

UNDOCUMENTED MIGRANT ACTIVISM AGAINST DEPORTATION:
AN OUTLOOK FROM CIVIL DISOBEDIENCE AND THE RIGHT TO STAY

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ABSTRACT

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In liberal democracies, we have been extensively witnessing the implementation of deportation as a prevalent measure of migration management. One aspect of deportation is the linkage between migrant illegality and deportability. While migrant illegality is a social condition easing the discipline and manipulation of migrants, deportability is a ubiquitous likelihood of deportation that draws migrants into daily and constant fear. Against their racialized and spatialized exclusion, migrants appeal to various forms of protests. Yet, in this thesis, I will be focusing on the theories of civil disobedience and scrutinizing whether civil disobedience can be a legitimate way to resist deportation. I will be furthering my discussion on whether civil disobedience can be a justified mode of resistance to engage in formulating the right to stay. I argue that, in significantly harsh conditions (like conditions of inflicting irreversible harm through deportation) migrants may not have to comply with the processes of the administrative framework. In line with that, the main argument of this thesis is offered as so: the radical conception of civil

disobedience initiates a dynamic of democratic empowerment for undocumented migrants by reinvigorating acts of citizenship, and it paves the way for migrants to manifest their constituent power in loosely institutional and horizontally structured modes of disobedience. The radical conception of civil disobedience is also justified since it is not solely an antagonistic dispute (like majorly including violent confrontations) with the state power but aims to address citizenry through communication for pursuing legislative change.

Keywords: deportation, deportability, the right to stay, contentious citizenship, radical civil disobedience.

ÖZ

SINIR DIŐI EDİLMEME KARŐI KAĐITSIZ GÖÇMEN AKTİVİZMİ: SİVİL İTAATSİZLİK VE KALMA HAKKI ÜZERİNE BİR ÇALIŐMA

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Liberal demokrasilerde göç yönetiminin ortak önlemi olarak sınır dışı etme uygulamalarına yoğun bir şekilde tanık olunmaktadır. Sınır dışı etmenin bir yönü, yasadışı göç ile sınır dışı edilebilirlik arasındaki bağlantıdır. Göçmenin yasadışılığı göçmenlerin disiplinini ve manipölasyonunu kolaylaőtıran sosyal bir durum olsa da, sınır dışı edilebilirlik, göçmenleri günlük ve sürekli korkuya çeken ve her yerde bulunan bir olasılıktır. Bu tezde, önemli ölçüde zorlu koşullar altında (sınır dışı etme yoluyla geri dönülemez zarar verme koşulları gibi) göçmenlerin idari çerçeve süreçlerine uymak zorunda kalmayabileceklerini ileri sürülmektedir. Bununla bağlantılı olarak, bu tezde, sivil itaatsizlik teorilerine odaklanılmakta ve sivil itaatsizliğin sınır dışı edilmeye karşı meşru bir yol olup olmadığı irdelenmektedir. Kalma hakkının formüle edilmesinde sivil itaatsizliğin haklı bir direniş biçimi olup olmayacağı konusunda tartışma iletılmaktadır. Buna uygun olarak bu tezin ana argümanı şu şekilde sunulmaktadır: Radikal sivil itaatsizlik anlayışı, vatandaşlık eylemlerini yeniden canlandırarak belgesiz göçmenler için demokratik bir güçlenme dinamiği başlatır ve göçmenlerin kurucu

güçlerini gevşek ve yatay yapılandırılmış itaatsizlik biçimleri olarak ortaya koymalarının önünü açar. Radikal sivil itaatsizliğin yalnızca devlet gücüyle düşmanca çatışmalardan ibaret olmaması, aynı zamanda hukuk kurallarının değişikliğini takip etmek için vatandaşlarla iletişim yolunu da tercih etmesi, radikal sivil itaatsizliğin meşruiyetinin bir ayağı olarak sunulmaktadır.

Anahtar kelimeler: sınır dışı, sınır dışı edilebilirlik, kalma hakkı, çekişmeli vatandaşlık, radikal sivil itaatsizlik

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CHAPTER 1

INTRODUCTION

In contemporary debates on the political theory of migration, deportation has commonly been referred to as a disputed state power. While the discourse of “war on refugees” has been gradually replacing the discourse of “war on terror”, obligations of the liberal democratic polity to conform to international law have been simultaneously eroding (Fekete, 2005: 64-65). Despite international law (one straightforward example is: the 1951 Geneva Convention and its protocol signed in 1967) prohibits harmful and impairing treatment against refugees, deportation practice opens fractures and causes discontinuities within the internationally acclaimed system of migration management, which for the first time attempted to hold states accountable.

Being a “cruel power” (Gibney, 2008: 147), deportation practice divides families and displaces people from where they resided for a noticeable period of time and established social and economic ties. Deportation is also a threat for migrants and generates inordinate hardships. Being an irregular foreigner in a host country is mostly equated with being susceptible to deportation, surveillance, and policing (Kaanstrom, 2017: 628; Buff, 2018: 2). Deportation is an “extended border control” and a “post-entry social control”, allowing states to enlarge the practice of migration oversight within their territorial borders (Kaanstrom, 2007: 5-6). The impact of deportation is far-reaching and diffuses to two groups of migrants specifically.

Firstly, there are mandates for deportation for people who have circumvented border controls in a clandestine way or directly confronted border agents at the entrance. If these groups of migrants were caught during illegal crossings, states would not be disdained completely in their actions of deportation or detention. This disciplinary mechanism shows its vicious face to vulnerable men and women (mostly undocumented migrants), precisely after the moment they enter the state’s territory by using deceitful

and covert ways: for instance, misrepresentation of identification through false ID or literal resistance against the border agents (jumping fences and so forth). Secondly, deportation enforcement may also be applied to migrants, who have already been permitted to live in the host country's territory. Even though these groups of migrants were not inadmissible to the territory in the first place, they may not escape encountering brutal enforcement. Committing criminal felonies, being convicted of a crime that requires serious punishment or, illegal staying despite the termination of the conditional resident permit can be pointed out as some situations in which migrants' legal status gets annulled. Accordingly, I think that the practices of deportation are the epitome of the growing trends in preserving the discretionary rights of the states in controlling their territory. Of course, deportation is not solely entrenched in border controls. Through inflating the omnipresent fear of deportability, deportation is being rendered as a likely outcome that any non-citizen may experience. Also, through provoking anxiety, deportation is being transformed into a key facet of the migration experience. As will be elaborated in the thesis, irregular migrants are being subjected to a disciplinary apparatus, which evidently reproduces migrant "illegality" with the simple intentions of realizing a presumptive goal of deportation (De Genova, 2002: 438). The notion of illegality is significantly broad, and migrants who do not have a valid legal status experience its outcomes through variable and ever-shifting state enforcement (Harrison & Lloyd, 2012: 372). While deportation has been legitimated only through criminal offenses during the 19th century, "deportation turn" – as the term was coined by Matthew Gibney (2008: 147) – started producing the migrant illegality not just as an abnormal and distinguishing judicial status, but as a daily, consequential and profoundly internalized form of being (De Genova & Peutz, 2010: 14). The constant fear of deportation can also be examined as a technique exploited to render migrants and migrant workers more economically effective and docile (Basok et.al, 2014: 1394). Once labelled as illegal and subjected to disproportionate methods of policing, migrants' basic rights and social entitlements are rejected. They find themselves in dubious circumstances and deadlocks, without having any recourse of security from the law. I see deportation as a scene, where sovereignty is carried out. In executing the acts of deportation, states try to arbitrate whether migrants – who are susceptible to deportation

– will be recognized as subjects of the political community or whether they will be discarded so that the state will practice disciplinary conduct including seizing, pumping fear, arresting in public and so forth. Then, deportation is revealed as the utmost capability of the sovereign to exclusively determine who is to be excluded, and who is to be curbed or allowed to access resources, production and distribution networks. While deportation and deportability become predominant aspects of migrants' experiences, migrants are also pacified and their political capacities – as well as their rights – fade visibly. Eventually, this pacification allows the sovereign to restore and reclaim its capacity to exclude exceptionally.

Before moving onto introducing my study, I would like to elaborate on certain limitations. Primarily, in my thesis, I discuss the resistance to deportation in the context of the politicization/subjectivization of undocumented migrants. Since I tend to determine a compact focal point of highlighting politicization and disobedience, I refrain from intensely involving with the migration law (the law of non-citizens) or the international migration law. If I had to justify my decision: the policies and the legal regulations of liberal democracies that plan and manage migration inherently contain the inequalities and injustices, which I attempt to draw attention. For example, deportation and the right to stay – according to the given legal regulations (both the particular legal designs of liberal democracies or the international law) - are embedded in the migration law. Moreover, the migration law has been established by assuming (or even accepting) these inequalities.

Therefore, it is obvious that deportation and the right to stay are categorical issues inherent to migration law. Since I think that discussing these two points entirely within the boundaries of the law cannot exceed a sterile debate around the inequalities - which have been ingrained in the migration law – my inclination is to separate deportation and the right to stay from the legal framework, and to take them as relatively independent categories. Separating deportation and the right to stay from the field of law may broaden the narrow perspective, which spots these two categories as solely the extensions of legal and administrative processes. Also, removing deportation and the right to stay from the field of law may lead to a new perspective on perceiving these two

categories as politicized demands that can be located at the center of the politicization/subjectivization processes of undocumented migrants.

In my thesis, in line with these preliminary paragraphs on deportation, I will first elaborate on the diffusing discursive framework of securitization. Securitization of migration conflates the migrant figure with the criminal or the impostor and draws a picture of an “enemy” that suggests the presence of a national security threat. Securitization and the conflation of the migrant and the criminal justify deportation. Alongside that, the intermingle of the migration law and the criminal law is delineated as legal violence (Menjivar & Abrego, 2012: 1413, in Radziwinowiczowna, 2022: 1098). In accordance with that, the conflation of the migrant figure with the criminal figure reproduces the unadjusted legal status of the migrant and the fear of deportability. In a sense, while the legal and social status of the migrant is being degraded constantly, their vulnerability to violence is intensifying. Basically, I will argue that, securitization of migration goes beyond the symbolic and physical forms of violence and reaches a structural level. The political and economic arrangement of society – with the inculcation of the securitization of migration - inflicts and promulgates conditions of both physical and sentimental hardships. While this arrangement worsens the conditions of migrants, these conditions are also getting rooted, and unfolded in various sites including the labor market, welfare state services and other multifold sites.

So, while deportation looks more like physical violence - which contains assaults and arrests – deportability is generally structural and exposes the migrant figure to forms of domination by fixing her position in the social structure. One result of being trapped within this political and economic arrangement of society is the reluctance to resist the law. Also, the erasure of the capacities of political claims-making - with the forms of symbolic and structural violence – renders the migrant figure as compliant, who accepts her assigned social identity (as the “other”) and the removal decision. This exclusion makes the conditions of migrants worse, especially considering the inextricable linkage between citizenship and rights that reinforces the separation between citizens and non-citizens. Hence, being a member of a political community (citizenship and rights it brings about) is still seemingly cherished as a peculiarity, and it differentiates and

augments the borders between political communities. Even though states' complete authorization in taking decisions on serious subjects (admittance, citizenship, exit and removal) concerning migration supposedly fluctuated in the post-1980 globalization period, the deportation-turn in the last decades reveals that, the supposed weakening of state sovereignty has not yet been significantly challenged by the global institutionalization of migration management.

After the discussion on securitization, I will move onto the comparative assessment of the arguments of open and closed borders. Respectively, I will be outlining the liberal egalitarian and cosmopolitan perspectives that address the moral significance of open borders and suggest an adjustment of the migration policies of liberal democracies towards a more inclusive, adaptable and integratory scheme. Then, I will be passing on the communitarian perspectives that prioritize closed borders, and states' discretionary powers on migration related matters. While unfolding this debate between open and closed borders, I will also pinpoint the discrepancy between the liberal democratic polity and liberal egalitarianism, which is tied to the uncertain discussions about whether the liberal democratic polity is entitled to impose restrictive policies towards migrants.

This discrepancy is especially crystallized in the deportation practices of the liberal democratic polity. Again, in the first chapter, deportation will be discussed as an embodiment of the tension between the inclusive tendencies of liberal egalitarianism towards migrants and the exclusionary inclinations of the liberal democratic polity. The advocates of the liberal egalitarian position accept that the liberal democratic polity has been founded on the spontaneous fulfilment of morally arbitrary conditions on personal identities (social origin, religion, ethnicity, etc.) (Ottonelli & Torresi, 2010: 3). Inevitably, the liberal democratic polity is delimited by territorial boundaries and restricts the scope of the legal application of equality through citizenship. As a consequence, exclusionary practices are enforced towards foreigners, which are concretized by narrowly regulating their access to the political community. The liberal egalitarian position sees an arduousness and inconsistency between the cosmopolitan rationale of the liberal democratic polity and its boundedness by means of an exclusionary constitution in actuality. In other words, the liberal democratic polity is

unconvincingly grounded on the empirical presumptions of the theory. So, at least theoretically, the liberal democratic polity is expected to produce and implement policies of migration conforming to the moral point of view of the liberal egalitarian idea as much as possible. Accordingly, the invalidation of national borders, due to their arbitrariness, is the morally consistent position, and policymakers should strive to reach this minimum moral condition as nearly as they can in structuring policies. Surely, approximating these policies requires support for non-citizens' rights as well. Therefore, the arguments of liberal egalitarians include open borders and fast integration measures, contrary to the arguments of closed borders/communities. While the former insists on inclusiveness and discards the assumption that justice solely applies to the members of a political community, the latter tries to ground states' right to hold authority over anticipated and already settled migrants (Sager, 2015: 6).

In other words, territorial sovereignty entails states' discretion to expel migrants, but simultaneously contradicts migrants' right to pursue their own interests and life plans, and to engage in reciprocal short/long term relationships with others. Most importantly, states' discretion to expel imperils the right to life and liberty, which has been subverted in the home countries of migrants. I think, deportation and deportability fit very persuasively into this liberal paradox, and annul the situation of staying in a given territory for the realization of these rights. The realization of these rights is tied to the lasting assurance of legal status and the enduring certainty to stay in a given territory. In this regard, I would argue that the right to stay is a precondition for the enjoyment of certain rights. The right to stay would also mean actualizing the most sticking out assumptions of liberal egalitarianism as autonomous agency, and thriving essential capabilities that bolster well-being and human flourishing. Furthering this discussion, I believe that an analogy with Henry Shue's conceptualization of basic rights can be helpful in framing the criticality of the right to stay. Succinctly, Shue describes basic rights as minimal protection against dire conditions of weakness and incapacity. For Shue, basic rights are the bulwarks against disastrous circumstances and perils, which may genuinely reposition people in situations of overwhelming neediness (1980: 18). The eradication of basic rights – the rights that offer a shield for protection against economic and political forces – means that the two basic pillars of them (subsistence and

security) would be rendered unavailable (Shue, 1980: 18). Shue indicates: “Basic rights are the morality of all depths. They specify the line beneath which no one is to be allowed to sink (1980: 18)”. In accordance with that, enjoying other rights is crucially dependent on the enjoyment of the essence of the basic right of subsistence (Woodward, 2002: 639; Mancilla, 2019: 2). In other words, the right to subsistence is considered a social right, and once realized, it cultivates capabilities to guide a minimally sufficient life (Nickel, 2007: 138-142, in Mancilla, 2019: 4).

Considering the right to subsistence in our discussion on deportation, I would argue that the right to stay even precedes the right to subsistence. Especially for undocumented migrants or failed asylum seekers, withstanding deportation practices and claiming the right to stay are the harbingers of the actualization of even the basic rights of subsistence and physical security. As mentioned above, irregularity makes migrants compliant and invisible, but the fear of possible incarceration also engenders their basic rights. The thwarted right to stay compels them to disguise their identities, pushes them into a cycle of continual escape, and blocks their abilities to bridge with the community in order to flourish their capabilities and agency.

Accordingly, in the second chapter, I will be discussing the philosophical and ethical implications of the right to stay. According to Kieran Oberman, expulsion and persecution are among many manifestations of the violation of one’s right to stay (2011: 258). So, undocumented migrants or refugees exemplify a group, whose right to stay is being breached through deportation. However, the right to stay is frequently theorized as the right to stay in the home country.

This is because - normally - the options chosen to pursue to realize several life plans are offered intrinsically to our lives in our home countries (our family, religion, social environment, etc.). According to Joseph Raz (1986: 411), Oberman argues that, it generally goes disastrous if the options chosen and commitments made are removed from our lives, and if the compensating options are taken away from our grasp (2011: 259). Yet, in my thesis, I will be shifting my focus to the right to stay of the migrants residing in a foreign territory.

Especially in communitarian arguments that advocate close borders, the right to stay of migrants is contingent on compliance with the rules and the political, economic and social arrangements of the society of the host country. In a way, this is not a right but a favor given by the states to migrants. Contrary to that, a rights-based approach – which has also been shaping international migration and human rights law – balances states’ discretionary liberties regarding migration related matters with non-citizen’s territorial presence. The territorial presence comes with rights and liberties attached, and one of its fundamental expressions is the principle of “non-refoulement”¹. The right to stay – at least theoretically in the international treaties - seems to have detached from nationality and been carried out to the realm of territoriality. However, as can be recalled from what I elaborated above on deportability, the legal uncertainty of undocumented migrants, failed asylum seekers or refugees is most of the time enduring. The international treaties or declarations provide a technical guidebook for the most appropriate handling of crisis situations, which is generally futile. Also, the normative human rights framework does not forbid states to appeal the measures of detention and deportation. This framework is at best a suggestion, and does not implement any punitive sanctions on states. So, when the legal uncertainty is persistent, the stay of migrants becomes a perplexity. I also understand that, the right to stay is generally formulated from a liberal point of view. This point of view stresses that the right to stay is decisive (as a fundamental right) for the unrestrained advancement of one’s personality and agency. Therefore, the right to stay is crucial for individuals to plan on long-term life arrangements by necessitating a legal certainty that would prevent states’ arbitrary and unreasonable actions. So, I think that, the formulation of the right to stay with liberal connotations is at odds with the restrictive migration policies of the liberal democratic polity. That is why the discussion of the right to stay seems to fit the liberal paradox.

Despite the fact that the right to stay is seemingly guaranteed by the international law of migration, it is still exclusively allocated to citizens. Because the migrant’s stay or entry is associated with illegality in the first place. Relevant to that point, Etienne Balibar

¹ As a key principle contained in international bodies, “non-refoulement” protects any individual from being moved (through deportation, repatriation, extradition) to another authority, when there is legitimate basis for believing that the individual would be under threat or would be subjugated to violent practices against her basic rights. Basically, the principle of “non-refoulement” addresses the right to stay.

coined the term “European Apartheid”. By suggesting it, Balibar underlines the segregated institutionalization of European citizenship (2001: 19). European citizenship - as an exclusionary status - is located in the formal and symbolic exclusion of undocumented migrants from the native population and the long-term migrant residents. As a selective status, such an insulating formation of citizenship pushes undocumented migrants into vague legal positions and vulnerability without settled rights. In other words, the right to stay is limited to citizenship, and citizenship is accessed unevenly. This way of construing the concept of citizenship leads to social closure, and limits migrants’ attainment of specific benefits and opportunities for bolstering prosperity, since they have already been reserved and retained for the use of citizens.

The closure stance anchors citizenship to territoriality. This linkage of the concept of citizenship to spatial terms brings about its institutions, and renders these institutions responsible and transparent only to citizens. Inevitably, the scope of the representativeness of these institutions is curbed, their inclusivity is deteriorated, and the formal/informal political participation is restricted to the included parties, which imperils democratic citizenship. I believe that, this is a burning issue in contemporary migration debates. Even though the closed form of the nation-state has not just withered away with the efforts of global institutionalization and moral cosmopolitanism, the forms of politics and culture have become increasingly transnational (Balibar, 2001: 19-21). So, the subjects of politics have ripped off the circumscription by the aspects of the nation state. Migrants – who are automatically rejected from accessing to the material conditions of subsistence – started rendering themselves as the legitimate subjects of political-claims making. Within the liberal democratic polity, efforts to broaden the tight understandings of the concept of citizenship have revealed themselves recently. In the second chapter – alongside the discussion on the right to stay - I will be introducing some widely acclaimed and pragmatically effective disobedient mobilizations of undocumented migrants. From “Sans Papiers”² (“Without Papers” or simply translated

² Initially commenced in 1996 and continued onwards, “Sans Papiers” organized against the state’s endeavors to expel “illegally” residing migrants in France. Protests gained a worldwide attention and embodied migrants’ political resistance contrary to French government’s attempts to stage and order special police forces to combat “illegality” (Freedman, 2008: 81). Aside from generating a new political consciousness regarding “illegality”, “Sans Papiers” had an outstanding impact in shaping contemporary

as “undocumented”) to the current protests focusing on the agenda of politicizing the right to stay, I will argue that migrants’ disobedient actions circle and overwhelm the political will of the democratic majority. I see that migrants’ political mobilizations denounce the narrow perceptions of democratic politics, and intervene within the sphere of the policy and law making. Furthermore, I will argue that these protests facilitate the need for transformation and opposition, and they display the new forms of political membership from below.

Moving onto the last chapter of my thesis, I will be delving into the discussion on civil disobedience, and the relevance of civil disobedience as a mode of political engagement to the politicization of migrants’ claims. Throughout this chapter, I will be scrutinizing whether civil disobedience can be a legitimate way to resist deportation. I will be furthering my discussion about whether civil disobedience can be a justified mode of resistance to engaging in formulating the right to stay. I will start this chapter with John Rawls’ and Ronald Dworkin’s mainstream interpretations of civil disobedience. Then, I will cover Jürgen Habermas and the conflation between his ethics of communication and the democratic modality of civil disobedience. Lastly, basically built on the theorization of Robin Çelikateş, I will discuss the proximity between radical civil disobedience and acts of citizenship.

What intrigued me to contemplate the concept of civil disobedience and migrants’ resistance in the liberal democratic polity is: so far, civil disobedience has been observed as an avowed refusal of citizens against complying with certain laws or policies. Namely, civil disobedience has been evaluated as a justified act of the citizen, but not the migrant. However, once they entered in a given territory, migrants would encounter harsh laws and policies that regulate their mobility. This regulatory framework does not usually give any justification to migrants or demand their acceptance.

So, I argue that in significantly harsh conditions (like conditions of inflicting irreversible harm through deportation) migrants may not have to comply with the processes of the

migration debate surrounding claims-making, citizenship, and the right to stay. I will be mentioning the movement in the second chapter.

administrative framework. When such controversy appears between the migrant and the law, I think that, migrants would also be justified in civilly disobeying. Another exciting point about radical civil disobedience is: formulating civil disobedience radically would not absolutely ditch the possibilities of communication. A radical disobedience is not a totally direct act implying a full antagonistic confrontation with the state and the international system of migration. Radical civil disobedience carries the potential to frustrate the legal and administrative scheme of migration management with ruptures, yet migrants may also find their places to negotiate their political identity through entering into numerous mechanisms of law making. To put it in other words: radical democratic civil disobedience does not renounce the aspirations of communication, however it does not also simply appeal to symbolic forms of contestation. Rather, radical civil disobedience opens the venues of communication – which otherwise remain unlocked - through unfamiliar confrontations (for example, proportionate use of violence and force). I will also argue that, radical civil disobedience balances the basic tenets of mainstream approaches of civil disobedience (like calmness, accepting punishment and so forth) with aggressive direct action. This kind of balance is also important in the sense that the latter may easily be labelled with irrationality or outrage of migrants. Being labelled as such would bolster the processes of criminalization, and therefore, discard migrants from democratic politics. Therefore, in the end, I think that, radical civil disobedience does not underestimate one of the major principles of civil disobedience, which is to appeal to the capacity for reason and sense of justice of the majority.

Through political mobilizations, migrants may find favorable settings to circulate their interpretations and corrective approaches regarding the existing policy and legal framework. In other words, politicization of rights-claims would allow migrants to reconceive themselves as the law-makers, instead of being subjected to the law. Indeed, like the right to stay, migrants' politicization displays the inconsistencies between liberal theory and polity (liberal paradox). Accordingly, modern constitutions offer sets of rights – including the right to membership, and therefore the right to stay – and these rights are mostly demonstrated in conformity with their universal identifiers, rather than local or particular adjectives (Pensky, 2002, in Benhabib, 2018: 184). So, the normative

power of democratic constitutions simultaneously insists on an expansion in terms of including all human-beings, and pulls back the idea of solely including the members of a particular political group in order to concretely structure a form of government (Pensky, 2002, in Benhabib, 2018: 184). However, contemporary forms of migration control and restrictive policies reveal that such an expansion is not openly aspired by the states. Instead, migration management is totally institutionalized and removed from the realm of democratic politics. So, migrants' rights – especially their right to stay – are contingent on the rule of law of the states, and these rights are open to administrative arbitrariness. Setting this as the dilemma, I will finish by arguing: migrants try to shift the contingently determined right to stay to a fundamental right for subsistence and physical security through acts of radical civil disobedience.

CHAPTER 2

DEPORTATION REGIME AND THE DEBATE ON OPEN OR RESTRICTED MIGRATION

In this chapter, I will initially try to provide context for the current acceleration of deportation and deportability as normalized devices of migration management in the liberal democratic polity. In the following subsection, I will be underlining the discrepancy between the state sovereignty and the ascending human rights regime. While the latter requires states to relinquish some of their jurisdictional and territorial rights with regards to transnational migration, the former insists that states should keep some of their fundamental rights (like allowing entry, administering processes of naturalization or expelling non-citizens out of their territory).

Then, I will be mentioning the embeddedness of the securitization of migration and its articulations of how irregular migration would endanger the cultural composition and integrity of the society. As can be grasped in the following pages, arguments of sovereignty and discourses of security are interwoven and mutually nourish each other so that they maintain the state power (sometimes brutal state power as deportation, detention and expulsion) to be exerted against non-citizens, without substantial concerns to find justifications.

Moving on, I will be laying out the comparative assessment of liberal egalitarian open border advocacy and the communitarian perspective. While unfolding this debate, I will be pinpointing the discrepancy between the liberal democratic polity (as the practice), and liberal egalitarianism (as the theory). The liberal egalitarian tenets substantively probe the egalitarian promises of liberalism with an interest in redistributive justice and equality of economic opportunities (coping with poverty). This interest of liberal egalitarianism coexists with its interest in enhancing political and civil rights for all individuals. Yet, the particular logic of liberal democratic polity is at variance with

the stance of liberal egalitarianism about matters of justice. Drawing from this discrepancy, I will be outlining the term called “liberal paradox”, which addresses this divergence between theory and practice. This discrepancy is also, where I try to locate deportation and deportability.

2.1. The State Sovereignty and Securitization of Migration

Following the end of the Cold War and after 9/11, conventional ways of states for apprehending and evaluating security have transformed drastically (Faist, 2004: 5). Security, which has been previously identified with reference to military operations and interstate conflicts, started being mostly characterized through irregular migrants and asylum crises (Huysmans & Squire, 2010: 169). Having said that, securitization of migration necessitates a new migration and border regime, which possesses highly restrictive and punitive enforcement measures primarily against irregular migrants.

The exceedingly prevalent scope of the securitization scheme may have included far-reaching discussions regarding the historical and political backgrounds of the process however, I will not specifically address these in the upcoming sections. Rather, I will set the primary inclination of the discussion on the actual consequences of securitization. Among many, I will be focusing on deportation, deportability and incarceration of undocumented migrants as routinely implemented and integral measures of punishment. (Grewcock, 2011: 69, in Hasselberg, 2016: 40).

Aside from being affiliated with a prevalent rhetoric of security, detention and deportation have also become apparent as fallouts of a stark tension between human rights and the right of the state to undertake whatever decision it favors in its jurisdictional territory. In the aftermath of World War II, the Universal Declaration of Human Rights has been accepted, and instead of floating in the air as a mere contemplation or wish, norms of human rights have been internationally institutionalized. With the emergence of the will of particular states to comply with the internally acclaimed norms of human rights, global civil society has entered a stage of transition from particular (state and membership centered) concerns of justice towards a

cosmopolitan understanding of justice (Benhabib, 2009: 695). According to Benhabib, this is not only a semantic changeover (2009: 695). The celebration of the international treaties - forcing states to bind their sovereignty according to various human rights covenants - is accompanied by the accrual and crystallization of the cosmopolitan norms, as in considering individuals sharing equal moral and legal personhood (Benhabib, 2008: 97; Benhabib, 2009: 695). Hence, this institutionalization is being argued as a countervailing power against states' discretion in their jurisdictional domain (Barkin, 1998: 229-230).

Accompanying this enormous growth of international human rights, arguments seem to accumulate on two alleged outcomes that have consistently emerged with this expansion. The first seems to be with regard to the devaluation of the concept of citizenship. The concept of citizenship has been conventionally understood as an array of rights and responsibilities authorized to the legitimate members of a political community. However, citizenship has been losing its ground in being accorded with the rights of people, who are deemed legal by states. This situation of losing ground, in turn, augments the proliferation of the international human rights codes (Jacobson, 1996: 132; Sassen, 1996: 95, in Dauvergne, 2004: 611). For instance, transnational migration and migrants' claims-making are challenging for the traditional constructs of the concept of citizenship, and may enlarge its shrinking and limited understanding. In turn, this may delink what citizenship has been connoted priorly like privileges, advantageous positions in the allocation of resources and so forth. The singular and daily epitomizations of transnational migration in terms of migrants' politicization of claims-making would approximate the concept of citizenship to the language of human rights. Conversely, the use of human rights instruments (for example, international treaties) and the human rights discourse integral to migrants' political mobilizations can be marked as impactful in separating citizenship from membership. These movements are critical to reinscribe the concept of citizenship in contrast to simply a legal standing of residence.

The second argument is about the territorial borders of states. This argument suggests that borders have been losing their moral relevance and becoming less celebrated. The arbitrariness of borders and their moral inconsistency vis a vis the universalist position is

is being notably underlined (Benhabib, 1999: 711). For instance, Carens returns to Rawls' conception of the "veil of ignorance" and takes it as a device to contemplate the principles of justice from the viewpoint of migrants, refugees and asylum seekers (Carens, 1995: 229, in Benhabib, 1999: 711; Benhabib, 2018: 104-105). Building up to a theory of relatively open borders, Carens' position basically asserts that borders circumscribe what rights and privileges a person is entitled to. In addition to that, close borders serve to reinforce and sustain the thick conceptualizations of citizenship. The thicker conceptualizations of citizenship share intrinsic and complementary characteristics with republican communitarianism. This integral connection would depict an understanding of citizenship that articulates tough measures on migration and more austere approaches to the incorporation of migrants (Bader, 1995: 229; Benhabib, 1999: 711-712). This discussion regarding the two basic pillars regarding the serious topics of citizenship, entry, naturalization and expulsion will be deepened in the following subsections.

Moving on from this point, we may observe that the prosperous liberal democracies seem to act inappropriately with regard to the contention of globalization, and liberal egalitarian premises in migration management. This is a stark reality and it also seems to be at odds with the argument that the legitimacy and morality of borders have been fading away (Dauvergne, 2004: 610-611). Indeed, borders have been maintaining their sacrosanct characteristics against undocumented migrants, refugees and asylum seekers from illiberal or so-called "Third World" countries.

As Dauvergne puts it eloquently, far from depreciating the significance of citizenship and its credible legal standing, the elevation of human rights has not produced an automatic right to live in a place, where one is deficient in holding a citizenship (2004: 612). This elevation seems not to have spontaneously reverberated in the rule of law of a liberal democratic state in terms of defining specific rights to be taken advantage of by migrants. In other words, acknowledgement of a recognized and fixed status of citizenship is regarded much more than the far-reaching international human rights law that gives meaning to an internationally acclaimed legal regime regulating refugees' and asylum seekers' burdensome circumstances with inclusive promises (Harvey, 2013).

Despite the fact that the international law of migrants has been institutionalized and strengthened through a variety of conventions and protocols, the system in operation is still limited. The United Nations' records and other human rights mechanisms address remedial measures and active enforcement of the essential rights of migrants within a greater scope. These rights include the guarantees of equality before the law, the right to attend fair trial procedures and the right to benefit from the disinterested tribunals in relation to asylum applications and so forth (Crepeau & Nakache, 2006: 6). In short, having emanated from the standard of non-discrimination, international and regional human rights treaties encumber states to act accordingly with the equality provisions.³

As Harvey stresses, this system is majorly built on the universal need-based evaluation - which is controversial and may lead to interpretive disputes among international actors in defining and delimiting needs - for people in dire situations with an urgent demand for assistance (2013: 68-69). Since the international system is grounded in that assessment and relies on an almost artificial status of human rights, dignity and the virtue of personhood, it is complicated for the system to coincide with the already assertive statist attitude and sovereignty. For instance, the internationally acclaimed system provides a definite set of rights to undocumented migrants and asylum seekers in the country they have reached. Even with a short glance at the right to apply for and enjoy asylum, one may argue that migrants are indeed being granted the right to flee from their countries of origin, where they undergo solemn violations of their substantive rights.

