen, interested in the politics of migration and family unification that has dominated Danish politics most of my lifetime. What particularly intrigues and concerns me are the interventions of the state and the novel cross-border strategies of evasion and contestation developed. As a well-educated, middle-class ethnic majority citizen I have a lot in common with many of my informants, but I am not myself in a transnational marriage. During my studies and research I have enjoyed the freedom of movement in the European Union and experienced changing and multiple attachments to places and political communities. Unlike my informants, however, my border-crossing has been entirely voluntary and my lived experience of transnational citizenship thus very different. This positioning has influenced the research process in various ways. It has helped me to establish easy contact and rapport with many interviewees but also made it more difficult to gain access to for example ethnic minority communities. With a sensitive and politicized issue like family migration, a long term anthropological field research might be necessary to obtain contacts and credibility across intensely contested ethnic boundaries (cf. Rytter, 2010a)

**Figure 7**

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**Map of the Øresund region**

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Source: [www.openstreetmap.org](http://www.openstreetmap.org), © OpenStreetMap contributors

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In the summer of 2011 I conducted fieldwork in the Øresund border region (see map above) where I interviewed Danish citizens and migrant spouses most of whom had used the ‘Swedish model’ (Rytter 2010a, 125). In Sweden, interviews took place in the cities of Malmö and Landskrona. With its approximately 280,000 inhabitants Malmö is the biggest town in the province of Scania. The train ride from Copenhagen across the bridge takes about half an hour. This makes it an attractive location for many who have jobs and studies in that city which they do not wish to give up. In recent years demands for housing in Malmö has increased greatly leading some to look to nearby towns like Lund and Landskrona (Rytter 2010a, p. 126). Still, Malmö is or has been the residence of most of my informants. It has a charming old town centre with shops, canals, parks, and cafés, a vibrant new harbour area, and many pleasant boroughs where people live, work and go to school. The town also has a number of rather run down housing estates with a high proportion of poor immigrants, refugees, and ethnic minorities among the residents. Malmö and neighbouring Lund are university towns offering a range of studies. At present, the town is governed by a centre-left coalition. The new anti-



immigration party, the Swedish Democrats, is also represented in the city council (Malmö Stad, 2013).

Most of my informants who live or have lived in Malmö report liking it. Many say they feel welcome and treated with respect by the immigration authorities. A few stress the beauty, cleanliness, and quietness of the town. Or they emphasize the greater toleration and respect they find here. Some find their Swedish neighbours difficult to get to know but admit that this may be due at least in part to their own commuter life which hinders their social integration. A few complain about the town being small and provincial. Apart from these minor issues, the only substantial problem which some informants recount in their relation to Swedish society concerns the job market. Unemployment was considerable in Scania also before the global economic downturn. In addition, some argue that the Swedish labour market is more regulated and bureaucratic than the Danish. Even in low skilled jobs proof of formal qualifications are required making it harder for newly arrived immigrants to gain entry.

About half of the interviews I conducted for the research project took part on the Danish side of Øresund. Some of my informants had not yet moved to Sweden. A few were prevented from doing so altogether as they were unable to meet the self-sufficiency requirement in EU-law. Others had moved back to Denmark after a period in Swedish exile. In addition, many still had their jobs and studies in Copenhagen though they presently lived outside the country and therefore found it convenient to meet here. As the capital and largest Danish city Copenhagen is home to many young adults who work in public and private sector jobs, undertake college training, or pursue university studies. Copenhagen also has a higher number of immigrants and ethnic minorities than other parts of the country. Many younger residents live in the borough of Nørrebro, a vibrant, culturally, racially and economically mixed part of town. The city also has its more segregated neighbourhoods with parts of Østerbro as traditional havens of the white and well-to-do and the North West as an area with larger groups of low income residents of both ethnic minority and majority background. Politically, Copenhagen has been governed by the social-democrats for more than half a century, often in coalition with the social-liberals and the leftist parties. Some of my younger informants describe

living in Copenhagen as essential to the kind of lifestyle they desire. Comparing it with Malmö they see it as bigger, more dynamic and eventful. It is where they have their social network. For others, Copenhagen is simply presented as an easier place to find a job. A few interviewees associated the city with exclusion and intolerance. Others dream of buying a house in the countryside or have a pragmatic view of where to live.

One interview was carried out in a suburb of Copenhagen and another in a provincial town south of the capital. I also interviewed a couple in Århus, the second largest city in Denmark situated in the western part of the country. Finally, one interview was conducted via Skype with a couple residing in Northern Jutland in a North-Western region of Denmark. The 'Swedish model' (Rytter, 2010a, p.125) is of course particularly attractive to citizens who live in the Copenhagen area. Some families from southern Jutland have moved to Germany instead. Crossing the Danish-German border is also a way of activating EU-citizenship and thereby obtaining easier access to spousal unification. The NGO Marriage without Borders<sup>75</sup> has also had a sub-section in Schleswig, a province in Northern Germany. Yet it closed down again after a few years. There are obvious reasons why this route is less popular than the move across the bridge of Øresund. For one thing, there is no city or large towns on the Danish side of the border. This means fewer students and young adults generally and fewer ethnic minorities who practice transnational marriages. I therefore chose to focus my fieldwork on the Øresund region.

### *The pilot study*

Before the fieldwork began in earnest I conducted a small pilot-study to try out my preliminary interview guide and get a feel of the field. This was done in the spring of 2011. I interviewed three couples. A young Danish woman and her Turkish boyfriend had lived in Malmö for a few years where they both undertook university studies. An Australian man and his Danish wife were about to move there with their six months old baby. A Danish woman and her Cuban husband had actually obtained family unification in Denmark under national rules. They had, however, become worried about the rapidly changing legal landscape and were now planning to study a semester in Spain and

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<sup>75</sup> Ægteskab uden Grænser, [www.aegteskabudengraenser.dk](http://www.aegteskabudengraenser.dk)

thereby obtain the extended protection available to families of mobile EU-citizens. The pilot-interviews were conducted with a topic guide following a narrative style of interviewing which will be described further below. This proved to be a useful technique. The three couples were all competent story tellers who with a little probing narrated their experiences in meaningful sequences around a sort of plot (Riessman 2008, p.7). In the later stages of the interviews I followed up or introduced themes of particular interest for my research. It confirmed my hunch that belonging, citizenship and to some extent the EU were topics that resonated with my informants' experiences and which could stimulate interesting reflection. In one interview the narration was rather chaotic compared with the orderliness of the others. This did not invalidate the interview strategy but illustrated that narratives are constructed in different genres (cf. Riessman 2008, p.7).

