Human Rights, Islam and the Failure of Cosmopolitanism

June Edmunds

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Cosmopolitanism, as an intellectual and political project, has failed. The portrayal of human rights, especially European, as evidence of cosmopolitanism in practice is misguided. Cosmopolitan theorists point to the rise of claims-making to the European Court of Human Rights (ECtHR) among Europe's Muslims to protect their right to religious freedom, mainly concerning the *hijab*, as evidence of cosmopolitan justice. However, the outcomes of such claims-making show that far from signifying a cosmopolitan moment, European human rights law has failed Europe's Muslims.

Human Rights, Islam and the Failure of Cosmopolitanism provides an empirical examination of claims-making and government policy in Western Europe focusing mainly on developments in the UK, Germany, France, Italy and the Netherlands. A consideration of public debates and European law of conduct in the public sphere shows that cosmopolitan optimism has misjudged the magnitude of the impact of claims-making among Europe's Muslims. To overcome this cul-de-sac, European Muslims should turn to a new 'politics of rights' to pursue their right to religious expression.

This eye-opening book will be of interest to undergraduate and postgraduate students studying subjects such as sociology, human rights, minority rights, cosmopolitanism and ethnic and racial studies.

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Preface

This book is being written in the immediate context of the terrorist attacks in France, namely the Charlie Hebdo attack and now the Bataclan attack. The latter has forced the President of France, François Hollande, to consider an extended state of emergency during which civil liberties will be lost. France has become the main target of attack for Islamist terrorists. However, its repercussions go far beyond France's borders and have triggered debates on the viability of an ongoing Schengen Agreement, where there is free movement between the borders of the signatories. These traumas bring into sharp relief the fragility of cosmopolitanism in continental Europe. While some politicians are trying not to conflate the migrant crisis with the wave of terror, others are exploiting the fact that one of the Bataclan offenders had used the refugee crisis to enter France from Syria. In response, the question of free movement of people has come under greater scrutiny than ever before. The debates themselves show how quickly nationalist interests can overcome any cosmopolitan impulses. In this context too, the Muslim minorities in Europe become increasingly at risk of being targeted physically and verbally. Whereas the reaction to the Charlie Hebdo attack seemed to bring together diverse groups including Jews and Muslims, the Muslim reaction to Bataclan has been one of fear of reprisals. Where do human rights stand in relation to the dilemmas thrown up by these latest attacks?

Chapter 1

Introduction

The rise of global human rights has been presented as compelling evidence for cosmopolitan progress, especially in Europe. Social theorists such as Beck (2002, 2006), Habermas (1997), Derrida (1997) and Benhabib (2006) have suggested that the spread of human rights law and institutions in the post-war period and post-communist period are indicators of cosmopolitan justice, with Europe as the key site. Human rights, they say, represent a 'cosmopolitan moment'. Without abandoning the progressive features of the nation-state, such as its capacity to promote individual welfare through democratically designed redistribution and public-goods provision, cosmopolitan thinkers detach the definition and exercise of human rights from the action of governments and the entitlement to human rights from 'membership' of any state. 'Cosmopolitanism stands opposed to any view that limits the scope of justification to the members of particular types of groups . . . if one takes the morality of states to posit that state boundaries are limits to the scope of justification, then cosmopolitanism is plainly incompatible with it' (Beitz 2005, p. 17). As European countries – emerging from a devastating conflict among nation-states – had signed up to a common Convention on Human Rights as early as 1948, and the European Union was engaged in a widening of common policies culminating in a legally binding Charter of Fundamental Rights effective from 2009 (EU 2012), these intellectual developments in social and legal thought had a longstanding affinity and interaction with political developments in Europe, significantly boosted by the end of its post-war political division – on 'western terms' in 1989–1991.