So, the international system sort of dictates obligations to liberal democracies towards non-citizens on the basis of their equal legal and moral personhood. Also, the internationally acclaimed system of human rights affirms that if migrants were not able to exercise their substantive rights in their home countries, they would be assured of

³ The equality provisions highlight the absoluteness and inalienability of definite rights. According to the Article 2 of the International Covenant of Civil and Political Rights, all individuals - regardless of their nationality, race, color, sex, language or ethnicity - should be subjected to the jurisdiction and constitutional premises of a given state, without being subjugated to discriminatory treatment (1976: art.2.1). In other words, regarding specific rights, the equality provisions guaranteed to non-citizens should be as valid as the guarantees offered to citizens. As noted in the Covenant, some of these rights are the right to life, the right to be recognized as a person before the law, freedom of thought, conscience and expression (Fitzpatrick 2003: 174, in Crepeau & Nakache, 2006: 8-9). The discriminatory repudiation of these rights would be disproportionate in all circumstances.

specific social entitlements and social protection by the host state (Crepeau & Nakache, 2006: 6).

Apparently, state sovereignty is being restrained by international law. In line that, the international human rights regime is also expected to set some procedural interferences against states' arbitrary and aggressive actions to expel rightful residents and undocumented migrants. Intricate implementation mechanisms of international law seem to impede the permissible ways that states can act concerning borders and irregular migrants within their territory (Crepeau & Nakache, 2006: 3-4; Wong, 2015: 28). As many have argued, having engaged in international bilateral or multilateral agreements, states have actually been efficiently forgoing their discretionary entitlements regarding entry restrictions and expulsions (Bosniak, 1991: 742).

The key accord with respect to that is “1951 Refugee Convention” and its protocol signed in 1967. Both figured out the definition of the refugee and delineated the rights of the refugees vis a vis the responsibilities of liberal democracies to respect and protect them. Importantly, *non-refoulement* is the chief principle of the Convention. This term declares that, refugees should not be forced to turn back where they would encounter substantial threats to their lives and freedom. Article 3 of the “United Nations Convention against Torture” urges states to abstain from sending any individual to a third country, where they would encounter the possible risky exposure of being deported afterwards (Toprakseven, 2018: 23). International human rights law also carries the burden of vindication for states to introduce objective and reasonable grounds for collectively removing a group of non-citizens. Pursuing an ill-founded action of expelling migrants without offering convincing reasons would also be a serious breach of the relevant content of the “International Covenant of Civil and Political Rights” and the “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” (Toprakseven, 2018: 24). Accordingly, by providing a legal portrayal of the refugee and designating their rights, these agreements under international human rights law constitute a normative scheme within the current refugee regime. These circumstances entail the conclusion that state sovereignty has weakened seriously and is in constant demand for legitimation from international norms.

Yet, the controversial point and difficulty here is to resolve the overt question of how liberal democracies - despite having committed to the international law and a universal human rights structure - appeal to the rigid preventive means of controlling borders, deporting individuals and controlling of membership without engaging in democratic procedures. Returning to the ideal of self-determination, it is an adequate expression of how the impartial and receptive stance of the liberal theory has transformed into an exclusive and restricted partiality in the liberal democratic polity. According to Gibney these exclusionary measures illustrate the cruel power of liberal democracies, and since they are firmly closing the paths of opportunities for social inclusion for migrants, they are also tenacious to resist (2008: 147).

Boosting deportation and admission rejections seem to demonstrate that the anticipated limits of liberal democracies have not genuinely been realized. Also, states' competence in distributing nationality and expelling non-citizens from their exclusively controlled physical domain has not yet been totally tarnished. As international treaties have been conferring rights, there is an advanced chasm between the normative foundations of the contemporary migration regime and state actions. A general hesitant attitude and the uneasiness of states in acknowledging non-citizens rights grab attention. So, an explicit expansion of rights - at least discursively and within the content of the international agreements - is not followed by an immediate utilization of them by non-citizens (Geddes, 2003: 16). The sovereignty of the liberal democratic polity has been gaining political grounds and a legitimate basis once again, and it has been successful in enhancing and radically improving their capacities of deportation.

Accordingly, granting asylum is totally dependent on states' discretion. Especially with the heightened securitization, asylum has started being intermingled with the discourse that signals "the fight" against irregular migration. (Atak & Crepeau, 2013: 230). As Huysmans argues, starting in the 1980s, Europe's liberal democratic states embraced a parochial change in the migration debate and accommodated the migration phenomenon within a policy framework surrounded by the rhetoric of protection of public order, welfare states, and domestic stability (2000: 756). Securitization addresses the social processes through which numerous social matters (including migration) become

“securitized” (Coutin, 2015: 672-673). Indeed, securitization is pervasive and it is mostly a discursive process in which a socially tempered issue is described and represented as a security problem.

Not only is migration filled with implications for threats against the state, but it has also been introduced as a security and identity issue for society (Ceyhan & Tsoukala, 2002: 22). Having been presented as a danger against the welfare state and the cultural configuration of society, the migration issue caused the building up of new approaches of stricter policies, and the invention of new surveillance and control apparatuses (Ceyhan & Tsoukala, 2002: 22). So, when migration management is on the table, the governing strategies of liberal democracies adopt a mentality of risk (Benam, 2018: 196). In general, understanding migration as a security problem locates it merely within an institutional framework and leads to a flawed perception of migration that is linked to the protection of national security, without having significant undertones of human rights (Huysmans, 2000: 757; Atak & Crepeau, 2013: 231). The discursive framework of securitization has carried burning issues like irregular immigration out of the realm of politics to the realm of security (Leonard & Kaunert, 2020: 2). Thus, the prevalence of securitization hampers migration management from embracing a closer stance towards the international migration law and its premises.

Securitization goes hand in hand with the stereotypical representation of migrants as criminals or illegals. Criminalization of migrants is the result of an “insecurity continuum” in which shared feelings of edginess, annoyance or threats are dispersed and exchanged among various actors of a society (Bigo, 2002: 63). This is basically a unilateral transfer of criminal or illegitimate behavior to migrants. In return, state officials may implement extraordinary and disproportionate measures beyond the ordinary requirements of migration management. Illegalization and criminalization of migrants subsequently trigger the employment of derogatory and exploiting sociopolitical practices such as deportation, incarceration or mass expulsions. These two processes have remarkably risen to a level of a problem in international debates (Sassen, 1999: 104, in De Genova, 2002: 419). Like citizenship, illegality is a juridical status reifying a relationship to the state and it is notably a political identity (De Genova, 2002:

422). As soon as the “illegal” label has been attributed to the migrant subject, it would automatically render her a deportable person or push her into the process of punishment. Illegality produces and reproduces the anti-immigration discourse, and since illegality legitimizes the “voices of security” (Karyotis, 2011, in Atak & Crepeau, 2013: 234), it obstructs the emergence of credible and provocative conflicting-discourse.⁴

In addition to that, detention and deportation are observed as ordinary administrative practices conducted with unyielding rhetoric about the necessity of fighting against unwanted migration. Evaluating these practices as routine administrative work with the priority of law enforcement causes an attitude of discrediting human beings (Cornelisse, 2010: 229-230). Detention and deportation are also understood as austere but reasonable enforcement mechanisms of the migration system. As Cornelisse puts it very simply from the statist line of thought, if a migrant passed a territory without authorization, then it would be fair to incarcerate that migrant for a definite time (2010: 230).

With regard to that, deportation is mostly preceded by detention/incarceration as another administrative measure. Having been incarcerated for a time is likely to exacerbate the vulnerability of potential deportees by cutting their access to fundamental rights and legal services, and by curtailing their capabilities in making moral and political claims to authorities and citizens (Silverman, 2016: 114). Executing such a policy is defended by giving references to how detention and deportation generate perceived effects in deterring forthcoming immigrants (Mainwaring & Silverman, 2017: 2). Yet, as Mainwaring and Silverman argue, the purpose of widening the scope of detention and deportation has very limited associations with states’ justifications stressing that such methods of punishment would inevitably function in deterring migrants and defending national security (2017: 3). Rather, the expansion of detention and deportation is

⁴ Securitization has situated migration regulations into an institutional framework, as mentioned. This is a relatively firm locatedness, which allows political elites to construct and reconstruct perceptions of fear and unease. This institutionality is also prone to converge separate experiences and individual situations of migrants, and it is inclined to apply complex but identical and bounded methods of administration. Institutional patterns for regulating migration are mostly conducted by the responses of legitimized voices of state officials, and these responses are deemed as the “compatible” ones because no inflammatory and opposing political claim would be acknowledged instead. In Chapter 2 and Chapter 3, I will be discussing the possible venues for these inflammatory assertions as conflicting discourses against the anti-migration discourse.

significantly related to manifesting state sovereignty despite the convincing indications that these methods are indeed harmful and ineffective (2017: 3).

So, detention and deportation exceed the aims of deterrence and have a greater impact in migration management. These measures enable states to reformulate their sovereignty against the influential rhetoric of human rights, and to adjust the political subjectivities of both citizens and immigrants (Peutz, 2006: 238). Even though the measures of expulsion are usually futile, they are indirectly but figuratively substantial in portraying the fabricated strength of states in controlling migration (Gibney & Hansen, 2003: 1-2). The necessity for states to be seen as if they were rigorously enforcing migration policies, and as if they were in charge of a tight discipline of borders, demonstrates their ostensible full supervision over migration related matters (Walters, 2002: 247 in Cornelisse 2010: 234). Demonstrating this ostensible full control typifies state sovereignty as a power to figure out who is inside and who is outside. In other words, deportation is needed to bolster the power of the state to govern the population by deciding who is included and who is excluded. At this point, the deportation debate puts forward a predicament while the practice has been diffusing in the national policy frameworks and gaining an intrinsic character in migration governance. Accordingly, deportation seems to have constituted a democratic paradox. This paradox embodies the fact that liberal democracies are historically and politically attached to, and identified with a state structure, namely a polity. To be more specific, this connection strongly suggests the existence of a capacity of a state to control its borders. As mentioned in the previous pages, such a capacity triggers diversions from some foundational liberal principles such as recognition and realization of the rights of an individual, freedom, equality before the law, and so forth. I specifically refer to the liberal democratic polity in discussing deportation because it is intriguing to observe the gradual fading of the structural importance of what liberalism once had given to democracy - as the moral depth - by inculcating the durability of human rights and the safeguard of minorities (Parekh, 1992: 168). Once boundaries have been drawn to designate a state territory, the populace lives within it, which is being sustained by the positive statement that a liberal democratic polity manifests the preferences of a citizenry about fundamental issues such as migration or other matters (Gibney & Hansen, 2003). Therefore, this logic

straightforwardly implies that if the majority of the citizenry were to deny open borders, then the liberal democratic polity would be expected to actualize that preference, at least in principle. However, these capacities of the liberal democratic polity meet liberal principles uncomfortably and constitute a moral and practical controversy for liberal democratic states (Gibney, 2008: 147).

Having set this as the puzzle, in the following parts of this chapter I will be curiously delving into this quarrel between free and restricted mobility. In the next section, I will present the pervasive and from time to time inescapable aspect of deportation. Then, I will discuss the liberal and rights-based standpoints that address exclusionary and preventive measures as unacceptable. Lastly, I will engage in the restrictive viewpoints against liberal and rights-based understandings. Restrictive approaches have been espousing to demonstrate justificatory causes for states and they have been leading states to embrace controlled borders. These two major stances have evident repercussions in the current migration debate, which I intend to outline in a comparative manner.

2.2. A Brief Outline of Deportation

Deportation is basically comprehended as a coercive exit or removal of an individual and it clearly points out that the right to stay has been annulled. Deportation is extensively understood as an involuntary expulsion from a given state territory. It is also a precautionary measure for an irregular migrant that would hinder the pathways of acquiring political membership (Birnie & Baübock, 2020: 267). In the liberal world, the trend has been the rise of confinement and deportation frequency. Over the last decade, institutional briefs, policy papers and investigative journalism have catalogued and detailed convincing documents about the acceleration of deportation and confinement practices, alongside their catastrophic impacts on migrants (Drotbohm & Hasselberg, 2018: 3-4). This acceleration of deportation has also emanated from the improving legal and political powers⁵ of liberal democratic states and the increasing public support to

⁵ - Very current example may be given from the UK. The New Illegal Migration Bill has passed the parliament in 2023. The bill obliterates the access to asylum in the UK for migrants who crossed the border irregularly. The Bill categorically erases the right to claim asylum (including unaccompanied minors) without showing any concern whether they are serious risks of persecution. The Bill also paves

remove irregular/undocumented migrants (Anderson et.al, 2011; Kanstroom, 2016). As mentioned in the previous section, intensified rates of immigration and terrorism are two of the prevailing headlines among a sweeping number of other rationalizations for increasing expulsions (Birnie & Baübock, 2020: 268). Especially in the liberal democratic world, the pursuit for sustaining a border-located national security has precipitated the transformation in the operation of migration penalties, and advanced the normalization of involvement with detention and deportation (De Genova & Peutz, 2010; 4-6; Drotbohm & Hasselberg, 2014: 552). This normalization is accompanied by standardized and unrelenting enforcement (Gibney, 2008: 148; Drotbohm & Hasselberg, 2018: 3). Thus, Western liberal democracies stand at a historical moment, where detention and deportation are increasingly being shown as the sole alternatives in approaching to migration related problems.

Antje Ellerman (2009) suggests that, deportation practices embody a category of public policy, and through their ossification they bring out exceptional demands for the liberal state. Addressing deportation, Ellerman (2009) puts forward the term coercive social regulation, which implies presumptuous, highly interfering and physically threatening means of monitoring the behavior of a targeted person with serious impositions that may cause personal costs (Ellerman, 2009: 3). These exclusionary practices have severe potentials for depriving aliens' capacities of manifesting their legitimate claims by generating long-lasting schemes of discrimination and by removing them from the social texture with closed and immutable conceptions of citizenship. With regard to that, deportation and detention are firm acts enforced by state and they degrade migrant agency with their clear conclusion of the separation of the migrant figure from social and political spaces.

way to deportations. According to Syal, every month more than 3.000 migrants can be barred and inevitably expelled (Guardian, 2023: para. 1-2).

- Aside from the UK, other EU nations have been planning to operationalize more stern policies to restrict irregular migration. On February 10th of 2023, 27 EU member states joined an official meeting to discuss on the options. Limiting visas to certain countries, bargaining on aids and weighing claims to uncooperative third countries were offered as options (Deutsche Welle, 2023; Voice of America, 2023). Quite easily understood, the major problem for EU nations is to hinder the return of the migrants who have been deported previously.

2.2.1. The Diffusivity of Deportability and the Permanence of Uncertainty

One of the outcomes of the rising academic engagement with the deportation phenomenon is the discussion of “deportability”. Aside from the actual exercise of deportation, deportability addresses the pervasive possibility of being deported. Deportability is entangled in the daily life, social relations and identity of a migrant, and creates migrant illegality (De Genova, 2002; Hinger et.al, 2018: 163). What is intriguing about illegality can be put forward as follows: framing a migrant as illegal is in distinction with a certain legal status attributed to an individual within a particular legal system. In other words, once framed with illegality, the migrant figure would not be preeminently pursued by the state authorities or would not definitely suffer from grave penalties. Indeed, being illegal is most of the time contrasting with the daily experiences of migrants since they continue to be part of society (Rosenberg, 2022: 3). Even though illegality has detrimental psychological effects – since it reproduces the feeling of being counted outside of society – migrants, who have been addressed as illegals, still contribute vitally to society (Nevins, 2002, in Rosenberg, 2022: 3).

Nevertheless, once labelled as illegal, they are susceptible to marginalization, criminalization and being precariously included in society, without being offered any avenues to guaranteed legitimate membership. As Hiemstra stresses, the concept of illegality has mostly been developed as a useful apparatus to socially and politically construct migrants on racial and spatial grounds to facilitate their manipulation and control their mobility (2010: 75). So, rather than being a mere or static legal status, illegality provokes uncertainty and fear lasting for unbearable periods. Illegality also provides the presupposition that deportation is the quick fix (Rosenberg, 2022: 3). This anxiety about getting deported has extensive outcomes. Relevant to my discussion in the following chapters, one of the most important consequences is that this worry may curtail the capacities of political agency of an irregular migrant, due to the presence of a steady feeling for disguising and keeping a low profile in public. A major consequence of that probable attitude would be the eventual silence of irregular migrants, heightening their rightful claims towards both the state and citizens.

Understandably, the unpredictability and insecurity in irregular migrants' everyday lives would push them away from engaging in any political mobilization or claims-making. However, the opposite way around, deportability may also stimulate political agency, and lead to more radical forms of protest. (Hinger et.al, 2018). These protests would not be single handedly focused on stopping deportations. Rather, they contest the legal insecurity and attach themselves to the enlarged civic campaigns to reinforce the undocumented migrants' and asylum seekers' right to have rights (McGregor, 2011: 598; Odugbesan & Schwiertz, 2018: 186).

Surely, these forms of protests are surrounded and organized by the urgent, short-term purposes of migrants (to block deportations in the first place). In other words, the daily experience of precarity may compel them to prioritize individual concerns and hastily articulate them (Odugbesan & Schwiertz, 2018: 187). However, undocumented migrants also seek avenues to utter their macro claims regarding the policy and legal framework to challenge the durable legal vulnerability. Thus, the impact of deportability to migrants' political agency is bifurcated. In such wise, the array of restrictive laws and policies happened to be saliently disseminated in liberal democratic states. They also draw attention to a relevant debate about transnational migration. Having offered a liberal solution to transnational migration, liberal egalitarian arguments highlight mobility across national borders as a basic human right. Departing from the fundamental values of liberal tradition (equality, freedom and moral evenness of all human beings), this way of argumentation extensively defends porous border regimes. As mentioned above, the liberal egalitarian view is contradictory to the actuality of the establishment of current migration enforcement. Indeed, international migration reveals this structural dilemma, which has been residing in hearts of liberal democracies. In the upcoming sections, this puzzle will be clarified by discussing the liberal egalitarian, rights-based and communitarian arguments.

2.3. Liberal Egalitarianism and Case for Open Borders: Two Primary Arguments

The trend towards the flow of expulsion in liberal democratic polity is appealing, as these practices contradict the basic premises of liberal political theory, and basically at

variance with the foundations of liberal egalitarianism. Freedom of movement and equal moral worth for human beings are the two salient arguments emerging from the liberal political tradition. These two principles have been used to advocate more flexible border arrangements.

2.3.1. Freedom of Movement

This principle is a solid objection to restrictive border controls, which originate from the tightly embraced fundamental rights of individuals to simply migrate, namely to move. Engaged in a rights-based framework, liberal thought evaluates border restrictions as blatant violations of freedom of movement (Cole, 2000; Dummett, 1992, in Gibney, 2004: 60-62). Generally, limiting refugees' freedom of movement is contended to be morally objectionable for those who cherish the functional duties of the liberal democratic polity to play a conducive role in providing for the basic needs and rights of individuals. Accordingly, states are artificial, man-made structures and they are appreciated because they are instrumentally able to safeguard individuals. Restrictions are also disputable for those who recognize freedom of movement as an important end in itself (Ypi, 2008: 397). For instance, fundamental liberties (freedom of association, freedom to work, freedom to make choices to maximize well-being) are deemed integral to freedom of movement. (Hidalgo, 2016: 3). Therefore, freedom to move is being upheld as a primary initiator of the subsequent fundamental freedoms to be enjoyed. Nevertheless, such a stance about open borders does not claim that there would be no restrictive entry measures unquestionably, and the liberal democratic states should inevitably lose their centralizing capabilities in determining who to admit (Gibney, 2004).

On some occasions, it is defended as conceivable to restrict movement and to override the principle. Environmental devastations, substantial overpopulation in a particular territory - which may entail a reduction of resources - or possible ethnic conflicts can be suggested among the several consequences of open borders that necessitate restrictive responses. When open borders expedite the emergence of risky situations or harms, then the moral worth of freedom of movement is justifiably surpassed (Hidalgo, 2016: 4).

The justifiability of restricting the access of migrants is also founded on criteria, which determine who to enter, based on skills, economic contributions and compliance with the public order (Ypi, 2008: 400). Even though these are considered morally pleasing excuses for formulating a just response to the restriction of freedom of movement, they are still incongruent with the liberal theory's understanding of justice in migration.

Regarding liberal democratic states' duties towards their citizens and non-citizens residing in their territory, liberal egalitarians' strong commitment to equal moral worth inescapably requires states to safeguard the positive as much as negative rights of individuals. Basically, the former is concretized in publicly funding a variety of social assistance such as education, health care, and any minimal supply of goods that are accessible to be availed of (Kymlicka, 2001: 249). Surely, these provisions are beyond benevolent or altruistic endowments of states. Rather, a liberal commitment to the equal moral worth of individuals is the basis for providing relatively equal opportunities for morally equal beings. Simply, recognizing the equal moral standing of human beings would ensure the attainment of welfare arrangements for all, regardless of membership in a political community.

So, having set freedom of movement as a basic right, liberal egalitarians are prone to supporting the idea of having the least-advantaged of the world not trapped in their harsh local conditions, which generate inequalities. For instance, Carens attempts to justify the right to freedom of movement from Rawls' difference principle, which was originally envisioned and theorized for a closed society (1995: 229-230). Very crudely, taking equal respect for all persons into its focal point, the difference principle empowers and improves the conditions of the worse-off by ensuring analogous levels of opportunity and a relatively fairer share of income (Lamont, 1996). Contemplating within the boundaries of the original position, people would choose and maintain international justice. Selecting the principle of international justice would eventually protect the right to freedom of movement because contemplation within the original position leads people to understand that migration may be fundamental to realizing life projections (Meilaender, 1999: 1063). Carens asserts that Rawls' theory can be applied to international political communities because justice is also a valid question within the

global context, and should embrace the hot questions regarding migration as well (Carens, 1997: 335, in Mendoza, 2016: 55). This position highlights the substantial existence of equal opportunities for all (Carens, 1992: 26). In other words, freedom of movement should be a basic right in order to raise the level of opportunities and life chances. Thus, Rawls' second principle of justice can be articulated in terms of the freedom of movement.

2.3.2. Equal Moral Worth

As an impartial philosophical outlook with a clear emphasis on the equal moral worth of all human beings, liberal egalitarianism designates exclusionary practices as hardly tolerated. According to the liberal egalitarian standpoint, resolving questions of membership, borders or belonging should be settled on the values of equality and rationality. However, these matters pose several problems because they are founded on arbitrary and contingent bases. So, they are incongruent with the essential provisions of liberal egalitarianism (Cole, 2014: 505). For instance, borders may induce inconsistencies in the allocation of rights to citizens and aliens. This is a critical issue especially having equal moral worth established as a key principle, which asserts that each individual equally matters and is evaluated as exclusive resources for valid claims (Kymlicka, 2001: 250-251).

As Carens (1992) openly puts it, liberal egalitarians care about human freedom and believe that each individual holds different aspirations, projects, capabilities and choices on how to continue their lives (1992: 27). While freedom of movement is deemed a moral and indispensable right within state boundaries, its restrictedness to citizens is complicated to explain for liberal egalitarians (Carens, 1992: 28). For Carens, the task is to delineate and separate the reasonable and unreasonable grounds for restrictions. Addressing that particular point, Cole emphasizes the rationality principle, which he derives from the Kantian notion of autonomy (Mendoza, 2016: 59). The rationality proposition implies that all human beings possess equal and adequate competence in rational thought, and at least in principle, all political problems can be resolved through these very capacities of rational solution (Cole, 2000: 5; Cole, 2014: 505-506). So, both

deportations and entry rejections are observed as a matter of justice and questions of justice cannot be addressed by engaging arbitrary standards. Rather, a reasonable acceptable moral justification should be carved out by affected parties to any discriminatory decision.

In accordance with that, the liberal egalitarian account seeks to reach justified moral reasons for enforcing restrictions. These restrictions should be explicable and attain a legitimate acceptance both by the members and foreigners (Carens, 1992: 25; Carens, 2013: 226). Anyone who endorses a vigorous position on border restrictions encounters a heavy burden to provide tangible and justifiable reasons to bring them. Regarding the justified reasons for exclusion, a brief example comes from Carens. With regard to that, Carens discusses whether exclusion to conserve cultural heritage is without doubt a legitimate excuse (1992: 39). Carens argues that assertions to preserve cultural cohesiveness may be overridden by non-citizens' legitimate claims of entry or integration (or not getting deported). Yet this kind of exclusion is not self-evidently wrong (1992: 39-40). When this is the situation, if the responsibilities of states were compensated through for instance, international aid, relocation of migrants to third countries and so forth, and if these were legitimized for both citizens and non-citizens, then these measures of exclusion would not be evaluated as morally wrong. Similarly, as Gibney highlights, the rejection of a refugee's admission into a given territory for the sake of actualizing a special obligation towards the equal members of a particular political community (for instance, efforts to protect national security), should be legitimized by means of impartial moral reasoning (2004: 78). One other issue with regard to the dilemma of separating reasonable and unreasonable justifications to materialize restrictive measures is toleration. As Carens highlights, if a non-citizen or a group of non-citizens are deemed intolerant of the institutions of liberal democracy and its political culture, then the restrictions on free movement or strict measures of exclusion (like deportation) would be validly overridden by the liberal egalitarian premises (1992: 28). Of course, this argument is significantly prone to reproducing the biased anticipation of evaluating non-citizens as unitarily and inherently antagonistic figures to liberal democratic institutions and procedures. This biased anticipation may also induce citizens to develop a disposition that non-citizens are feared by being the

competitors in the labor market or the burdens jeopardizing the welfare system (Carens, 1992: 31-32). Framing migrants as the adversary would initially seal migrants' integration into production and distribution schemes within a political community. Secondly, seeing migrants as the disrupter, would deteriorate the mutuality and cooperativeness ingrained in the liberal egalitarian distributive programs within a political community (1992: 31). For Carens, it is crucial to detect whether migrants are critically eroding the sustenance of the liberal egalitarian distributive schemes within a political community. If so, then the endorsement of migration restrictions would be located on reasonable ground. Surely, uncovering migrants' hazardous impacts to the welfare system or to the redistributive and cooperative schemes seems to be tied to the ill-favored and baseless preferences of citizens. I also think that, the diffusion of securitization discourse and the anti-migrant media effect are substantial in shaping the preferences of citizens and policymakers in specifically discrediting migrants' claims.

Aligning with these views of bringing justifications to restrictions, Espejo coined the term - "the place-specific duties" - which migrants have to comply if they would like to maintain their permission to stay and keep their rights intact (2018: 71). Very briefly, the place-specific terms address specific duties to others on the basis of their appearance in place-specific arrangements of cooperation. In other words, the place-specific arrangements of cooperation imply networks and schemes of relationships, and put every individual – who participates in these relationships- in a situation of acquiring rights and obligations. This standpoint values the place and the relationships constructed within, therefore encumbering rights and obligations to all individuals "as role bearers in a relationship (Espejo, 2018: 80)." So, if the newcomer impairs the web of cooperation (for instance, by free riding), then the ones (including citizens and non-citizens) - who have already become participants in the system of cooperation - would be justified to appeal exclusionary measures. So, I think that, Espejo's argument is close to Carens' above-mentioned points about endorsing migration restrictions if liberal egalitarian redistributive schemes are endangered.

Thus, in light of the arguments above, if it were doubtful to sufficiently justify the harms inflicted on migrants through restrictive policies, then the duty of liberal states would be

to abandon such policies and allow the entry of aspiring immigrants. In other words, states should admit immigrants unless any legitimate reason is provided, which can override the moral significance of individual freedoms. In the previous two subsections, I introduced and elaborated on the two basic premises of liberal egalitarianism. In the following subsection, I will move arguments based on human rights and political membership.

2.4. Arguments Based on Human Rights and Political Membership

At this point, another conflicting issue to be revealed between the liberal tenets and the liberal democratic polity is the reluctance of the latter to support preventive actions to enhance the human rights of non-citizens (Wong, 2015: 28). Human rights understanding refers to the concept of equal moral worth. Ultimately, the evenness of the moral worth among individuals is set as the absolute substance of the human, and theoretically replies the question of ‘what is to be human?’ (Langlois, 2001: 514). Nevertheless, in this subsection, my aim is not to particularly engage in a profound philosophical discussion about human rights. I will just try to draw attention to the acute degree to which the disparities in availing human rights have become for non-citizens, especially undocumented immigrants. So, human rights thought will be treated as a universal consensus with broadly accepted validity and a political and legal reality (Langlois, 2001: 512). As underlined in the first subsection of this chapter, the justification of human rights has received an international and regional visage. Indeed, human rights’ justification has been raised to the international level, and internationally set standards require states to comply with those standards in domestic practices (Vincent, 1987: 11). So, the appearance of this consensus in actual contexts should precede human rights in domestic institutions. As far as human rights are referenced - considering all human beings matter equally - there should be no divergences in accessing them. Nevertheless, the moral equality of people has been reduced to the moral equality of “citizens” in the liberal democratic polity as the countenance of the aspirations to forge a common national identity (Kymlicka, 2001: 255). The aspirations for nation-building legitimize the social and political exclusions of non-citizens, who are

deprived of a position as subjects to rights, and constitute them as objects of control, surveillance and marginalization (Wong, 2015: 29).

Once the theoretical grounds of liberal egalitarianism have been exceeded for realizing a concrete project of the liberal democratic polity, the question of political membership would come to surface (Cole, 2000: 2). In other words, the political membership would simply address free and equal citizens in a sustainable liberal democratic polity. These citizens have privileges in participating in the political community, they possess civil and political rights and they are legally positioned differently from outsiders. This is a situation that reveals a lack of strategy for appropriating membership in congruence with the fundamental liberal tenets (Cole, 2000: 193, in Seglow, 2005: 325).

Arendt's thoughts about the conundrum and tragedy of human rights are pertinent: her approach tells us about how these inalienable and supposedly unconstrained rights have been embodied and consolidated by the actual fact of being a member of a political community (Arendt, 1973). Being stripped of a membership in a political community means a loss of human rights (Kesby, 2012). By entering the territory of a country without carrying documents of proof of attachment to any sovereign state, undocumented migrants present an exemplification of that situation. As Wong eloquently puts it, Arendt's analysis specifies membership in a political community as the underlying source of possessing rights (2015: 30). Having set that as a critical evaluation, the absolute deficit of membership would lead to a state of fundamental rightlessness.

Being in a position of fundamental rightlessness and lacking a legally secure status are linked. The flawed position of undocumented migrants in terms of status and rights emerged from an incomplete governmental recognition of their physical presence. To put it differently, states' unwillingness to formally acknowledge undocumented migrants brings out the weak moral legitimacy of their residing in a given territory, and their feeble legal identity (Bloemraad, 2018: 5). A weak legal identity is an impediment to dissolving the categorical equal positioning of human beings (Bloemraad, 2018: 7). According to Bloemraad, analyzing legal status from the normative content of

citizenship - which is status and rights attached to it - necessitates an overview of its legal, regulatory and instrumental benefits (2018: 9). Namely, once given, citizenship is an eventual power of access to fundamental resources and to integrate the allocation networks. Besides, being recognized as a citizen would ensure the moral and legitimate nature of political claims and claims-making. Thus, without a legal status, undocumented migrants are obviously cast out, and they are clearly exposed to the most far-reaching powers of the liberal democratic polity. With regard to that, being a legitimate citizen means freedom from being subjected to massive expulsion power.

Nevertheless, the arguments for the condensation of human rights to merely being a legitimate member of a political community are counterbalanced by the universalist stance. The universalist stance can be basically put forward as a moral viewpoint that holding human rights should outweigh holding citizenship rights, and shrinking the former to the latter is morally unacceptable. For instance, Benhabib argues for moral universalism and offers a formula of “just membership”. This outlook necessitates undocumented migrants, asylum seekers and refugees’ initial moral demand for accession to the territory of a certain state to be recognized. Another requirement of this overview is to generate precautionary measures to protect each individual’s right to have rights, which are irrevocable regardless of political membership (2018: 13). This perspective offers an all-encompassing reconceptualization of political membership/citizenship, as far as moral equality and the equality of obtaining rights for citizens and non-citizens are preserved (Wong, 2015: 31).

A relatively close argument to Benhabib’s would be the approach of post-national citizenship. This approach is majorly interested in criticizing the international repercussions of the rights attached to nation-state citizenship. Basically, post-national scholars aim to formulate convincing points on how human rights have been substituting citizenship rights (Faist, 2000: 206-207). According to the post-national stance, the life chances of immigrants in the liberal democratic polity have not been mainly structured by being affiliated with a particular national community, but by human and civil rights. This affiliation is administered by the universal discourses and supranational institutions (Faist, 2000: 206-207). Arguments of post-national citizenship are being formed under

the jargon of transnationalism and fundamentally interwoven with notions of universal human rights, dignity, equality of personhood and cosmopolitanism (Favell, 2022: 4). Post-national citizenship discusses every individual's right and obligation to participate in the public, political life of a polity, unconcerned about their cultural or historical affiliations with the community (Soysal 1994: 3). Despite Western liberal democratic states having adopted "human rights as a world-culture" (Meyer et.al, 1997, in Faist, 2000: 207) through displaying their commitments to international agreements, the deportation turn would prove that their commitments to apply internationally acclaimed premises in the domestic context are floating in thin air.