The pilot-study gave rise to one important adjustment of my research design. Initially, the idea had been to interview the Danish part of a transnational couple and not the foreign spouse. The partner I presumed to be less interested in the dispute of Danish immigration politics and less emotionally involved. It is not, after all, their country that prevents them from realizing the family life they desire. Moreover, if you move from Australia, Cuba, or Turkey to Scandinavia the socio-political, cultural, and climatic changes you experience are bound to be considerable in any case. Consequently, the difference between living in Denmark and living Sweden may be of minor import. As it turned out, these tacit assumptions had some traction but also notable limitations. In general, my Danish informants expressed more frustration and shock, and were also often more politically mobilized than their partners. Yet the spouses I interviewed were far from unaffected. In fact, two of my three pilot-interviews came about as I was contacted by the non-Danish partners who were eager to express their views about the Danish rules. In all three interviews, both spouses participated actively in a collaborate effort to construct a common account of their experience and the trilateral format generated productive conversations. They allowed for in-depth story-telling, as in individual interviews, but also prompted joint reflection as in focus groups. As a consequence, when subsequently searching for informants I sought to enlist both spouses for a joint interview. This was not always possible for practical reasons, for

example when the partner had not yet arrived in Scandinavia. Some spouses also did not wish to take part. Still, more than half of my interviews are conversations between two spouses and me. In a few interviews young children were present, and one conversation was carried out with a family rather than a couple. They had moved to Sweden because the mother-in-law, who was widow and economically dependent on her son, was unable to obtain family unification under Danish law. During the interview she first took care of her grandson. Later she was drawn into the conversation by her daughter-in-law and contributed her own perspectives and stories. Finally, one interview was carried out with two friends who had both married foreign spouses.

During the pilot-study I also contacted a young Danish woman who had previously been a leading figure in Marriage without Borders. We met and discussed the project. She expressed great interest and helped me establish contact with the organisation and obtain their support which proved to be very useful in my search for informants. Apart from acting as ‘gatekeeper’ she and her husband were also later interviewed and told about their experiences with family migration, border crossing and active citizenship.

#### *In search of story-tellers*

As described in chapter three, in searching for research participants I aimed for diversity in socio-cultural and economic positioning, encounters with the law and cross-border strategies. To find informants I advertised for couples willing to participate in the research project at the homepage of Marriage without Borders. The board of the NGO subsequently recommended its members to take part in the project. My advertisement was also included in their newsletter and in an e-mail to a network of couples living in Sweden (‘the Sweden’s Network’, see chapter five). Most of my informants were individuals or couples who contacted me either by e-mail or phone in response to these requests for volunteers.

In addition, I also posted the same research ad on the site of a facebook group, Love without borders (Kærlighed uden grænser) which had by then just been established. One informant contacted me this way. Similar advertisements were posted at departments of Malmö University, public libraries and language schools around this city. These settings

were chosen as sites that might well be frequented by young Danish citizens residing in Malmö and their foreign partners. One or two interviewees responded to these ads.

My research contact at Marriage without Borders put me in contact with several friends and acquaintances. This was especially to help me find early movers and divorced participants. Finally, there were two informants whom I approached directly after having read interviews with them or letters to the editors by them in the Danish press.

My interviewees were thus found through self-selection and strategic selection. This has advantages. Participation was clearly voluntary and most informants were eager to take part. When, as in this project, contributors are asked to share very personal experiences it is especially important that their consent is given freely and on an informed basis. Yet self-selection also has limitation, as discussed in chapter three.

### **A narrative research strategy**

The study is informed by narrative research methodologies which explores how meaning is constructed in and through story-telling (Riessman, 2008; Chase, 1995). This guides both the interviewing and the subsequent data-analysis. I investigate how the experience of border crossing is narrated by my informants.

#### *Narrative interviewing*

There are many different understandings of what a narrative is. Riessman (2008, p. 6) distinguishes between ‘the practice of storytelling (the narrative impulse – a universal way of knowing and communicating ...); narrative data (the empirical materials, or objects for scrutiny); and narrative analysis (the systematic study of narrative data). While I find this tri-lateral distinction theoretically insightful ‘narrative data’ seems a somewhat technical term for the rich accounts woven in the interviews. In the following I use the terms stories and narratives synonymously to refer to both the story-lines my informants develop in the interviews and the analytical reconstructions I present in the thesis.

Narrative research, as discussed in the introduction, is often particularly appropriate for studies that explore the meaning of dramatic occurrences. Marriage is an obvious contender for a major biographical event. Across a range of different cultural scripts and practices it functions as a demarcating event which many orient and interpret their lives in relation to. In many societies, matrimony provides the frame for legitimate sexual relations and reproduction. Post-traditional norms of cohabitation and single life offer different ways of organizing intimacy and childrearing. In Denmark, for example, there are presently more single adults than wedded couples (Statistics Denmark, 2013). Even so, marriage retains considerable symbolic and material import. This is reflected not merely in the excess of bridal gowns, wedding cakes, and honeymoon destinations displayed in magazines and reality shows, but also in the struggle by many same-sex couples across Europe for the right to marry.

In addition, involuntary exile is clearly an important and disruptive event. Most of my Danish informants, as we have seen, are shocked when they realize that they cannot bring their partner to Denmark but must move to Sweden to establish the family life they desire. It interferes greatly with their plans and dreams. It also more profoundly disturbs their trust in the Danish state. Many recount how a sense of security and belonging which as citizens they had taken for granted is suddenly in jeopardy. To explore my informants' lived experiences of border crossing and transnational marriage a narrative interview technique thus seems particularly well-suited.

While narrative research is a broad church (Chase, 2005; Riessman, 2008) I follow a constructivist approach (White, 1980-81; Bruner, 1991). Narratives, on this view, are selective and interpretative accounts wherein social occurrences are organized and given meaning and subjectivity articulated (Riessman, 1993, pp. 2-4; Chase, 2005, p.656). In any story-telling, some 'events which might have been included ... [are] left out' (White, 1980-81, p.10, emphasis removed). Likewise, in the effort to create credible plots and characters and distribute credit and blame some discourses are mobilized while others are not (Holstein and Gubrium, 1997). My informants, by narrating their experiences pick out and weave together a set of happenings such as falling in love, moving to Sweden, applying for citizenship, getting divorced, acting politically, raising

children, struggling with unemployment. They draw on and sometimes re-appropriate cultural repertoires of, for example, romance, migration, patriotism, and human rights. In doing so, they narrate themselves as individual persons, couples, families, citizens or exiles.

A concern might be that research participants tell stories that present themselves to their best advantage, downplaying issues that do not tally with dominant norms and codes of behaviour. This problem should not be overstated, however. All ‘identity work’ is about interactional positioning where we project and negotiate self-identity in conversation with present or imaginary interlocutors (Holstein and Gubrium, 1997; Davies and Harré, 2001). The aim of the analysis is not retrieve an authentic self but rather to explore how subjectivity is constructed situationally by drawing on and rearticulating discourses in the social realm (Maynes et al., 2008; Holstein and Gubrium, 1997). Of course, researchers can encounter interviewees who are very skilled at crafting heroic public selves. This is typical for professional politicians and other media trained persons and is thus more of a problem for elite interviewing. By contrast, all my informants, even those whose civil society activism has given them some experience with public communication, construct complex narratives of vulnerability, agency, pragmatism, principles and self-interest.

I also use narrative interviews as a source of information about the strategies of cross-border movement that have been devised in response to the tightening of Danish family unification rules. In this a risk is that the informants leave out important parts of their actions for example because they fear repercussions. The guarantee of anonymity reduces this problem and the fact that several informants tell about semi-legal or illegal tactics suggest that it is not a serious issue.

Telling stories is not necessarily something my interviewees do unprompted. From a constructivist perspective it is typically stressed that “the researcher does not *find* narratives but instead participates in their creation” (Mishler quotes in Riessman 2008, p. 21). As interviewer I sought to encourage, facilitate, and actively listen for stories by offering themes, cues, and occasions for reflection (see Chase, 1995, 2005; Holstein and

Gubrium, 1997). As Susan Chase (1995, p.12) points out this requires particular attention to asking questions which 'invite the other's story'. Good candidates are often concrete queries about how something happened which is of import in a narrator's life (Riessman 2008, pp. 24-25).