Alongside cosmopolitan social theorists, political philosophers have taken concepts of human rights developed in particular social contexts or argued by their original authors to be appropriate within a particular nation-state (notably that of Rawls 1971) and argued for their cosmopolitanism generalisability:

> Unlike Rawls, however, I see no reason to restrict our moral focus to the basic structure of any particular nation-state; on the contrary, if one's concern is with the justifiability of the institutions which determine persons' life chances, there are compelling grounds for taking a wider view . . . the object of our enquiry ought to be what we may call the international basic structure, the major institutions of the world as a whole.
>
> (Jones 1999, pp. 7–8)

Although 'institutions' might initially imply governmental structures, cosmopolitans tend to deny that the internationalization of justice and human welfare requires or is even compatible with the international extension of state powers, which they recognise as practically impossible if political accountability and democracy are to be preserved. Instead, internationalization is (to be) achieved through the definition of rights at the individual level and their application to individuals anywhere in the world regardless of national location or affiliation. Just as 'classical' liberals found the state an impediment to individual rights and freedoms because it could infringe on liberty and expropriate property (Hobhouse 1911; Locke 1924 [1688]), today's cosmopolitans view the state as an impediment to globalizing individual rights because it ties them to specific political cultures and economic resource configurations locked in at nation-state level (Caney 2005; Pogge and Moellendorf 2008). 'Global society', 'cosmopolitanism' and 'human rights' are likely to constitute the basis of present and future ways of life' according to Cotesta et al. (2013), who define a global society as one 'where states no longer constitute the exclusive unit for analysis and where it is increasingly possible to detect the presence of a cosmopolitan awareness' (Cotesta et al. 2013, pp. xiii–xxviii).

New conceptions of citizenship – post-national, de-nationalized, disaggregated and cosmopolitan – support this optimism by suggesting that minorities (in Europe) are protected by cosmopolitan justice irrespective of their national status. These theorists point to the increase in claims-making among Europe's Muslims, who have turned to human rights to protect their right to religious freedom, as evidence for their proposition. In particular, the protests against national bans on the *hijab* and now the *burka* are thought to demonstrate the potency of post-national citizenship whereby minorities' rights can be protected through supranational organizations such as the European Court of Human Rights (ECtHR) (Soysal 1994).

This book challenges these arguments through a consideration of human rights activism and its progress in Europe in relation, principally, to religious expression. It does so through consideration of claims-making and government policy in Western Europe focusing mainly on developments in the UK, Germany, France, Italy, Belgium and the Netherlands. Through reflection on public debates and European law relating to the right to wear the *hijab* or other Islamic dress in the public sphere, it shows that cosmopolitan optimism has misjudged the magnitude of the impact of human rights and that the outcome of claims-making among Europe's Muslims has not been as they intended. Rather than protecting the human rights of Muslims, Europe has been a site for securitization which has led to Muslims becoming targets of hard and soft forms of surveillance and hyper-vigilance, expressed in attitudes towards Islamic dress.

Several explanations for this development are given. First, the intellectual contradictions between cosmopolitanism and human rights. Second, the ongoing salience of national sovereignty and national citizenship (against what post-national theory presupposes). Third, the tension between secular cosmopolitanism and

human rights based on individual rights and religion, which is seen as a threat to individual freedom. Fourth, the contradictions between European cosmopolitanism, which is based on cool affective attachments, and Islamic cosmopolitanism, which is based on thick religious attachments. Fifth, the rise of the neo-liberal right and governments which are very nationalistic about labour and citizen rights and socially conservative. And finally, Europe's inability fully to escape its regional, colonial history. In particular, it will suggest that the failure can be understood through a wider development, namely, the climate of Islamophobia which has provided fertile ground for the racialization of Muslims who have come to be seen as a 'dangerous race' which needs to be contained. The veiling movement, which has developed across Europe, has thus been understood as backward looking, despite being more appropriately understood as an innovative reaction to modernization (Carvalho 2013).

Moreover, the book explores how human rights institutions themselves adhere to secularism and increasingly so: while the right to religious expression in the immediate post-war period was an absolute right, it has now become a qualified right. Close analysis of the ECtHR's decision making reflects the national characterizations of Islam – as a threat to public order – without probing the cases for an evidential basis to their decisions. The judgements have been made on an unquestioning acceptance of the national governments' view of religious practices relating to clothing of Muslims, with only a few dissenters. Cosmopolitan theory, integrally connected with secularism and Eurocentrism, has misjudged the extent of this problem. Moreover, the ECtHR is itself caught up in this, with studies showing that the more unpopular the minority groups in Europe, the more the Court reflects this (Berry 2012).