Therefore, I believe that against the possibility of the reduction of one's human rights to citizenship rights, the post-nationalistic attempts⁶ may sometimes be futile and irrelevant, considering the immediacy of the situation of the undocumented migrants. To be clear, I am not arguing that post-nationalistic attempts are widely hollow and ineffectual. Rather, I am stressing that they are easily renounced against the concerns of securitization or national interests. Thus, it is imperative to politicize them towards obtaining fruitful and practical results to restrain the harsh measures of states. Politicization of the premises of post-nationalism and migrants' agency will be elaborately discussed in the following chapters, but now, I would move onto the arguments of communitarianism and the gap between the theory and the authority structures of the liberal democratic polity.

2.5. Communitarianism, Sovereignty, and the Restrictive Stance on Migration

Until this section, liberal egalitarian positions – which assert reasons for open or relatively more permeable borders - are presented. One should notice that, these positions highlight the gap between theory and the actual structure of the liberal democratic polity. Circumscribed by boundaries, delimited by a certain and accepted jurisdiction, characterized by a recognized institutional framework and defined by a self-contained political community, the liberal democratic polity is partial in organization,

⁶ Attempts to locate and give meaning to the concept of citizenship and rights within the global institutionalization of the status of "being a person" and agency.

and enforces exclusive membership practices. Sustaining equality between the members of a political community depends on an organized political community with an adherence to collective solidarity and cohesiveness among its members. Arguments on communitarianism are shaped around the membership question. Since solidarity and cohesiveness necessitate a shared identity, the political community is rightfully determined admission or exclusion policies singlehandedly prevent the close networks among its members (Walzer, 1983, in Cole, 2000: 61).

Restrictive arguments seem to predominantly rely on communitarian approaches regarding migration ethics. To put it very plainly, communitarian approaches figure the community as the first concern. States are considered political communities, and across a substantial field of decisions they can make, they ought to be regarded as having a nearly unconditional discretion to implement whatever migration regulation they would like to endorse (Higgins, 2013: 24).

Questions of justice in communitarian arguments generally touch on defining and encircling what a community is, and whom to be a part of it (Mendoza, 2016: 52). Political membership is the primary good and the capability of allocating membership is a matter of choice or a moral constraint (Walzer, 1983: 32-33; Reed-Sandoval, 2016: 15). Controlling the distribution of membership is founded on two fundamental purposes. The first is to preserve the domestically formed closed-knit ties between local communities (neighborhoods), so that they can remain open and inclusive (Walzer, 1983: 38). Accordingly, local communities are organized around local politics and culture in a parochial way. They are relatively indifferent and detached from the national context and build their own institutional structures, living habits and personal preferences (Walzer, 1983: 38; Higgins, 2013: 25-26). Hence, a state - which directly promotes open policies of migration - would alternatively create a world full of aliens and break the functionality and cohesiveness of inner units. The second is to conserve the distinctiveness of the culture. As Walzer stresses, a political community is the closest form of participating in a world of shared meanings (1983: 28). The members of a political community are inclined to form a collective consciousness since they share a language, history, sensibilities and collective interests. Approximating Walzer's

position, David Miller argues that a sense of belongingness to a particular nation suggests the existence of reciprocal commitments and shared beliefs with people, who identify themselves as included in the same nation (Miller, 1995: 23, in Reed-Sandoval, 2015: 17). This sense of “we” emanates from shared historical continuity and a joint public culture, which leads to aspirations to seek a collective agency (for instance, in the form of political self-determination). Accompanying the ambitions of acting collectively, this same sense of “we” captures a strong relationship with the territory (Miller, 1995, in Harrell et.al, 2022: 985). In virtue of these views, nationhood is comprehended as an ethical community in which members enjoy better trust in each other and acknowledge peculiar duties to other members (Harrell et.al, 2022: 985-986). The aim of preserving this commonality entails the defense of closed borders. Thus, if migration is somehow accelerated or facilitated by the state somehow, national integrity would be destabilized and reciprocity among nationals would be crippled.

Higgins construes Walzer’s and Miller’s positions of safeguarding the particular traits of a political community as “prescriptive nationalist” (2013: 22). In accordance with prescriptive nationalists, “states ought to choose immigration policies in accordance with ‘nationalist interests’” (Higgins, 2013: 22). While prescriptive nationalists bear a risk of conceiving the term “national interest” simply as the cumulative interest of all citizens, they generally agree that states should priorly display concern for citizens’ anxieties and may legitimately devote less energy to foreigners’ (Higgins, 2013: 22-23).

One may argue that, both Walzer’s and Miller’s positions offer a considerably essentialist conception of the political community. Shared cultural traits address cultural homogeneity, and in consequence, there would be no room for opposition and disagreement within. As Higgins underlines, this closed understanding of the political community also brings about the justification of group rights (2013: 27). The conception of group rights presumes the group is consolidated and tightly merged in terms of beliefs, traditions and interests. Rights are ensured to the group for sustaining these collective holdings. So, the presence of the group is the precondition for having rights (Tamir, 1993: 47-48). According to Walzer, the moral and political relevance of a right is extracted from being members of a historic community, sharing a rooted way of life

and manifesting these common acquisitions in unique political forms (Gibney, 2004: 25). In line with Walzer's and Miller's thoughts, internal controversies within the political community can be grasped as warning signals against the capacity of the group to hold the rights to preserve its culture. This understanding entails a point, which equates the realization of the rights to the precondition of accord and reconciliation within the group. Namely, the rights are restricted to citizens - the legitimate members of a political community - and their good-will for protecting their cultural distinctiveness.

Complementary to our discussion on communitarianism so far, the equality of members presumption outweighs the moral equality of all people presumption in the liberal political theory from the outlooks of communitarianism and cultural particularism. This is also essentially different from liberal egalitarians perception of justice, which basically calls attention to the unjust political, economic and social conditions that have been developing from restrictions over international migration. Indeed, the supposition concerning the privileged membership of a particular political community is not repeatedly challenged from the outlook of the principle of moral equality for all. Rather, by the liberal thinkers – who approximate to communitarian viewpoints – the equality principle is occasionally supported by suggesting that the concepts of national unity, common identity, shared culture and mutuality do not consistently deny liberal values, but rather transform and ease their application (Kymlicka, 2001: 254). Related to that argument, participation in the national culture elevates a person's individual freedom by enhancing as many worthwhile choices as it can about how to shape and direct her life (Kymlicka, 2001: 266). As Kymlicka conveys from Margalit and Raz (1990: 449), “familiarity with a culture determines the boundaries of the imaginable (Kymlicka, 2001: 266)”.

Considering freedom and equality as the major tenets of liberal political theory, such integrative efforts to a particular national culture to genuinely bolster these values and make them closer to reality would be wise to prefer for a migrant. These endeavors would be intelligible for a migrant to pursue, according to the argument above, however, the actual problem is the outcome of the controversial power of the liberal democratic polity that expresses itself in rejecting and expelling immigrants. That is the explanation

for why the undocumented migrants would not acquire available venues for interweaving with the national culture, even though it seemed to be unambiguously the right choice.

So, intermingling with the national culture is – most of the time – impossible for undocumented migrants, and these efforts to associate with the local populations cannot be crudely pointed out as a matter of choice. Firstly, one may not want to renounce peculiar cultural affiliations just for the sake of becoming integral to the schemes of cooperation and to advancing rights and freedoms. Preserving these unique cultural traits, and rejecting soft assimilation may well be prioritized. Secondly, as can be recalled, the majorly accepted prerogative of liberal democracies and the political community is the fundamental right of self-determination that leads to unilateral decisions excluding or expelling migrants (Buckinx & Filindra, 2015: 394).

Although migrants are willing to be a part of the national culture, the political community (alongside the strict policies of admission and integration) is not waiting to embrace them without demanding any conditions. I think, considering liberal values and premises were to be appreciated and carried out better in a closed society, this would overburden migrants to conform with specific behavioral expectations and conditions to be accepted, and they would be pressured to disavow their cultural baggage and to be ready for assimilation. Overall, this is fundamentally at odds with the principle of moral equality for all, and is hazardous since it would curb migrants' personhood and agency. As I mentioned, by sharing crucial interests and a collective/integral spirit, separate political communities have a presumed right to exclude or admit foreigners unless they would evaluate them as unfit. However, once let in, Walzer thinks that a state is morally compelled to enlarge the rights of non-citizens (Gibney, 2004: 37; Mendoza, 2016: 53). Truly, this argument is intriguing for its closeness with Carens' position, which asserts the gravity of the right to stay is much higher than the right to get in (1992: 29). Carens' position indicates the vitality of safeguarding the right to stay because once legally admitted, each individual starts making future plans about their life. If the right to stay was imperiled, that would be a total violation of the equal moral worth of all people, because then, the decision of removal would hamper an individual's agency to try to

make the most of her life. To put it differently, Carens explicitly upholds the view that, once admitted to stay, and granted permission to work, the liberal democratic polity cannot behave as if immigrants were not moral equals of citizens (1992: 29-30).

2.6. Concluding Remarks

The liberal democratic polity is capable of employing harsh methods of conduct against non-citizens. These methods often shift to cruel ways of treating non-citizens despite states' expressive pledges to the international human rights regime (Wittock et.al, 2021: 1589-1590). The forced deportation and the administrative detention periods are the scenes, where the liberal democratic polity mostly deviates from their proclaimed engagement with international law and human rights.

National security concerns, the alleged tendency of immigrants to be criminals or various other rationalizations - which underline the vitality of the response to be taken by the authorities - are pointed out to justify executing deportation decisions or additional forms of exclusion. This elevates the scope of the responsive attitudes of the states to the level of principles of the rule of law. Eventually, states do not conceive of forced deportations as measures of enforcement to be morally avoided. To some extent, undermining the questions of justice regarding the treatment of migrants is akin to a partial view concerning principally the interests of the legitimate members of the political community. Conceptualizing justice within a partial view eludes the liberal understanding of it, which stresses the necessity to disconnect from any particular attachment and identity in taking any just action.

Thus, when these exclusionary measures have been uplifted to the level of principles of the rule of law, they are also treated as if they could not be a subject matter of any political dispute, and as if they were the outcome of an uncontroversial discretionary power stripped away from its political character. Of course, many thinkers argue that the liberal democratic polity has a presumptive right and discretion to self-determination on border related matters, without reckoning any need to appeal to an alternative moral

justification. Surely, such a right to control migration within its own jurisdiction seems to open up a legitimate basis for deploying disciplinary means.

Besides, securitization and criminalization would also depoliticize the refugee figure. These processes deprive us of any liberating power to critically engage with the arrangements of exclusion (Kremmel & Pali, 2010: 257-258). The territorial rights in wielding migration controls have been heightening deportation to a vital matter, and neutralizing its political aspects through prioritizing the protection of national security and the preservation of established order. As Rosenberg underlines, deportation and deportability are functional (2022: 3). One outcome of this functionality is benefiting from deportable migrants' legal insecurities and rendering them a cheap and docile labor force to realize the interests of global capitalists (De Genova, 2007: 426). The second outcome is the social construction of migrants as security threats, which deepens the authorization of state officials to employ the devices of securitization. These outcomes detach deportation related matters from the realm of resistance and political claims-making, and delimit them within an institutional realm that treats migration issues as cases to be resolved urgently, without appealing any consultation or putting any democratic problem-solving mechanisms in place. Simultaneously, the shadow of deportation inflicts emotional and physical burdens on migrants. One may argue that this anxiety causes withdrawals from actively engaging in political contestations by migrants. In this regard, deportation and deportability seem to construct a cycle of depoliticization.

Nevertheless, one may argue that the execution of deportation and other forms of exclusion have political consequences. These discriminatory measures are contested by migrant subjects, and by broader civic campaigns in many liberal democracies (McGregor, 2011: 598). Therefore, the policies of the liberal democratic polity - which reproduce illegality and criminality – trigger irregular migrants to acknowledge and react to the social and political contexts surrounding them. In other words, migrants are mostly attentive and politically alert. They have the capability of for challenging their disenfranchised position through politicizing their experiences, and connecting various struggles against the widely-spread anti-migration rhetoric (Schwiertz, 2016). In the next

chapter, I will elaborate on the recent forms of migrants' political claims-making in liberal democracies. I will put forward the philosophical and ethical implications of the concept of the right to stay and recent protests' relevance to this concept.

CHAPTER 3

ACTIVISM OF UNDOCUMENTED MIGRANTS AND THE RIGHT TO STAY

The border regime of the liberal democratic polity creates new actors and forms of political contestation. The actors and the forms of political contestation are evaluated as the products and symptoms of the border regime. The current systemic border violence does not remain exceptional on the borders, but diffuses within the society and manifests itself as the violence occurring in the micropolitical borders across multifold subdivisions of the society (Nail, 2012: 242). Seeing the malleability of contemporary border arrangements, one may argue that, in response to this transformation, the strategies of resistance should be altered. For instance, Nail (2012) argues that new forms of solidarity should be molded by emphasizing the nomadic character of the migrant. This nomadic character implies a non-status migrant, who is on the move constantly and cannot be barriered by any nation or delimited by any state. Simply, Nail indicates as so: "... given this transformation of the border violence, migrant resistance must also change from being only a struggle for rights and citizenship (that are inherently exclusionary) to making the non-status migrant or nomad itself the central figure of an entirely new political movement based on universal solidarity" (Nail, 2012: 257).

However, undocumented migrants have been striving not to get deported in the first place. Accordingly, I believe that shifting the focus of political claims-making from inclusion (and therefore gaining legal status) towards the constant mobility of the migrant figure would be too luxurious for undocumented migrants because of their immediate concerns. Nail's stance requires migrants to transform their positionality vis a vis the state-centric concepts, and to acknowledge their position outside the boundaries of which the border regime has been compelling them to do so. On the contrary, I will argue that the concept of citizenship may be outstripped from its narrow definition – which is inherently exclusionary – by figuring it as a contested practice for negotiating and pressing for rights. Also, this reformulation is vital to remove rights from being

attached to a specific nation-state framework. Thus, I see no need to keep a distance from the concept. Rather, I think, a radical decoding of the concept from its thick communitarian embeddedness would be crucial in relocating it closer to just membership for all. Specific acts engaged by migrants would contribute to extending our insights into citizenship towards observing it as a “ground of battle” (Isin, 2005: 375). This “ground of battle” surpasses the claims to reach a given set of rights. Instead, it directs the route of the political contestation towards negotiating and re-negotiating unconventional rights. For undocumented migrants, the right to stay in a given territory may be considered an example. I will be discussing the right to stay in the upcoming subsections.

In light with this introductory part, in this chapter, I will first examine the concept of the right to stay. I will try to underline the concept in a two-fold manner. Firstly, I will look at the formulations of the right to stay as a fundamental human right. This formulation of the right to stay is attached to a liberal reading and does not offer a broad evaluation of the concept with regard to migrants’ rights. I figure that, this liberal reading is sterile and does not go beyond the level of holding states – or international bodies - morally accountable for guaranteeing this right. In other words, the liberal reading seems unproductive in locating the right to stay in migrant struggles.

With regard to the liberal reading of the right to stay, I will be looking at the membership-based arguments for the right to stay. These arguments put forward the societal membership thesis that long-term resident irregular migrants build close links to society, and they become the “de facto” members of the political community. Thus, their claim to formal membership should be noticed and alternative schemes of regularization should be founded to eliminate the legal uncertainty. This argument seems close to the liberal content of the right to stay: once the legal uncertainty is resolved, migrants would be relatively less hampered in realizing their future plans, thriving personally and proceeding with their lives. In other words, once undocumented migrants acquire legal standing, they are guaranteed to be discharged from states’ arbitrary power as deportation. Nevertheless, the membership-based arguments are as unsuccessful in politicizing the right to stay as the liberal formulation of the concept. This is problematic

because the membership-based arguments are apt to deviate from the logic of being rooted in a country towards the framework of deservingness. The framework of deservingness seems to reveal itself as a precondition for the social and economic integration of the migrant, which may impose certain behavioral requirements and display genuine intentions to mitigate the consequences of having entered illegally.

Contrary to the depoliticized reading of the right to stay, I will argue that the firm articulation of the right to stay has been located in the center of the precedent instances of migrant activism in the liberal democratic polity. By going through these prominent examples of migrants' political engagement, I will discuss the transformation concerning how the "political" - which is defined and restricted for the legal subjects - has been ruptured by the migrants. I will present examples of migrant activism as movements of political significance, since they have been reformulating and redefining the premises of being political (Isin, 2009: 370-371; Oliveri, 2012: 795).

Next, I will revisit liberal-egalitarianism. One may argue that the fundamental tenets of the liberal-egalitarian theoretical approach conform with the point of origin of the migrant protests. As already introduced, liberal-egalitarianism is inclined to favor human freedoms and cherish people's endeavors in pursuing their individual life projects as long as these individual claims do not meddle with the legitimate claims of others that deserve equal acclamation (Carens, 1992: 26; Scaperlanda, 1999: 527). In relation to that, the basic starting points for migrants were the demands shaped around equality, individual autonomy, full execution of international human rights and freedom of movement. Nevertheless, once migrants engaged in "dissensual resistance" (Stierl, 2019: 57), their dissent gained a relatively aggressive character. So, I will argue that, such an antagonistic voice cannot be narrowed down to singular, individualistic assertions. Rather, by engaging in visible protests - in which migrants insist on broader inclusion - they built a political subjectivity for confronting the structural injustice and inequalities emanating from the migration management of the liberal democratic polity. The fact that migrants built political subjectivity can also be comprehended in terms of "desubjugating" themselves from a form of life, in which they were being exposed to derogatory and jeopardizing government coercion (Foucault, 1993, in Stierl, 2019: 58).

By participating grassroots events, migrants compelled the liberal democratic polity to advance its public accountability with regards to migration regulations. Therefore, migrants contested the flawed patterns of democracy (flawed patterns, including certain neglects in migrants' political participation, non-inclusivity, political, economic and social exclusions) by exerting their visibility in the public sphere, and by challenging their illegalized social construction to prove that their claims should have been valid in decision-making processes that directly affect them.

3.1. Approaches on the Right to Stay

The right to stay is essentially defined as a right not to involuntarily depart a person from her home state (Oberman, 2011: 257). Aside from protecting people from coercive banishment in the receiving state, Oberman's approach to the right to stay is referred to as bringing safeguards against persecution - which may in consequence - impel people to flee to other countries for security and liberty concerns. To put it differently: the right to stay seeks to protect people against being necessitated to leave their home state to meet their urgent needs and subsistence (Oberman, 2011: 258). This outlook understands the right to stay as a human right of not being forced to leave a particular locality. Such an outlook is favorably cherished by the theorists, who embrace the arguments defending migration restrictions because the right to stay is interwoven with the values they care deeply about, and would like them to cultivate. Accordingly, the right to stay is valuable due to the near impossibility of someone's culture being entitled to a national status in the receiving state (Kymlicka, 1995: 95-100, in Oberman, 2011: 259). As mentioned above, I stress that membership-based arguments may tend to formulate and implement legalization policies on the basis of the deservingness scheme. Considering that one's cultural attachment is unrealistically awarded as a legitimate status in a foreign country, migrants - who would desire to be legalized - are likely to be pushed into a legalization process that forces them to assimilate as the first step of integration. In addition to the consequences, like renouncing the culture to fulfill the behavioral requirements of the legalization policy, another specific outcome of forcibly leaving one's home country is to simply leave the territory. Detaching from the territory would mean becoming incapable of developing personality, deprived of choices and losing a special sense of

belonging (Oberman, 2011: 259). So, the arguments highlighting the importance of the right to stay address that the options are normally more appropriately situated in our home countries, and our reach to them is much easier. However, people migrate to other countries due to the inconvenience of subsistence, to compensate for their cumbersome living conditions or to rescue themselves from harsh political and economic crises. So, I will shift my focus to the right of migrants to stay within the territory of the receiving country.

Contrary to the primary formulation of the right to stay, the second theoretical approach is shaped around the right to stay of undocumented migrants. This alternative reading of the right to stay has liberal connotations and confronts any mechanical process or involuntary action in removal. A migrant's claim of the right to stay may emerge from multiple bases and appeals. For instance, an undocumented migrant may insist on her right to stay by appealing to the principle of “non-refoulement”, which is codified in Article 33 of the Convention and Protocol Relating to the Status of Refugees. Accordingly, this article binds the contractor states not to involve in any measures of expulsion towards a refugee, if such an enforcement threatens her life, safety or freedom on account of their race, religion, nationality or affiliation with a political or social group. For instance, the right to stay pertains to the right to mobility, which is a fundamental component of human agency (Cole, 2011: 298). So, having the right to stay provides a freedom of movement within a country that would allow migrants to sufficiently protect their interests and needs, as if they were completely recognized as full members of a political community (Cole, 2011: 298-299).

Reverberated in Article 8 of the European Court of Human Rights as well, any automatism in removing an individual seems illegitimate. Convergent to that point, the right to stay is also deemed essential for the unconstrained flourishing of human personality (Savino, 2016: 70). Basically, if the boundedness of the individual and the place is cut through removal, then the individual would be deprived of resources and options for personal advancement. Overall, this outlook problematizes the legal uncertainty and argues that the unpredictable and arbitrary state actions are obstacles for migrants against their efforts in making long-term life plans (Ellermann, 2014: 293).

Related to that, deportation and deportability produce capriciousness and anxiety in undocumented migrants' lives, which deteriorate the relationship between the person and the place. In this perspective, the right to stay is founded on the terminology of personhood and not impeded by citizenship (Birnie, 2020: 379). Here, I would like to reiterate that deportation can be considered an act to reassert the gravity of the decisive right to stay that citizenship ensures (Anderson et.al, 2011: 548). This is important because deportation - in a definitive way - singles out the individual, who is not suitable for citizenship and therefore cannot pursue further residency in the territory of the receiving state. So, deportation is a constitutive practice and delimits the legal boundaries of membership.

Against this direct link between membership and the right to stay, the liberal formulation inclines to draw the notion of personhood into the focal point. This formulation of the right to stay seems to be loosening the mutual obligation between the state and citizenry, and constituting it between the state and the individual (Savino, 2012, in Savino, 2016: 93). Reconstituting this link between the state and the individual would mean that states should acknowledge the legal personhood of all, regardless of territoriality (rather can be addressed as citizenship). Additionally, one's legal personhood, the right to stay of undocumented migrants suggest that the mere physical presence of an individual in a given territory replaces the territoriality condition as the primary criteria for distributing rights and liberties (Savino, 2016: 74). Indeed, this expanded comprehension of the right to stay would allow migrants to legitimately ask states to protect their rights and liberties because the legal personhood of the individual is no longer strictly defined via the link between state and citizenship. Despite the fact that legal personhood is reaffirmed by deportation acts, and despite deportation bolstering the dependency of legal personhood on the link between state and citizenship, the liberal formulation of the right to stay - at least theoretically - addresses the disappearing relationship between the rights and citizenship. In line with that, the right to stay leads to an advanced erosion of states' rightfulness in allocating privileged benefits to their members. By highlighting the significance of personal development, the right to stay renders the discrepancy between citizens and non-citizens' legal personhood even less relevant. In a manner to resolve the moral unease of whom to be qualified as a would-be deportee, Birnie argues that one

should be relieved from any process of deportation if she made to the territory and found a residence for the sake of planned life projects and attachments. Accordingly, any person has a moral right to continue remaining in her established living space, specifically after having lived there for a notable period of time, which makes them a member of the existing political community. For instance, Birnie defends a broadened scope of the right to stay including “de-facto domiciled non-citizens” (Birnie, 2020: 380).

According to Birnie, the term domiciled stands for a place, where one has already identified and perceived it as home. So, it seems that domiciled implies permanency rather than temporariness and even future endeavors to move other places for reasons of security or subsistence. In addition to that, having a dwelling in a place signifies a legal relationship with the person and a system of law within the country in which the non-citizen resides. However, a significant period of time is necessary for this legal relationship to be established. In other words, long-term locatedness in a given place is a precondition for building future-oriented life projects, emotional attachments and other forms of dependency (Hammar, 1990: 199, in Birnie, 2020: 380). This approach grounds the right to non-deportability by subscribing to the belief that the longer one stays in a place of domicile, the more her previous attachments that had been founded in the geographically detached country, diminish (Birnie, 2020: 381). As a result, long-term locatedness in a particular space is morally applicable and it would be wrong and doing injustice to deport someone establishing strong ties with the community.

At this point, I think that Martha Nussbaum’s capabilities approach would not be considered incompatible with the societal approach of the right to stay. Capabilities approach leads to two fundamental assertions. The first claim indicates the fulfillment of well-being is the primary concern, and the second claim associates the freedom to accomplish well-being with capabilities and function (Robenys & Byskov, 2020). Capabilities are basically the deeds that people can carry out if they choose to (Nussbaum, 1997). In relevance to our discussion about the societal accounts of the right to stay, Nussbaum’s list of capabilities - which consists of ten materials - provides an alternative path that justifies the right to stay. For instance, the fifth component of the

list is called “emotions”. Accordingly, Nussbaum indicates: “Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience, longing, gratitude, and justified anger.” (Nussbaum, 1997: 287).

Such emotional attachments require a territorial presence, stability and a minimum level of cohesion with the community. In defining “emotions” Nussbaum addresses a normative ideal, which can only be actualized in lived experiences without threats of being deported or alienated. Considering that harm can manifest in manifold ways, expelling someone may bear the consequences of bringing psychological abuse, and this is intrinsic to achieving well-being. I believe that the seventh material on the list called “affiliation”, is as significantly relevant as “emotions”. Divided into two sub-components as “friendship” and “respect”, an effective realization of this capability compels the presence and continuance of a social base of self-worth and dignity. In other words, this capability necessitates a non-degrading treatment of someone by giving equal respect and moral worth without appealing to discriminatory provisions (Nussbaum, 1997: 287). Therefore, the right to stay is crucial in reinforcing the capacity to choose, decide and go after a specific life plan within a dignified context. One may argue that, the right to stay precedes autonomous agency (in terms of adopting own commitments, making judgements and taking decisions regarding how to act). Of course, maintaining this structure in social relations would be challenging, when undocumented migrants are at the center. This is because undocumented migrants’ integration is presumed not to be fruitful.

Complementary to the previous stances on societal membership, Molly Gerver provides a complementary one called ‘plans argument’, which stresses why refugees must have the right to stay. According to this argument, accession to a least minimally decent life contains the capacity to be engaged in a minimum of social, economic or romantic relationships (2021: 421). Depriving migrants’ abilities would put them in an inadequate position to fulfill these relationships. Also, this deprivation would place them in a defenseless situation, and render them totally dependent and needy subjects. Considering the ‘plans argument’ alongside the ideal of equality of opportunities and equal moral

worth, denying migrants' right to stay may cost non-negligible outcomes. Because entering social, economic or political relationships can be evaluated as various opportunities for migrants to genuinely realize their plans and bolster their life chances within their habitual space. So, if the liberal democratic polity does not endow the right to stay and exerts deportations, this decision does not result in minor and tolerable consequences for would-be deportees since they would have no better option than to go through the migration journey once again.

I believe that this approach would oblige the migrant to display a concrete intent to see the country, which she has entered, as the principal source of political, economic and social interests. As opposed to the arguments above that states should recognize the legal personhood of aliens and award them a certain degree of protection, a long-term locatedness makes the protection measures contingent. Surely, Birnie's point does not suggest neglect in practicing temporary protection measures such as "non-refoulement". However, for migrants' it would not always be easy to abruptly reveal their intentions about the country they have entered, and about what they plan with their lives. Also, long-term locatedness is considerably difficult for undocumented migrants because the degree of arbitrariness and insecurity would not completely vanish during this period. Suggesting rootedness - in a given territory - as the precondition for entering into a legal relationship with the state (as being a member or as being given a different legal status that guarantees the stay of the migrant) seems to be devaluing the content of the right to stay. Stressing deportation's far-reaching and intermittent expressions, I believe that, without an expansive formulation of the right to stay, undocumented migrants' vulnerability may be reproduced. So, I argue that legal certainty - beyond the temporary protection measures - should be ingrained in the rule of law before distinguishing migrants with regard to their long-term locatedness. A similar view of the connectedness between long-term residency and the right to stay is also shared by Carens. Yet Carens' position comes with a nuance, which points out that undocumented migrants with long-term locatedness may have legitimate claims to national membership because they are observed as being qualified for societal membership already. This account places societal membership above national. Accordingly, membership is initially social and regulated by social factors primarily such as living, working or contributing to a

community's life in different ways (culturally, politically, economically, etc.) (Rubio-Marín, 2000: 21, in Birnie, 2020: 373). The membership-based argument addresses the gradual decay of the moral right of states to incarcerate and deport undocumented migrants as these migrants' spent time in the host country accrues over years (Carens, 2010: 18). Under these circumstances, Carens contends that undocumented migrants' moral claims to membership would intensify and obtain a legitimate ground. Arguments shaped around long-term residency are prominently formulated in reference to interpersonal ties including close-knit networks and inclinations to build associative relationships. Eventually, the dense societal relations give space to moral claims to stay (Carens, 2013: 164). Carens' approach also resembles Shachar's principle of rootedness (2009: 171). Resembling Carens' point, Shachar addresses a threshold of duration in which social ties deepen sufficiently and formal inclusion may be morally claimed. Arguments based on residency also accompany a hardship logic (Ellermann, 2014: 295). Accordingly, the refusal of an immigrant to legalize inflicts profound burdens and these are absolutely disproportionate to the illegal entry. As Carens indicates: "Even if someone has arrived only as an adult, it seems cruel and inhumane to uproot a person who has spent fifteen or twenty years as a contributing member of society in the name of enforcing immigration restrictions. The harm is entirely out of proportion to the wrong of illegal entry." (Carens, 2010: 12).

Yet, as in Birnie's, Carens' position also seems to be lacking in locating and sketching the right to stay for undocumented migrants, who have not yet spent a long-time in the receiving country. I think that carving out the right to stay from one's time of residency is problematic since the lack of a legal basis for this right may lead to an automatic expulsion of the migrant with irreversible harm. In the absence of specific guarantees for the right to stay (specific guarantees should be included in the rule of law so that undocumented migrants may enjoy them), the securitization rhetoric is likely to function as an inflexible instrument in detaining and deporting migrants. The circulation of the discursive framework that labels the migrant as a threat to the public security may defend disproportionate automatism in deportation by grounding such measures within the discourse of disorder and crime avoidance. So, these arguments seem to apply to long-inhabited migrants, who might have bonded with the larger territorial community

in different aspects (ranging from giving socio-economic contributions to becoming culturally consonant). When the discussion shifts to undocumented immigrants, refugees or failed asylum seekers, we encounter the fact that the latter group had come to the foreign territory without tangible future prospects, but only for short-term solutions to elude an acute crisis. Therefore, a likely outcome for states would be to expel these people by coercive means without offering any moral justifications, and undocumented migrants would not be exempted from the state's power. So, undocumented migrants' relationship with deportation would be quite distinctive from the people, who have domiciled and already established moderate connections (political, economic, cultural exchanges) with the community. Undocumented migrants' relationship with deportation has a political character since it challenges membership.

So, as I argue above, the right to stay should not be carved out of a migrant's time of residency. Rather, I think, the principle of harm avoidance and the labeling of the right to stay as a basic right is more insightful. So, accounts of non-removal are also related to harm and harm avoidance. Citizenship safeguards the inviolable right to be physically present on a given territory, nevertheless, an illegal migrant is expected to gain such a right conditionally (Goldman, 2002, in Buckinx & Filindra, 2015: 395). Yet, adhering to equal moral worth for all individuals and attaching preeminence to their rights of life and liberty promotes a way of seeing each individual as a "unit of moral concern" (Buckinx & Filindra, 2015: 396). In line with that, imposing harm seems to be irreconcilable with the cosmopolitan principles of being equal and therefore worthy of being treated with equal moral respect. According to Shapcott, the harm principle discloses the fundamental cosmopolitan commitment to equality (2008: 195). Drawing from this argument, Shapcott underlines the affinity of the harm principle with Kant's categorical imperative (2008: 195). With regard to our discussion, Kant's categorical imperative requires citizens to treat outsiders as equals, and to avoid imposing unproportionate harm on them. Theoretically, if we are sincere in holding the view that all human beings are morally equal, and bestowed with the same, inalienable rights, then we are morally obligated to contemplate what this belief necessitates us to do for both fellow members of the political community and for non-citizens.