I usually began my interviews by briefly recapitulating the overall topics of the research project (family unification, moving to Sweden, and what this means for my interviewees' rights and sense of belonging), explaining the format (1-1½ hours of informal conversation), thanking my informants for participating, requesting their permission to record the conversation (which was always granted), ensuring them of anonymity, and asking if they had any clarifying questions before we could begin. I then typically asked if they could start by telling me how they met each other and came to move to Sweden. Or if they had not already moved, how it came about that they were planning to leave? This generally worked well as a way of opening up the conversation and directing the interview to the experience of border crossing and transnational marriage which was both central to my research interest and pivotal events in my informants' lives. Most interviewees responded by offering temporally ordered sequences of events and holding the floor without significant intervention from me for 5-20 minutes. A few informants – couples and individual narrators – continued for up to an hour without interruptions. These opening accounts often ended with statements like 'so this is our story', 'that's the story so far' or 'so that's the short version'. Some ended their narration with a pause or invited me to ask questions. Other narratives had no easily identifiable ending.

When the opening stories were over I would often ask informants to clarify key happenings to ensure I had understood them correctly. Or I invited narrators to expand on specific issues they had brought up. In this process the sequence of events was often retold and a richer account was woven adding more details of events, emotions, and often sub-narratives. I would then ask my informants to reflect on their use of EU law versus national rules and explore further their views on family migration regulation and participation in public debate or civil society activism. If, as was often the case, my



informants had already touched upon these topics in their story-telling, I would merely return the conversation to those issues. Otherwise, I would introduce the themes myself.

A question which often generated thoughtful and interesting contributions concerned my informants' sense of home ('so what and where is home to you?'). Though themes of belonging or attachment were central to the project from the outset I was initially unsure about the best way to invite my informants' reflections on this. The interview guide below puts the question using more theoretical or academic concepts of affiliation or community. Yet after a few try-outs I found out that asking about 'home' was helpful. This term from our ordinary language was easy to understand across cultural and linguistic barriers and seemed to make intuitive sense to most of my interviewees who responded well to it.

In the interviews I not only sought to prompt my informants to tell their wider story of family unification and moving to Sweden with as much detail as possible. I also actively listened for such shorter stories which are often woven into the fibre of the larger narrative and help to give it meaning. Some interviewees offer many and rich anecdotes in response to questions or to illustrate and emphasize a point. According to Chase (2005) this is quite typical in the telling of stories. It indicates, she claims, the impact the event has made on the narrator who remembers it vividly. As with narratives generally these sub-narratives are moral tales with which the story-teller is making a claim and seeks to persuade listeners or readers.

In qualitative and narrative interviewing the researcher is thus actively involved in the conversational construction of meaning. The positionality of the interviewer and specific rapport created in the situation help shape the stories told (Riessman, 2008; Holstein and Gubrium, 1997). Another researcher conducting a similar study might thus collect and construct a somewhat different interview material. Still, narratives should not differ too much. Most research participants came to the interview with a clear sense of having a story to tell reflected in the statement 'so this is our story'. Many, as we have seen, had also told versions of this tale before to the media, although the anonymous and narrative interview situation allowed them to develop longer, more

complex storylines. Other qualitative studies among ethnic minority exiles find similar representations.

### *Language and transcription*

In narrative research it is important not to ‘treat language as transparent’ but pay attention to how it conditions meaningful communication (Riessman, 1993, 2008). Even within the same language area different dialects and conventions abound reflecting geographical and class-based distinctions. These are usually important to how individuals are positioned, the cultural references that make sense to them and the symbolic capital they can mobilize. This is all the more evident in multi-lingual research. Many qualitative studies where speakers of more than one vernacular are involved therefore focuses on one or a few specific linguistic groups whose language the researcher speaks fluently or with considerable competence. That in turn helps to ensure that important connotations are not lost in translation. It also reduces power-imbalances as informants are able to speak in their native tongue without third-person mediation.

Yet because of the linguistic diversity of my informants, with interviewees from almost all regions of the world, such a scenario is hardly possible here. Instead, my interviews were conducted in either Danish or English. One exception was my conversation with Danish Julie and Australian Derek. They had found that it worked well for them when they both spoke their own native tongue. Derek explained that though he had learned Danish he no longer wished to speak it because of the ill treatment he felt he had been subjected to, as discussed in chapter four. This illustrates nicely the importance of language and communicative strategies for the narrative construction of identity especially in a politically charged terrain.

The linguistic conditions of the interviews thus call for some reflection. In my conversation with Danish Anna and Turkish Enes, two young university students, Enes talked a lot about the role of language in his experience of cross border movement. He explained that though living and studying in Malmö he did not wish to learn Swedish. As long as he speaks English he can position himself as an international student – a

cosmopolitan identity that both he and Anna embrace. But if he learns Swedish he will speak it with an accent which will mark him out as an immigrant – an unwanted foreigner. Enes related this argument to the interview situation arguing that if I had been British I would have had greater mastery of English which would put me in a position of superiority in the conversation. Since, however, we were all speaking a second language this made us ‘almost equal’ (Interview with Anna and Enes 2011, p.31). I think Enes’ point is well taken as far as it goes. To be sure, any interview situation is marked by inequality between the interviewee who provides the material for research and the interviewer who has the privilege of interpreting and presenting what is said. But at least this inequality is not greatly enhanced by language differences. The medium of a common second language can help to level the playing field. Yet access to that medium is not evenly distributed and in a few interviews the non-Danish informants spoke English with some difficulties or not at all. This affected my ability to understand what was being said and influenced the transcription and analysis. It also arguably affected their participation as these informants seemed less confident talking or struggled to express what they wanted to say.

One interview had to be conducted in Danish and Spanish with the Danish informant, Martha, interpreting between me and her Guatemalan husband Guillermo. Though the couple usually spoke Spanish this mode of translation was normal for them when in company with Martha’s friends and family. As far as I could judge, Martha seemed to interpret loyally with few comments of her own. Guillermo, for his part, was an extraordinarily competent story-teller and with a very distinct voice of his own, albeit through translation, in the interview. Still, the process of translation greatly shaped the flow of the conversation and the form of their narrative interaction.

All interviews were recorded and subsequently transcribed by myself except in three cases where I relied on a temporary research assistant for the transcription. The style of transcription was simple. I wrote out verbatim what my informants said including false starts, laughs and longer pauses. As the object was not a socio-linguistic study I did not employ the more elaborate notation systems often used in for example conversation analysis (Riessman, 2008). In any case, the multi-lingual setting would not have been

conducive to such a close analysis of micro-structures and practices. When presenting quotes in the text I removed false starts where they made sentences unduly difficult to read and marked this with '...'. Where whole sentences are left out for reasons of space and readability this is likewise indicated with '...'. Words and sentences that I was unable to hear or make sense of in the transcription process are marked with [xxx]. Quotes from interviews in Danish I have translated into English. I kept my informants' emphasis of particular words, indicated with italics, except where translation made these confusing. Especially in the interviews conducted in English most speakers, including the interviewer, make occasional grammatical errors. These are also maintained in the quotes since tidying up the language would in many cases be a rather invasive undertaking changing the rhythm and tone of the conversation. As I am exploring transnational lives, usually lived across linguistic boundaries, it is appropriate that this is reflected in the interview material.