The singling out of Muslims for special treatment by European human rights stems from the new insecurities relating to Europe's standing in the global economy: after the loss of empire has come the loss of geo-political and economic power in the face of emerging powers in Asia and Eastern Europe. Europe has reacted to this threat by backward-looking nostalgic appeals to its old power, which involved the subjugation (physically and symbolically) of Muslim populations, portraying them as standing in the way of Europe's modernization project. New social insecurities have been exacerbated by the EU's long phase of economic growth without a significant rise in living standards, followed by one of the longest recorded recessions in recent history. The increasingly cross-party perception of European-style welfare states relying on a social solidarity that is disrupted by recent arrival and ethnic difference has allowed a fear based on a fusion of immigrants and immigrant-descended communities that have insufficiently 'integrated', linguistically and culturally.

However, the book is not limited to a critique of cosmopolitanism and human rights. Rather, it suggests that cosmopolitanism cannot be rescued from its elitism, abstractness and inability to deal with religious claims in particular. Its shortcomings cannot be overcome by inventing new types of cosmopolitanism to accommodate difference. Cosmopolitics in action has seen schoolgirls in France being

forced to choose between wearing a headscarf, of great symbolic significance, or going to school (Balibar 2008) because of the inescapable relationship between cosmopolitanism and secularism. This is not the same for human rights, which from their inception outlined a series of particular rights to be protected within its framework including the right to religious expression, which has absolute protection in the US but is qualified in Europe.

The solution is not to invent yet another cosmopolitanism to add to the array that already exists – 'thick', 'communitarian' or 'federal', 'affective', 'communal' or 'embodied', among others (see Holton 2009). While Muslims' political and social exclusion has forced them to take a formal, legalistic approach to asserting and defending their rights, the outcomes are generally negative because the law – especially human rights law – is a slow and blunt instrument. Their cases are forced upwards to supranational courts, which may take months or years to reach a verdict and almost invariably (in the cases thus far on Muslim dress) are pushed back into a national jurisdiction, where (majority) cultural norms shape the law and its interpretation. Cosmopolitics needs therefore to be replaced with a more pragmatic approach, which would not necessarily involve the total abandonment of litigation but would couch the claims in rights which have greater resonance with the public (e.g. the right to education and the right to work) along with campaigning that frames claims within human rights language but without necessarily going through formal litigation.

I therefore argue for a return to a new politics of rights (see Scheingold 2004), rescuing human rights from the formal judiciaries and transforming them into a political rights movement, which has historically achieved better outcomes than working through formal legal channels (Scheingold 2004, p. xix). As rights claims are not the sole preserve of non-Islamic European practices but also well established in the Islamic tradition, this book offers a progression from a simple post-colonial critique. The limits of cosmopolitanism have been exposed by European human rights' inadequate accommodation of Muslim claims-making. The unbridgeable connection between secularism and cosmopolitanism demands a return to a new politics of rights which rescues human rights from the formal judiciary and challenges the supposed antipathy between Islam and universal justice.

The book is structured in the following way: Chapter 2 looks at the wave of cosmopolitan optimism which emerged in social theory in response to the 1989–1992 revolutions. It shows how, in this new political context, a number of theorists including Beck (2002, 2006), Habermas (1997), Derrida (1997), Appiah (2006) and Benhabib (2006) began to argue that cosmopolitanism had become established in Europe. Cosmopolitanism is variously defined, but at its core it holds that there has been a decline in the significance of the nation-state. The chapter will show how cosmopolitan theorists attributed particular significance to the rise of human rights as evidence of the success of cosmopolitanism. They saw human rights as the archetypical expression of cosmopolitanism because they made an appeal to universal humanity. Human rights, it was claimed, signified a 'cosmopolitan moment' because they were committed to openness to strangers

(Beck and Sznaider 2006, pp. 12–13). While accepting that the cosmopolitanization of justice was incomplete, these theorists thought it was most complete in Europe because of the growing importance of the European Court of Human Rights (ECtHR) in the post-communist era.