This formulation of the harm principle has cosmopolitan connotations and addresses a negative duty of harm limitation and harm evasion (Shapcott, 2008: 196). Therefore, our acts (or state acts) should not deliberately inflict harm on non-citizens. From the angle of the right to stay and non-deportability, not endowing the right to stay to an undocumented migrant may render that migrant worse off than she was priorly. To put it more clearly: it is not a surprise that undocumented migrants live under unfavorable conditions. Also, we are not bewildered by the fact that their social and economic integration is selective. However, what I see as very crucial is: whether flawed or ready to be disentangled, undocumented migrants have already established arrangements in the receiving country. Given this as a fact, the absence of a right to stay would do harm to undocumented migrants by rendering them worse off than the earlier arrangements that would have been maintained uninterrupted. The direct outcome of the absence of the right to stay may be deportation. Being deported would disturb the already established arrangements (may be flawed or incomplete) and expose the undocumented migrant to more atrocious conditions. In relation to that, the harm principle and harm avoidance are also interpreted in reference to basic rights (Buckinx & Filindra, 2015: 396). For instance, according to Shue, basic rights imply rights to subsistence, security of physical integrity and liberty (1980: 18). According to Shue's argument, these rights are distinguished and recognized first. They also provide a base for other basic rights to flourish. Any deficiencies in employing basic rights would generate impractical conditions for someone to exercise other rights. Shue considers the right to subsistence a moral right. So, any demand to socially guarantee its true enjoyment is justified in any matter (1980: 13). In other words, the actual enjoyment of the right to subsistence requires genuine protection from social institutions. With regard to the right to subsistence, Shue offers three correlative duties. The first correlative duty necessitates the aversion of keeping away the only available means of people, which would ensure their minimal subsistence. The second correlative duty requires a genuine protection of these available means from definite hazards for the actual enjoyment of the right to subsistence. Lastly, the third correlative duty entails providing material assistance to those, who are unable to arrange the procurement of the available means to actualize the right to subsistence (Shue, 1980: 52; Mancilla, 2019: 3).

In line with the correlative duties, one may argue that, anyone expelled from a territory without valid justifications would probably be deprived of the provisions of survival. At this point, I would like to contemplate a hypothetical case of a migrant Y. Let's consider that Y is an irregular migrant and her thwarted right to stay pushes her into a continual escape from state authorities and blocks the opportunities to fully bridge with the political community to flourish her agency and capabilities. Yet, being a deportable migrant does not always mean a total cutoff from society. However, it embodies perplexed circumstances, in which undocumented migrants suffer from legal uncertainties and encounter an agitated environment consisting of fear of being caught by state officials at any time (Hasselberg, 2015; Waldstein, 2021: 963). I argue that, even though Y's right to stay is in danger, the impaired arrangements (for instance an impaired arrangement can be put forward as so: working in a shoe factory uninsured and unregistered) that she has already made would better her off in the receiving country against any decision of removal. Here, I do not argue that Y appreciates the flawed arrangements that she made. Rather, I try to show that despite her right to stay being grounded on a slippery slope, her physical presence in a given territory in any condition (although these conditions may drag Y into insecure and precarious working environments) would be more favorable than getting deported. I made up this hypothetical case of Y to underline the importance of the right to stay for subsistence. Therefore, from Shue's basic rights perspective, one may argue that, once a foreigner has been deported without any justified grounds, she would be dispossessed of her accompanying basic rights as well. However, undocumented migrants' claims of the right to stay are inclined to face rejections vis a vis states' right to exclude. Also, as mentioned in the societal accounts of membership, the standards of inclusion are circumscribed to migrants, whose stays are either long-lasting or who entered in legal ways. So, about the undocumented migrants - who entered the territory of the receiving state recently - one may indicate that they are not rooted in the host country. So, they do not suffice the precondition of the right to stay. Rootedness is also recognized as an imperative for meeting the standard of socialization. Yet, since undocumented migrants withstand an uninterrupted threat of removal, and suffer from illegality, they abstain from disclosing their physical presence (Waldstein, 2021: 962).

Simply from a comprehensive structural context, the composition of the migration regime frustrates the integration that was initially intended, and suggests integration as a precondition for legalization (therefore, the right to stay). Resulting from the restrictive policy framework, migrants cannot pursue a continual integration that may involve processes of mitigation. Indeed, the mitigation process may deeply be associated with the deservingness framework and address undocumented migrants' endeavors to convince authorities by displaying good behavior that they will be able to alleviate the wrong emanating from their illegal entry (Ellermann, 2014: 296). Having carried out prohibitive policy discourses, the EU's lasting attitude to incentivize returning and deporting migrants - who are ineligible to stay - can be a decent example for our ongoing discussion. For instance, in March 2023, EU Home Affairs Commissioner Ylva Johansson made a statement about how being unsuccessful in returning migrants would consecutively obstruct the EU migration system's functioning and deteriorate trust in institutions. While emphasizing the return implies collaboration with home states, remade attempts to amend the asylum program were futile (Associated Press, 2023). Johansson has also underlined the well-supplied position of the EU's border and coastguard agency in arranging deportations. Underlining this well-supplied position advises member states to benefit from the readiness of the EU's units of border security. (Associated Press, 2023). Aside from the migration system being escalated towards an intolerably restrictive scheme, an intersection trend of the laws and codes of the migration regime with criminal laws has begun, and it is called "crimmigration" (Stumpf, 2006). The eventual result of this junction shows itself in circumstances, in which migrants are being marked by criminality and labeled as punishment-deserving subjects. This stigmatization dehumanizes migrants, and renders them depleted of their political agency (Leyro & Stageman, 2018: 46-48). Being prevalent within a broadened scope of policies, programs and rhetoric, crimmigration tactics have serious ramifications for undocumented migrants that would lead them to live a charged life. With the legal avenues of asylum and residency claims limited, migrants are being cornered by the norms and practices of the migration regime. Badly, these norms and practices have been increasingly construed by the narratives and measures of the criminal law (Bosworth, 2008: 206). The fact that criminal law is gradually infiltrating

migration policies captures the migrant figure within a representation of the “other”. Ultimately, it is followed by a discourse, which ascribes this figure with a likelihood of committing crime and identifies the undocumented migrant with undeserving and inexcusable conduct (Radziwinowiczowna, 2020; Könönen: 2022). As a result, the discussion on the right to stay in the liberal democratic polity is being shifted to a realm beyond politics by relying on a shield of security-prioritizing discursive practices (Atak & Crepeau, 2013: 227-231; Leonard & Kaunert, 2020: 2).

In the following sections, I will be moving on undocumented migrant activism and its recent examples. I will argue that, by making the right to stay the focal point of their protests, migrants’ political engagement created episodic moments, in which they revealed their claims for the right to stay. However, these episodic moments provoke an official proclamation of the right to stay, which is disjointed from the “right to stay” given by the migration law. To put it differently: migrants declared their right to stay by insisting on legal protections and by repeating their will for temporality to be eliminated alongside contingent and arbitrary conditions of exclusion.

3.2. Undocumented Migrant Activism in Europe and Key Protest Movements

Politicization of undocumented migrants is not a rare occurrence, but a widely observed phenomenon, and there is an extensively rich literature on refugees’ and undocumented migrants’ political agency. In the liberal democratic polity, marches, sit-ins and various forms of protests are being addressed as political efforts, which unveil the capacities of migrants to jointly uphold the right to stay and mobilize against detention and deportation. Starting in the 1990s, new arrangements of protests have come up and materialized in various forms, including church occupations, hunger strikes, populous marches and airport blockades. It would not be wrong to address “Sans-Papiers” (Migrants Without Documents) as one of the most famous and far-reaching protests movements organized in Europe in 1996. Sans-Papiers were either asylum seekers or long-standing and regularized working migrants, whose legal standing in France had been disrupted by the legislative changes (McNevin, 2006: 142-145). As a result of the transformation in the legislation, migrants have promptly started organizing political

strikes to straightforwardly confront the government's decision and influence it through church occupations, demonstrations, petitions and hunger strikes (McNevin, 2006: 146). Sans Papiers demanded a backward transition to the regularized status, which had once been given to them. While they claimed the right to stay in France, they also engaged in various forms of political strikes to leave the ambiguous realm of illegality (McNevin, 2006: 146; Ataç, et.al, 2015: 6).

Accordingly, the policy shift was also conspicuous in terms of giving support to police enforcement to track down and expel irregular migrants from French territory (Freedman, 2008: 81). Once legally crippled, migrants were open to being criminalized and addressed as illegals. So, these political strikes challenged the French government's harsh policy of criminalization and illegalization of migrants as much as they aimed to reverse the hazardous situation producing precarious individual outcomes, for instance, being deprived of the right to stay. Yet, Sans Papiers shows us the capacity of the “rightless” to circumvent state oppression and to become political actors.

By the beginning of the 2010s, strong political demands and efforts to put an end to camps, detention centers and practices of deportation started gaining a collective character in Europe. The purpose of engaging in such protests displayed itself in migrants' claims of asylum, residence or free mobility. In 2012, two significant activist campaigns took place in Germany and Austria. In Germany, the aftermath of the suicide of an Iranian asylum seeker Mohammed Rahsepar - who had been detained in a reception center in Würzburg - sparked an eagerness to start a 600 kilometers march to Berlin, Oranienplatz (Saunders, 2018: 851-852). This march ended by setting up a tent city within the square and the surrounding area with the demands of terminating the liability of living in camps and existing deportation practices. Besides, protesters demanded the abolishment of ‘Residenzpflicht’ (mandatory residence) as a legal requirement that is asked to be obliged by the claimants for refugee status. Specifically, this legal requirement forbids migrants to leave the district - where they were listed in the first place – without permission (Ataç et.al, 2015: 2; Saunders, 2018: 851; Steinhilper, 2021: 128). In Austria, having taken the risky and unsteady living conditions in reception centers into their focus, around 100 immigrants organized a march from the

reception center located in Traiskirchen to Vienna (Ataç, 2016; Saunders, 2018: 851-852). This event was also concluded with a tent camp in front of the Votive Church in Sigmund Freud Park until the church was seized by the police force (Ataç, et.al, 2015: 5; Ataç, 2016: 636-637).

These disruptive protests have come to the forefront, specifically with their disapproval of the living arrangements of migrants and with a strong demand for equal treatment. However, the demands of the protesters moved far beyond the disreputable detention conditions and addressed the general composition of the EU's migration policies. Protesters demanded the right to stay, the right to work (so that they would not be depending on state aid for indefinite periods), the right to access education, and cutting off deportations in accordance with Dublin regulations (Saunders, 2018: 851-852). Also, and perhaps most notably, protesters insisted on receiving treatment that complies with basic human rights regardless of being undocumented. For instance, Napuli Langa, who was one of the most high-profile figures of Oranienplatz sit-ins, openly declared: "We will not stop to fight equal rights for all" (Staiger, 2015, in Ataç et.al, 2015: 4). Not only the ones in Germany and Austria, but many other undocumented migrant-political activists have shared such a discourse of equal rights and equal moral weight among all.

Another outstanding political movement against deportation was "Lampedusa in Hamburg", which started in spring 2013 with a clear articulation of the right to stay. This movement was organized by West-African workers, who had departed from Libya to Italy through Lampedusa. These men were provided temporary residence permission, yet they were hampered in finding jobs or housing. Since the emergency lexicon stepped in immediately, migrants' settlement in Italy was received as antipathetic.

The public discomfort also resulted in frustrations in maintaining an informed dialogue (Paoletti, 2014: 128; Drangland, 2020: 1-2). As the inadequacy of jobs and problems with regard to other aspects of living have been accelerating, some migrants ended up in Hamburg. Surely, moving to Hamburg was not carried out spontaneously. Rather, it was prompted by Italian authorities in terms of offering monetary aid and so forth. Yet,

according to Dublin regulations, these migrants were not recognized as legitimate asylum claimants, and were not provided with legal opportunities to find jobs.ba

“Lampedusa in Hamburg” was a protest group of 300-350 immigrants, who found each other in Hamburg, and fundamentally challenged Dublin regulations by politically stating their claim to be provided a valid residency permit in Germany (Odugbesan & Schwiertz, 2018; Drangland, 2020: 1). In the name of speeding up asylum access and increasing the efficiency of the crisis management system, Dublin regulations bring limitations to the freedom of movement of migrants across European states for seeking employment, accommodation and related needs. So, Dublin regulations strictly utter an obligation to remain in the first country of entry until the asylum examination and relocation process (if seen necessary) are finalized (Merhaut & Stern, 2018). Indeed, “Lampedusa in Hamburg” was a resistance to the Dublin regulations’ obligatory outcome of returning to Italy and was a fight for the right to stay and free movement (Odugbesan & Schwiertz, 2018). This struggle is being interpreted as a milestone in initiating a new cycle of migrant protests. Because, “Lampedusa in Hamburg” eventually ended up in a relatively advantageous outcome for protesters, which was gaining the precarious legal status of “toleration permit” (Drangland, 2020: 1-2). Having acquired that legal status, immigrants’ deportation has been postponed for an undetermined period. Therefore, “Lampedusa in Hamburg” definitely set an example for a solidarity movement. It revealed migrants’ capacities for acting as interlocutors, who could engage in a dialogue regarding their demands to stay, work and integrate. Besides “Lampedusa in Hamburg”, another effective and referred to collective mobilization was the “March of Hope” in 2015. The march has been initiated from Budapest to the Austria border with a participation of more than one thousand discontented refugees (Murray, 2015). Alongside “March of Hope”, “March for Freedom” was organized from Strasbourg to the EU Parliament in Brussels in 2014. This five-week long action articulated numerous demands of undocumented migrants and failed asylum seekers ranging from the right to stay to radical transformations in EU migration policies. Condensing migration policies and the political spectrum - where right-wing populism and anti-migration rhetoric are pervasive - have been compelling migrants to prioritize the struggle for their everyday imperative needs. These include, for instance, having

relatively smooth access to social welfare systems, including health, education and job markets.

Deducing from her field study conducted in Oranienplatz's migrants, and the European activists - who have sided with the migrants - Fadaee argues that, there was a distinct cleavage in Oranienplatz in identifying the problems and delineating possible solutions among these actors. While migrants were framing their struggle in a way that would solve their immediate and acute problems, European left-leaning activists were framing the same struggle as anti-colonial and anti-capitalist with an emphasis on hierarchical power structures (Fadaee, 2015: 738). So, there was a distinction in comprehending the meaning of this political mobilization. Different framings of the issue prompted the emergence of an order or priority. Among protesters, divisions arose about the value and urgency of claims. This division among protesters resulted in deviations with regard to the content or focus of the protest, and engendered a problematic consequence of ignoring the primary needs of undocumented migrants by the European activists. Deriving two concepts (ruptural strategies and symbiotic strategies) from Erik Olin Wright's book "Envisioning Real Utopias" (2010), Fadaee argues that migrants' overall purpose engaging in Oranienplatz protests was more suitable for symbiotic strategies. Symbiotic strategies accentuate the efforts toward the advancement of social empowerment within the existing political, social and economic arrangements of the system without a strong inclination to challenge the existing migration policies and laws.

Considering our discussion on the right to stay, migrants put emphasis on staying within European territory in the first place. Migrants also attach as much importance to the right to free movement within European territory as to the right to stay. So, remaining is the primary concern for them. Thus, Fadaee argues that, the priority of refugees was not systemic. Contrary to refugees, European leftist activists' purpose resonated more in the ruptural strategies. They aimed for systemic and structural change in the migration regime (Fadaee, 2015: 738-739). One may argue that, it is somewhat puzzling and open to doubt whether drawing such a strict line between migrants' and European activists' framing of the Oranienplatz protest may diminish the political character of this migrant mobilization. Considering how, and from what discursive framework the above-

mentioned collectivities have been catalyzed, I believe that, refugees indeed conveyed an impression of taking the systemic problems of the European migration regime seriously. Turning back to Erik Olin Wright's twofold separation between symbiotic and ruptural strategies, migrants' practices of self-organization seem to exceed the efforts in pursuing everyday essentials, but are also attached to the practices of resistance against the fundamentals of the European migration regime. I think that, the strategies of resistance carry a potential for disengagement from the systemic operationalization of the complex EU migration scheme. I can put forward the reason as follows: despite the exclusionary nature of the system, and the prioritization of state discretion against international human rights law, migrants confront this architecture with an entirely antithetical discourse of fundamental human rights, and mobilized in the same discursive framework. Through public acts and political networking, migrants obtain a new form of political existence, which outpaces the conventional position of being simply a receiver of the decisions taken on behalf of them.

3.3. Adapting Liberal Egalitarian Principles to Non-Deportability

Adapting liberal egalitarian principles to deportation practices may have objectionable consequences. Most of the would-be deportees had priorly fled their own countries due to reasonable exposures (wars, conflicts, persecution, or political/economic distress). Keeping in mind that these are moderately acceptable reasons to move from one country to another for improving their life prospects, expelling somebody or a mass group of people may be unjustified. Removal of migrants without offering justified grounds would be at odds with the basic rights that "owed to human beings everywhere" (Miller, 2007: 198). As Lenard underlines, Miller's account of human rights addresses the shared responsibility of states and the international order to protect these rights (2015: 476). Miller seems to draw his conceptualization of human rights from his approach to "humanitarian", which he implies that the essence of human rights can be found in human needs. Human needs are labelled as the components that every individual should be at the disposal of to search for and live a decent human life (Lenard, 2015: 476). Therefore, deportation practices would deprive migrants of these items (human needs). If a would-be deportee is in jeopardy of having her basic needs supplied improperly due

to a specific practice (this practice can be the deportation itself or the actions that are carried out during the deportation process, like detention) then her basic human rights would be breached, and her basic needs would go unmet. Aside from the physical harm that deportation may bring, such a practice may also imperil human flourishing and agency, which are some essential values of liberal egalitarianism. Related to that, a would-be deportee cannot be considered an inert or unproductive subject, who would not seek favorable circumstances for residing irregularly. Being undocumented would not lead to a total immobilization or prevent migrants from searching for jobs, struggling to find affordable and safe accommodations or attaching to someone emotionally. Seeing that, would-be deportees strive to actualize their general interest in acquiring various means of access to the extended or limited scope of life options ahead (Oberman, 2016, in Song, 2018: 389).

Considering the recent forms of migrant activism in Europe, the initial incitement of collective defiance against the European migration system can be put forward as the embracement of international human rights discourse. The rhetoric shared in migrants' disobedient action contains a dense vocabulary of the moral equality of all human beings, freedom of movement and the challenge against regulations (detention, incarceration, deportation), which bring harm to migrants. In that sense, the point of departure of the disobedient actions somehow matches and draws near to the arguments of liberal egalitarianism.

If we recall the primary arguments of liberal egalitarianism with regard to border debates, we would encounter a basic assertion of moral equality of all human beings. Prioritizing equal moral worth is especially notable in providing a justice-based answer to the unfairness of arbitrary privileges that emerge from luck (Carens, 1987: 252; Song, 2018: 388-389). These are, for instance, being a citizen of a prosperous liberal democratic state or being a member of a wealthy family. Accordingly, there are some random entitlements that would be greatly effective and decisive in one's outlook for the future, however they are extremely arbitrary from the angle of the argument of equal moral worth (Rawls, 1971: 72, in Song, 2018: 389). The ideal of moral equality is followed by another claim: equality of opportunities. For example, by embracing a more

straightforward liberal egalitarian position by exceeding Rawls' arguments based on domestic level (closed-society), Carens addresses the principle of equality of opportunities in a global sphere. Carens indicates that there should be an openness to accessing the social positions with one's individual capacities and talents rather than reaching them with arbitrarily assigned features such as class, sex or perhaps citizenship. So, for instance, current understanding of citizenship - which refers to a status and a constituted territory - reifies the existing imbalances in life prospects due to their discrepancy with moral equality. The conventional understanding of citizenship renders expectancy and life outlooks contingent on morally arbitrary criteria. In other words, Shachar sketches a theoretical analogy between the birthright citizenship and inherited property. She claims that in the wider context of current burning debates about global justice and the distribution of opportunity, the entitlements that come with the birthright citizenship (can be put forward as membership) should be explored towards a universal standing (2009: 3). Accordingly, legal regimes play a substantial role in distributing political membership according to the birthright. The allocation of political membership estranges non-citizens from the distribution schemes, and reinforces the inherited entitlement. Through their claims to the right to stay, I believe that, migrants destabilize the instinctive relationship between allocating entitlements and political membership. In a sense, by articulating their demand to stay and to make life plans within the receiving country, migrants disrupt the reliance on being entitled to rights and privileges as a legitimate member of a political community. To put it differently: through engaging in political action, migrants interrupt this reliance, which has been affirmed as natural and depoliticized. Returning to liberal egalitarianism, the value of freedom is as prominent as the ideals of moral equality and equality of opportunities. Associated with the humanitarian and human-rights based defense of entering a territory and not getting deported, freedom of movement is evaluated as a fundamental human right inherently (Song, 2018: 389-390). Regarding the worth of equality of opportunity, freedom of movement is purported to be a substantive right for many individuals in bolstering their well-being. Therefore, it should be reputable, and should be seen as noncontroversial and respected (Oberman, 2016, in Song, 2018: 389). Freedom of movement within or across countries is fully upheld by liberal egalitarians as a premise, which can be

actualized within an extended range of conditions (from wanting to join a religious group that has frequent adherents located in a country to going after cultural opportunities in another destination, and to locate another place in order to live with loved-ones) (Carens, 2013: 239). Yet in practice, when undocumented migrants are the subjects of free movement, their mobilization is predominantly regarded as illegal. So, if the existing border arrangements and nation-states' morally arbitrary measures remain immune to rational criticism, adapting a practical approach to treat immigrants within the limits of liberal egalitarian theory seems unattainable. In other words, inconsistencies would be expected between the theoretical underpinnings and the arbitrariness of the practical formation. However, I believe that, by politically mobilizing through various forms of protests, migrants present themselves as reason-givers, who possess the capabilities to convey demands communicatively, and show their eagerness to transmit their claims into dialogue. This political involvement can be seen as a critical confrontation of arbitrariness and moral dispute within the ongoing migration regime in the liberal democratic polity.

3.4. Looking Beyond Liberal Egalitarianism

From the angle of undocumented migrants - who have been engaging in a relatively advanced and experienced activism of anti-deportation and the right to stay - a liberal egalitarian version of thinking offers good reasons to ethically defend their claims. Indeed, looking deeply at both refugee and pro-refugee activism would reveal that the organized groups mostly grasp the narratives of equality, and refer to cosmopolitan justice that endorses fundamental human rights over national privileges (Cabrera, 2010, in Scheuerman, 2018: 4). Accordingly, we have reiterated that the EU migration system has been abusing the foundational standards of international conventions on migration and human rights law. As Fekete clearly notifies, the 'war on terror' overall, and the EU Deportation Program in particular (both are related to the 'fortress strategy' founded on brutality and deterrence through securitization) have been outlawing international human rights principles and producing illegalities (Fekete, 2005: 64-65). Also, the lack of moral and political ambition of states has been crippling the humanitarian advancement that had once been achieved decades ago. While this deterioration is a fact, undocumented

migrants have been adopting a firm stance against it, by building a mobilization around the discourse of human rights, moral equality and freedom. So, I argue that undocumented migrant activism strongly shares the fundamental principles of liberal egalitarianism, as it leads the unrest and constructs mobilization by appealing to these principles. Nevertheless, I argue further that the ideal of equality (as a premise) in liberal egalitarianism is being positively exceeded as a goal to be accomplished in migrant activism. Despite the fact that equal moral worth and the emphasis on freedom of movement are the initial catalysts of protests - which are seen to be infringed by the existing policy framework - the solidarity phenomenon excels migrants' political agency without restraining them on a moral level. Therefore, I believe that, migrant activism and deportation resistance, followed by a strong claim of the right to stay have the capacity to convey the moral discourse into a political dimension. To put it differently: while the impartial moral equality of persons somehow stresses the duty of states to treat migrants without appealing to cruel tactics, refugee activism transmits that moral equality to the political sphere by making it a subject of contentious politics. So, the claims of the right to stay and deportation resistance seem to relate equal moral worth and respect for freedom of movement to migrant agency, rather than categorically defining them as duties to be realized by liberal democracies.

3.5. Contentiousness and Challenging Citizenship

Until that point, what I basically argued is: disobedient practices pursued by migrants have prevalently used a discourse conforming to liberal egalitarian premises. Accordingly, curtailment of the rights of migrants by reference to fundamental human rights, disruption of equality at moral and political levels, and restraint on freedom of movement were problematized as the reasons to resist policy and legal structures regulating deportation. However, as argued in the previous subsection, the fragments of liberal egalitarianism in migrant activism have been outpaced in a way that they could not exert pressure on migrants' struggles to solely remain in the ethical realm. In other words, migrants exceeded normative ground, in which they may have only challenged the ethics of immigration restrictions by appealing to the principles of liberal egalitarianism. However, once the migrants' resistance gains political character, their

engagement in forms of resistance would start challenging the prevalent forms of citizenship.

With regard to the citizenship debate, in the first chapter, the gap between the theoretical underpinnings of liberal theory and the actualization of liberal democratic polity was highlighted. This cleavage between the theoretical model and the institutional formation leads to the outcome that equal moral worth has been prevailed by the “equality of members”. This is the equality of a political and/or cultural group in liberty and welfare. Besides being equal in liberty and welfare, the members of a political community are also endowed with the right to determine who to be included or excluded from this equal standing.

In a liberal democratic polity, membership takes on a formal standing - which is citizenship - and citizens legally and practically reap the benefits of having unconditional protections against removal. According to this conventional approach, the political space is assigned to the use of citizens. The privilege of using the political space turns migrants into subjects who are uninvolved in political processes. At this point, it is critical to remember that migration policy and law are enforced upon non-citizens, who are neither asked for acceptance nor expected to endorse the relevant law. The lack of demanding any approval from the foreigners - who are being subjected to the migration law - would lead liberal states not to offer a relatively comprehensive justification to them regarding why their interests have not been included at all (Nagel, 2005, in Ip, 2022: 1-2).

Therefore, non-citizens lack the rights of democratic participation, which would empower them to submit and generate pressure for their demands (Laubenthal, 2007: 101, in McGregor, 2011: 599). Since the political space is restricted to non-citizens for showing non-compliance, and directing their discontent about the ongoing arrangements, their exclusion triggers an accelerated political invisibility (McGregor, 2011: 599). Nevertheless, the inevitable turmoil sometimes takes the form of political strikes, illegitimate/unauthorized marches, sit-ins/ or occupations of public areas, and blockades of spaces such as airports, where the deportations are being carried out (No Border

Camps, 2022). Besides, the limitation of political space can manifest itself in alternative political statements such as hunger strikes, self-harm or suicide. The embodiment of the turmoil reveals “active citizenship” (Isin, 2005; 2009). “Active citizenship” enacts the political subjectivity of the undocumented migrant through unconventional acts. These acts either take an individual or a collective expression or display the embodiment of a political uneasiness or anxiety (recalling deportability, the undocumented migrant is always on alert in a nervous state of mind due to the feeling of insecurity and unpredictability).

With regard to the citizenship debate, a pertinent citizenship formulation to the liberal egalitarian theory would be approaching the post-national citizenship conceptions. As discussed in the first chapter, a post-national understanding seems to associate with the global human rights discourse with an ideal of equality across national boundaries, but guaranteed by the international legal codes and by the disseminated influence of constitutional courts. This stand accentuates how human rights have been replacing citizenship rights, and offers some convincing points concerning why obtaining any rights should be ripped away from any particular political membership (Faist, 2000). Also, this view highlights that international migration and other globalization related phenomenon have been subverting nations and nation-states. The political significance of being a member of a nation-state has been deteriorating with respect to the growing legitimacy of international human rights institutions (Soysal, 1994: 3-4; Jacobson, 1996: 132; Sassen, 1996: 95). Thus, considering its huge emphasis on the equal moral worth of people, the liberal egalitarian viewpoint seems to fit the globalist tendencies of post-nationalism.

However, states assert their privileged authorization of exclusion and have used coercive power thus far. States’ will in appealing such force (for instance, in deporting a group of immigrants) is not a rare occurrence and not a morally uncommon practice (Blake, 2013). Exerting such decisions would need a justification in others’ eyes, and citizenship seems to be the frequently referred notion that a justification is being built upon. Revisiting the discussion on collective self-determination and territorial states would suggest that the right to control migration relies upon the right of nations to be self-

determining. Very openly, Miller stresses that the citizens are not only the subjects who associate with each other as equals, sharing a sense of belonging to the same nation and holding similar cultural values (2016: 26). Accordingly, citizens also regard each other as fellows in social and political cooperation (Miller, 2016: 26). So, community members' concerted ownership of the existing political institutions of a territorial state ensures a right to collectively decide about the prospect of the same institutions (Pevnick, 2011: 164, in Song, 2018: 393). For example, if migration is interpreted as a problem to reduce reciprocal trust in society and burden political/economic institutions, then a consolidated decision can take the form of dissociation or automatically exclude foreigners from the territorial state. In that sense, one of the moral justifications for states expelling non-citizens does require further consideration of political membership. In a context, where the political significance of being a member of a nation state has not been undermined and citizenship is yet to be a relatively restricted status, what immigrants have been doing is challenging citizenship as a fixed and legally secure acquisition, providing fundamental rights next to it. Migrants' actions have been showing us that citizenship is indeed constantly within an alteration.

3.6. Concluding Remarks

In this chapter, firstly, I comparatively laid out the conception of the right to stay in three accounts. Respectively, the first one is the approach to the development of human personality. The second one is the societal membership account. And the third one is related to the harm-principle and Shue's understanding of basic rights. One may argue that, the right to stay has been mostly read from an individualistic reading in all of these approaches. With regard to the accounts conveyed in the first part of the thesis, I argued that these accounts were somehow in distance to detect migrants' everyday acts of deconstructing citizenship by claiming their rights. In the second part of the thesis, I moved onto the recent migrant struggles, with a specific emphasis on the right to stay. In this part, I tried to show that, the migrant struggles intervened in the distinguished identification of political action and reflection as the practices of the legitimate members of a political community. In other words, by engaging in political claims-making, migrants naturalized their exemption from politics.

In the next chapter, I will be questioning how and to what extent civil disobedience would be ethically justifiable and practical for migrants in claims-making. According to the common conviction, civil disobedience is totally associated with citizens' (or in this case the European public's) moral right to break the law in a democratic and relatively just society in order to improve what they observe as unfair, wrong or omitted (Benli, 2018: 315). However, undocumented migrants would not count as legitimate members of the European public. So, their involvement in a civilly disobedient action can be deemed unjustifiable from the start. Since migrants would not be entitled to break the law - in such a setting - states may advance their position to use coercive tactics even more. This advancement would probably increase migrants' defenselessness. Nevertheless, in the following chapters, by underscoring the intermingle of "active citizenship" and radical civil disobedience, the ethical validity of migrants engaging in civil disobedience will be addressed. The probable simultaneity of civil disobedience and the claims of the right to stay were examined. By inclining towards the fact that state discretionary rights are truly represented in deportation, the likely effects of civil disobedience in confronting this practice will be discussed.

CHAPTER 4

POLITICIZATION OF CIVIL DISOBEDIENCE AND ACTS OF CITIZENSHIP FOR CLAIMING RIGHTS

The most vigorous topics in the intellectual debates of civil disobedience are surrounded by the basic questions of how to sketch a definition, and how to justify the action itself given its contested nature. Regarding its bounding criteria (publicity, non-violence, non-evasion, fidelity to the law) and the controversy about the appropriate subject, who may justifiably undertake the disobedient action, civil disobedience does not fit into a single theoretical description.

In this chapter, I will discuss whether civil disobedience can be politicized by undocumented migrants, aiming our attention at its constitutive force in generating claims of the right to stay or not get deported. Following Robin Çelikateş's (2016a; 2016b; 2018; 2019) insightful theoretical discussion on radical civil disobedience, I argue that migrants' political engagement in civil disobedience disturbs the anticipated actualization of this action. Presumably, civil disobedience is seen as an act of citizens.

To put it differently: civil disobedience reinforces attempts by free and equal citizens to oppose certain unjust laws as long as they keep their robust allegiance and justify their actions by appealing to the principles of justice. In Rawls' terminology, this maintenance of allegiance to the law is offered as "fidelity to law" (1993: 383). So, if citizens guide their actions by political principles (considering that these principles oversee and adjust political and social life) to avert unfair interventions with fundamental rights and liberties, then the civilly disobedient action is legitimate. Contrary to Rawls' mainstream approach, Çelikateş brings out a radical democratic reading of civil disobedience by underscoring its democratizing potential. In line with that, radical civil disobedience shatters the taken for granted, strict and criteria-bounded dynamics of civil disobedience, and cuts its ties with the formal notions of citizenship (Çelikateş, 2019: 69).

Such a distortion in coming up with an alternative reading of the concept entails a relatively unconstrained perception of the justification of civil disobedience. First, the agent profile is not shrunk to citizens, but extended to unrecognized people. This expansion of agency suggests that, non-citizens' appeals to civil disobedience would not be automatically disregarded as illegitimate. Second, with migrants entering the realm of civil disobedience, the set of appeals on moral and legal issues is broadened towards the seemingly uncontroversial notions of the political community (as borders, national security, political membership, etc.). So, with the expansion of agency, the passive position of migrants' ceases, and migrants contest their uninvolved bystander position by vigorously intervening in political struggles. Asserting their active positions regarding the struggles of borders, migration law or membership is also an attempt to politicize these institutional structures that have long been naturalized (Çelikateş, 2019: 69).

In line with that my goal in this chapter is to point out the proximity between radical civil disobedience and citizenship as claims-making. As will be unfolded in the following pages, the mainstream formulations of civil disobedience devise the justification for civil disobedience by pointing out the action as an exclusive right for citizens to counter unfair laws. Also, the mainstream formulations understand civil disobedience as a legitimate action as long as the action is guided by the shared conception of justice, and locates the action within the outer bounds of the law.