### *Narrative analysis*

Narrative analysis, as already pointed out, is distinguished from other qualitative strategies by its emphasis on stories. Where for example grounded theory methods often organize data according to different empirically generated codes and categories narrative analysis seeks to preserve and re-present narrative structures (Riessman, 2008; Chase, 2005). In approaching the data I followed this methodology while keeping in sight the project's analytical focus on citizenship and border crossing. The analysis looked at each interview separately and then found patterns in the storylines between different conversations. Theoretically, my reading was informed by the thin/thick debate over citizenship and migration as well as by agonistic and deliberative democracy. At the same time I sought to remain empirically sensitive, allowing for unexpected storylines like 'last resort' and actively sought out contrasting findings (cf. Clarke, 2005).

I first identified chains of key events - the beginning of a relationship, the decision to go to Sweden, life abroad, and, where relevant, the subsequent move to Denmark. Here I primarily analyzed the opening stories my informants told in the beginning of the interviews. I employed what Riessman (2008, pp.53-54) calls thematic narrative

analysis. This is a type of narrative analysis ‘where the primary attention is on “what” is said rather than “how”, “to whom” or “for what purposes”.’ I thus organized the interviews into different groups according to the content of the stories. This initial coding process was largely inductive.

This was followed by careful analysis of how my informants interpret and give meaning to their cross-border practices and experiences. I drew out the discourses they mobilize to make sense of their situation and justify their actions. How is identification and belonging constructed in anecdotes and longer sequences? What relation, if any, is articulated between practices of border crossing and public voice? Focus here is still on the content of narratives but with more attention to form as well. The analysis shifts back and forth between in-depth investigation of selected interviews and the broader data corpus. To give an example, examining in detail Martha’s story presented in chapter seven helped to orient my interpretive engagement with other narratives exploring similarities and differences and opening up new ways of organizing the interview corpus.

When re-presenting my informants’ stories I use different textual strategies. In the initial content centred analysis I construct short biographies and storylines that are easy to convey and compare. Here I often paraphrase rather than reproduce extensive raw-data. By contrast, when I analyze constructions of identity and stories of participation I use quotes, sometimes lengthy ones. This is to show the discourses informants draw on and the rhetorical devices they deploy like for example Martha’s term of ‘forced non-marriage’. These sequences are offered as evidence to support my interpretations and allow readers to make their own judgements. To ensure anonymity all names of informants have been changed. Where interviewees have participated in public debate and especially if they or their partners have carried out illegal or semi-legal activities, further anonymization is carried out by changing background factors like country of origin or occupation. This is done carefully, with respect for markers of identity such as class and religion, in order to change as little as possible in the overall narrative.

The analysis seeks to present a nuanced picture of the data reflecting and exploring the diversity of the perspectives and articulations. I include stories that are overtly political and others that are less so as well as narratives tallying well with agonism and deliberative democracy and accounts resonating with liberalism or forum-shopping. I have also sought to ensure that the voices of differently situated informants are reflected in the analysis. There are vocal and activist interviewees like Charlotte as well as quiet and sombre informants like Jonas; citizens such as Ajda and Carsten and migrant spouses like Mary Ann and Jamil. I sought to maintain a reasonable balance in the amount of analytical attention given to political and less political narratives, although the former as the focus of the thesis is given more weight in order to carry out conceptual development.

### **List of interviews**

Peter and Marielle, 2011  
Anja and Miguel, 2011  
Line and Jamil, 2011  
Katrine and Mark, 2011  
Laura, 2011  
Susanne and Lisbeth, 2011  
Aimeé, 2011  
Anna and Enes, 2011  
Helga and Bekim, 2011  
Carsten and Mary Ann, 2011  
Nikolaj and Natasha, 2011  
Eva, 2011  
Julie and Derek, 2011  
Maja and Enrique, 2011  
Helene and Jasper, 2011  
Carmen, 2012  
Charlotte, 2011  
Nina, 2011  
Astrid, 2011

Jakob and Daiyu, 2011  
 Rebecca and Narayan (and Kayravi), 2011  
 Martha and Guillermo, 2011  
 Iris, 2011  
 Aisha, 2011  
 Maria, 2011  
 Maiken and Selim, 2011  
 Cecilie, 2011  
 Ajda, 2011  
 Jonas and Grace, 2011  
 Nhean, 2011

**Table 1**

<b>Interview participants</b>					
<b>Name</b>	<b>Gender</b>	<b>Age</b>	<b>Education/ occupation</b>	<b>Country of nationality</b>	<b>Civil status</b>
Peter	M	47	Engineer	Denmark	Married to Marielle
Marielle	F	28	Hairdresser	Cote d'Ivoire	Married to Peter
Miguel	M	26	Accountant and blacksmith	Cuba	Married to Anja
Anja	F	30	Student	Denmark	Married to Miguel
Line	F	32	NGO-worker	Denmark	Married to Jamil
Jamil	F	29	Care assistant	Egypt and Sweden	Married to Line
Katrine	F	23	Student	Denmark	Married to Mark
Mark	M	25	BA in construction management	Canada	Married to Katrine

Laura	F	30	Student	Denmark	Married
Susanne	F	33	Insurance agent	Sweden	Married
Lisbeth	F	About 40	Teacher	Denmark	Married
Aimeé	F	25	Student (on maternity leave)	Denmark	Married
Anna	F	22	Student	Denmark	In relationship with Enes
Enes	M	29	Student	Turkey	In relationship with Anna
Helga	F	Above 60	Retired	Denmark	Married to Bekim
Bekim	M	46	Self-taught construction worker	Albania	Married to Helga
Carsten	M	45	Student	Denmark	Married to Mary Ann
Mary Ann	F	31	BA in management (on maternity leave)	The Philippines	Married to Carsten
Nikolaj	M	36	IT consultant, MSc	Denmark	Married to Natasha
Natasha	F	31	MSc and PhD in economics and maths	Ukraine	Married to Nikolaj
Eva	F	36	BA, unemployed	Denmark	In relationship
Julie	F	23	Student (on maternity leave)	Denmark	Engaged to Derek
Derek	M	24	Self-taught entrepreneur	Australia	Engaged to Julie
Maja	F	25	Student	Denmark	Married to Enrique
Enrique	F	29	Engineer, student	Cuba	Married to Maja



Helene	F	47	Dentist	Denmark	Married to Jasper
Jasper	M	38	Degree in computer science, care worker	Sudan	Married to Helene
Carmen	F	42	Secretary	Denmark	Divorced, engaged
Charlotte	F	31	Engineer	Denmark	Married
Nina	F	27	Student	Denmark	In relationship
Astrid	F	31	Social worker	Denmark	Divorced
Jakob	M	25	Shipping broker	Denmark	Married to Daiyu
Daiyu	F	25	On maternity leave	China	Married to Jakob
Rebecca	F	30s	MD, PhD	Denmark	Married to Narayan
Narayan	M	30s	Self-taught cell phone technician	Tanzania	Married to Rebecca
Kairavi	F	?	Home maker	Kenya	Widow (mother of Narayan)
Martha	F	22	Student	Denmark	Married to Guillermo
Guillermo	M	28	Self-taught social worker	Guatemala	Married to Martha
Iris	F	24	Student	Canadian	Married
Aisha	F	36	Hairdresser, unemployed	Denmark	Divorced, in relationship
Maria	F	31	Student, teacher	Denmark	Divorced
Maiken	F	26	Student	Denmark	Married to Selim

Selim	M	32	Student	Turkey	Married to Maiken
Cecilie	F	25	Student	Denmark	Married
Ajda	F	23	Student	Denmark	Married
Grace	F	25	BA	Denmark	Married to Jonas
Jonas	M	24	Works for a transport company	Denmark	Married to Grace
Nhean	M	29	PhD Candidate	Denmark	Married
Notes: Age, education/occupation, country of nationality and civil status at the time of the interview (with changes due to anonymization).					