Chapter 3 outlines a parallel development in theories of citizenship and the invention of a range of new forms of citizenship including post-national, denationalized, disaggregated and cosmopolitan (Soysal 1994; Sassen 2002; Benhabib 2004). These new theories of citizenship shared the optimism of cosmopolitan theorists. It is thus claimed that Europe has been pivotal to the protection of minority rights, including those without formal citizenship, through access to supra-national organizations such as the ECtHR and through the entry of rights-based principles in the national sphere and other regional or local fora. The shift in rights entitlement from the nation to supra-national bodies such as the ECtHR is the cornerstone of post-national theory (Soysal 1997, 2000). At the national level, citizenship has thus been denationalized to the extent that cosmopolitan norms, expressed in human rights, have intruded into the national sphere, compelling national courts (as well as other areas of life) to take account of the universal principles of Europe's human rights institutions (Sassen 2002). Unshackling from the nation-state is also integral to disaggregated citizenship, namely, the opening up of sub- and supra-national spaces for democratic activism (Benhabib 2004, p. 3). Cosmopolitan citizenship differs from post-national theory because it does not depend on the erosion of national sovereignty. Rather, it refers to 'the reclaiming and the repositioning of the universal – its iteration – within the framework of the local, the regional, or other sites of democratic activism and engagement' (Benhabib 2004, pp. 23–24).

Chapter 4 examines how post-national and cosmopolitan theory used the human rights activism among Europe's Muslims as a principal litmus test for their theories. The 1989 *foulards* affair has been cited as the watershed trauma that kick-started cosmopolitan citizenship, followed by a succession of similar controversies in 1994, 2003 and 2004 when the French government claimed that the Muslim veil violated French republicanism (Scott 2007, p. 21). European Muslims responded by mobilizing against the ban through human rights language – appropriating universal frameworks to defend particular practices associated with religious freedom – on the grounds that wearing the headscarf was a 'natural right' of individuals to manifest their religious identity in public (Soysal 1997, pp. 512–518). The 1990s saw a rise in individuals and organizations litigating against bans on certain items of Islamic dress, in particular the *hijab*, on the grounds that they contravened international law and governmental commitments to human rights (Barras 2009, pp. 1237–1245) and the right to religious freedom. Most cases concerned bans on the *hijab* in schools and higher education institutions involving students and teachers. Reflecting national politics, they have also been made mainly against France and Turkey, which adhere to *laïcité* and *laïklik* respectively (Rorive 2008). Post-national theorists saw the rise of litigation around religious freedom in cases relating to bans on wearing Islamic dress, especially the *hijab*,

in schools and higher education institutions as indicators of cosmopolitan justice. Benhabib (2004) maintained that the *foulards* affair in France and litigation in Germany were transformative moments, resignifying the meaning of the headscarf and transforming Muslim women from passive to active subjects.

Chapter 5 explores these theories through a detailed analysis of the outcomes of litigation at Strasbourg and the trend among European governments towards outlawing Islamic dress, the *burka*, in public spaces. It claims that post-national theory failed to look at the outcomes of claims-making and therefore misjudged the extent to which cosmopolitan justice had emerged. The litigation arising from Islamic headscarf wearing in Europe demonstrated the limitations of post-national citizenship. While European Muslims are increasingly using human rights as a vehicle for gaining religious rights, they have not been effective, because case history to date has almost universally involved delegating responsibility for decision making on the bans to the national governments. Over the question of the ban, human rights institutions in Europe seem to be uniformly reinforcing national policy and national stereotypes and so failing to establish a supranational position on an issue as significant and controversial as the one under consideration. This chapter shows that cosmopolitan and post-national theory's optimism was precipitate and that national sovereignty played a particularly important part in the outcomes of the Court, against what cosmopolitan and post-national theorists presupposed. The litigation exposed the limitations of cosmopolitanism because it failed over the matter of cultural and religious identity (Skach 2006, pp. 189–195).