Yet what I argue is: in circulating the clashing concepts of justice with references to migrants' rights, and in dispersing a cosmopolitan perspective, radical civil disobedience and acts of citizenship would allow irregular migrants to be corrective and restitutive in terms of law and policy. While I will be displaying the affinity between radical civil disobedience and acts of citizenship, I will also be cautious not to equate them with each other. This is because civil disobedience – whether it is mainstream or radical – avoids episodic ruptures in the last instance. While undocumented migrants reconceive themselves as political equals through acts of citizenship, they need to return to communicative steps to advance momentary gains, and further their attempts to guarantee legal protections rather than merely causing ruptures.

Besides that, when the issue at stake is either the entry or deportation of undocumented migrants, the unilateral discretion of the state authority and migration law construe justifications only for the members of a political community (Abizadeh, 2008). Migration law that regulates entries/removals and disciplines irregular immigration is being enforced on migrants without offering any sufficient justification to accept the arbitrary and inequitable consequences of it (Nagel, 2005: 129-130).

Subsequent to this unilateral decision-making, migrants' claims of justice - which can be articulated in a separate vocabulary diverging from the discourses of predominant migration regime - are neglected. Accordingly, I argue that, when exclusionary practices do not offer any mitigating grounds for migrants' claims (or, in other words, when these practices come without any justifications), migrants may not have to comply with the processes of the administrative framework.

In line with this introductory part, in the following subsections, I will initially be unfolding the mainstream accounts of civil disobedience. Afterwards, I will be moving to deliberative/democratic conceptualizations of the term. Lastly, I will shift the discussion to radical civil disobedience and performative models of citizenship. In the last section, I argue that autonomously organized migrant civil disobedience proclaims migrants as right-bearing subjects, and upholds fundamental disputes against the contemporary migration regime in the liberal democratic polity.

Basically, radical civil disobedience buttresses the contestation against the discriminatory measures of the liberal democratic polity, which render the prerequisites of stay and not getting deported contingent on the mechanisms of differential inclusion and arbitrary selection criteria. Secondly, I confer that radical civil disobedience arises out of an alternative understanding of justice. Accordingly, the presupposition of the alternative interpretations of justice outpaces a relatively fixed and unmolded understandings of justice, which are embedded with partiality and closed communitarian interests. In that sense, radical civil disobedience undertaken by undocumented migrants carries a potential to presume a contrasting meaning to the concept of justice and rights.

4.1 Mainstream (Rawlsian) Account of Civil Disobedience

Before moving forward to the discussion on radical civil disobedience, I will draw attention to the reformist and delimiting interpretations of the term. As a significantly constrained form of action circumscribed around the duty to obey the law, the mainstream understanding of civil disobedience is mostly moderate and symbolic. In his seminal account, Rawls defines the concept: "... as a public, non-violent, conscientious breach of law undertaken with the aim of bringing about a change in the law or politics of the government" (Rawls, 1999: 320, in Moraro, 2019).

Civil disobedience is mostly conceived as applicable only in a fairly constitutional and democratic social order, which can be translated through Rawls' terminology as "nearly just" societies (Scheuerman, 2018: 52). A civilly disobedient action reinforces the struggles by equal citizens of a political community to counteract unjust laws or policies, yet within the limitations of "fidelity to law" (Scheuerman, 2018: 35). So, it is illegal, nevertheless normatively legitimate in cases, where citizens detect unfairness and decide to act at the outer edge of the law (Rawls, 1999: 322, in Moraro, 2019).

In Rawls' account, civil disobedience is apparently a political action since it originates from political principles, which are assumed to regulate political and social institutions. The political principles are founded on a shared and public conception of justice. This shared understanding of justice predicates an indicator for citizens to discern and grasp the constitution, and to govern their political transactions. The shared conception of justice is also appealed to justify disobedient actions' respectability and moral righteousness (Rawls, 2018: 59-60). Addressing the shared conception of justice necessitates relinquishing violent and covert actions because the objective of disobedient person is to convince the majority that their action is conscientious and bears no inclination to overcome the existing political system. In other words, participants in civil disobedience do not simply contravene the laws that they judge as immoral. Furthering their non-compliance, they also attempt to galvanize others to follow their attitude of non-compliance and transform the targeted law. Thus, communicative efforts are embedded in the act of civil disobedience.

In the Rawlsian line of thought, the constitutional theory of civil disobedience is clearly broken up with other endeavors of dissent that oppose democratic authority overall. Rawls' theory is discernibly duty-bound. The theory simultaneously unfolds the limits of one's duty to defy injustice, and highlights the duty of each member of a political community to recognize the law whose legitimacy has been more or less accepted.

So, civil disobedience seems to emerge from a conflict of duties. When the political power diverts from its deeds, misuses its capacities and oversteps the law, the natural duty of justice – which manifests itself in conforming with our just institutions and arrangements - is depleted. In this case, our duty to promote justice for our shared institutions substitutes for the duty to obey the law. Because the law is already unfair, it is imperative to reaffirm the political principles, which have been interpreted and implemented wrongly and caused unjust laws to prevail.

To put it differently: for the power that is exerted upon us to be acceptable, decisions taken and imposed by the political majority should be morally justifiable to the autonomous individual (Mason, 2012, in Moraro, 2019: 60). This justification cannot be given without resting on reason-giving. Reason-giving would make citizens abide by the law as long as the reasons provided by the political authority are comprehended as aligned with the essential principles of the constitution (Humphrey, 2006: 311, in Moraro, 2019: 60). Since citizens are expected to favor decisions that are reasonably matched with constitutional commitments (political principles), once they are convinced of the judgments of the political authority (by using public reason), they would be morally obliged to fulfill the duty of obeying the law. Nevertheless, if the political majority cannot offer a justification for its actions (taking political decisions that rely on partisan values or controversial stands of thought that may stimulate dispute), then citizens may manifest their dissent through civil disobedience.

Drawing from our discussion on Rawls so far, I will be elaborating on Rawls' two principles of justice. I think that locating the mainstream conceptualization of civil disobedience in the two principles of justice would make the concept settle on a more solid ground. But before, I would like to remain on the discussion of duty-boundness,

and expand it towards a relevant point of inquiry that can be put as so: when non-citizens (undocumented migrants, refugees, failed asylum seekers) suffer from injustice instead of the political equals of the community, would it be possible that the duty of the state and the citizen is sustained?

4.1.1. Duty of the Citizen and the State Towards the Undocumented

Beginning this subsection with a recent example can be insightful. Accordingly, a disobedient action took place in November 2021, when three people locked themselves outside Brook House Immigration Removal Center near Gatwick Airport to prevent undocumented migrants from being coercively expelled from the UK territory to Jamaica (Leak, 2023). In their brief response, these three UK citizens expressed themselves as interfering with deportations out of feelings of solidarity and support against would-be deportees' long-term separation from their loved-ones, children and family (Ferris et.al, 2023). Also, during the process of the lawsuit, these three protesters openly stressed that they undertook this direct action out of a sense of moral responsibility.

This specific action attempted to block the government's policy, but it did not pursue any intent of persuasion. Yet, protesters also circumscribed themselves in a civil manner as much as possible, just so they did not allow any public violence (Milligan, 2013: 20). Thus, they have just tried to stop a misdeed from occurring. Accordingly, individuals' efforts to prevent any transgressions and misdemeanors of rights are related to principles called "political ethics of immigration" (Yong, 2018: 459). Compared to Rawls' perspective of political principles - which asks how institutions should be administered and overseen about immigration management – "political ethics of immigration" appeals to how individuals should position themselves and determine a code of conduct against the predominating institutions (Yong, 2018: 459). To put it differently: "political ethics of immigration" invites individuals to determine whether they should approve the practices and regulations of institutions that manage migration or whether they should act in a nonconforming way (Yong, 2018: 459-460). Returning to the Brook House Immigration Removal Center protesters, we know that they initiated the action out of

moral responsibility. They undertook this action by practically resisting the legally acknowledged authorization of the formal unit of discretion, and by mitigating the repercussions of a particular deportation decision. This action fundamentally confronted the static understanding of justice and moral/legal principles. As will be mentioned in the following subsection, a stagnant understanding would be tantamount to Rawls' shared conception of justice. Rawls' understanding is stagnant because it stems from a political culture that conscientiously preserves the institutionalized principles of a constitution. So, carrying out any action with a firm alliance with political principles is just. Here, there would be no serious confrontation through civil disobedience because any action can be identified as nothing but repeatedly reassuring the pre-given substance of justice (Cooke, 2021: 239-242).

Aside from that, any action that opposes the law is unjust. In line with that, the Brook House Immigration Removal Center protesters seem to have formulated and clinched to an alternative conception of justice. Their direct action embraced the claims of justice of a would-be deportee, and challenged the entrenched ethical values of a political community. Also, the protest disturbed the predetermined validity of the joint comprehension of justice. The ability to discern different forms of injustice (aside from the Rawlsian one, which emerged in a closed community) would render the resistance productive and make the agents find corresponding forms of thought, action and social behavior. This seems to be a process of self-understanding and a political endeavor to interpret the law and policy by shifting positions and taking the side of undocumented migrants. Alongside the discussion of the "political ethics of immigration", this protest can also be interpreted from the outlook of Samaritan⁷ duties. Samaritanism basically encumbers a moral duty on the bystanders to disobey the law and to help the person in dire urgency as much as the conditions are convenient, and if unreasonable risks are not undertaken (Delmas, 2014, in Hidalgo, 2019: 7; Delmas, 2018a: 138). The situation of dire urgency occurs, when noncontingent basic needs are pressured, such as life, bodily integrity or security. Apparently, these three protesters captured the situation of the would-be deportees as a dire urgency that they suffer on a daily basis. In addition to that,

⁷ In old English, Samaritan is used for addressing the "native or inhabitant of Samaria". Samaria is a district in ancient Palestine. In its figurative use, Samaritan indicates a "charitable of benevolent" person.

during their protests they appealed to the discourse of human rights, and they gained a moral sight. In a way, these protesters did not stay at the level of moral blindness (Delmas, 2018a: 150-151), which may fail people in recognizing the imperilment due to culturally prevalent ideas. This situation inevitably results in observing the problems of the targeted groups as justified and normal. For instance, a simple example of a prevalent idea causing moral blindness regarding deportation would be the utmost importance given to the realm of political self-determination. This idea underscores the discretionary entitlements of states to remove migrants. Also, the illegal entry of the migrant in the first place (a breach of law, which requires punishment) or cultural priorities (arguments approximating membership: if a political community resembles a private club, then the members are free to admit or expel anyone) are compelling in building blind prejudice that harm done to migrants is justified.

Samaritan duties seem to attribute greater responsibility to states, citizens or previously oppressed, yet currently discharged people. In the context of our debate problematizing deportation for instance, states or citizens' agency is epitomized in their commitment to safeguard everyone's human rights regardless of membership. For instance, governments or NGOs may conduct local, regional or national research and provide information about the schemes of assistance or contribute to the production of knowledge in regards to how to live together. For some, Samaritan duty is quite influential as a political constraint on, which state legitimacy has been founded. According to C.H. Wellman for instance, the state is structured in such a capacious way that it can keep everyone from the anarchy and disorder originating from the state of nature (Delmas, 2018a: 138-139). This capaciousness allows the state to protect everyone from desperate needs and evils. Also, the vastness of state capabilities acclaims its remedial and egalitarian duties, which are pointed out as the sources of its legitimacy (Wellman, 2011: 67; Delmas, 2018a: 139). While governments might be assigned duties to support the oppressed groups in making better choices and taking decisions, I would like to return to citizens' duties once more because citizens' disobedience against restrictive migration law is also comprehended as a substantial category of duties approximating Samaritanism.

One of the vigorous advocates of such a position is Javier Hidalgo, who tries to answer the question, “When is it justified for citizens to disobey these laws?” (Hidalgo, 2019: 6). Hidalgo argues that citizens have a political obligation to disobey, if their states implement unjust migration laws (Hidalgo, 2016: 1). His argument is reinforced by an ethical ground that is molded with concerns about individual conduct. This argument eventually leads to a question like, “How do we ought to live our lives?”. At this point, Hidalgo underlines a critical point: states enforcing restrictive immigration law - which leads to an ample range of practices including non-entry bans to deportations - do transform their citizens into culpable figures by making them accomplices, and by burdening them with legal duties to conform with state practices (Hidalgo, 2016: 5). Comparable to Yong’s (2018) stance, Hidalgo considers migration-related matters through individual ethics. So, being an accomplice to an unjust immigration law seems to be at odds with the moral requirement of citizens to deter any involvement with injustice. While living our lives without being complicit in any injustice seems proper, citizens should refrain from actively or passively supporting state practices that facilitate the disclosure of injustice.

Integral to this ethical inquiry, citizens are also expected not to cooperate with state decisions prohibiting or disallowing certain interactions with migrants. Aside from being unethical, hindering citizens’ contact with migrants is nearly impossible. Complementary to their journey, migrants seek to build cooperative arrangements with citizens about employment, housing, education purposes, and so forth. Hidalgo problematizes this possible obstruction of establishing social and economic interactions between citizens and migrants, and designates this impediment as a moral wrongdoing.

At this point, what citizens are charged with can be put as so: they should reject to comply with restrictive migration law as far as their moral reasons to embrace a disobedient attitude would not be challenged with an invalidating rationale (an example may be that the migrant, who is in dire need of help, holds serious crime offenses or the same migrant may be convincingly revealed as a threat to public order) (Hidalgo, 2016: 7-9). By referencing Rawls’ presupposition that in a reasonably just political regime, obeying the law is derived from our natural duties, Hidalgo stresses that disobedience is

only legitimate if unjust laws disrupt our political obligation to endorse just institutions, and therefore our natural duty to uphold them (Hidalgo, 2016: 16).

The decisive point of Hidalgo's arguments is that citizens are expected to use their practical knowledge to understand the injustice, and to separate a moral wrongdoing (which is unjust) from an imperative action of states to curtail the rights of a migrant. So, to a certain extent, since Hidalgo's position involves contemplation about the law and an internalization of the fundamental reasons behind the law – which necessitates its alteration with a purpose to communicate discomforts - a potential defiance from citizens would be labeled as a civilly disobedient action. Also, any disobedient action carries the risk of being punished. The mainstream view of civil disobedience asserts that people - who object to the law - should be ready and willing to expect punishment. Citizens, who do not refrain from getting involved with the confrontation of the moral wrongdoing should bear its individual costs.

As covered in this section, injustice produced by political institutions bears obligations to citizens, and provides avenues to shift towards a challenge against the presupposed idea of justice. To put it differently, unjust decisions of official discretion oblige citizens to identify injustice within a broader extent that is not solely attributed to the breaches of the basic rights of equal members of a polity, but also ascribed to the infringement of the rights of non-state members. From here, I would like to return to Rawls and his two principles, which I think can be illuminating in understanding the confining nature of civil disobedience in mainstream accounts.

4.1.2. Civil Disobedience and Rawls' Two Principles of Justice

Rawls declares two principles of justice, which can be arbitrated in the original position and should be pertinent in the succeeding social relationships, systems and institutions. These principles are inclined to maximize the outcome that the worst-off may have, within a political community. Embraced and endorsed by the conflicting moral viewpoints, the shared conception of justice is delimited by these two principles (Moraro, 2019: 59). Accordingly, Rawls' speculation can be put forward as follows: the

free and equal citizens of a constitutional regime are intertwined and fulfilled with the durable desire to cooperate with each other. This mutuality implies civility in any disagreement and non-violence in any occurrence of irresolvable conflict (1993: 54-55). However, it also constricts civil disobedience to very few incidents with the only condition being the violation of the conception of justice as fairness.

Accordingly, the first is the principle of equal liberty. The principle of equal liberty simply defines an equal right for individuals to have the most comprehensive liberties in a system, which renders similar liberties possible for all. The second is the difference principle. The difference principle presupposes that social and economic inequalities are fixed, and there can be no meaningful effort for a total overhaul of the system to eradicate these inequalities. However, social and economic inequalities should be arranged in a particular way. As a result, they would be compatible to the greatest benefit of the least advantaged people, and this arrangement would enhance the equality of opportunity (Rawls, 1999, in Moraro, 2019: 53; Wenar, 2021).

Having set these two principles as the underlying pillars of a just society, Rawls' account of civil disobedience - which deems non-urgent or trivial causes to engage in an unlawful protest as wrong - justifies that action in cases of deliberate violations of the equal liberty principle. In other words, if blatant injustice arises due to infringements of basic civil and political rights, then this would depict a diversion from society's shared commitment to the first principle. Eventually, civil disobedience would be a legitimate means to act in response to that problematic situation (Scheuerman, 2018; Moraro, 2019). Rawls understands civil disobedience as a proper mechanism to protest only if it is employed as the last resort, and if the general legitimacy of the system is significantly challenged (Cohen, 1966, in Scheuerman, 2018: 52). However, this limited comprehension of the concept of civil disobedience would lead to the disregard of pervasive injustices and degrade the understanding of injustice to simple law offenses (Smith, 2013: 51).

This position is inadvertent to systematic injustices, which lay a substantial burden on the oppressed because the oppressed are under a moral duty to comply with the law. For

instance, migrants' full compliance with the migration law and state enforcement is expected in any decision. Any counter practice is bound to be marked as illegitimate, and is inclined to circulate the securitization rhetoric for further oppression.

In a similar line of thought, Dworkin furthers Rawls' claims arguing that civil disobedience as a concept belongs to people, who do not absolutely disconnect themselves from the predominant foundations of society. Civil disobedients, to a large extent, accept the legitimacy of the existing government structures and political unity. Instead of evading responsibility, they would follow their duty as citizens by in warning the political majority that they have neglected the clear benchmark of what constitutes "just" (Dworkin, 2018: 147). However, Dworkin departs from Rawls in regard to which particular rights are granted to citizens. While engaging in civil disobedience, protected rights in the constitution are not always the target. Rights bear an unsettled and mutable meaning, and they have an associative relationship with the continual process of adjustment and revision of the constitution (Cohen & Arato, 1992, in Moraro, 2019: 66). For Rawls, the institutionalized configuration of shared political commitments is the constitution, and vital political and civil rights are derived from the constitutions. However, for Dworkin, the focal point of civil disobedience goes beyond a restitutive function and engages with the content of the principles and norms to be legislated (Moraro, 2019: 55) Yet, in both approaches, civil disobedience is justifiable so long as it maintains an exclusive focus on rights.

For Rawls, the fractured legitimacy of the system is revealed, when injustices have become integral to domestic institutions. Prevailing injustices would render any legal means futile in counteracting the illegitimate condition (an example given by Rawls is: the negligence shown against the minority claims of right to vote and stand for election, having property or right to choose of residency (1999: 63). Since the first principle of justice outlines the acknowledged status of equal citizenship in a nearly just democratic regime and formulates the standards in socio-political affairs in a political community, Rawls thinks that civil disobedience is appropriate in finding a resolution to the breaches of the first principle of justice. In other words, Rawls only derives a solid justification for civil disobedience with regard to violations of the first principle (1993: 109).

In this context, engaging in civil disobedience also seems to be connected to associative obligations. Associative obligations pinpoint the political duties owed to other members of the political community. They are outlined and formulated with an apparent focus on the shared identity of members (Moraro, 2019: 24-26). Interpreting Rawls' outlook so far, the members - who identify themselves with the polity and its political principles - do share an obligation to each other to respect the law. Yet, an associative obligation should not simply be evaluated as a mere obligation to obey the law, but also as meaning to play an active role in concerning fellow community members' well-being and interests because their well-being and interests may be negatively affected by unjust forms of the law (Horton, 2010, in Moraro, 2019: 27).

For instance, Candice Delmas asserts a correlative relationship with one's dignity and associative obligation (2018a: 187). From Emmeline Pankhurst's expressions addressing the suffragist movement: being a militant woman requires carrying her own conscience and self-worth to other women who are less well-off, Delmas argues the same reasons apply to the relationship between the prosperous and less-fortunate/oppressed members of a polity in order to protect the latter's dignity (2018a: 188). Delmas emphasizes her stance by claiming that asserting the dignity of the oppressed encumbers the moral requirements of protest and finds its repercussions in solidarity. She indicates: "Even if I am not responsible for my fellow citizens' mistreatment, I have responsibilities to them in virtue of our co-membership in the polity" (Delmas, 2018a: 188). Delmas even finds no problem broadening the principles of associative duties towards the external sites of the political community to protect dignity. One relevant point to this discussion - which I suppose to expand Rawls' stance - is offered by Kimberley Brownlee by suggesting the term "necessity defense". Accordingly, Brownlee maintains a position that civil disobedience aims to accentuate states' omission or intentional misdeed of non-contingent basic needs and rights (2012: 179-180). By indicating non-contingent, Brownlee indeed draws attention to basic rights and needs, which do not emanate from the constitution of a political community. To put it differently: these rights and needs are not necessarily celebrated as the epitomization of the political principles derived from the shared conception of justice. Rather, Brownlee expands the scope of basic rights and needs towards recognition, inclusion and autonomy (Moraro, 2019: 112-113).

Highlighting civil disobedience as an ethical action to prevent the negligence of the government on basic rights and needs, Brownlee offers a more promising picture for civil disobedience as an action for non-citizens too.

From Brownlee's outlook, non-citizens' engagement with civil disobedience can be justified on the basis of exercising autonomy, recognition, inclusion and the position of being able to make choices in mid and long terms (in relevance to our discussion I would say the right to stay). For Brownlee, non-contingent rights are unraveled from their connotations tied to the constitutional regime and boundaries of the status of equal citizenship. Moreover, they are located external to a political community's shared conception of justice. The emphasis on non-contingent rights is expected to hold the democratic government responsible for abusing the rights of non-citizens. We can return to Rawls, after having examined Delmas' and Brownlee's relevant theoretical contributions. At this point, I would like to draw attention to Rawls' position on the relationship between civil disobedience and any violation of the second principle of justice. Accordingly, Rawls disregards any problematization of social and economic issues as a subject of civil disobedience because he sees the infringements of social and economic rights as concealed (Moraro, 2019: 51-53). Being more specific: the calculation of the satisfaction of the difference principle relies on an intricate judgment of a certain policy or law, and involves a complex analysis, statistical data or expert information (Moraro, 2019: 53). Quoted from Rawls by Piero Moraro: "there is usually a wide range of conflicting, yet rational opinions as to whether this principle is satisfied (Rawls, 1999: 327, in Moraro: 53)". In essence, violations of social and economic rights would not result in significant change to the established system of law. Hence, the infringements of the second principle would not be just as obvious as the ones occurring in the first principle, and they would not definitely suggest a legitimate reasoning to appeal the unlawful protest.

4.1.3. Accepting Punishment

Acting from a conscientious moral conviction about the unfairness of a particular law, civil disobedients are believed to manifest a commitment that they are genuinely eager

to articulate their standing to others and endure the possible costs of grasping their opposing belief (Brownlee, 2012, in Delmas, 2016: 682). According to Rawls, fidelity to law is expressed by the overtness of the action and the preparedness to bear its legal consequences (2018: 61). The definite framework of the action and peaceful intentions are the guarantees of authenticity, however civil disobedience is an open breach of the law, and it is naturally wrong. So, the aftereffects of this peaceful non-conformism may find the agent subject to unpleasant legal sanctions.

Accepting punishment and fidelity to law are considerably another strong points, which the narrowness of liberal civil disobedience is hinted at. For example, against a confined understanding, Howard Zinn - who was also a peer of Rawls, lived within the same period of time and studied on theories of civil disobedience - interprets the concept of civil disobedience from a wider angle. Very briefly, Zinn sees civil disobedience as a tool for pursuing democratic and social change. Contrary to Rawls, Zinn's approach consisted of anarchist overtones that manifest themselves in the idea of renouncing the rule of law and dismissing any sense of having a fundamental obligation to follow the law (Zinn, 2002, in Scheuerman, 2018: 59-62). Zinn links civil disobedience to direct action (rather than symbolic action) to convince others about the essential righteousness and conscientiousness of the action. Zinn highlights civil disobedience as a medium, which contains ambitions of sweeping changes (Zinn, 2002, in Scheuerman, 2018: 59). Zinn also rejects restricting civil disobedience to the transgression of certain specific laws, but observes it as the engine of challenging the profound social ills (Zinn, 2002, in Scheuerman, 2018: 61). Eventually, Zinn rejects any punishment that may find the agent in the aftermath of the action.

I believe that Zinn's rejection of showing any commitment to rule of law at any stage of the protest implies his negation of a shared conception of justice. In my opinion, this is a significant point since shared conception of justice tethers who to be the legitimate agents of civil disobedience (equal citizens who share identical rights and liberties from their attachment to the constitutional regime structured upon the shared political principles). In line with our discussion of irregular migrants' agency, I find Zinn's theory insightful to a certain extent that it actually disavows any legal standard arising

from joint ethical considerations of a political community. Rather than embracing particular legal criteria as a moral compass of civil disobedience, Zinn comes up with a laxer redefinition that hypothetically would be more permissive to foreigners in legitimately engaging such an action. Considering forced removals and the legal underpinnings of such enforcements are not being democratically justified to foreigners, they would be in no position to express their fidelity to law or regulation when they choose to take a direct action.

4.1.4. Appeal to the Public and Communication

So far, the mainstream account of civil disobedience declares that the action should address the misguided direction of the political majority's understanding of justice, and its diversion from the foundational political principles of the constitutional regime. Yet, the proper way of addressing these diversions does not consist of unconcealed disruptive forms of protest against the political system. Rather, the proper way requires a commitment to convince those, who have entered an erroneous route of interpreting the shared conception of justice. This commitment necessitates the articulation of conscientious political convictions publicly, in an appropriate milieu, for instance, a public forum.

Rawls acknowledges the enduring plurality in contemporary societies and the presence of competing moral views with various conceptions of the good life. Nevertheless, the shared conception of justice - which was agreed upon by the equal members of the political community - assumes the intellectual ability of human beings in putting forward a rational judgment about the political commitments. In other words, Rawls asserts a capacity for human rationality detached from tradition, which is transparent enough to be supposedly attributed to all human beings (Mendus, 1995). The expression of political convictions through public speech and profound reason-giving discards the justifications built on the grounds of religious doctrines, individual morality or group interests. Then, civil disobedience stresses a communicative trend in line with pluralism, where the appeal of deep political convictions is made to the public (Rawls, 2018: 59-60). The mainstream account prioritizes the core communicative character of civil

disobedience. This character declares itself as participating in a free debate without coercion because any impulsive breach of the law causes a worry about having the rationale of communication undermined (Scheuerman, 2018: 48). Surely, in such a context of abundance of conscientious moral standpoints, a communicative effort would not contain multifold propositions of morality. Rather, civil disobedients undertake joint political concerns with their equals regarding their political rights. To say it differently: such communicative tackles would not surpass the exterior sites of Rawls' first principle of egalitarianism, which substantiates the comprehensively validated convictions about the shared importance of basic rights and liberties (for instance, a moral viewpoint regarding environmental preservation and activism would not be a justified theme).

Another tackle in situating communication in the realm of civil disobedience is related to the position of non-citizens in communicative efforts. According to that, communicating agents are political equals, and there may be no interest for them in pursuing a forward-looking persuasive endeavor towards an effort to involve foreigners to a reasoned deliberation. This inequality in a presupposed public site of communication will be discussed in the following sections. In the upcoming section, I will be moving onto deliberative and democratic accounts of civil disobedience, which seem to offer a more horizontal perspective (yet a flawed one, when immigrants are considered as one of the primary agents).

4.2. Deliberative/Democratic Accounts of Civil Disobedience

The deliberative approach to civil disobedience departs from Rawls' conceptualization. As already shown, Rawls tends to portray disobedient action as merely an act, striving to avert the risks of governments' use of abusive power. This approach is unduly confining and only brings legitimacy to the action by highlighting the violations of basic rights. However, without suffering from any serious deficit in basic rights, civil disobedience may be in the form of disclosing a political or social anxiety with procedural means (Moraro, 2019: 67). The theory of democratic civil disobedience understands legitimacy quite differently and seeks it within the interactive process of law-making. Within the theoretical discussion on the democratization of civil disobedience, Habermas' position

appears in the first place. Habermas unearths the justification of civil disobedience in a moment, where legitimacy and legality of the democratic polity are at a juncture. Accordingly, the civil disobedient figure appreciates democratic legality. Yet in extraordinary situations, the same figure acknowledges the legal infractions – which are deemed illegitimate - vis a vis the moral principles reasonable for all (supposed that every member is willingly recognizing and validating them), in the modern constitutional state (Habermas, 1985a: 103-104).

In line with what is indicated in the above sentences, Habermas' conceptualization seems to resemble the mainstream approach of Rawls. As the mainstream approach, Habermas would stress that the democratic legitimacy of a political authority is being perverted in conditions of overt contradiction with basic rights and liberties. However, in the democratic model, civil disobedience aims to augment meaningful participation in claims-making and will formation so that the horizon of civil disobedience would be enhanced to a level of democratic procedure and self-determination (Scheuerman, 2018: 74-75).

As Habermas puts it, by breaking the law, the civil disobedient gains a role as a citizen, activating her utmost sovereign capacity (1985a: 103). For Habermas, this non-violent action is also a demand to exercise power instead of the political leaders, who are packed into the rigid institutional frameworks (1985b: 136).

So, the particular requirement of the mainstream approach to invoke constitutional principles in justifying civil disobedience is expanded by Habermas in terms of recognizing the constitution as an unfinished project (Scheuerman, 2018: 97; Smith, 2021: 109). In that sense, civil disobedience is creative, and such a dynamic approach evokes the possibility of conflicting opinions about constitutional principles, and stimulates the appearance of diverse political judgments (Smith, 2021: 110).

4.2.1. Habermasian Account of Civil Disobedience

As Daniel Markovits stresses, a theory of democratic disobedience delivers a seemingly implausible claim that disobeying laws can indeed assist democracy (2005: 1902-1903).

The intention of the political law-breaking has been shifted from bulwarking political/civil rights to responding to democratic shortcomings (Aitchison, 2018: 666-667). The idea that disobeying laws would bring democratization is also related to the understanding that modern constitutional democracies are challenged with the task of protecting a lively, but strenuous relationship of distrust of injustice (Scheuerman, 2018: 74). Despite the fact that the modern constitutional structure is deemed to be aligned with universal principles, it cannot remain static and conclusive while being consistently exposed to changing historical and political circumstances (Scheuerman, 2018: 74). There would be certain disparities between the normative framework - which is presumed to be molding the basis of the constitution - and the political actuality.

One blunt example for my inquiry, which delineates such a gap is the political and legal practice of deportation. Being an outcome of intensifying transnational migration, deportation counteracts the perspective that current political and legal practices adequately conform the pressing norms of the liberal democratic polity. As Scheuerman conveys from Habermas, socio-political and historical circumstances (in this case, transnational migration and deportation) frequently interfere with democracy and the constitution. These circumstances set a continual process of alteration for the constitution and always make it open to adjustments and revisions (2018: 74). This outlook admits the fact that the existing legal and institutional structure of a constitutional democracy may produce injustices. Also, this structure may be apt to exclude the demands of the oppressed and the exploited. Being aware of such a possibility, the liberal democratic polity needs to maintain a controlled distrust of its constitution and its institutions. The distrust untightens the likelihood of civil disobedience. This is a dynamic understanding of the constitution – and as mentioned above – this understanding sees the constitution as an unfinished project (Habermas, 1996: 384). Accordingly, the constitution of a liberal democratic polity does not portray a flawless and complete structure. On the contrary, the constitution represents fallible human reason and it is often prone to being corrupted by human interests (Habermas, 1996: 384; Scheuerman, 2018: 74). Habermas suggests that constitutional premises are susceptible to being modified. The direction of such a modification is to carry out a new system of rights without immunizing themselves from shifting socio-political and

historical circumstances. Rather, a new system of rights arises from embracing these circumstances (Cooke, 2021: 240).

At this point, unlike Rawls - but approaching to Dworkin - Habermas holds the view that, a legitimate legal order and the myriad of instruments carrying it together (system of rights, foundational principles of the constitution, positive law, etc.) are genuine insofar as they rely on lizable, fundamental values or, as their universal value is totally communicated (Habermas, 1985b: 135; Moraro, 2019: 74-75). What Habermas's reconstructive standpoint of the constitution shows us can be put forward as so: constitutional rights - which are responsive to corrections and revisions - construe the performative character of the self-formation of a political community (Habermas, 1996: 384-385). Within such a long trial and error process, rights are subject to change through actions of civil disobedience (or other non-violent, public but extra-legal measures).

Lastly, for Habermas, the public sphere is also integral to extra-legal actions. According to such an approach to the public sphere - if I deduce accurately - civil disobedience may only gain a distinctive attribute of law-making - to such an extent - that it incorporates citizens' eagerness to present their preferences about the law and policy in a process of opinion formation. The public sphere is where this cognitive process of public debate occurs. Relevant to that, the public sphere is where the opportunities to influence one another about a public concern - alongside the moral-learning of justice - take place. (Smith, 2013: 54-55). From that angle, deliberative accounts of civil disobedience are only meaningful, when considered together with discourse ethics. This boundedness between discourse ethics and civil disobedience implies an intersubjective relationship among speaking and performing subjects, who initiate communication for the purpose of reaching an agreement about the validity of a norm. This agreement should be concluded without any external coercive impositions.