## **Interview guide**

*The interview guide is organised around a set of themes and concepts central to the study: EU, rights, post-national identity, citizenship status, civic practice. The questions are meant as inspiration and are largely but not exclusively open-ended. A few seek explicitly to elicit critical reflections and justifications. The idea behind the interview guide is to provide different ways of inviting the informants to narrativize their experiences in the interview. Not all questions need to be asked in each interview and the order in which they are asked is not decisive.*

### Disclaimer

Thank you so much for agreeing to participate in my PhD study of family unification and citizenship. With your permission I record the interviews for the purpose of transcribing and analyzing them for the research project. The recordings will be treated confidentially and kept for the duration of the study after which they will be deleted. You are of course guaranteed anonymity. That is to say, when I use the interview material and retell you stories, names and features by which you might be recognized will be changed. Do you have any question or queries before we begin?

### Civic practice, rights, citizenship status

- Could you tell me about how you came to live in Malmö?
- Why do people like you move to Malmö?
- How come you chose Malmö/Sweden?
- What problems did you face that made you move to Sweden?
- Some people who were affected by the new family unification regulation chose to express their discontent in public for example in the press. Is this something you have considered doing?

### Marriage and citizenship

- How did you meet?
- Describe the situation you found yourself in after you met your partner
- Describe the situation you found yourself in after your wedding
- So when you realized that your partner could not come to Denmark how did you react?
- What were your thoughts?
- How did it make you feel?

#### EU, rights, civic practice

- So tell me about moving to Malmö? How did you go about it?
- Could you tell me about the application process?
- The rules seem rather complex. How did you figure out what to do?
- You mentioned the EU-rules. Could you say a bit more how you made use of them?
- It could be argued that by making use of EU-rules people like you are circumventing Danish law. What are your thoughts on this?
- Is this acceptable do you think?

#### Sense of belonging/post-national identity, EU

- Tell me about your life here in Malmö
- How do you find living here?
- What about your spouse?
- So you have lived in Malmö for [time period] – what are your thoughts on the future?
- How do feel about going back to Denmark?
- How about the future?
- In terms of affiliation and community, how would you describe your-self?
- Has this changed after you have been through this family unification process?

#### Background information

- Full names
- Age
- Nationality
- Education/profession
- Children
- Time and duration of stay in Sweden/Denmark

## APPENDIX II: ON NEWSPAPER DEBATE

This appendix contains an analysis of the public debate over family unification in the two largest Danish broadsheets, the centre-right paper, Jyllands-Posten, and the centre-left paper, Politiken. The two are selected because they constitute the ideological extremes within mainstream public discourse on migration issues and thus give a very broad sample of opinions.<sup>76</sup> From these sources I collect, via the database Infomedia, all editorials, columns and letters to the editor containing the word family unification (*familiesammenføring*) in 2003. This year is chosen because of the intensity of the discussion as the effects of the 2002-restrictions of the law started to become visible. This public dispute led to significant changes in the regulation towards the end of the year as described in chapter three and five. Other years and other papers or media, for example television or blogs, could give a somewhat different picture and might be interesting to include in a larger study.

It is a qualitative textual analysis. The material has been coded following a strategy of grounded theory (Clarke, 2005; Strauss and Corbin, 1998). In an iterative process of reading and re-reading the material I developed and adjusted the categories while drawing on political theory (Kelly, 2005; Okin, 1999; Miller, 1995) and insights from previous studies of Danish public discourse on migration (Hussain, 2000; Hervik, 2004; Karpantchof, 2003; Rydgren, 2004; Lægaard, 2005; Siim 2007). The texts are grouped according to five codes: 'Rights-based international liberalism', 'State-feminism', 'Ethno-nationalism', 'Social-democratic communitarianism', and 'Other'. A few articles articulate more than one discourse, but have been categorized after the text's main argument. This coding is combined with a close, discourse-theoretically inspired analysis (Wetherell, 2001; Howarth, 2000) of how central concepts such as citizenship, rights and borders are constructed in the debate.

### Debating the right to love

In the Danish debate a number of different positions are put forth concerning the regulation of family unification by citizens, politicians and newspaper editors. Some are

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<sup>76</sup> For a critical analysis of the role of Danish media in the public debate over immigration, see Hussain 2000.

in favour of a restrictive policy, while others argue against it. Their articulations and negotiations draw on discourses of liberty, feminism, social-democracy, and ethno-nationalism. Yet across the board, a central theme is the idea of a right to love, which is interpreted in competing ways and related to different conceptions of community. This is what I examine in the following sections.

### *Rights-based international liberalism*

The largest group of articles I have categorized under the label ‘rights-based internationalist liberalism’. Strongly supported and propagated by the editors of the social-liberal newspaper Politiken, it is a discourse found mainly though not exclusively in this paper. Apart from the editors themselves, it is expressed by a number of politicians from centre-left parties, especially by leading members of the small Social-Liberal Party (*Det Radikale Venstre*). It is also put forth by a group of other debaters as well as a handful of citizens who are themselves personally affected by the law.

Rights-based internationalist liberalism is a position which stresses the rights of Danish citizens and/or residents to live in Denmark with the partner of their choice. The general line of argument expressed here is that love knows no borders and the right to live in your home state with your closest family is essential to the concept of citizenship. As the former Minister of Economic Affairs and then leader of the Social-Liberal Party, Marianne Jelved, puts it: ‘A citizen must under all circumstances be able to reside in his or her country with his or her family.’ (Jelved, 2003; see also Politiken, 2003a-c; Hornsgaard, 2003; Andersen, 2003).

The following quote from a letter to the editor by Anne Marie and Henrik Voldborg illustrates the argument:

To fall in love with a foreigner and decide to get married is a big decision. To come home to Denmark with one’s partner and children and find out that one’s own little family is not welcome in Denmark is a horrible chock. Despair, impotence, anger, insecurity, anxiety and risk of depression, no, the feelings are indescribable. Most Danes, who were given the choice between living in Denmark or giving up their marriage, probably ask themselves what a Danish citizenship is worth in reality when one of the most basic rights is not respected, that is, the right to marry whom one wishes to

without being excluded from one's own country. (Voldborg and Voldborg, 2003)<sup>77</sup>

In this way the right to family unification, qua the right to love, becomes a fundamental freedom without which citizenship is an empty category. Though they do not write so explicitly Anne Marie and Henrik Voldborg's letter to the editor gives the impression that they have some personal experience with the situation they describe, perhaps via friends or relatives.<sup>78</sup>

Philip von Platen belongs to this small group of people who have chosen and been able to give voice in public to their personal grievances. He has helped fuel the debate over the restrictive regulation, and especially the attachment requirement, by drawing attention to its consequences for Danes living abroad. Von Platen tells his story in a letter to the editor in Jyllands-Posten 24 April 2003. A Danish citizen, he married an American woman. After living together for 18 years in the USA they decided to move to Denmark. The couple met the age requirements – both were obviously more than 24 years old – but the application was denied because of the attachment requirement. Their joint connection was not, it was deemed, greater to Denmark than to any other country, and hence they could not get family unification (von Platen, 2004). Philip von Platen ends his letter to the editor with a very critical comment on the Danish regulation:

Every week Danes are forced into involuntary exile - human beings whose only crime is to love a foreigner. It is these ruined lives which are hidden behind the government's happy message that the restrictions are working because the number of family unification applications is dropping. ... If Denmark wishes to be part of the global society then we cannot live with that Danes who go abroad must fear that they cannot come home and live a full life – unless they have remembered to marry a Dane. (von Platen 2004)

The quote underlines again the importance of love in this discourse and how it is tied to mobility and cross-border movement. In a globalized era, it is pointed out, it is unreasonable to expect citizens not to fall in love and marry outside of the national community (see also Grove, 2003; Politiken, 2003c). As an ethnic majority citizens living abroad, von Platen is clearly not a member of the groups whose life the law

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<sup>77</sup> I have translated all quotes in the empirical analysis from Danish to English.