While the principal aim of the book is to show the failure of cosmopolitanism in relation to human rights claims by European Muslims, Chapter 6 goes beyond the specific case study to wider areas to demonstrate the potential generality of the argument. It seeks to explore the thesis further through a consideration of government policy relating to migrants, including asylum seekers, transnational migrants as well as the progress of racial discrimination claims. It shows that despite Europe's picture of itself as the centre of tolerance towards migrants and racial minorities, this self-image is betrayed by outcomes. The chapter sets out how Europe constructed an image of itself as a protector of migrant rights and guardian against racial discrimination. It argues that Europe's self-image depends on the idea of openness and tolerance, a haven for refugees and asylum seekers (Tuitt 1996). However, it shows that a closer look confirms the book's central thesis, namely that the way human rights in relation to migrants and racial discrimination are dealt with in practice betrays the region's image of itself. Through detailed examination of cases, this chapter shows that the Court's default position is to defer to national governments when assessing migrants' rights and cases of racial discrimination. This is shown to be evident in relation to forced migrants – such as asylum seekers – and economic migrants (Farahat 2009). Furthermore, the ECtHR's approach to racial discrimination, despite some progress, for example in relation to European Roma, remains hamstrung by the rule of law and European history (Dembour 2006). Rather than leading the way to challenging restrictions imposed by governments, the Court is reinforcing national government policy and failing to set more progressive precedents in its jurisprudence.

Chapter 7 suggests that a more cautious approach be taken on the relationship between cosmopolitanism and human rights (Cheah 2006) because these model cases of cosmopolitan citizenship and justice threw up unresolved ambiguities. This chapter argues that the failure to uphold these claims is part of a much wider movement in Europe and elsewhere towards casting Muslims out of human rights (Razack 2008). It maintains that the post–9/11 era marked the start of a period of securitization which singled out Muslims as the main target for surveillance. The cosmopolitanization of Europe, exemplified by its human rights institutions and treaties, has been accompanied by an age of securitization, reinforcing rather than dismantling borders. Paradoxically, the cosmopolitan age – based on global mobility, respect for cultural and religious diversity and commitment to global human rights – has been concurrent with new immobility regimes. National governments have turned to measures of 'closure, entrapment and containment' for those groups deemed most dangerous (Turner 2007, pp. 289–290). In heightened national security, this new immobility regime has mainly targeted Muslims. The war on terror has triggered an assault on human rights, including absolute rights such as the prohibition on torture and the right to a fair trial (Gearty 2009). After 9/11, Muslims became a category that needed containment, a measure that took two forms: de-legalization (loss of fundamental human rights protections) and hyper-legalization (loss of cultural/religious rights) (Malik 2008/2009). Europe, considered the main site of cosmopolitan justice, has also been the site for the withdrawal of rights from religious minorities – particularly suspected Muslim terrorists as well as established Muslim communities.

It is not incomplete cosmopolitanization that explains Europe's exclusion of Muslims from cosmopolitan justice (in relation to religious freedom) but the core normative basis of its European version, which acts as a counterpoint to Muslim cosmopolitanism (Hanley 2008; Marsden 2008). This competing cosmopolitanism, whose globalism is expressed through thick and affective attachments, is incompatible with the cosmopolitan paradigm that is European. Indeed, the cosmopolitanism espoused by Muslims amounts to a challenge to the European project, one which is defined by cool attachments which negate religious identity. Cosmopolitanism's commitment to supra-national politics does not extend to supra-national entities, such as the global *ummah*, which is spiritual and linked to thick religious attachments. The cosmopolitanism identified with Muslims – religious pilgrimages to Mecca such as the *Haj* or *Umra* – is adverse to the western, liberal vision (see Meijer 1999). The exclusion of Muslims from Europe's cosmopolitan project and justice is not, therefore, merely a by-product of a former era. It flows from the conception of Muslims as the 'bad other' to modernization and provides the narrative which followed the attack on the Twin Towers, portraying it as an attack on cosmopolitanism (Calhoun 2002b, pp. 869–870). By seeking to manifest their religious identity in public, Muslims have, Levy and Sznaider (2006, pp. 172–175) suggest, been cast in the role of enemies of cosmopolitanism through a 're-orientalization' of Enlightenment thought.

Chapter 8 claims that even while speaking the language of human rights, Europe's Muslims have so far failed to penetrate this barrier and have been excluded from

the protections offered by supra-national institutions such as the ECtHR. Hannah Arendt's conception of cosmopolitanism as the 'right to have rights', the rights of everyone to belong to humanity through guarantees by humanity (see Fine 2006, pp. 55–56), seems utopian, as cosmopolitanism, as embodied in European human rights, has failed the region's most visible religious minority. The cases specifically expose the limitations of cosmopolitanism because they indicated that one of the 'most cosmopolitan, and controversial trends in constitutional law: using foreign and international law as an aid to interpreting domestic constitutional law' failed over the matter of cultural and religious identity and thus the principle of pluralism (Skach 2006, pp. 189–195). The evidence suggests that the supposed globalism of the international human rights regime, expressed in the ratification of human rights treaties by multiple states, is deceptive – that there is a gap between commitment and practice. However, there is scope for closing the gap between the two through the impact of the global civil rights movement, which can potentially pressurize governments into improving their track record (Hafner-Burton and Tsutsi 2005).