In a communicative action, the willingness to contribute, ease and facilitate the achievement of a collective goal is vital. The precondition for the common goal to be accomplished is the prior mutual confirmation between the free and uncoerced individuals that the goal is reasonable (Moraro, 2019: 65). One may argue that, this

viewpoint is original and shows Habermas' divergence from Rawls as civil disobedience allows citizens to convey their perspective about the content of rights. I believe that, this is also a step in politicizing any serious infringement of rights (not necessarily political/civil rights), alongside mobilizing citizens to describe - and even invent - new sets of rights concerning the changing context. Nevertheless, as will be discussed in the upcoming pages, civil disobedience may encounter deliberative failures. One specific deliberative failure would be the prevention of actors (for instance, non-citizens) from participating in the communicative action, even though they may have relevant assertions in opinion-formation about a matter (Smith, 2021: 111). In relation to our debate on deportation and claims of the right to stay, the agency of distressed migrants - who are mostly attentive and observant of their situation, and aware of how their political action is significant - is taken a backseat because the narrow understanding of citizenship only allows political equals to openly address their fellows. This is an absence of an imperative standing for non-citizens to circulate their interests with regard to the migration law and policies, considering that the migration law and policies have far-reaching impacts upon migrants' outlook for the future (Smith, 2021: 112).

4.2.2. Arendt's Account on Civil Disobedience

In line with Habermas, Arendt's outlook also democratizes civil disobedience. She concerns civil disobedience as an action that publicly dramatizes various matters of common concern, and as a political intervention that manifests the political capacity of human beings (Scheuerman, 2018: 60-65). In addition to that, Arendt understands civil disobedience as an exquisite and concerted activity, and more importantly, she sees civil disobedience as an activity, which equal citizens engage reciprocally and mutually (Scheuerman, 2018: 65). Her emphasis on political capacity seems to be analogous with the Habermasian reconstructive position in regard to constitution making. This reconstructive position emphasizes that constitutional rights and principles are construed by the performative attitude of free and equal citizens (Habermas, 1996: 384-385). In addition to that, Arendt underscores the rapid pace of transformation in social and political life (just like Habermas). This accelerated pace of transformation challenges the rule of law by bringing out obstructions to legalization, and therefore, destabilizes

change (Arendt, 2018: 102-103). Yet, Arendt leads a query about whether the law can be incorporated with society's acceleration and temporality that would eventually encumber the long-established mechanisms of operation with recent concerns and needs (Scheuerman, 2018: 66-67). Despite the escalating pace of transformation in society - which challenges the legal order - change in the outmoded law can only be brought about with extra-legal actions. Civil disobedience is one form of such an action, which gradually surfaces in modern democracies (Arendt, 2018: 102-103).

However, unlike Habermas, Arendt does not openly give commitment to the democratic constitutional regime, and does not theorize an action for repairing it towards the previously robust and normative stand. As stressed by Scheuerman, Arendt conceives of civil disobedience as a will of political action. The will of civil disobedients may revitalize a reciprocal, solidaristic and creative relationship between the law and politics (2018: 69).

According to Arendt, this horizontal space renders possibilities for citizens to politicize their distresses, without losing their restricted autonomy (for example, being competent in making choices and free from any coercion in setting and maintaining distinguishing moral viewpoints). This horizontal space is a reinvigorated public sphere, and empowers civil disobedients to articulate claims to address common concerns (Arendt, 2018: 114; Delmas, 2016: 686). Otherwise, civil disobedients would be restrained by a cramped liberalism that cannot catch social change (Scheuerman, 2018: 69-70). Therefore, we can argue that Arendt's understanding of law-breaking does not completely depend on worries about majoritarian perils to basic rights. Rather, her conception of civil disobedience cherishes the action because it allows political peers to act in concert and exemplify their political capacities. For Arendt, there is a relatively more open invitation to performative attitudes and efforts to democratize decision-making alongside reformulating laws and rights.

Arendt's discussion on civil disobedience does not candidly discuss the role of non-citizens in civil disobedience (reservations to include non-citizens are shared by Habermas). At this point, turning to Arendt's understanding of "right to have rights"

would be conducive to expanding the conception of citizenship, and therefore the right to stay (Arendt, 1973: 296-297). As mentioned in the first chapter as well, Arendt rescues the contemplation of human rights from the metaphysical foundations, and tries to secularize the concept. The concept of human rights has ceased to be construed with notions like human nature or natural law (Gündoğdu, 2015: 168-169). Arendt contends: despite affirming the rights of man, the French Revolution demanded national sovereignty. Demanding national sovereignty shifted the subject of the “image of the man” from the “individual” to the “people” (Arendt, 1973: 291).

This shift led to the contradiction that human rights have been contained by national rights (Kesby, 2012: 3-6; Khwaja, 2023: 3). The containment of human rights with national rights mingled the question of human rights inseparably with the question of national emancipation (Arendt, 1973: 291). So, only the human rights of people, which belong to the emancipated sovereignty, can be protected. As Kesby elaborates, if human rights can only be insured by being a member of a political community, then the one and only (true) human right must be belonging to this community (2012: 3).

From here, I will return to Arendt’s approach to civil disobedience. Drawing from Arendt’s conceptualization of human rights, I think that, engaging in civil disobedience seems ironic before being a rights-bearing subject (namely, to enjoy the legal and political membership of a state). According to Arendt, a stateless person is destitute of all capacities and rights, and cannot act or speak to claim rights. That is a reduced status of “human being in general” (Kesby, 2012: 3). Therefore, the right to belong to an established political community should be realized priorly. In other words, for being transferred to the realm of the “people” (as stressed above, the “people” is the replacement of the “individual” as the subject of the “image of the man”), the individual should be guaranteed to legitimately live in a political community. As a member, the individual would be discharged from a pernicious state of being, which makes her open to arbitrary acts of state.

I figure that Arendt’s stateless person image has been sketched as that of a very shaken and ruined man, whose engagement in a political process of claims-making (such as

civil disobedience) is impossible. To put it differently: Arendt seems not to consider any agency within the pre-political circumstance, which is pointed out as the moment before being recognized by a political community.

Vis a vis the radical democratic theorization of civil disobedience - which designates the action as a part of the insurrectional and extra-legal acts of citizenship with endeavors to modify the structure of the political community, Arendt's emphasis declares that there is no moment at all for the stateless to reconfigure the political community.

However, deriving from both Habermas' and Arendt's arguments that rapid change reveals temporalities in law and social formation, I believe that, civil disobedience should be more inclusive in the liberal democratic polity. So far, mutuality and the horizontal social structure for displaying political capacities seem to be reserved for equals in the political community. Yet, through acts of citizenship, withdrawal from the dominant classifications of political identity is possible (Stierl, 2019: 29).

The contentious limits of citizenship are examined frequently through the intersection of citizenship with idiosyncratic notions such as cosmopolitan, irregular or coincidental (Nyers, 2010, in Stierl, 2019: 29). Eventually, undocumented migrants' activism and acts of radical civil disobedience suggest alternative modalities of citizenship. These alternative modalities impair and simultaneously reinscribe an accustomed understanding of the concept of citizenship. The acts of citizenship universalize the status of the citizen, and provide a universal right to politics (Balibar, 2004: 312). Unlike Habermas and Arendt, the pre-political person - who has not been included yet - can contest the existing institutionalization and the consensus on defined rights. In other words, by calling upon human rights and politicizing equality before political institutionalization, the pre-political person may stimulate a self-initiated transformation for into a political subject.

As a relevant point, undocumented migrants, refugees and failed asylum seekers are being subjugated to an incontestable migration regime, which has been structured and employed without their approval. Having set this as the problem, the discussion in the

following sections elaborate on non-citizens politicizing their demands (for instance, the right to stay) in the context of radical civil disobedience. Before moving on to radical civil disobedience, I would like to mention the objections brought against the deliberative/democratic stance of civil disobedience.

4.2.3. Objections to Deliberative/Democratic Accounts of Civil Disobedience

Objections to the deliberative model basically accumulate around the idea that the public sphere is being distorted by structural inequalities. Accordingly, the structural inequalities lead to a gradual curtailment of the capacity of political influence of the oppressed groups. In this situation, the profound entrenchment of hegemonic discourses may result in the constant marginalization of opposing discourses and opinions.

For instance, let us consider undertaking a march as an act of civil disobedience, for the right to stay. Aside from helping undocumented migrants to politicize their demands and to show their will to communicate on the alternative formulations of the right to stay, the march is an example of breaching the law, which demands the undocumented migrant to remain incarcerated in a facility. Such an action can be seen as a claim for a political standing with an unfamiliar and challenging set of discourses. At this point, it is likely for the migrant subjects to appeal to a more universalizable set of discursive frameworks (for example, by finding a relevance between a right to stay and the protection of bodily integrity or the right to stay and being safeguarded against political and economic hardships). This is a discourse against a vocabulary, which has communitarian-nationalist connotations. That vocabulary justifies states' right to their territory by reasoning that, such a right, manifests the cumulative possession of the land and resources of the legitimate members of the political community (Blake, 2013, in Khwaja, 2023: 3). When structural inequalities prevail in the communicative spheres, the communitarian vocabulary may be superior to the universalizable set of discourses of migrants. In light of the discussion in the previous two sections, democracy-enhancing models – which prioritize self-determination - seem to suffer from a theoretical deficiency regarding the inclusion of non-citizens in reciprocal engagement. Some thinkers believe that, deliberative democracy obliges unity. For Iris Marion

Young, the conception of deliberative democracy - which is founded on the commitment to unity – acknowledges that, the circulated social criticism and opposing views are legitimate as long as they appeal to the community’s shared understandings (1996: 125). This is specifically the unity of joint insights and awareness with regard to values, opinions and cultural ways of judgment. As Young suggests, procedures of public deliberation - which depend on the ideal of homogeneity and integrity - are prone to generating problems in the context of contemporary plural societies (1996: 125-126). Once unity is cherished, opinions circulated in a deliberative process would discard the flow of particular perspectives. Related to the erosion of particular perspectives, the deliberation would likely be confined to a precise definition of the common good (Young, 1996: 126). Thereby, despite a formula to conduct a fair discussion that might be achieved with the procedures of inclusion agreed upon, the conceivable outcome of an appeal to the common good would include citizens, but eliminate foreigners and their right to voice their opinions with equal respect.

Obviously, there is a motivation to preserve social unity and cultivate shared values among the members of a political community, who have freely associated with one another (Wellman, 2011: 2-3). Also, by political choice, communities have a crucial interest in constructing and perpetuating their collective character (Mendoza, 2016: 53). From Young’s approach, one may infer that, establishing deliberative democratic standards on the grounds of social totality seems to be futile in democratizing the deliberative realm. Young’s position is contrary to that of communitarians, who envisage social totality as an object possessing intrinsic positivity and therefore do not stretch the boundaries of deliberative democracy by including non-citizens.

Remembering Ernesto Laclau, a holistic approach to society “fixes the meaning of any element or social process outside itself” (1983: 22). Accordingly, the undocumented migrant or the failed asylum seeker - who experience constant anxiety about having severe encounters with the state - do suffer from the fixation that their identity and relations with the majority of society have already been cemented. Such a totality also denounces the relational character of any social identity. This totality (as an essence) is placed beyond the empirical fluctuations of social life, and it sets the intelligibility of

social order through accepting finite relations within the societal structure (Laclau, 1983: 22).

As we elaborated, irregular migrants keep their slippery and unreliable positions within and at the boundaries of the society that they reside in. Therefore, the fixation of social totality would reproduce their situatedness at the periphery of society by offering significantly narrow and vastly conditional pathways for inclusion, recognition and naturalization. In addition to that, such an essence of society would carry the risk of consolidating the meaning of “citizen” and “non-citizen/foreigner” by attributing them an essence. Nevertheless, in plural societies – which are widely exposed to transnational migration - social subjects (either the citizen or the foreigner) are not immutable and finite, but they are decentered. For Laclau, this is unstable ground, and it paves the way for “unstable articulation of constantly changing positionalities” (1983: 23). In relation to that, the excess meaning is present to be observed in the domain of subjectivity (Marchart, 2007: 135-137). The identity is overflowed and - in consideration of our inquiry focusing on undocumented migrants – this unsettled identity would hint at the fact that a would-be deportee may oscillate between misrecognizing herself as a performative subject (because being undocumented is misplacing migrants as if they were totally at the outskirts of society and rendering them as if they were not awarded with equal respect by any chance) and a proper subject, who she transforms herself through demanding her rights and performing as if she were equal with the legitimate members of the political community.

Even though radical theorists recognize undocumented migrants as agents to share an equal standing in deliberations for formulizing their claims, realizing this is hard through pre-constituted discursive schemes (for instance, discursive schemes containing securitization and illegalization of migration as primary elements) that have already been embedded in various phases of deliberation. Encountering an exclusionary rhetoric in deliberation would be problematic for an undocumented migrant to hold a firm position not to divert from the reciprocal engagement of the practice of deliberation. In other words, the securitization of migration may be a pervasive component of the norms of communication. Other than being pervasive, the securitization of migration may not

even be a topic of political discussion. Having been affiliated with the security rhetoric, the claims of anti-deportation and the right to stay would not be heard if they were regarded as subject matters that were immune from migrant participation. In the first chapter, I mentioned the institutionalization of migration regulations, saying that only institutional responses to migration related matters are deemed legitimate. Aside from these responses, any instigative or provocative political claims are regarded as illegitimate. Therefore, the political agency of the undocumented migrant is endangered of being degraded. So, I believe that, being a part of deliberation and conveying claims may be futile for migrants because the inequality ingrained within these forms of deliberation is structured by the prevailing idea of a political community to have outright discretion about admission and exclusion. The justice claims of citizens and undocumented migrants clash, but migrants may exploit limited venues to raise their claims through deliberation due to failures of reciprocity and political inequality.

With regard to the restricted accession of migrants to deliberative spaces, Young makes a highly candid distinction between the democrat and the activist, claiming that the activist is doubtful of the inducements of deliberation because structural inequalities eventually inhibit agents from affecting procedures and outcomes (2001: 670-671). According to Young, people, who are concerned with advancing greater justice should turn their faces chiefly to critical oppositional activity (Young, 2001: 671). Therefore, a deliberative democrat is somehow naive in thinking that social injustices would be interfered with and ameliorated by fostering the establishment of sites and procedures that include contradictory and disparate members of society (Young, 2001: 672). Drawing from a very similar point, Archon Fung coined the term deliberative activism. Accordingly, the deliberative activist occasionally relinquishes the use of reason and persuasion, and shifts to non-deliberative tactics (2005: 402-403).

I believe that this framework is precisely right in addressing how frustrated it is going to be to gather diverse and disagreeing voices into sites of deliberation for seeking greater justice. The reason I see the deliberative efforts as aimless is: engaging in a deliberation seems to be grounded in strict respect for law and to appreciating others as equals. In other words, what Habermas aspires to in his procedural theory is to bring equality

forward. Deliberation approaches an ideal site, where communication would outpace the present inequalities and provide equality. So, the democratic process should forbid anyone to uplift their judgments over others'. Following that, Habermas does not restrict the breadth and substance of deliberation, but follows strict proceduralism (Mouffe, 2005: 5).

One may argue that, by imposing procedural constraints, Habermas tries to establish an optimal site for speech. The discourse circulated within this ideal situation of speech should be regulated by the norms of symmetry. To put it differently: all people – who are the participants in the conversation – should have the identical possibilities to start a speech, direct questions and initiate debate (Benhabib, 1996: 70). Therefore, the participants in this ideal speech situation would not suffer from any unforeseeable inequalities as long as the norms of equality are implemented, and as long as the participants follow the procedures. In a democratic polity, the ideal sites of communication ingrained in the deliberative process are necessary for reaching legitimacy and rationality about the collectively taken decision (Benhabib, 1996: 69-70). Collective decision-making is also pertinent to coming up with a common interest. So, in a democratic polity, the common interest also ensues as a result of the deliberative processes, which are administered in a fair way among free and equal fellows. Even though Habermas tries to lay out the conditions for ideal communication, I see that, in today's liberal democratic polity, neither norms of symmetry nor procedural expectations generate conditions for people to be less coerced and to initiate speeches on better arguments. Rather, the securitization framework and illegalization/criminalization of migrants render the deliberative procedures closed and partial. I think, an important point regarding Habermas' "ideal discourse" can be argued as so: transnational migration results in some empirical problems that would distort our perception of an equal and rational self, who is an active participant in communication. In other words, with migration is being presented as a security issue, collective-decision making processes may be extensively blended with particular interests. The securitization of migration seems to be constraining communication. I suppose such a constraint exists, because if the migrant figure is equated to a security threat or a criminal, the procedural

conditions and the norms of symmetry would not be neutrally functioning. Impartiality may be eroded, and the norms of symmetry and equality may be extinguished.

So, problems regarding migrants' right to stay, deportation practices and other security-related matters are threatened to be left outside of the rational public debate. One may argue that, if the norms of symmetry and procedural conditions do not work, then it would no longer be an ideal site of communication, and the criticisms are irrelevant. However, I believe that Habermas' position is still valued only with the condition that the empirical impediments against an ideal site of deportation are challenged. Namely, I precede the acts of citizenship and radical civil disobedient action before engaging in the ideal sites of communication. I will be delving into this argument starting in the following section.

With regards to that, even though undocumented migrants would be willing to promote a structured dialogue, and further a forward-looking exchange of thoughts on existing law or policy, due to the contextual obstruction (migrant being regarded as a security issue, and therefore not as an equal), they may search for alternative ways to articulate their demands. That is not solely because they are rejected from a fair exchange of thought. But, even if they are included, they cannot proceed with a healthy dialogue to reflect their choices and their rational explanation. An alternative action - which is believed to disclose the message more efficiently - is epitomized in the migrants' protests that are discussed in the second chapter. Rather than appealing to reason, activists include emotional appeals, slogans, humor, irony and disruptive tactics in their repertoires of action.

While moving onto radical civil disobedience in the light of these critical standpoints, I would argue that a radical endeavor to redress substantial injustice does not firmly request a reciprocal recognition of equality for engaging in politics. Rather, unraveling the wrong or deploying an essential dispute against the preponderant disposition of law are decisive (Kremmel & Pali, 2015: 263). At this point, I remember Habermas' interpretation of the constitution as a fallible and unfinished project that the political objective in the long-run is to envision and conceive a system of rights akin to

contemporary social transformations. Rather than this conscripted precondition of politics, radical civil disobedience will disentangle the precondition of equality, but confer a radical egalitarianism, which compels the agent to fulfill no specific obligation to fulfill before entering the realm of politics.

4.3. Radical Civil Disobedience and its Basic Tenets

While sharing parallels with the above-mentioned efforts to democratize civil disobedience, the radical conception of civil disobedience synchronizes with the practices of contesting citizenship to a greater extent. As discussed so far, Habermas departs from Rawls' line of thought by claiming that, the unshakeable ethical duties and commitments in the embedded political culture can be receptive to transformative trends. Habermas also suggests the dynamism of constitution-making (Cooke, 2021: 241). Yet, the prioritization of dialogue among equals, and the orientation of “no-room for coercion” have his theory cornered around normative demands. Also, in both Habermas' and Rawls' theories, there seems to be an outspoken conviction that the boundaries of illegal - but permissive action (for publicizing a problem in order to manifest the excitement and awareness behind it) - are set insofar it is restrained by the engagement of citizens. On the contrary, the endeavors of a radical theory of civil disobedience concentrate on exceeding symbolic attempts of reconciliation with the majority or noncompliance with the law.

A more contemporary interpretation of civil disobedience is less restrictive, and promisingly includes people who have been recognized as citizens (Çelikateş, 2016a). The radical interpretation of civil disobedience openly challenges the mainstream model for being too stringent and bringing imperative conditions to defining civil disobedience. In criticizing the mainstream approach, Delmas argues that there is another norm of civility called “decorum” (alongside publicity, non-violence and non-evasion), which concerns “the way citizens ought to interact with each other in the public sphere, when debating political questions” (2018: 43). “Decorum” is the anticipation of actors of disobedience to behave in a courteous manner, and it seems to depend on the expectation of future cooperation between the members of a political community. Also, it relies on

the assumption that actors engaging in civil disobedience act in a way that would not imperil the forward-looking concerns of the community, and instead they behave in a certain way to secure a fair system of cooperation (Sabl, 2001: 314-315; Smith, 2021: 88). Delmas also pinpoints how this reduced understanding of civility curbs the extensive range of justified resistance. “Decorum” criteria - which effectively ban offensive and disrespectful acts - is referred to as a defected impression of civility, and it is deemed to always be susceptible to being manipulated by the powerful actors in condemning the legitimate resistance by surrounding it with moral claims (Delmas, 2021: 213).

Another criticized aspect of mainstream civil disobedience is the requirement from civil disobedients that they should conduct their action with fair notice in advance (Çelikateş, 2016a: 38). Suggested as the elemental criteria of “proper” civil disobedience, a non-covert action seems to scarcely conform with the contemporary, radical forms of disobedient action (for instance, with migrants’ protests in a detention center or airport strikes to prevent their deportation). Furthering his criticisms, Çelikateş challenges the idea that civil disobedience remains legitimate as far as it completely accommodates non-violent tactics. Envisioning a purely non-violent form of civil disobedience would be critically weakening the action by shrinking it to a mere moral appeal (Çelikateş, 2016a: 41-42). Consequently, ruling out some necessary violent tactics or coercion (here, it is important to indicate Çelikateş’ categorical rejection of any militaristic confrontation or individual harm to other people) may bear risks of leaving all the hope of being responsive to change, to the political system or to the fractured and unjust deliberative public sphere (Çelikateş, 2016a: 41). Çelikateş argues that, actors, who have been suffering from structural injustice should not be disapproved straightforwardly for not providing a valid justification for their appeal to violence. In other words, they should not be condemned directly for their choice of not using genuinely civil responses in their resistance (for instance, not damaging property by choosing any equivalent violent action). Çelikateş contends that in a liberal democratic polity, labeling an event “violent” is always politically loaded. Thereby, an event – which bears promises of rupture for the ongoing organization of society - is wide open for marginalization and exclusion (Çelikateş, 2016b: 984). Therefore, if politically

charged stigmatization is prevalent in marking any disobedient action, civil disobedients' sincere intentions to conform with the normative and standardizing criteria of being non-violent may be futile.

Çelikateş suggests that the tendency to mark any event with non-violence, an apolitical attitude or a criminal incentive relies on how we socially, politically and legally define violence (2016a: 41-42). Here, Çelikateş refers to Herbert Marcuse's concept of "repressive tolerance". Marcuse points out that a mentality is created "for which right and wrong, true and false are predefined wherever they affect the vital interests of the society" (Marcuse, 1965: 95). Aside from the unavailability of impartiality, objectivity is also crippled and functions to promote a mental outlook (indoctrination) that eliminates the difference between true and false or right and wrong (Marcuse, 1965: 97). This is critical in obliterating the autonomous processes of judgment, and it also tends to foster an attitude of inadvertently embracing the rooted behaviors of ideas within society. For instance, since migrants' struggles pursue and offer a crucially diverse understanding of justice against entrenched conceptions – which are shared by the closed community – these struggles are often prone to being framed, marginalized and criminalized.

As already mentioned, such exclusion of migrants' struggles (for not getting deported in the first place, and for the right to stay) is far from being interpreted in a disinterested way. Rather, these struggles are being fed by anti-immigrant and racist perspectives. Consequently, this attitude represses dissent, which is a liberating capability of democracy. Deriving from Marcuse, one may argue that, the fortification of hegemonic discourses within the public sphere homogenizes the way of identifying problems, making sense of the world and coming up with solutions (Smith, 2021: 113). Named deliberative inertia, this condition inhibits alternative suggestions for diagnosing social problems and proposing solutions (Smith, 2021: 113). From the lens of radical theory, the occasions of deliberative-inertia carry the potential to render civil disobedience functional again, and to define it with radical overtones, ensuing new discursive schemes of human rights, poverty, inequality and so forth (Çelikateş, 2016b: 989; Smith, 2021: 113-114). In the case of deliberative-inertia, framing civil disobedience with communicative manners would be futile.

To be clear, I would like to remind my point here once again: I argue that civil disobedience's rationale and characterization on the grounds of communication are valid. However, contextual determinants (as the securitization rhetoric) would not allow the members of a political community to render themselves as impartial and rational individuals, who would be appreciating migrants as equals, and who would be eager to meet migrants in an ideal site of communication with norms of symmetry and neutral procedures.

Considering the liberal democratic polity, the securitization rhetoric and illegalization of migration are significantly institutionalized and open to exploitation by elites. So, aside from migrants being stigmatized as threats, migration-related issues are even sometimes removed from the deliberative realm. This is the puzzle to which I would like to offer some solutions. In the following paragraphs, I will be underscoring radical civil disobedience and acts of citizenship as justified forms of resistance because, to attain a nearly ideal site of communication, migrants need to challenge the hegemonic discourses invading the rational public debate, and to render themselves as equals. In other words, the first concern for migrants should be to conduct effective dissent for their rights. This effective dissent should exceed the symbolic and constrained forms of claims-making (like Habermas' constriction through procedures), but should always be open to returning to communication. Lastly, this effective dissent should not be confused with anarchist direct action with a prefiguration of embracing a strict anti-capitalist and anti-state agenda (Berglund, 2023: 5). The dissent I mention is rather a radicalized action and challenges the existing methods of doing politics by redefining citizenship.

For instance, the marches and sit-ins that have been referred to in the second chapter were all undertaken by agents, who were inclined to encounter the legal outcomes of their actions. They also displayed their propensity to raise their claims in a scheme of social cooperation, highlighting the inescapability of living together (Benli, 2018: 318). These demonstrations did not merely aim to discontinue with the political community. Yet by clinging to slogans like "We are here!", they fundamentally stressed the unavoidable cohabitation and their right to stay (McGuaran & Hudig, 2014: 30). For presenting concrete examples: in May and September 2012, Somalia and Iraqi descent

immigrants started a camp close to the refugee center in Ter Apel in the Netherlands, insisting on their claim to receive more aid from the state, and for their prohibition from work to be outlawed (DutchNews, 2012; McGuaran & Hudig, 2014: 29). Following that, due to similar reasons, an Amsterdam group set up a tent camp called Osdorp. This tent camp continued until evictions took place in November 2012. The shared feature of these protests about setting up alternative camps was: even if the act was permitted by local authorities or tolerated to a certain extent, the power to penalize undocumented immigrants was conserved. Even though, undocumented migrants have positioned themselves against the migration law, the actions they committed were not initiated without apprehending that the authorities sustain their punitive power. So, one may argue that despite running the risk of being punished (concretely in the form of deportation), immigrants insisted on their communicative intentions and displayed their will to live together.

4.4 Radical Civil Disobedience and Migrants' Political Agency

Having enlarged the scope of people - who may engage in civilly disobedient action - the radical democratic outlook of civil disobedience contends that such a protest can be meaningfully employed by migrants as much as it is being exercised by citizens. However, migrants' engagement in disobedient action seems to politicize and address the dire, immediate needs to be addressed in the first place. Before aiming to non-violently pursue reciprocal communication, would-be deportees engage in a disobedient action to halt the damage that would be given to them in terms of their integrity and unity as a subject, if they were to be deported. This is a crucial moment where radical democratic disobedience should be cherished because it legitimizes migrants' possible actions, focusing on the acute problems that would harm them, if omitted.

I want to argue that, there is an unhindered approximation between the so called "acts of citizenship" and radical democratic disobedience. This closeness breaks up with the deliberative line of thought by problematizing how far deliberative theorization of civil disobedience is amenable to encouraging the stimulus of clinching disruption (Smith, 2021: 123-124). Rather, the radical democratic theory of civil disobedience witnesses

prevalent injustices, and strongly demonstrates the necessity of a turn in the form, character, and subjects of the protests.

At this point, I would indicate that, some features of the protests of undocumented migrants, which have been pointed out in the previous chapter, may be interpreted through the theoretical framework of radical civil disobedience. One obvious indication is the dissenters' choice of appealing non-violent, public and direct action in displaying their conspicuous repudiation of the laws, considering that these laws cause incarceration and deportation. These marches are manifestations of acquiring political agency. Through these marches, migrants display that (despite their imposed marginality) the regulatory structure of the migration regime in the liberal democratic polity can be challenged (Çelikateş, 2022: 99).

States and international authorities are empowered through the prevailing discourse of the “refugee crisis”. These authorities are expected to cautiously offer solutions to ongoing problems with the intention of curbing potential radical challenges before arriving at a point of political struggle. This depoliticization brings out undocumented migrants being depicted as victims and passive beneficiaries of assistance. Alongside the naturalization of their political stances, migrants - who have been ongoingly overpowered through political oppression - are also depersonalized. So, they are portrayed as mere recipients of policy and law, which they would have no conveyance of insight into (Çelikateş, 2022: 99-100). However, even though undocumented migrants are subjugated to coercive mistreatment, they are indeed epistemically privileged in interpreting the unjust processes and social relations of oppression. This epistemic privilege is critical to building an epistemic agency out of it (Çelikateş, 2022: 99).

A different interpretation of epistemic privilege is inferred by Ashwini Vasanthakumar. In line with her discussion, migrants have knowledge of injustice and the violence that it delivers. This knowledge can be acquired as a result of direct experience/observation or conveyed directly by someone else. So, they are singularly located in a position where they commence or induce efforts of resistance (Vasanthakumar, 2018: 466). Furthering her discussion, Vasanthakumar points out a dichotomization between “institutional

injustice” and “structural injustice” in which the former is equated with persecution (the oppression is visible), and migrant agents may knowingly act against it (2018: 466-468). At this point, taking “Lampedusa in Hamburg”⁸ to be a focal point would be conducive in comprehending the epistemic privilege. As mentioned in the second chapter, having been transnationally organized in various European countries, these protests embodied an aggregating alertness towards Dublin II regulations and the fingerprint databases of Eurodac. As pointed out in the previous chapter, Dublin II contains a restrictive and disciplinary scheme of migration administration. Its disciplinary scheme entraps migrants in the country of the first entrance without allowing a secondary movement. Institutionalized in such a way, this policy convicts migrants to a situation of circling deportation, detention and incarceration. Respectively, and from Vasanthakumar’s outlook, migrants’ solidarity embodied struggles against institutional injustice and was organized on the basis of their experiences of immeasurably problematic conditions, which cause the restriction of free movement.

Vasanthakumar also fundamentally links the epistemic privilege of the oppressed to duty. Accordingly, a duty is being encumbered to previous victims of institutional injustice to alert or testify in favor of the current or would-be victims (2018: 468-470). Previous victims’ experiential knowledge of grave injustices imposes duties to assist. Nevertheless, this duty only appears if the oppressed person’s morally significant and basic interests are not jeopardized (Vasanthakumar, 2018: 468). The duty is present as far as the person - who possesses the experiential knowledge of previous persecution - has the capacity to come up with the moral judgment that the needy stranger’s basic interests are deeply endangered. In line with that, duty is distributed according to the seriousness of the threat (whether basic interests are at stake) and the existence of practical knowledge in determining whether the given situation of the needy stranger is actually critical. Radical democratic civil disobedience has a democracy enhancing role and appears as an extra-institutional practice, which exceeds the conceptualization of civil disobedience as a merely preventative act of the individual for safeguarding her

⁸ Lampedusa in Hamburg was a refugee group of African Migrants, who survived from the camps in Italy in 2013 and gathered in Hamburg after two years. Migrants fought for the improvement of their situation in Germany. Specifically, they struggled against the “Duldung”, which was a temporary suspension of deportation. Their struggle aimed for a permanent right to stay and to be granted work permits.

given rights. Thereby, it is undertaken against the institutions that devoured the constituent political capacities and absorbed the agency positions of individuals (Celiktates, 2016a: 41; Benli, 2018: 327). At this point, Balibar's short text on "Sans-Papiers" may remind us of the similarities between the collective character of radical civil disobedience and the provocative role of migrant activism in recreating citizenship as a joint practice (Balibar, 1996). Even though Balibar does not openly build linkages between "Sans-Papiers" and civil disobedience, he thinks that we owe this movement for cracking the exclusionary trends of communication and showing that they can regain their constituent power by releasing themselves from victimhood (Balibar, 1996). Radical civil disobedience is a dynamic force, and it is located between the constituted order and the transgressing rationale that generates unresolvable tensions and consistent attempts to reconfigure the establishment inside (Çelikateş, 2019: 69). From that outlook, the radical approach seems to be affiliated with acts of citizenship in prioritizing undocumented migrants' capabilities to politicizing predicaments that have been arising from unjust migration law. So, I contend: both perspectives share a belief that, by politicizing their claims, undocumented migrants may articulate their distresses (by using their own vocabulary) in line with the injustices, which they have been aware of and suffered. These struggles can also be conceived as the re-composition of political society because, by reconfiguring their political agency, migrants may become corrective and demanding for their rights. In the paragraphs below, I will be continuing to discuss this particular point.

Opposed to the conventional understanding of citizenship that narrowly defines who belongs, and points out to whom the rights and duties are attributed, acts of citizenship unfold how the standardized depiction of conception is challenged and negotiated through everyday acts. Theoretical endeavors for construing an "activist citizen" are responsive to the constantly changing realities of multicultural, complex societies. These endeavors are also willing to accommodate a vision of citizenship, which is constructed through political struggles and embedded in this flux (Isin, 2009). Thereby, citizenship is founded on the subject position, and acts of citizenship can be carried out in multifold sites by different actors, including undocumented migrants or other categories of aliens. (Bassel, 2008, in Isin, 2009: 370).