<sup>78</sup> Anne Maria Voldborg has also participated in Marriage without Borders.

specifically intended to regulate. This prompts us to examine more closely who has or has not a right to love.

This is often slightly unclear. Some debaters refer to Danes (Wilson, 2003b; Gerner Nielsen, 2003b; Lemcke, 2003; Hollingbery, 2003a-b; Lind Simonsen, 2003; Grove, 2003; Nørlem Sørensen, 2003). Others use the phrase Danish citizens (Nielsen, 2003; Gerner Nielsen, 2003a; Politiken, 2003a-c; Arestrup, 2003; Andersen, 2003; Jelved, 2003). On the face of it, there does not seem to be a difference. The terms appear to be used, in the rights based discourse, more or less interchangeably. This suggests that a Dane is simply anyone holding a Danish passport. However the debate takes place in a context where 'Danishness' is a heavily loaded concept and often used in a rather more restrictive sense capturing only ethnic majority and not minority citizens (Karpantschhof, 2003, pp.35-36; Hussain, 2000). This underlies the preference for the more neutral concept of Danish citizenship on the part of some participants. Indeed there is an explicit fear of a 'gradation of Danish citizenship' (Politiken, 2003c) in the law as well as in the debate which would mean that this key status no longer entails the same rights and duties for all (see also Arestrup, 2003; Gerner Nielsen, 2003c; Shah, 2003; Sethi, 2003; Politiken, 2003a). The right to love thus belongs to anyone who is a full member of this political community, the Danish state.

Some takes this argument a step further and include denizens such as migrants and refugees. Rasmus Nørlem Sørensen (2003) puts it this way: 'Let us ... expand our criticism of the affiliation requirement and the marriage paternalism and fight for just laws for all in Denmark and not just [for] those who "resemble ourselves" enough for us to identify with their problems.' The right to love and family unity within ones country of residence is constructed as a basic human right. While it requires a state to protect it, this right is assigned in principle to anyone who belongs to the universal community of the human species (see also Clausen, 2003; Kjær, 2003; Clemensen, 2003; Mortensen, 2003; Svarre, 2003; Wilson, 2003a; Politiken, 2003a).

The articles in this position thus strongly defend a right to love and family unity. They also, however, illustrate the classical liberal tension between universality and



particularity (cf. Benhabib, 2006, pp.30-33): Individuals have rights qua human beings, but these universal human rights are protected and upheld by 'bounded communities'. This leaves vulnerable those whose political membership is uncertain.

### *State-feminism*

A second group of texts are coded under the heading state-feminism. It is a smaller position put forth in both papers, though not by either's board of editors. It is defended especially by the then Minister for Refugee, Immigration and Integration Affairs and Member of Parliament for the Liberal Party, Bertel Haarder. It also articulated by leading social-democratic parliamentarians, including the then party chairman, Mogens Lykketoft, as well as by a few other debaters. It is thus largely a liberal and social-democratic discourse.

The feminist position resembles the rights-based liberal internationalism in its focus on the right of individuals to make their own choices in life and love. It differs, however, in the assessment of how this goal is best achieved. The argument is that young ethnic minority men and especially women are pressed to marry partners they hardly know, let alone love – with detrimental effects for liberty and gender equality (Jørgensen, 2003; Mandel, 2003). It is pointed out that within, for example, the Turkish diaspora in Denmark it is customary for parents to arrange their children's marriage (Haarder, 2003d). Arranged marriages are in themselves seen as dubious from this perspective. They conflict with the ideals of personal autonomy and romantic love. Even when a young person consents to the match he or she may simply be giving in to subtle parental pressure (Mogensen and Nørgaard, 2003; Mandel, 2003).

This problem, according to the state-feminist line of argument, is aggravated by a particular practice of cross-border matrimony. Prior to the restrictive regulation of family unification parents and relatives often found a spouse for their children from the country of origin (Haarder, 2003d). According to two prominent feminist debaters, Britta Mogensen and Lone Nørgaard (2003), money, cultural practices and patriarchy interplay to produce this situation. 'The ... marriages are both a visa to the West and a successful attempt to uphold traditional values associated partly with female

suppression and partly with religious submission.' Because so much is at stake for the families involved – honour and prosperity - the young men and women often experience emotional blackmail, it is argued. Some who resist are subjected to threats, violence or, in worst case, murder (Mogensen and Nørgaard; Haarder, 2003a-c).

Moreover, when the marriage is arranged with a spouse from the country of origin, this easily leads to a troubling socio-cultural gulf between husband and wife, some debaters point out. A former headmaster, Steen Flemming Jørgensen (2003) tells about a young Pakistani woman, just graduated from high school, who is now entering into a marriage with a cousin from Pakistan she does not know. Having spent only a few years in school, the spouse 'can hardly calculate nor read. Now he is getting married to this young intelligent girl, who can look forward to years as a homemaker and mum.' And he asks rhetorically: '[H]ow will the communication be between this well-educated and partly liberated woman and this man from some distant village, who has learned that women should be silent and take care of the home and his children?' (Jørgensen, 2003; see also Haarder, 2003d)

This matrimonial practice, it is stressed, thus prevents a group of youngsters in Denmark from exercising their right to love and it upholds grossly unequal gender relations (Sundoo, 2003; Haarder, 2003a). A restrictive family unification policy is therefore a necessary means to help some young adults 'resist their parents and grandparents tyranny over who they should marry' (Lykketoft and Meldgaard, 2003; see also Haarder, 2003a-b). As Bertel Haarder (2003a) argues: 'It is the parents and family who violate human rights in this case – not the government.'

Several debaters however recognize that the attachment requirement have unfortunate consequences for some men and women – mainly well-off ethnic majority citizens like my interviewees – who have fallen in love with foreigners. These negative side-effects of the law should be avoided, if possible, but not at the cost of letting down the minority youths who are in danger (Jensen, 2003; Jensen, 2003a-b; Lykketoft and Meldgaard, 2003): As headmaster Isabelle Mandel (2003) puts it:

They who argue against the new rules for family unification underline precisely this, that human beings should be allowed to decide themselves who they fall in love with and wish to live with. This is a value we should defend. That is what this law is about – that also young persons with other homelands than Denmark should be allowed to choose freely.

Seen from this perspective, Bertel Haarder argues, the new law is a success. And he quotes Fatih Alev, a Danish-Turkish Imam, for the following optimistic assessment of the rules: “There are youngsters who see the restrictions as an advantage. Now the girls in particular can argue better in relation to their parents for why they do not wish to get married.” (Alev in Haarder, 2003c; see also Jensen, 2003a).