While offering a critique of cosmopolitanism and post-national theory, this chapter looks at what can be offered to facilitate effective human rights activism on the part of Europe's Muslims. It suggests that there is little point in trying to render an essentially universalist cosmopolitanism compatible with the veiling movement across Europe and wider human rights claims made by Europe's Muslims. The attempts to do so through inventing new types of cosmopolitanism to accommodate difference – namely, 'thick' cosmopolitanism or cosmopolitan federalism – have failed. However, I still suggest that a politics of human rights activism is a useful direction to go in. It is for this reason that I depart from Sian et al.'s (2013) solution to the limits of human rights for minorities, because they suggest that human rights activism is a barrier to the development of anti-racist discrimination.

Concluding comments

This book addresses a highly topical and conceptual issue in sociology – namely the merits of cosmopolitan and post-national theory – through an examination of case material which focuses mainly on the new veiling movement across Europe and legal and public support for bans on Islamic dress, in particular the *hijab* and the *burka*. It suggests that cosmopolitanism, as an intellectual and political project, has failed and that the portrayal of human rights, especially European, as evidence of cosmopolitanism in practice is misguided. Cosmopolitan theorists point to the rise of claims-making to the European Court of Human Rights (ECtHR) among Europe's Muslims to protect their right to religious freedom, mainly concerning the *hijab*, as evidence of cosmopolitan justice. However, the outcomes of such claims-making thus far show that far from signifying a cosmopolitan moment, European human rights have failed Europe's Muslims.

While a lot of case law on the *hijab* has been covered in detail, especially watershed cases such as *Leyla Şahin vs Turkey*, this book maintains close attention

to up-to-date political developments relating, for example, to the introduction of fines across Europe for wearing the *burka* through more recent developments following the 2011 implementation of France's *Loi interdisant la dissimulation du visage dans l'espace public*, which prohibits wearing face covering in public and ongoing review as well as a continuous reviewing of new case material through the relevant legal databases. The book concludes that cosmopolitan optimism and post-national theory have been premature: that cosmopolitan justice has not been achieved through the rise of formal human rights claims by Europe's Muslims and other minorities. Indeed, these cases demonstrate that the ongoing power of national sovereignty has limited post-national and cosmopolitan trends. These contradictions need to be reconciled before Europe can define itself as the unrivalled site of cosmopolitan justice.

Chapter 2

Human rights as a 'cosmopolitan moment'

Historically, cosmopolitan movements have been born out of upheaval, revolution, conflict, war and imperialism. They arise when a fragmented country seeks to establish unity and social cohesion by asserting rights and values that all its people can acquire or aspire to or when a united country uses an appeal to such rights and values as part of a campaign to capture and subdue other territory. Cosmopolitanism does not always start with political leaders trying to sow unifying attitudes and actions among diverse people, but they almost invariably co-opt it if it is not their creation. Thus cosmopolitanism emerged out of the spread of the Roman Empire, the American War of Independence and the French Revolution and, later, the rise of fascism and Nazism in Europe. Today, it is the East European revolutions of 1989–1992 and the shifts associated with globalization that have been instrumental in the new wave of cosmopolitan thinking.

Following a period of relative stability, when social theorists were interested in nationalism – its origins and expression – there emerged a surge of cosmopolitan optimism. Some social theorists suggested that cosmopolitanism had become established in Europe (e.g. Held 2003; Beck and Beck-Gernsheim 2009) through a process which – perhaps for the first time anywhere – was entirely peaceful, consensual, evolutionary and democratic. This coincided with a phase of more general optimism regarding the 'European Project', as the European Union (EU) moved ahead with its single-market and single-currency programmes. These seemed to deliver the economic benefits of a super-state while retaining the political and social diversity of independent nation-states. EU citizenship was created in the 2007 Lisbon Treaty and automatically conferred on all citizens of EU states, giving them a set of rights including that of living anywhere in the EU free of discrimination on the basis of nationality. The EU had also embarked on an enlargement programme, admitting new eastern and southern members that had escaped dictatorship, which appeared to remove shared geography and history from its entry criteria and broaden it to any country that adequately enshrined democracy, human rights and the rule of law. Its accession negotiations with Turkey and Bosnia-Herzegovina challenged any suggestion that 'Christian' values and prescriptions were either necessary or sufficient for EU membership and citizenship.