On the contrary, the territorial jurisdiction of the liberal democratic polity, and its restricted definition of citizenship confine the demands of justice to a territorial level (Fudge, 2014: 30). Obviously, this is not congruent with the demands of social justice demands that exceed territorial delimitation. Considering the ongoing and multicultural social formation of the liberal democratic polity (due to transnational migration), concerns in regards to justice seem to be diversified and hardly to be restrained. Thereby, constructing shared meanings of justice is gradually becoming more and more inconceivable. From a communitarian perspective, justice is contingent on the presumptive right of a polity to freely extend its full membership rights. Namely, non-citizens' demands for social justice would not be regarded as serious as they would be, if they were articulated by citizens. This may result in an informal hierarchical structure and artificial arrangement according to the worth among demands of justice, and may cause a tendency to demarcate valid and illegitimate justice claims with a favorable inclination to single out the former ones. At this point, invoking international human rights norms as an auspicious basis for safeguarding the rights and justice claims of non-citizens can be considered worthwhile. Invoking human rights would play a significant role in ameliorating the mismatch between being granted a formal legal status and being deprived of such a status. The discourse of human rights arises on the grounds of equal moral worth, autonomy and dignity, which refer to a person's normative status as a dignified being.

Undoubtedly, the institutionalization of international human rights law is being introduced as a massive progress in founding the legal personhood of migrants. In addition to that, the exalted human rights discourse and institutional scheme offer an equalization of all human beings with an inattentiveness to nationality (Gündoğdu, 2015: 108-109). While equal moral worth is underscored, human rights law has a profoundly strained relationship with the principle of territorial sovereignty. Accordingly, this tension is being navigated in different ways and may cause migrants to find themselves in more precarious conditions or not. One of the outcomes of human rights law – which is applicable to migration regulations - is giving legal standing to some migrants (for instance, asylum seekers). For asylum seekers, the whole process of receiving an asylum is constructed upon a convincing answer to a question that they have been asked to reply

to: whether they are certainly the person they claim to be (Gündoğdu, 2015: 110-111). In this sense, migrants are deprived of their agency, and their rights are left to the subjective evaluation of the states and the courts that render their rights through volatile tendencies (Gündoğdu, 2015: 113).

It may be argued that, being devoid of agency eventually opens room for humanitarian sentiments as a replacement for human rights. By reducing political agency, the migrant figure becomes dependent on the benevolence of the host state, and the host state can also be freed from any positive duty as long as the migrant is solemnly suffering from any physical distress. (Gündoğdu, 2015: 114). Beyond that, migrants' political personhood is totally curbed and their speech is conceived as unrelated. What is puzzling here is: rendering the migrant figure a desperate recipient of the exceptional humanitarian aid would make the migrant unable to politicize her relevant claims regarding the migration law and her rights. Therefore, international human rights suffer from being deficient in compensating for or devaluing citizenship, which is tied to communitarian interests. Even though it is frequently appealed to by undocumented migrants, I believe that the normative discourse of human rights seems to be mediocre in responding to the traditionally strained relationship between liberal individualism and the communitarian-nationalist outlook of citizenship. As can be guessed, the latter viewpoint gives precedence to the good of the community, and may direct burning questions that seek, whether there is a reasonable threshold for citizens of the host society to be compelled to accommodate foreigners or whether an individual's freedom can be crippled with respect to the host community's interests (Miller, 2008: 370).

Appealing to international human rights and liberal expressions sometimes may not surpass the boundary of legitimacy that the particularist accounts of communitarianism sketched. Rather, through identifying deadlocks within the migration regime, migrants shape and express their demands, which are amenable to being molded within everyday resistance. These demands may be about immediate needs regarding daily sustenance (for instance, the need for shelter or basic hygiene). Or, these demands may go beyond the individualistic claims and define the object of the protests as the re-regulation of migration policies (Odugbesan & Schwiertz, 2018: 186). As mentioned in the second

chapter, the Oranienplatz protests in Berlin were taken up to oppose the residency law of Germany in a public and conscientious way. Recalling ‘Residenzpflicht’ (mandatory residence), German authorities forbid undocumented migrants to move across and force them to remain within the local administrative district, where they were initially distributed (Ataç et.al, 2015: 2; Saunders, 2018: 851; Steinhilper, 2021: 128). In accordance with the concept of civil disobedience, Oranienplatz is seemingly an act of civil disobedience because it started with a march, which was definitely a breach of the law obliging immigrants to remain in their allocated place. Also, I consider that, by engaging in Oranienplatz protests, migrants politicized and reconfigured their claims of the right to stay with a restored description. This reconfiguration is simply the defiance of the law, which conceived the right to stay as a conditional right. In other words, the law constrained the right to stay to staying in the city/district, where the local administrative unit that made the first registration was located. Contrary to the definitive content of the law, migrants declared an extended right to stay, including free mobilization across the country.

The social protest movements of migrants – which were mentioned in the second chapter – drove public attention to conditions that had hitherto been neglected. Carrying out their protests visible, migrants gain political agency and demonstrate their will to candidly dispute the laws, policies and discourse. The disputation of the elements of the migration regime was also critical because these elements can be unfolded as liable for migrants’ unsuccessful integration and their claims being rendered illegitimate (Ataç et.al, 2015; Stierl, 2019: 33). By drawing their protests to the spotlight, migrants vigorously articulated their claims of recognition and demanded their rights to rescue themselves from what is endorsed as a condition of being non-citizen (Stierl, 2019: 33).

The right to stay is among those rights for migrants. I believe that claiming the right to stay is an invention emanating from the clash between dissensual practices and the established framework of migration governance. Engaging in dissensual practices, undocumented migrants declare their rights. In other words, migrants’ performative contradiction with the migration regime potentially brings out the right to stay. Deriving out of their political intervention in the migration regime, migrants potentially redefine

and conceptualize the right to stay. Emanating from migrants' protests, the right to stay is no longer a favor to be given by states on conditional requirements. Rather, what I argue is: claims for the right to stay are, where migrants' political subjectivity is manifested. Considering from the angle of radical civil disobedience, claims for the right to stay are at odds with the specific nature of the contentious politics that the mainstream accounts of civil disobedience assert. Accordingly, the latter pinpoints the relevance of moral persuasion and the function of the moral argument in addressing a constitutional failure or a democratic deficit. However, any moral argument coming from the undocumented migrant about the right to stay would be easily exploited by the communitarian assertions. Or, migrants' arguments would be discarded by the right to exclude states based on securitization rhetoric. Therefore, radical civil disobedience bypasses the purely civil nature of contestation and approximates migrants to an action, which directly provokes and influences the political community.

From this point of view, contestations of migrants generate interventions within the political order and approximate Ranciere's theorization of political subjectivity through embracing opposing political practices - which are for Ranciere – the moments of conflict that generate discontinuity (Ranciere, 2010, in Stierl, 2019: 37). From Ranciere's distinction between the police and politics, we may elaborate on how migrants become subjects through dissent. For Ranciere, the world of police is assertive and indicates the social order, which debilitates the constituent force and dynamism by having every component of society arranged and subdivided according to different functionalities. In relation to the essence of the police, Ranciere indicates: "Society here is made up of groups tied to specific modes of doing, to places in which these occupations are exercised, and to modes of being corresponding to these occupations and these places. In this matching of functions, places and ways of being, there is no place for any void." (Ranciere, 2010: 36).

Moving forward from this insight, I believe that, radical civil disobedience coincides with acts of citizenship. Ranciere argues that the appearance and intervention of the non-visible (the inarticulate subject) are manifestations, which indicate the actually merged, but ostensibly two separated worlds. Accordingly, one world is the police order (the

migration regime and the reiterated securitization rhetoric). The police order leaves no room for disarray and suggests a rough homogeneity. The other world is composed of the excluded (undocumented migrants, refugees, failed asylum seekers), who have no corresponding political functionalities within the police structure (yet, remembering De Genova's arguments in the first chapter, the constant fear of deportation and illegalization may be the excluded labor market). Therefore, they are subjugated to state force constantly in reproducing the vitality of the police. Through dissent, the inarticulate subject exposes herself politically, and the aberration of the two separate worlds is erased (Ranciere, 2010: 36-39).

From this perspective, I want to argue that radical civil disobedience in claiming the right to stay eases the demonstration of the intertwinement of the worlds of citizens and immigrants. In line with that, radical civil disobedience suggests a configuration of a novel arena of action, which holds the possibility of surpassing the conventionally acclaimed dichotomies (Celiktates, 2018: 130). Engaging in radical civil disobedience to circulate their claims of the right to stay manifests a novel political logic that has been neglected by established law and policy. Claiming the right to stay disrupts the logic of earned rights and goes beyond it as much as it significantly fractures the formal understandings of citizenship. Besides, radical civil disobedience approximates Ranciere's stance in the sense that it maintains a position of being indifferent to an act of persuasion. As mentioned, the Habermasian model of civil disobedience carries substantial repercussions from theories of deliberation, which are grounded on prerequisites of openness and good-faith to hear respective positions (Habermas, 2019: 156). Comparatively, for radical theories, the primary step in displaying a political agency is not pursuing a dialogue over opinions and interests, but it is to express the presence and the voice of the unreasonably discarded to be heard. In regards to that for instance, Tony Milligan reveals his cynical attitude toward the model of civil disobedience, which is fixed on communication (2013: 19-20). Rather than prioritizing a communicative moral appeal, he underlines disruptiveness as the major feature that constitutes the essence of the protest. Accordingly, the communication thesis would not show a detailed scrutiny of the structural non-equivalence between the subjects of a confrontational activity (as undocumented migrants) and the political elites/privileged

citizens in the practice of deliberation. In this sense, the communication thesis would remain excessively respectful and considerate. Accordingly, Milligan argues that communication-centered civil disobedience would be deferential and would overly rely on the persuasion of political elites, who should indeed be coerced to reverse the law or policy (Milligan, 2017: 296, in Moraro, 2019: 35).

Yet, despite Milligan's belittlement of communication, radical civil disobedience does not externalize the venues of communication. In other words, undocumented migrants show their willingness to communicate. What I mean by that is: undocumented migrants do not conduct disobedient action with the pure aim of antagonistic confrontation with the state. They do not act with irrationality and shift to emotional politics. Or, they do not carry out actions as representatives of groundless outrage. Rather, undocumented migrants are well aware of border violence and its implications for their daily lives. However, undocumented migrants precede the ruptural strategies before dialogue and offer their alternative visions about border violence in particular, and the migration regime in general. These alternative visions (or justice claims) would not be bestowed with equal standing in the realm of communication and dialogue due to the pressure coming from the securitization rhetoric, which is related to the communitarian-nationalistic visions of justice as elaborated in the first chapter. Therefore, looking from this angle, I argue that by embracing dissensus before dialogue, migrants even risk justifying more brutalized and perverted border violence. By approximating acts of citizenship, radical civil disobedience provides a site for the undocumented migrants to revitalize their political capacities to negotiate the borders, rights and issues of membership. To say it differently: radical democratic civil disobedience seems to be affiliated with the concept of constituent power, including a tendency to set the nature of the friction and its boundaries with the state. But at the same time, without losing this antagonism, radical democratic civil disobedience addresses the potentiality of finding a room of dialogue with citizens with a clear aspect of triggering a dynamic of law-making, and eventually legislative change.

Having been located between symbolic politics and confrontation, civil disobedience brings about a strenuous relationship between institutionalized politics and insurrectional

politics (Çelikateş, 2016a: 43). For irregular migrants - who are trapped within the state-initiated disciplinary mechanisms of mobility - the routes leading to institutionalized politics are blocked. Restrictive policies and closures against political participation are unwanted conditions, however, they may simultaneously produce unfamiliar ways of being political. Breaking up with the circumscription of the framework of the migration regime, claims-making for rights (such as to stay, to move across or to be included) can be productive in terms of insurrectional politics (Nyers & Rygiel, 2012: 3). I believe that radical civil disobedience is situated at this breaking point as an extra-legal mode of protest.

4.5. Concluding Remarks

In this chapter, I engaged in a comparative discussion with three accounts of civil disobedience. First of all, I elaborated on the mainstream account, with a particular focus on Rawls. Since the mainstream account of civil disobedience places a huge emphasis on constitutionality and the shared conception of justice, civil disobedience is mostly reserved for citizens, who are subjected to the constitution and the political principles of a society. So, Rawls' stance is immensely restrictive and brings out the legitimacy of civil disobedience from "fidelity to law". Applying his theory to undocumented migrants' resistance would not yield fruitful results because undocumented migrants cannot be asked to comply with the laws of the political community, which they are not a part of. In other words, once they entered a given territory, undocumented migrants would encounter harsh laws and policies that regulate migration. This regulatory framework does not usually give any justification to migrants or demand their acceptance. So, I argue that in significantly harsh conditions (like conditions of inflicting irreversible harm through deportation), migrants may not have to comply with the processes of the administrative framework (for instance, being deported). Looking at the situation of migrants from Rawls' perspective, any symbolic action of migrants to address the injustice of the prevalent laws would be deemed illegitimate. Because undocumented migrants are not citizens, and they may not offer restitutive claims about the failures of the shared conception of justice through civil disobedience.

After Rawls, I came to the deliberative/democratic accounts of citizenship, and I assessed Arendt and Habermas. In Arendt's account, what is critical is: she does not embark on any attempt to derive the legitimacy of the civil disobedience from the constitution. In other words, she departs from Rawls - as Rawls would say - any legitimate ground for civil disobedience can be found as long as the action is restricted to targeting the underpinnings of the constitution with a reconciliatory attempt. Rather, Arendt conceives of civil disobedience as a productive relationship between the law and politics. However, from Arendt's discussion, I figure that, since the undocumented migrant is not accepted by the political community, she would lack the network and reciprocity - which are indispensable - for being at the site of a political activity.

Afterwards, I proceeded with Habermas' account. Like Rawls, Habermas conceives of civil disobedience as a tamed and symbolic act, which does not tolerate violence, evasion or being deceitful. Resembling Rawls, Habermas condemns coercive tactics as illegitimate and antithetical to the political equality of people in reason giving and sense of justice. However, Habermas departs from Rawls with the opinion that the constitution is alterable and inconclusively constructed and reconstructed. According to Habermas, the constitution is an unfinished project, and therefore, constitutional rights are not fixed and immutable. Rather, constitutional rights can be fluctuated, invented or re-written since they are constantly exposed to changing socio-political and historical circumstances. Looking from Habermas' point of view, one may argue that, transnational migration is an aspect of political actuality. Transnational migration brings exterior pressures and demands coming from noncitizens in multifold areas, and this political reality may affect the mutable character of the constitution. Nevertheless, his deliberative ideal - which is embedded in his formulation of civil disobedience - is grounded in the reciprocity between the political equals (namely, the citizens). Accordingly, Habermas' deliberative model of disobedience may exclude non-citizens from sites of opinion-formation.

So, in the two final sections of this chapter, I turned my face to radical democratic civil disobedience. Accordingly, my primary assertion is: the naturalization and de-politicization of undocumented migrants are reversed through radical civil disobedient

action. By altering their position as the needy and mere compliant towards a political subject, radical civil disobedience and acts of citizenship reinvigorate undocumented migrants' political capacities. So far, within the discursive framework of the migration regime in the liberal democratic polity, undocumented migrants have been targeted as the symptoms of the migration crisis. However, migrants are successful in carving out emancipatory information from their epistemically privileged position. Accordingly, they are the ones being exposed to coercive state action and discrimination. With regard to that, they revitalize their subject position by understanding the migration law, articulating claims, and even declaring their rights. In relation to that, the marches and other migrant protests provide eloquent remarks about their subjective experiences of a continuous crisis. I think that, migrants' efforts in articulately disseminating their awareness about the legal framework of the migration regime - which is mostly comprised of scrupulously selective and discriminatory procedures – are fitting examples of radical activism in the sense that they are sharply confronting state decisiveness, but also in the sense that they are aiming for communicative venues to be open.

Such activism is also tied to radical civil disobedience in the sense that this activism challenges the general presumptions about the outer limits of, whom to decide as a member. To put it clearly: migrant activism allows a new perspective in acknowledging and critically engaging with the burning issues of migration, the right discourse, and the controversy over justice claims. This new perspective is from the point of view of migrants instead of states. Undocumented migrants manifest a constitutive and transformative power against invisibilization, which targets the accustomed vocabulary and ordinary agents of the migration regime. Therefore, the radical disobedient action is comprehensive, defensive, and legalistic in a way that it denounces the current political order.

CHAPTER 5

CONCLUSION

In this thesis, the major discussion is about the resistance of undocumented migrants against the deportation practices of the liberal democratic polity. The analysis is divided into three parts. In the first chapter - to better frame the issue of deportation and deportability – I attempted to locate these terms within the political construction of migration as a security issue, with escalating referrals to migrants' hazardous effects of endangering integration and national security.

I put forward the relationship between the securitization of migration (the wider articulation of transitioning to a potentially destabilized society) and the illegalization of the migrant figure. I underlined that, the securitization of migration mirrors the realm of law and public policy. In other words, the problem is established first (migration as a security issue), and the response to resolve this problem follows afterwards (deportation policy). So, aspects of migration and asylum issues (including deportation) have been embedded visibly in the framework of law and policy of particular nation-states.

Defining migration as a security issue also delimits migration regulation to the realm of institutional reaction and professionalism. To put it differently: if migration is categorized as a concern of security and conveyed to the policy level with this logic, then the administration of migrants in a given territory would be left to the professional disposition and capacities of certain institutional units (like police forces).

Thus, the securitization process of migration encloses migration management to institutional responsiveness. Inclinations of professionalism to surround the burning matters of migration hinder democratic and participatory mechanisms. This is also problematic in preventing the transformation of citizens and/or migrants as political subjects, who judge and engage in effectual decision-making mechanisms on common issues.

The securitization of migration also justifies the political construction of the undocumented migrant figure as “illegal”. In the last decades, illegality has been widely assigned as a derogatory stigma to all undocumented migrants. Illegality refers to migrants’ entry to a given territory without authorization or by breaching the law. Yet, used as a depreciative stigma, illegality singles out the discretion and adjudication of the liberal democratic polity, and suppresses the scrutinization of the fundamental reasons for international mobilization. For instance, an impoverished migrant (let’s say X) from Libya – who tries to enter Italy – may have started her journey for better access to economic opportunities, and to relieve her family members at home through sending remittances. Surely, within the legal framework, any deceitful passage of X to the host country can be deemed illegal. However, the illegal entry of X can also be justified by appealing to a necessity claim that, if X did not start the journey, then the members of X’s family at home would starve or their basic subsistence needs would get worse. Therefore, an immediate labelling of the migrant as “illegal” is dangerous because it tends to blur the justificatory reasons for the journey in the first place.

Aside from the necessity framework – which bears a substantial humanitarian rationale – the securitization of migration and the illegalization of the migrant figure are problematic in the sense that, both processes obscure the politico-historical context of power relations and inequality. Framing migration as a security issue disguises the background power relations that brought out extreme poverty, and the urgency to migrate in the first place. I argue that, illegalization functions as a cloak to cover up the justified demands of migrants and their politicization to insist on their rights. Additionally - by prioritizing the national security rhetoric and states’ discretion – illegalization would prevent the outbreak of the explicit political dimension of unlawful border crossing. Rather, illegalization narrows down the scope of border related matters to institutional responsiveness, and diminishes the possibilities of relating border crossings to political contestations.

I finished the first chapter with a relatively long, comparative discussion about the arguments about open and closed borders. Respectively, I assessed the liberal egalitarian and moral cosmopolitan arguments. Then I covered communitarian perspectives. I

underlined the gap between the liberal egalitarian theoretical framework and the liberal democratic polity (as the liberal paradox). I argued that, this gap is especially crystallized in deportation practices, and in the debates about the right to stay.

In the second chapter, I moved to the concept of the right to stay. I discussed the philosophical and ethical position of the concept, and suggested it as a human right. The normative aspect of the right to stay basically unfolds the concept as a necessity to pursue a development on personal grounds. Thus, before being ascribed to a legal entitlement, the right to stay is theoretically discussed as a fundamental human right that is connected to an extensive individualistic reading. Accordingly, the right to stay is key to the free development of human personality. In other words, holding the right to stay is intrinsic to the right to reach certain resources to pursue an established life plan, and the right to receive certain opportunities to make choices and flourish human capabilities. Formulated from a liberal point of view, the right to stay is matched with the agency of human-beings, and with their autonomy (being unrestrained in organizing one's own life). On the other hand, the right to stay is also equated with legal certainty, protecting the individual from state arbitrariness that may lead to unjust deportations with irreversible harm. From that perspective, the right to stay is more related to the legalization of migrants. Contrary to the individualistic reading of the right to stay, this evaluation is conceivable with membership and political belonging to a community. Thus, the right to stay is a legal entitlement, which is gained after a specific period of time spent in the country of residence. This way of constructing the right stay is close to the social membership argument, which was elaborated in the second chapter. This membership-based argument underlines the immorality and cruelty of uprooting a person, who spent considerable time in the receiving country. The automatic deduction from the long-term residency of a migrant is her presumed civic integration. Once a migrant is civically integrated and becomes a contributing member of society, any deportation measure (except a decision upon a serious criminal activity or infringement of some membership conditions) would be out of proportion and lead to more serious harm for the individual, compared to the harm that would have been given if she had not been allowed to enter in the first place.

Thus, I think that, the political agency of undocumented migrants is neglected in either of the approaches to the right to stay. I believe that, the former one is problematic in treating the migrant as an agent, who only acts to ameliorate the personal urgency or to fulfil the personal interest. The latter is grounded on the presumed success of civic integration. This civic integration is likely to foresee how and to what extent the migrant figure conforms with the moral and behavioral expectations of a closed community. In other words, the expectation of integration awaits a demonstrative performance from the migrant to see if she is fitting the behavioral requirements, and therefore, if she is deserving to receive the legal entitlement (as the right to stay). Especially, the second reading of the right to stay is inclined to depict a migrant figure, who is extremely suffering and being the victim of a misfortune. The migrant figure is sketched as if she would conform to all the behavioral and moral conditions that may render her well-integrated, productive and obedient; so that she could save herself from the grave despair that she is into. These accounts do not detect migrants' visible and invisible everyday acts of insisting on their rights. These everyday acts and struggles open out to various assertions, including different forms of refugee protests (for the right to stay, the right to mobility or the right to access resources).

Taking from here, I passed on to the contemporary forms of migrants' struggles, with a specific emphasis on the right to stay against deportation. In a way, the protest movements that I mentioned in this chapter offer an opening to the current deadlock of political action and reflection. According to Ranciere, this deadlock arises due to the distinguished identification of political action and reflection as the deeds of the legitimate members of a political community (2016: 72). If migrants were exempted from politics, and if politics was rendered as a deed that is totally set apart for the engagement of the members of a political community, then it would bring out exclusive modes to govern, and show these modes as the natural/uncontroversial rules of society.

In relation to our discussion, deportation can be considered as one of the aspects of these modes to govern with its firm situatedness in the migration law. However - through the new protest movements and solidarity networks aiming to formulate the right to stay - migrants challenged this self-contained understanding of politics. At this point, one may

argue that, the liberal democratic polity satisfies the conditions of being a constitutional democracy. So, the rules of such a constitutional democracy about migration related matters are arguably legitimate to the majority of members of this particular political community. However, the existing arrangements for migration enforcement may be unproportionally restrictive that remove any rights-based assertions of migrants in all circumstances. If injustice is manifested, then the legitimacy of the migration law of the liberal democratic polity would be frustrated. These occurrences are, when undocumented migrants are just in disapproving and disobeying the law.

In situations of mere non-compliance, migrants may construct their social spaces, and may succeed in organizing autonomous political stages to demonstrate - but also - ratify their equality with others. In Ranciere's terminology, the protest movements of migrants for the right to stay are political actions in which equality is not just articulated, but also proved in action (2016: 73). So, equality exceeds the status of a value, but is presumed, envisioned and embodied in political action. To put it differently: engaging in protests for the right to stay, political action and contemplation's delimited space for citizens are being surpassed. While this delimitation stresses that claims-making is also restricted to citizens, struggles for the right to stay stretch the boundaries of the politicization of claims-making towards the mistreated. The discourse of the right to stay also opposes the prevalent rhetoric of securitization. I believe that, the politicization of the migrant voice demolishes the institutional responsiveness and professionalism that securitization offers.

Nevertheless, manifestations of equality may be episodic and short-lived. Despite migrants' protests (mentioned in the second chapter) created ruptures, the protests' temporary nature did not open a transitory passage within the ongoing arrangements of migration policy enforcement. Namely, the regime – which ties the right to stay of migrants to contingency and arbitrariness – keeps producing illegalization and precarity, but disjointed moments of protests would not bring pragmatic outcomes for undocumented migrants in terms of their right to stay. From this starting point, in the third and last chapter, I delved into the discussion on civil disobedience with two basic questions, which I simply put as so: whether civil disobedience can be a legitimate way

to resist deportation, and whether civil disobedience can be a justified mode of resistance to engage in formulating the right to stay. In a comparative manner, I started the chapter with Rawls' and Dworkin's mainstream accounts of civil disobedience. Accordingly, this account defines civil disobedience in a significantly restrictive manner. While indicating that civil disobedience should be public, non-evasive (accepting punishment), non-violent and non-offensive, Rawls' position seems to be stuck in a regressive pathway. Saying it differently: the mainstream account only functions as a fortification for breaches of political principles or the law, which are the products of the shared conception of justice. This requires only slight interventions and intends to restore the conception of justice (as given, Rawls' civil disobedience wants to go back to the flawless conceptualization and only addresses corrective interference). Namely, the mainstream account defines a mode of civil disobedience that only defends the already settled/given rights. In line with that, Rawls' account cannot be progressively furthered towards formulating new rights (based on alternative conceptualizations of justice) or cannot reveal the constituent power of the undocumented migrants.

Afterwards, I proceeded with Habermas' account of civil disobedience. Like Rawls, Habermas highlights the pure symbolic character of civil disobedience. He also resembles Rawls in condemning all coercive tactics as illegitimate and as antithetical to the political equality of people in reason giving and sense of justice. Yet, contrary to Rawls, Habermas addresses the modern constitutional structure and the political principles of a particular community – which are the products of the common understanding of justice in Rawls – as inconclusive constructions. Despite the fact that constitutional rights and political principles are deemed aligned with universal tenets, Habermas argues that, the pillars of the modern constitution are dynamic since they are being consistently exposed to changing historical circumstances. Indeed, Habermas understands the disparity between the normative framework and the political actuality. Accordingly, transnational migration can be pointed out as an aspect of political actuality. Then, the constitutional scheme of the liberal democratic polity should be mutable and sensitive to external pressures coming from non-citizens. So far, Habermas' account seems to promise substantial progressive advancement. Nevertheless, he tries to ingrain the deliberative ideal of politics with his formulation of civil disobedience, and

the deliberative ideal is exalted by reason (referring to the capacity of equal-reason giving) and grounded on the reciprocity between the political equals (citizens). Thus, his account may encounter deliberative failures since non-citizens are not counted as equals. In the deliberative model of civil disobedience, non-citizens may be excluded from the processes of opinion-formation.

Later, I briefly revisited Arendt's account of civil disobedience. Arendt does not appeal to the constitution and does not try to derive an action of civil disobedience that is underpinned by the constitution. Rather, she conceives of civil disobedience as a creative network of relationship between law and politics. However, I figure that, the undocumented migrant – who suffers from the absence of any state protection – also lacks the social network and mutuality as the imperatives for being in the site for a political activity. To put it very crudely, Arendt's account of civil disobedience seems to be exclusive to citizens of a political community.

In the final section of the third chapter, I thoroughly engaged in the discussion of radical civil disobedience. I argue that by providing a more capacious understanding of civil disobedience, the radical account grasps alternative forms of political contestation that allow political actors to bolster their capacities for raising their claims together. What the radical theorization of civil disobedience does is widening the borders of normatively justified law-breaking. I also stress that, radical civil disobedience is not completely disengaged from the mainstream underpinnings of civil disobedience (like its operationalization through communication). In other words, governmental figures or citizens are still addressed and taken as respondents for sharing their deeply held commitments. However, the radical account revitalizes the cramped understanding of civil disobedience as a more confrontational practice. Çelikateş persuasively argues that, the two dimensions of civil disobedience (confrontation and symbolic practices) are dependent on each other. The absence of real confrontation would make the symbolic power lose its strength, and turn the civilly disobedient action into a total appeal to the majority's conscience (Çelikateş, 2016: 41-42). Besides the mutuality between confrontation and symbolic practices, Çelikateş also argues that civility brings about a political logic, which compels disobedient actors to recognize and uphold some kind of

civil bond with their adversaries (Aitchison, 2018: 675). I argue that, this comprehension of civility is manifested in eschewing blatant violence, militant interventions and so forth, but also implies the requirement of communication in the last instance. I understand that, the confrontational strategies offer a rescue path for undocumented migrants from deliberative reason giving (where the parties engaging in such a process are evaluated as political equals). Yet, once migrants unveil themselves as political equals and reconceive themselves as political subjects acting as citizens, they need to return to communicative steps to further their episodic gains towards more structured and guaranteed rights within the constitutional framework.

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APPENDICES

A. TURKISH SUMMARY / TÜRKCÖ ÖZET

Göç, özellikle geçtiğimiz on yılda sürekli ivme kazanıp yaygınlaşan ve birçok veçhede incelenen bir olgudur. Göçün yakaladığı bu ivme, liberal demokrasilerde göçün kontrolü, planlanması ve göçmenin disipline edilmesi süreçlerini beraberinde getirmektedir. Yine geçtiğimiz on yılda, liberal demokrasilerde göçmene yönelik baskılar artmakta, bizzat göç olgusu ve göçmen figürü, göç alan ülke vatandaşları tarafından aşırı bir tepkisellikle karşılanmaktadır.

Göçmenler (bilhassa kağıtsız/belgesiz⁹ veya düzensiz göçmenler) terörizm ve ilgili suçlamalarla bağlantılı şekilde, güvenlik sorunu olarak resmedilmektedir. Bunun yanı sıra, göç ile birlikte artan toplumsal çeşitlilik ve heterojenlik ulusal ve toplumsal uyuşmayı veya bütünleşmişlik halini yıpratana bir tehdit olarak sunulmaktadır. Özellikle bu iki etmen üzerinden süregiden göçün güvenlileştirilmesi süreçleri, liberal demokrasilerin göçü kontrol altına alma ve planlama gibi karar verici mekanizmalarının daha merkezîyetçi ve egemenlik perspektifinden formülize edilen birtakım bakış açıları tarafından sınırlandırılmasına sebebiyet verebilmektedir. Kısaca, devletler - konu göç yönetimi olduğunda - uluslararası yabancılar hukukuna bağlı

⁹ Bu tezde, “kağıtsız”, “belgesiz” ifadesi “yasadışı (illegal)” ifadesine tercih edilmiştir. Bunun sebebi şudur: pek çok liberal demokraside – göç hukuku ile ceza hukukunun birbirine karıştırılması ya da iç içe geçişi ile beraber doğrudan göçün suç sayılabilmesi yönündeki eğilim bir yana – düzensiz göç, genellikle kişilere ve mallara karşı direkt bir tehdit olmadığı için suç kabul edilmemektedir. Güncele bakıldığında, düzensiz göç ya da bu tezde ifade edildiği şekliyle, kişinin hareketliliğinin meşru sayılabilmesi için sahip olması gereken belgelerden yoksun olma hali, ulusal güvenlik ve uyumu tehlikeye sokması açısından suçla ilişkilendirilebilmektedir. Fakat bu tezde de savunulduğu gibi, bu ilişkilendirme çoğunlukla göçmenlerin toplumsal olarak güvenlik tehdidi olarak kurgulanıyor ve betimleniyor oluşu sebebiyle keyfi ve rastlantısal olmaktadır. Özellikle, göçmenin gerçekten somut bir suç işlememiş olduğu halde suçla iltisaklı gibi sunulması problemli gözükmektedir. “Yasadışı” ifadesinin kullanılmaktan kaçınılmasının bir diğer nedeni, bu terimin göçmeni devamlı şekilde aldatici tavır taşıyan ya da bu tavra başvurmadan çekinmeyen, hile ve kandırmaya yönelen bir figür olarak göstermesidir. Netice itibarıyla da göçmen, hem politik yönü sınırlı olan ve vatandaşlardan gelebilecek merhamet duygusunun hem de devletler tarafından üretilebilecek içerici/kapsayıcı bir politikanın öznesi olmayı hak etmeyen bir figür olarak belirlemektedir. “Yasadışı” ifadesininin bu tezde geçmiyor oluşunun son sebebi de bu terimin son kertede göç ve göçe dair konularda bilinçli bir tartışmanın olanaklarını kapatıyor olmasıdır.

regülasyon ve sözleşmelerden çıkarılabilecek, egemenlik ve takdir yetkisini devretme ve diğer devletlerle ortak sorumluluk paylaşma gibi bağılıklarına riayet etmeyebilir.