Hence, according to this state-feminist position, the right to love is protected and upheld – also for the vulnerable - by the government’s intervention, even if it means restricting to some extent this same right for the privileged. Similar arguments are found in the political theory literature on migration and multiculturalism. Some feminist scholars also stress the need for state protection of ethnic minority women against patriarchal family structures (see especially Okin, 1999, 2004; for nuanced discussion of family unification and forced marriages, see Phillips, 2007).<sup>79</sup> The theoretical debate, however, often focuses on the necessity to restrict or abandon special rights for cultural and religious minority groups (see for example Barry, 2002). The state-feminist position in the family unification debate, by contrast, favours limiting the general, individual rights of all citizens to protect young immigrants.

### *Ethno-nationalism*

A third, somewhat larger section of articles in the debate draws on what I refer to as an ethno-nationalist discourse. It is found mainly in Jyllands-Posten and defended by the editors of this paper. It is also put forth by a handful of centre-right parliamentarians and politicians, especially by Søren Krarup, reverend and prominent former Member of

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<sup>79</sup> Susan Okin’s arguments are controversial and have been subjected to extensive criticism in the literature (Cohen et al., 1999; Kukathas, 2001; Shachar, 2001). Other political theorists are articulating different and more culturally sensitive feminist positions (see for example Shachar, 2001; Deveau, 2006; Phillips, 2007; Mookherjee, 2009). While a similar diversity can be found in European public debates over for example headscarves, the predominant feminist discourse is severely critical of Islam and minority cultural practices (Sauer, 2009, pp.87-89; Scott, 2007, pp.151-174).

Parliament for the Danish People's party. A few other debaters also support this position.

Like the feminist discourse, the ethno-nationalist rhetoric provides support for a restrictive family unification policy. The reasons given are different, though. The overall argument is that the Danish nation and welfare state is threatened by extensive immigration via family unification (Moes, 2003; Jepsen, 2003; Krarup, 2003b). An editorial in Jyllands-Posten (2003a), for example, condemns the allegedly irresponsible social-democratic and social-liberal politicians whose lenient refugee and family unification policy admitted all these newcomers to the country. The problem is articulated as follows:

Denmark has through the past 20 years experienced a massive immigration of uneducated people, typically Muslims, who... helped by some mad, unenlightened imams constitute an increasing burden on the Danish society. Not just because we are talking about people without education, who have primarily come to be provided for by the Danish welfare-system, but also because they have demonstrated a worrying unwillingness to become integrated into a society, they clearly view with skepticism and perhaps even hostility. (Jyllands-Posten, 2003a)

Immigrants and Muslims in particular are thus portrayed as generally problematic – unskilled, lazy, sectarian and a threat to society. The new restrictive family unification policy is presented necessary to stop this further immigration (see also Bitsch, 2003; Jyllands-Posten, 2003d-e; Kristensen, 2003a-b; Jepsen, 2003)

Some debaters admit that the law has had negative effects on Danes living abroad, as they are no longer able to return with their loved ones to their native country (Moes, 2003; Larsen, 2003; Jyllands-Posten, 2003c). In response to Phillip von Platen's letter to the editor referred earlier, Søren Krarup (2003b) expresses great sympathy, regretting the unhappy situation, which was not 'the law's intention':

Under normal circumstances we all would react with indignation to such a case. ... But the fact of the matter is that because of 20 years of immigration policy madness (*udlændingepolitisk vanvid*) things are not normal. They are highly un-normal. We must protect ourselves against this. We must protect

Denmark against being overrun by the flood of migrants. This is why one cannot just move to Denmark when one feels like it. This is why there are requirements about age and attachment which must be met ... and unfortunately we cannot distinguish between a Dane who has lived in the USA and Middle-Eastern immigrants. (Krarup 2003b)

It is the danger of the present extraordinary situation for the country which makes it necessary to limit access to Denmark - even for Danes and their spouses (Krarup, 2003b). The defence of the community overrides the rights of individual citizens in this discourse.

Krarup later changes his view after hearing more sad stories from Danes abroad. He subsequently favours a revision of the law which does in fact distinguish between 'Danes' and 'Middle-Eastern immigrants' (Krarup, 2003a). The former has a strong attachment to Denmark while the latter do not and the two should therefore not be treated alike. If Krarup means to differentiate between Danish citizens and immigrants with permanent residence this is not, perhaps, very remarkable. Citizen-status does generally provide a person with a wider set of rights and privileges (cf. Ersbøl, 2004, p.86; Joppke, 2009, p.vii). Yet elsewhere in the text there are indications that Krarup intends to make a distinction also within the category of citizens. He thus refers to 'culture and family ties' and suggests that when it comes to acquiring Danish citizenship religion is a relevant criterion. '[I]f we are to evaluate someone's possibility of becoming integrated into Danish society, religion is naturally something quite decisive. Christian Europeans have evidently quite different predispositions than Muslim Asians. That goes without saying.' (Krarup 2003a) This suggests an ethnocentric or culturalist undertone where only those citizens with the right religion and cultural background are proper Danes. Interpreted thus, a right to love and family life in Denmark is put forth, but only for a subset of citizens. Only this, it appears, is compatible with protecting the Danish *Kultur-Nation*.

Some support this differential treatment of ethnic majority and minority citizens (Larsen, 2003; Kristensen, 2003a). Others advocate distinguishing between foreigners from western and non-western countries applying for family unification (Moes, 2003; Jyllands-Posten, 2003d). If these strategies conflict with norms about equality and

human rights treatises against discrimination then perhaps it is time to revise or drop these international conventions, it is argued (Krarup, 2003b-c; Jyllands-Posten, 2003b; Moes, 2003). Niels B. Larsen formulates it thus:

There is no doubt that the new rules concerning family unification affect persons whom it was not the law's intention to affect. Let us therefore disregard [the] various conventions and decide ourselves. Let ethnic Danes, who fall in love abroad, freely bring home (*indføre*) their spouse. Denmark is an independent country - we should decide ourselves whom we want to have residing here. (Larsen, 2003)

In this discourse, international human rights are seen as threatening national sovereignty. The same goes for the European Union which should not interfere with Danish immigration and family unification policy, according to a few debaters (Thomsen, 2003; Engel, 2003). If there is a right to reside in this country with a foreign spouse - and this is by no means certain - it is not a human right, but a right of citizenship or Danishness. Others may have a right to love, but this does not necessarily entail a right to family unification in Denmark. The two, according to Johnnie Schoelzer, should be disentangled:

If immigrants residing here insist on finding their spouses in the home country this is ... their own business. They are thereafter free to leave Denmark and move together to the chosen one's home country. It is no natural law that family unification must always take place in Denmark. If they truly love their spouses there is hardly a problem in settling in the home country. Love, as is well known, conquers all. (Schoelzer, 2003)

Taken together, then, this ethno-national discourse does allow for the right of (some) citizens to love and family life in Denmark with a foreign partner. But it is a highly circumscribed and exclusive right which can be overridden if the guarding of the national community requires so.