Göçün güvenleştirlmesi, kağıtsız veya düzensiz göçmenleri hedefine alan yerel bir kapanma yaratabilmektedir. Bu kapanma, kağıtsız göçmenlerin siyasal, sosyal ve ekonomik alanlardan tümüyle dışlanması, kayıtsız çalışmaya zorlanması ya da sosyal hizmetlerden son derece kısıtlı şekilde yararlanması gibi noktalarda somutlaşabilmektedir. Kağıtsız göçmenleri odağına alan bu kapanmanın aksi yönünde ise liberalizmin açıklık mantığıyla tutarlı olacak şekilde, ekonomik alanda daha fazla uluslararası açıklığı pekiştirmeye ve sınırları açık tutmaya yönelik bir eğilim göze çarpmaktadır. Bu eğilim, yasal çerçeve dahilinde göç eden grupların emek piyasasına erişimini kolaylaştırmakta ve ekonomik bir izahtan doğru olarak uygulanmaktadır. Liberalizmdeki bu açıklık mantığıyla ters olarak, kağıtsız göçmenler, artan düzeyde siyasal ve hukuksal birtakım sınırlamalar ile karşılaşmaktadır. Ekonomik mantığın hakim olduğu açıklık eğilimi ile güvenleştirme ile siyasal baskının sebebiyet verdiği kapanma eğilimi, eş zamanlı olarak süregelmektedir ve bu eş zamanlılık, “liberal paradoks” ya da “liberal demokratik paradoks” olarak adlandırılmaktadır. “Liberal demokratik paradoksu”, açıklık ve kapalılık ayırımında bir gerilim hattı olarak tarif etmek de mümkündür.

Son yıllarda, “liberal demokratik paradoks” kavramı, sınır dışı edilme ve insan hakları perspektifinden de yeniden ele alınıp değerlendirilmiştir. Buna göre, uluslararası insan hakları rejiminin kurumsallaşması ile denk düşen sermaye, mal ve hizmet piyasalarının küresel entegrasyonu, liberal demokratik yönetim biçimlerinin egemenlik ve takdir yetkisini önceleyen yatkınlıklarını kuşatan gelişmeler olmuştur. İnsan hakları söyleminin giderek kurumsallaşıp sağlamlaştığı ve bu durumun liberal demokratik yönetim biçimlerine sınırlamalar getirdiğine yönelik görüşler azımsanamayacak düzeydedir. Uluslararası hukukta kodlanan evrensel insan hakları söylemi, liberal demokrasilerin egemenliğine meydan okur gibi görünse de bu meydan okuma esas olarak kavramsal düzeyde kalmaktadır. Uygulamada, uluslararası hukuka giderek içkin hale gelen evrensel insan hakları, devletlerin iç işlerine müdahale etme veya belli pratikleri empoze etme kuvvetini sağlamamıştır. Söylem düzeyinde kuvvetli olsa da yaptırım kapasitesi

epey dar kalmaktadır. Bu çelişkili durumun açık seçik görülebileceği alan, göç yönetiminin en problemlili ve insan hakları söz konusu olduğunda belki de en aykırı görülebilecek yüzeyi olan göçmenlerin sınır dışı edilmesi pratiğidir. Bu pratik, liberal değerlerin ve insan hakları rejiminin alkış tutulan kurumsallaşmasının hudutları dışında yer almaktadır.

Buradan doğru olarak, bu tezde, göç yönetiminin yaygın teşebbüs edilen eylemlerinden olan ve genellikle, bir güvenlik sorununu çözmek maksadıyla - zorunlu olarak – başvurulması şart bir yöntem olarak ifade edilen, sınır dışı edilme pratiklerine odaklanılmaktadır. Sınır dışı edilme, liberal demokrasilerde süregiden göç rejiminin çoğunlukla hukuki ve idari boyutunu ilgilendiren bir süreçtir. Ayrıca, önceden belirlenmiş ve ekseriyetle tartışmasız olarak sunulan tek taraflı, prosedürel bir yapıya sahiptir. Bu durum, sınır dışı edilmenin nasıl yürütüleceği konusunda kayda değer ölçüde az müzakere yapılmasına, hatta bu pratiğin doğrudan herhangi bir itirazın konusu olmayacak şekilde dokunulmaz bir noktaya taşınmasına sebebiyet vermektedir. Bu açıdan bakıldığında, sınır dışı edilme, özellikle kağıtsız göçmenlerin siyasal failliğini bulanıklaştıran ve belirsizleştiren bir sürece kapı aralamaktadır. Bunun tam aksi yönünde, göçmenlerin sınır dışı edilebilme kaygısı, göç politikalarını ifa eden devlet görevlilerinin ve vatandaşların failliğini güçlendirmektedir.

Sınır dışı edilme, hukuki ve idari bir karaktere sahip; göçün güvenlikleştirilmesi ile bağlantılı biçimde yaygınlaşarak icra edilen faaliyettir. Liberal demokratik yönetim biçimlerinin siyasal topluluklarının üyeleri (vatandaşlar), göçmenlerin sınır dışı edilebilirlik endişesi yaşamasının normal olduğu ve göçmenlerin deneyimledikleri güvencesizliğin hak edilmiş, dahası bu güvencesizliğin göçmenlerin yaşamlarına içkinliğinin çok olağan bir hal olduğu kanaatini taşıyabilmektedir. Göç alan ülke vatandaşları tarafından geliştirilen, zaman zaman da sivri ve ölçsüz olabilen tepkisellik (kamuoyunun fikri ve göçmenlere yönelik davranış biçimi), göçün güvenlikleştirilmesine yönelik teşvikleri artırırken, bu alandaki politikaların da yaygınlaşmasında kolaylık sağlamaktadır.

Bu tezde, sınır dışı edilme, devletlerin kendi topraklarına girişi ya da halihazırda girmiş olan göçmen popülasyonunu kontrol ve disipline etme konusundaki takdir haklarını

koruma noktasında artan eğilimlerinin, son on yılda artarak alenileşen bir örneği olarak okuyucuya aktarılmaktadır. Sınır dışı edilme, ekseriyetle hukuki ve idari bir süreç gibi görünüyorsa da tezde, bu uygulamayı tamamen bahsedilen iki yüzeye hapsedmekten kaçınılmıştır. Bunun yerine, uygulama, sınır dışı edilebilirlik tartışmasına doğru genişletilmiştir. Sınır dışı edilebilirlik kavramı - literatürde yoğun biçimde işaret edildiği şekliyle, kağıtsız göçmenleri sömürüye açık hale getiren, onların itirazlarını politikləştirmesinin önünü tıkayan ve gündelik yaşamlarına karışan kırılma/çaresizlik halini yeniden üreten bir deneyimdir. Literatürde bu, genellikle bir duygu ve sosyalleşme ile politikleşmeden kaçınmayı üreten bir çekince hali olarak tartışılmıştır. Sınır dışı edilebilirlik, her an apar topar sınır dışı edilme süreçlerine çekilebilecek kağıtsız göçmeni, etkisiz ve atıl bir pozisyona sokuyor olması hususuna vurgu yapılarak tartışılmaktadır. Bu tezde de literatürdeki bu kanaat takip edilmektedir. Tezde, aynı zamanda, sınır dışı edilebilirliğin sembolik ve fiziksel bir şiddet biçimi olmasının yanında mevcut siyasi ve ekonomik düzen içinde kişinin konumunu sabitlediğinin de altı çizilmektedir. Bununla bağlantılı olarak, sınır dışı edilebilirliğin göçmenlerin politikleşme girişimlerini yatıştırdığı ve onların politik kapasitelerini zayıflattığı iddia edilmektedir. “Yasa dışı” olarak tarif edilmek ya da göçün güvenikleştirilmesinin söylemsel çerçevesine duyarlı olmak, özellikle kağıtsız göçmenleri “dışarıdaki” olarak sabitlemektedir. “Dışarıdaki” imajı, kağıtsız göçmenlerin gündelik hayatlarındaki acil problemlerin çözümünde yön belirleyememelerine ve bu problemleri idarede zorlanmalarına sebebiyet verebilmektedir. Zira, “dışarıdaki” şeklinde zuhur eden tarif, “dışarıdakinin” politik itirazlarına az ya da hiç alan bırakmaktadır.

Sosyal kimliğin “dışarıdaki” olarak sabitlenmesi ve sınır dışı edilme kaygısı iki belirgin sonuç üretmektedir. Bunlardan ilki, göçmenlerin göçü düzenleyen hukuki yapı ve politikalara karşı itiraz geliştirme isteğinin olmaması (bu istek hiçbir zaman gündemlerinde bile olmayabilir) ya da bir istek varsa bile, sınır dışı edilebilme kaygısından ötürü bunda bir azalma olmasıdır. “Yasa dışı” şeklinde karakterize edilmek veya kurgulanmak, göçmenlerin somut olarak hayatlarına etki eden yasa ve politikaları ele alma, bunları eleştirel bakışla yorumlama ve mevcut pratiğin zıddı bir tepkiselliği politikləştiren, taleplerini kamuoyu nezdinde yaygınlaştırma gibi imkanları ellerinden almaktadır. Yasadışılık, göçmene duyulan güvensizliği katlarken, göçmenleri

görünmezliğe itmekte ve onları devamlı olarak yasa/politika uygulayıcılardan kaçmaya mahkum bırakmaktadır. İkinci sonuç ise, kağıtsız göçmenlerin, varış ülkesindeki politik topluluğun meşru bir üyesi olma noktasındaki girişimlerinin abluka altına alınması olarak belirtilebilir.

Bahsedilen bu iki sonuç, sınır dışı edilmenin kurucu bir idari aksiyon olduğunu göstermektedir. Bu iddia şu şekilde açılabilir: sınır dışı edilme, gönderilecek olanı tayin ederken, aynı zamanda “dışlanan” “dışarıda olan”, “vatandaş olamayacak olan” kişi imgesini pekiştirir. Sınır dışı edilme, “dışlanana” belirlerken – buna karşı fakat tamamlayıcı olarak – göçmen olmayana da vatandaş (politik topluluğun meşru üyesi) olarak vasıflandırır. Buradaki vatandaşlık, bir yanıla konvansiyonel vatandaşlık anlayışını kuvvetlendirmektedir çünkü “dışarıda olanın” karşısında konumlanan vatandaş, bir politik topluluğun paylaşılan ve ortak birtakım anlayışları ve devamlılıklarını taşıyan kişi olarak tanıtılmaktadır. Fakat esas önemli olan husus, vatandaşın - kendisini sınır dışı edilmeye karşı koruyan - formel, yasal bir statü sahibi olmasıdır. Resmi ve bütünüyle politik bir topluluğa üye olmak, ayırt edici haklara sahipliği de beraberinde getirmektedir. Son olarak, sadece vatandaşlar politik aktörlerdir ve politik alanları onlar kurup, onlar kullanmaktadır. Bir diğer deyişle, sadece vatandaş olan, politik bir zeminde taleplerini özgürce ve meşru biçimde dile getirme hakkına sahiptir. Aynı zamanda, devletin keyfi ve zarar verici olabilen sınır dışı edilme pratiklerine karşı emniyet altındadır.

Buna göre, bu tezin çıkış noktasını şu soru oluşturmaktadır: kağıtsız göçmenler, kendilerini (sınır dışı edilme söz konusu olduğunda) hukuki ve idari süreçleri izlemesi ve mutlak suretle bu süreçlere uyması gereken pasif özneler olarak konumlandırıan, aynı zamanda göçü düzenleyen ve planlayan hukuki yapıyı ve politikaları, politik itirazlarının merkezine koyarak ve buradan bir “kalma hakkı” deklare ederek sınıyabilir mi? Tezin ikinci bölümünde sunulduğu üzere, geçtiğimiz on yılda Avrupa’da göç rejimine karşı başkaldırı örnekleri görülmektedir. Bu örnekler, göçmenleri politik alanın meşru aktörleri olarak görmeyen konvansiyonel vatandaşlık anlayışını düzensizliğe uğratarken, çekişmeli siyaset alanını genişletmektedir. Yine de ikinci bölümde ayrıntılı olarak bahsedilen ve göçmenlerin angaje oldukları protestoları harekete geçiren tek unsur

kalma hakkı değildir. Burada ilginç olan nokta şudur: göçmen figürü, kaygan legal statüsünün ve kırılğan yaşam koşullarının farkındadır. Bu farkındalığa ek olarak, liberal demokrasilerde yaygınlaşarak cereyan eden sınır dışı edilme süreçlerini açığa çıkaran düzenleyici hukuk ve politika şemalarının işleyişi ve bu şemaların, yaşamına olan aleni etkilerini de anlama ve kavrama becerisine sahiptir. Buna göre, ikinci bölümde verilen protesto örnekleri, bahsedilen hukuki yapı ve ayrımcı politikaların kağıtsız göçmen figürü tarafından tahlilinin yapılması ve yine bu figür tarafından politik bir bilinçle yorumlanıp, buradan bir eylemsellik türetilmesi olarak yorumlanmaktadır. Yani, kağıtsız göçmen, bildirimsel/deklaratif hak talepleriyle politik alanda bir zemin bulabilmekte; bu da sınır dışı edilmenin yarattığı “dışarıda olan” ve vatandaş arasındaki ikiliği aşmaktadır. Buradan doğru olarak, son bölümde uzunca tartışılan konu, kağıtsız göçmenlerin, sivil itaatsizlik pratiğini sınır dışı edilmeye karşı ve kalma hakkına dair olan taleplerini telaffuz edebilmek ve kamusal alanda bu talepleri dolaşıma sokabilmek adına bir politik strateji olarak belirleyip belirleyemeyecekleri ve bunun ne derece meşru olduğudur.

Bu tartışmalar, tezin son bölümüne taşınırken, ilk bölümde, sınır dışı edilme faaliyeti teorik bir tartışmanın merkezine oturtulmaya çalışılmıştır. Buna ek olarak, özetin giriş kısmında bahsedilen “liberal demokratik paradoks” da daha geniş bir çerçeveye oturtulmuştur. Buradan doğru olarak, ilk bölümde, liberal demokrasilerin göç politikalarının daha açık/uyarlanabilir, entegre edici ve kapsayıcı bir yapısı olması gerektiği savını ortaya koyan liberal eşitlikçi (egaliter)/kozmpolit yaklaşımlar ile kapalı sınırları ve devletlerin takdir (ihtiyari) haklarını önceleyen komüniter yaklaşımlar, karşılaştırmalı bir tarzda ele alınmıştır.

“Liberal demokratik paradoks” kavramı ile sınır dışı edilme ve insan hakları arasındaki sarıh ilişkiyi anlayabilmek için, liberal eşitlikçi pozisyon bağlamına başvurulabilir. Liberal eşitlikçi pozisyona göre, liberal demokratik yönetim biçimi, etnik ya da ulusal kimlik gibi ahlaki olarak ihtiyari birtakım şartların spontane biçimde icrası neticesinde işlemektedir. Başka bir deyişle, liberal demokratik yönetim biçimi, liberal politik ahlakın, tüm insanların ahlaki eşitliği savı üzerinde yükselen merkezi bağlılığını herhangi bir politik topluluğa üye olanların eşitliği gibi keyfi bir noktaya taşımaktadır. Buna göre, liberal demokratik yönetim biçimi, kaçınılmaz olarak bölgesel sınırlarla

tanımlanmakta ve vatandaşlık yoluyla eşitliğin yasal olarak uygulanmasının kapsamını sınırlandırarak, kimi koşullara bağlamaktadır. Örneğin, bir politik topluluğa üyelik, doğuştan kazanılan bir hak olarak görülebilir ve bu hakkın dağıtımında devletler azımsanmayacak önemde kritik rol oynayabilir. Politik üyeliğin, doğuştan kazanılan bir hak olarak tahsisi, vatandaş olmayanları, üretim, dağıtım ve bölüşüm süreçleri ve ilişkilerinden dışlayabilir ve vatandaşlığı miras alınan bir imtiyaz olarak tahkim edebilir.

Bununla bağlantılı olarak, liberal eşitlikçi ya da evrenselci yaklaşımlar, liberal demokratik yönetim biçiminin benimsemesi gereken mantık ya da “rasyonel” ile liberal demokratik yönetim biçiminin pratiği arasında bir tutarsızlık görmektedir. Bu tespit, ahlaki olarak tutarlı olan pozisyonu şöyle sunar: katı sınır politikaları ve kısıtlayıcı vatandaşlık anlayışı mümkün mertebe geçersiz kılınmalıdır. Göç hukuku ve politikalarını, kapalı politik topluluğun üyelerinin hak ve çıkarları doğrultusunda tayin ettiği adalet anlayışından doğru şekillendirmemek gerekir. Bunun yerine, küresel bir adalet vurgusu tandanslı politikalar oluşturulmaya gayret gösterilmelidir. Örneğin, küresel adalet ve fırsat dağıtımına ilişkin tartışmalar ışığında, doğuştan vatandaşlıkla gelen kimi hakların, kısmiden ziyade evrensel bir duruşla soruşturulmaya ve sınanmaya açık olması gerekmektedir.

Liberal eşitlikçi yaklaşım, açık ve kapsayıcı göç politikalarına dair savlarını belirgin olarak iki temel gerekçeyle izah etmektedir. Birinci bölümde de belirtildiği gibi, bunlar, bireyin eşit ahlaki değeri ve hareket etme özgürlüğüdür. Eşit ahlaki değer savı, her bireyin makul, geçerli ve eşit meşruiyet derecesine sahip iddia, kanaatler ve projeksiyonlara sahip olabildiğini ve bu sebeple herkesin eşit ölçüde saygı görmesi gerektiğini temel bir ilke olarak ortaya koymaktadır. Liberal eşitlikçi yaklaşım açıkça, insan özgürlüklerini önemsemekte ve her bireyin yaşamını nasıl sürdüreceği hususunda birbirinden farklı isteklere, projelere, yeteneklere ve seçimlere sahip olduğuna inanmaktadır. Geleceğe dair projeksiyonları gerçekleştirip neticelendirebilmek, bireyin kimi zaman bir yerde sabit kalışını ve kurulu bir ilişkiler ağının içinde eyleyici bir fail olmasını gerektirebilmektedir. Bu açıdan bakıldığında, kalma hakkının korunması kimi zaman hayati bir önem arz edebilmektedir. Kalma hakkı tehlikeye girerse bu, tüm insanların eşit ahlaki değerinin ihlali manasına gelebilir, zira bu hakkın tanınmaması,

bireyin gelecek projeksiyonları çizgisinde dolu ve bereketli bir hayat yaşayamaması sonucunu doğurabilir.

Pratikte, liberal eşitlikçi pozisyonun vurguladığı bu iki değeri koruyan ve icrasını olduğunca muhafaza eden gelişme, insan hakları söyleminin yoğunlaşması ve uluslararası düzeyde bir kurumsallık kazanmasıdır. Kağıtsız göçmenler bağlamında ele alındığında, insan hakları söyleminin bu yaygınlığına rağmen, bahse konu olan göçmenlerin “yasadışı” statüsü ve devletlerin kesin tanınmasından yoksun oluşları, haklarından da mahrum olmaları anlamına gelmektedir. Yani, hem liberal eşitlikçi savın dikkat çektiği iki değer hem de bölünmez ve sözüm ona sınırlandırılmamış haklar, sadece vatandaşlar için mevcuttur. Tezin ilk bölümünde de ifade edildiği gibi, liberal eşitlikçi sav karşısına, politik toplulukların çıkar ve imtiyazlarını yeğ tutan bir çizgi doğrultusunda çıkan komüniter yaklaşım, bireylerin eşit ahlaki değerini üyelerin eşit ahlaki değerine çevirmektedir. Üyelerin eşit ahlaki değeri, haklara sahip olan üyeler ile haklardan yoksun olan “öteki” ikiliğini pekiştirmektedir. Tezin konusu bağlamında, vatandaşın sahip olduğu en ağırlıklı ve mühim hak “kalma hakkı”; bir başka deyişle sınır dışı edilmeme garantisi olarak göze çarpmaktadır. Bu noktada, tezde de ifade edildiği gibi ilgi çeken husus, kalma hakkının kağıtsız göçmenler nezdinde temellendirilebilir ya da gerekçelendirilebilir olup olmadığıdır.

Kalma hakkına dair ilgi çekici olan nokta şöyle ifade edilebilir: herhangi bir politik topluluğa üyelik ile kalma hakkı arasında var kabul edilen sağlam bağlantıya karşı, kalma hakkının liberal formülasyonu, kişilik (ferdiyet)¹⁰ kavramını, üyelik yerine odak noktasına çekme eğilimindedir. Kalma hakkı (bu formülasyona göre) insan kişiliğinin sınırsız gelişimi için temel kabul edilmektedir. Tezin ikinci bölümünde de uzunca tartışıldığı gibi, kalma hakkını sadece vatandaşın olmaktan çıkarıp bunu göçmenler bağlamında da tanımlarken altı çizilen nokta şu şekilde izah edilebilir: birey (ister

¹⁰ Birey olma ve bireysellik haline temas edilmektedir. Herhangi bir politik topluluğa üyeliğe referans verilirken altı çizilen benzeşme, ortaklaşma ya da homojenleşme (kültürel, tarihi, dilsel ortak özelliklere hasıl olma) gibi yatkınlıklara değil, bireyi benzerlerinden ayıran otonomi, kişilik özellikleri, yetenek seti, kapasite ve seçim yapma durumu işaret edilmektedir. Bu bağlamda, kalma hakkı, kişinin kendini diğerlerinden ayıran özelliklerini ya da kapasitelerini geliştirmesi ve genişletmesi noktasında türetilebilir. Kalma hakkı, bu yüzden sadece üyelerin hakkı olamaz. Kalma hakkı, ulusal/etnik kimlik veya tarihsel/dilsel devamlılığa, taşıyıcılığa ya da ortaklığa sahip diğer kimlikler bağlamından ayrılmış bir hak olarak tarif edilmektedir.

vatandaş ister göçmen) kendi kapasitesini ve yaşam planlarını gerçekleştirmek isteyen, aktif ve muhakemeye yetisi gelişmiş bir faildir. Bu faillik meşrudur. Bu doğrultuda, birey, kişisel gelişiminin veçhelerinin realizasyonu için gereken kaynaklara erişimde sıkıntı yaşamamalıdır. Yine ikinci bölümde bahsedildiği gibi, bu yaklaşım, uzun dönemli yerleşik göçmenlerin kalma hakkını gerekçelendirmek amacıyla sosyal üyelik argümanlarında kendini göstermektedir. Bir başka ifadeyle, sosyal üyelik argümanları, göçmenin ev sahibi ülkede kayda değer bir süre kaldığını ve vatandaşlığa geçişi sağlanmasa da fiilen ikamet ettiği için, politik toplumla çeşitli boyutlarda yakın ve kenetli ilişkiler kurduğunu savunmaktadır. Buna göre, göçmenin bulunduğu ülkede geçirdiği süre uzadıkça, devletlerin göçmeni sınır dışı etme ya da geri gönderme hakkı da ahlaki olarak daha çok sorgulanmaya başlamaktadır.

Göçmenlerin kalma hakkı ikamet süresi dolayımıyla temellendirilmeye çalışılırken, kalma hakkına dair “zarardan kaçınma” argümanına yaslanan bir meşruiyet arayışı da dikkat çekmektedir. Yani, kalma hakkına dair alternatif teorik tahayyüller mevcuttur. Basit bir şekilde, “zarardan kaçınma” argümanı, devletlere sorumluluk yükleyerek, devletlerden, sınır dışı edilmenin beklenen zararlı etkilerini dikkate almasını ve bu değerlendirmeye göre göçmenleri sınır dışı etmekten kaçınmasını salık vermektedir. Liberal eşitlikçi pozisyonun ve evrenselci yaklaşımın penceresine geri dönüşlü bakılacak olursa, zarar vermek, kozmopolit eşit olma ilkesi ile bağdaşmamakta ve eşit ahlaki saygı ile davranılma koşulunu ilga ediyor görünmektedir. Açıkça, hem uzun müddetli ikametden türetilen hem de “zarardan kaçınma” argümanından devşirilen kalma hakkı, bireylerin eşit ahlaki değerini ön planda tutmaktadır.

Bu yaklaşımlardan doğru olarak, tezde son bölüme geçilirken ileri sürülen iddia şudur: kalma hakkına dair bahsedilen iki yaklaşım da göçmenlerin politik failliğini gölgeler niteliktedir ya da göçmenlerin politik failliğine hiç değinmemektedir. İki yaklaşımda da esas faillik, bireyin kendi hayatına dair planları ve ferdi kapasitelerini geliştirebilmesi, kapasiteleri dolayımı ile kendi “iyi” anlayışına doğru eylemesi, muhakeme yetisini kullanarak kendine uygun seçimlere yönelebilmesidir. Faillik, bu belirgin noktalarda somutlaşmaktadır. Bu becerilere yaslanarak, kolektif politik eylemi dışarıda bırakan bir faillik vurgusu ile kalma hakkını temellendirmeye çalışmaktadır. Ayrıca sosyal üyelik

(farz edilen toplumsal entegrasyon), yani göçmenin bulunduğu ülkede geçirdiği süre boyunca kurduğu ilişkiler ağı ve içinde bulunduğu aranjanlar olduğu savının, göçmenin bulunduğu topluma iyi-kötü entegre olduğu varsayımı ile eş tutularak buradan bir kalma hakkı tanımlanmaya çalışılması da göçmenin politik kimliğine dair kayda değer bir şey söylememektedir.

Bu eleştirel noktadan hareketle, tezin son bölümünde, son on yılda Avrupa'da gelişen protestoların, kalma hakkını depolitizasyona maruz kaldığı yukarıda bahsedilen çerçeveden çıkararak, bildirimsel/deklaratif düzeye çektiği savunulmaktadır. Bu savunuda, sivil itaatsizlik tartışması devreye sokulmuştur. Sivil itaatsizlik, kavramın ana akım/liberal formülasyonlarına göre (ki hala literatürde başlıca başvuru, çekirdek teorik yaklaşım olarak gözükmektedir), liberal demokrasilerde (Rawls'cu anlayışla, adil olan ya da adil olmaya en çok yaklaşan politik toplumlarda) toplumsal ilişkileri düzenlemek amacıyla oluşturulan ve ihlali maddi yaptırıma bağlanmış hukuk prensiplerinin çıkış noktalarına bağlı kalmak şartıyla (fakat yasayı da ihlal etmek suretiyle) bir durumun, yasanın ya da politikanın adaletsizliğine dikkat çekme eylemi olarak tarif edilmektedir. Sivil itaatsizlik, iletişim ve kamusal süreçlerini de son derece benimsemektedir. Bunun dışında, kaçamak veya perde arkasından (kamuoyuna duyurulmadan ve alenilikten sakınılarak) girilen eylemleri dışlamakta; girilen yasaya aykırı eylemlerin cezai yaptırımlarından kaçınmamak gerektiğini dillendirmektedir.

Sivil itaatsizlik, ekseriyetle sadece vatandaşların ahlaki hakkı olarak sunulmaktadır. Kapalı toplumlarda, vatandaşların ortaklaştığı varsayılan temel adalet anlayışı ve buradan çıkan politik prensiplerin ihlal edildiğine kanaat getirildiği momentlerde – diğer tüm hukuki itiraz yolları tükendikten sonra – sivil itaatsizliğe başvurarak yasayı ihlal etme, meşru görülmektedir. Yani, sivil itaatsizlik, demokrasi, anayasa ve adalet anlayışını, kapalı toplumlarda geliştiren bir siyasi strateji olarak tartışılmalıdır. Tam da bu noktada, merak uyandıran ve üçüncü bölüme bir çerçeve kazandıran soru, sivil itaatsizliğin sınır dışı edilme ya da kalma hakkı söz konusu olduğunda, kağıtsız göçmenlerin de bir eylemi olup olamayacağıdır.

Göçmenler, ev sahibi ülkeye girişlerinin ardından oldukça katı bir düzenleyici hukuk mekanizması ile karşılaşmaktadır ve bu mekanizmanın göçmenlerin onayını talep

etmediği açıktır. Yanı sıra, bu mekanizmanın içeriği ve işleyişine dair göçmenlere herhangi bir somut gerekçelendirme yapılmamaktadır. Bu eksiklikten hareketle, göçü düzenleyen hukuki yapı ve politika çıktılarının meşruiyeti sorgulanabilir. Bu tezin son bölümünde de göçmenlerin – özellikle geri döndürülemez zarar ile karşılaştıkları sınır dışı edilme pratiklerine maruz kaldıklarında – bu düzenleyici mekanizmanın işleyişine uyum göstermeme hakkı olduğu ileri sürülmektedir. Bunun ardından da şu iddia edilmektedir: sivil itaatsizliğin radikal teorisi, hem tartışmacı/çekişmeli vatandaşlık kavramına yaklaşması ve göçmenin depolitizasyonunu aşmasıyla hem de sivil itaatsizliğin, ana akım teorik yaklaşımından gelen birtakım tanımlayıcı özelliklerini (düzeltici/korektif, demokrasi iyileştirici/pekiştirici, stabilize edici) bünyesinde barındırmasıyla, göçmenlerin de başvurabileceği bir siyasal stratejidir. Sivil itaatsizliğin radikal teorisi, göçmenlerin onayına sunulmamış düzenleyici ve disipline edici göçmen hukukunu, kağıtsız göçmenlerin çıkarını ve haklarını gözeterek yeniden tartışmaya açma ihtimalini taşıması yönünden kritik öneme sahiptir. Yeniden tartışmaya açma, doğal olarak kapalı bir toplumda vatandaşlar tarafından paylaşıldığı varsayılan adalet duygusuna olan katı referansı aşır, daha kozmopolit, eşitlikçi bir adalet anlayışını benimsemekten ileri gelmektedir. Daha da önemlisi, yeniden tartışmaya açma; iletişim, diyalog ve karşılıklılık gibi sivil itaatsizliğin merkezi değere sahip tanımlayıcı öğelerini bütünüyle terk ederek ya da topyekün zorlayıcı/baskı içeren pratikleri kucaklayarak da gerçekleşmemektedir. Tamamen sembolik düzeye sıkışmadan, sivil itaatsizlik ve vatandaşlığı konvansiyonel tarifi dışında yeniden üreten pratikler arasında bir denge sağlanabilmektedir. Sivil itaatsizliğin radikal teorisinin en ehemmiyetli getirisi budur.

Buna göre, son bölümde varılan iddia şudur: sivil itaatsizliğin radikal demokrasi teorisi üzerinden yorumlanması, vatandaşlık eylemlerini yeniden canlandırarak, özellikle kağıtsız göçmenler için demokratik bir güçlenme dinamiği başlatabilecektir. Göçmenlerin kurucu güçlerini, görece gevşek bir kurumsallıkla ve yatay olarak yapılandırılmış itaatsizlik biçimleriyle ortaya koymalarının yolunu açabilecektir. Bir başka deyişle, sivil itaatsizliğin radikal anlayışı göçmenlerin politik özne kimliğini kazanması ya da bunu dönüştürerek göçmeni “dışarıda olan” kimliğinden sıyrabilecektir.

Depolitizasyondan ayrılaşmak ve politik bir karakter kazanmak yanında, sivil itaatsizliğin radikal teorisi, mevcut hukuki ve yönetimsel yapıda ya da vatandaşlık kavramında bir çatlağa sebebiyet verdikten sonra (ya da bir tür kopmaya yol açtıktan sonra) bu kopuşun etkisi ile beraber giderek zayıflamayacak bir eylem biçimini kuramlaştırmaktadır. Bu, süreksiz, epizodik ya da başka bir deyişle sadece bir olaya bağlı olarak gelişen ve anlık ortaya çıkıp aniden sönümlenebilen bir siyasal protesto biçimine işaret etmemektedir. Sivil itaatsizliğin radikal teorisi, mevcut hukuki yapıdaki ya da politikalarda cereyan eden anlık kesilmelerdeki dönüştürücü enerjiyi iletişim ve diyalog süreçlerine tahvil edebilmektedir. Buna göre, taleplerini politik alana taşıyabilen göçmen, öncelikle bir vatandaş gibi davranmakta, yani pratikte kendini vatandaşa eş kılmaktadır. Tezde iddia edilen ise şudur: eşitlik kaygısı ile kurulu düzende kopmalara sebebiyet veren protesto biçimi radikal sivil itaatsizlik ile eklemlenerek, nüfuz alanını ve mukavemet kuvvetini, diyalog süreçlerine aktarabilecek ve sivil itaatsizliğin karşılıklılık ilkesini sürdürebilecektir. Başka bir deyişle, radikal sivil itaatsizlik, sınır dışı edilme pratikleri bağlamında, yalnızca devlete karşı düşmanca bir tavırdan ibaret olarak görünmez. Bunun yanında, radikal sivil itaatsizliğe angaje olan politik özne, vatandaşın kendisini eşit olarak görmesini beklemektedir ve epizodik anlarda dolaşıma soktuğu talepleriyle de pratikte bunu başarmaktadır. Değindiği gibi, radikal sivil itaatsizliğin süreksizliği ve ani sönümlenmeyi aşabileceği nokta, belirli momentlerde bildirimsel/deklaratif olarak telaffuz edilen hakların karşılıklılık bağlamında somut zemine oturtma ve hukuki kazanım elde etme çabasını da vurgulamasıdır.

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