The distinctions drawn in this discourse both between migrants and citizens and within different groups of citizens merit close attention. They build on a nationalism which underlines its cultural and not biological foundations. Hence a couple of the debaters explicitly stress that they are not racists (Moes, 2003; Krarup, 2003c). Yet the

understanding of culture put forth especially by members of the Danish People's Party is highly essentialistic, portraying 'Danes' and 'foreigners' as inherently different. Moreover, the stereotypes of migrants and ethnic minorities sometimes articulated are very negative, generalizing and demeaning (Krarup, 2003a-b; Kristensen, 2003a-b). Hence at least some articles in this position fall in the category of neo- or cultural racism (cf. Hervik, 2004; Rydgren, 2004).

#### *Social-democratic communitarianism*

The last position identified in the debate I refer to as social-democratic communitarian. It consists of a small group of articles published mainly in *Politiken*. The authors are a couple of prominent social-democratic members of parliament and a few other debaters. It resembles the ethno-national discourse in its focus on the good of society, but also draws on elements from the state-feminist position with regards to universal rights and protection against forced marriages. Notwithstanding these similarities and overlaps, the texts in this position do have a distinct tone and argument with an emphasis on equal opportunities, socio-economic challenges, pragmatism and integration (Meldgaard, 2003a-c; Lykketoft, 2003; Olsen, 2003; Kornø Rasmussen, 2003; Stub Jørgensen, 2003).

Like in the ethno-national position there is a worry that the arrival of too many immigrants with few educational skills and a very different cultural background can create big problems. But in contrast to this discourse, the social-democratic line of argument also stresses the rights and potentials of these new members and underlines the importance of inclusion (Lykketoft, 2003; Meldgaard, 2003a-c). Anne Marie Meldgaard, then spokesperson on foreigners for the Social-Democratic party in the Danish Parliament, puts it thus:

Today's integration policy is too poor. It is difficult for those foreigners who come to Denmark to get a good start. Rather than becoming team players many are being permanently benched. This is neither good for them or for the team. The Social-Democrats now believe this should change. Consequently, it is necessary to limit immigration in order to manage the integration of those we already share Denmark with. (Meldgaard 2003c)

Large groups of migrants and ethnic minorities, Meldgaard points out, are marginalized. This is problematic in itself, since these persons do not have the same possibilities of leading rich and fulfilling lives and becoming good citizens, she claims. Moreover, it can lead to sectarianism, religious fanaticism and social fragmentation. Hence, it must be prevented through a policy of 'rights and duties' (Meldgaard 2003c).

As in the ethno-nationalist discourse a threatening cultural difference again plays a part in the construction of migrants which sets them apart from 'old Danes' (Meldgaard, 2003c). But this otherness is not portrayed as an inherent feature. Practices can and should change. Foreigners can and should become 'new Danes' (Meldgaard, 2003c). Moreover, the cultural lens is supplemented with a class-based analysis. The problems that immigrants face are partly socio-economic and thus call for solidarity. This move makes the challenges appear more familiar and manageable. Scandinavian social-democrats have a long history of combating social injustice in the nation state:

We have abandoned the old, deep class divides and we will not watch passively while new ones emerge! Foreigners shall not make up the lowest echelons of society. They shall participate actively like all others. Therefore we have to solve the problems creating social in-equality. The Social-Democrats will by all means hinder the emergence of a new lower class in Denmark whose behaviour is far from all we as a society can and should tolerate. We will fight against prejudice and discrimination and give new Danes, who have arrived here legally, the best possible conditions to join and get started. But we shall also clearly and unmistakably communicate that we expect and demand active engagement and acceptance of our society's fundamental democratic values. (Meldgaard, 2003c)

The new restrictive family unification regulation is viewed as a necessary element in a strategy for improving social integration: It limits the number of immigrants so as to better help those already present, and it hinders forced marriages which are incompatible with the values of democratic citizenship (Meldgaard, 2003a-c; Lykketoft, 2003; Olsen, 2003).

It is thus to some extent a utilitarian as well as paternalist discourse. The welfare of society is prioritized over the rights of individual citizens and the state intervenes to help ethnic minority youngsters. As in the state-feminist discourse, a right to love and



choose one's own partner is defended against interfering relatives. But for pragmatic reasons it does not extend to a right to reside in Denmark with a foreign partner. This would endanger those very same rights and undermine the good of the social-democratic community. Anne-Marie Meldgaard (2003b) explains that the Social-Democrats 'can accept the 24-years rule' - reluctantly it seems - because the integration process seldom benefits from 'family unification between a thoroughly Danish [*pæredansk*] girl with Turkish roots and her cousin from Turkey – regardless of whether it is a case of force or ordinary [sic] paternal pressure.' She insists that 'Social-Democrats and others with a pragmatic attitude must ask for time-out [*arbejdsro*] from the self-righteous and others too frightened to solve [the problems]. It is those who yell "racist" or "bleeding liberal" [*pladderhumanist*] ... who brutalize the debate ... not us who tackle the problems.' (Meldgaard, 2003b)

For all the class-based rhetoric, the community which needs protecting is the nation. The struggle for equality takes place within its never questioned boundaries. The offer of equal membership, rights and duties, is only extended to those outsiders who have arrived legally. With restrictive policies for labour migration and family unification this is presumably few. This line of argument is reflected in contemporary political theory where some communitarian social-democrats argue that socio-economic justice is only attainable within the nation-state. Where else do we find the kind of inter-generational and inter-class trust and fellow-feeling necessary for re-distributive politics (Miller, 1995; pp.91-92; cf. Walzer, 1983)? This position, however, leaves open the justification of borders and the question of international solidarity and equality (cf. Marx & Engels [1848] 1948; Pogge, 2002; Mezzadra, 2011; Ypi, 2012)

### **Redrawing the boundaries of liberal democracy**

To sum up the analysis, we have seen how competing constructions of rights and community are put forth by participants in the debate in order to criticize or defend a restrictive family unification policy.

A right to love is articulated by adherents of all four positions – liberal-international, state-feminist, ethno-nationalist and social-democratic communitarian. According to the

first group it is an unrestricted freedom which goes hand in hand with the right to family life in one's home state. It is moreover central to the concept of citizenship or even to the protection of basic human dignity which all persons can claim. For the latter three positions, however, the right to love does not entail an unlimited right to family unification in a particular country; either because the protection of the right to love for some citizens against patriarchal family structures necessitates a break with family unification; or because the welfare of the nation would be jeopardized by an increase in culturally different migrants and/or socio-economic inequality.

Different conceptions of community are thus also at stake; Firstly, a liberal international community. There, rights are all that binds people together, and borders are at least semi-open; secondly, an paternalist feminist state where the borders must be tightly regulated to ensure the freedom of the citizens; thirdly a nation that thrives behind closed borders and whose members are held together by an imagined common cultural heritage; and fourthly, a national community in which participants share rights and duties regardless of ethnicity and class, but where borders should be fairly closed.

This public debate led to changes in the legal regulation, as described in chapter three and five. The result was a limited extension of citizens' rights. In response to fierce criticism especially from Danes abroad the 28-years-rule was introduced by amending the attachment requirement. In strange ways the liberalization reflected a tenuous common ground between the extreme poles in the debate. Their fierce disagreement notwithstanding liberal-internationalists and ethno-nationalists all worried about the constraint on the right to love for at least some Danish citizens. The former got a minor concession, but still faced a very restrictive and possibly discriminatory regime – and were highly displeased. The latter secured the rights of not-quite-so-young ethnic majority Danes. They could not quite prevent large groups of minorities from enjoying a similar freedom, but got a new rule against transnational cousin-marriages thus again targeting particular groups of unwanted citizens. The boundaries of membership were temporarily redrawn and the interpretive struggle continued.

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