Social and political theorists attributed particular significance to the rise of human rights as evidence of the success of cosmopolitanism and saw the two as intimately connected. Like their predecessors, they saw human rights as the archetypal expression of cosmopolitanism because they made an appeal to universal humanity. It was argued that human rights signified a 'cosmopolitan moment' because they upheld the commitment to openness to strangers (Beck and Sznaider 2006, pp. 12–13). For theorists in central Europe, a signal moment arose in 2000 when (under EU pressure) Germany changed its citizenship law from one requiring German descent or ethnicity to one with a manageable residence qualification, enabling previously excluded minorities (especially Turks) to gain full rights and opening up Germany as a country of immigration (Merih 2005).

While accepting that the cosmopolitanization of justice was incomplete, sympathetic commentators believed that it was most complete in Europe because of the growing importance of the ECtHR in the post-communist era. The ECtHR was opened in 1959 to enforce the European Convention on Human Rights (ECHR), adopted by the Council of Europe in 1950 and effective from 1953 across the Council's member states, which numbered 47 (including Turkey, Russia, Ukraine and all EU countries) in 2016. The subset of countries that in 1958 formed the European Economic Community, which had widened to 28 members and deepened into a European Union by 2016, used the ECHR as a foundation to widen the definition and application of rights, adding several that enshrined the values and 'common constitutional traditions' (European Commission 2016) that its post-war national governments (centre-left and centre-right) tended to share. The EU Charter of Fundamental Rights includes 'human dignity' (article 1), 'the right to life' (article 2), 'security of person' (article 6), respect for private and family life (article 7), personal data protection (article 8), 'the right to found a family' (article 9), 'freedom of thought, conscience and religion' (article 10), freedom of expression (article 11), freedom of assembly and association (article 12), freedom to engage in 'arts and scientific research' (article 13), the right to education and vocational training (article 14), 'freedom to choose an occupation' (article 15), 'freedom to conduct a business' (article 16), and the 'right to property' (article 17), as well as affirming rights bestowed by the ECHR and other earlier treaties, such as the right to asylum under the 1951 Geneva Convention (EU 2012). The Charter was adopted by the European Council meeting in Nice in December 2000 and became legally binding on all member states under the 2009 Lisbon Treaty.

Since fewer than half of the signatories to the ECHR are members of the EU, the Charter could be viewed as a selective deepening of human rights that crosscuts the cosmopolitan vision by institutionalizing geographical variations in the strength of rights and freedoms. But the damage it does to this vision goes much deeper because of the EU's 'subsidiarity' principle of keeping political and judicial decisions at the lowest, most local administrative level. The EU could only create a uniform enriched vision of human rights, as in the Charter, by insisting that it created no new powers for the Union's central institutions (Commission

and Court of Justice), and guaranteeing that national variations in interpreting Charter provisions would still be allowed. Explaining why a Labour government in the UK had secured amendments during final discussions on the Charter that would specifically prevent European courts from overriding national laws, a key strategist in that government argued that 'To permit the European Court [of Justice] to overturn national laws on the basis of a constructive legal interpretation of a legally binding EU Charter would be undemocratic' (Liddle 2005, p. 34). The Court is, in this view, strictly an institution to which individuals can appeal if they believe their fundamental rights *as defined in national law* have been breached by (or not properly upheld due to) an EU directive or other international law. It does not allow rights to be asserted or upheld that are not established in national law, and therefore acts as a defence against EU institutions breaching nationally defined rights rather than a mechanism for EU institutions to enhance those rights.

The appeal to 'democracy' in this limitation of European Court power reflects the fundamental problem that democratic rights remain bound by national borders, even if human rights are held to be universal and economic rights (of natural and legal persons) are increasingly enshrined in international commercial treaties. Rodrik (2011, pp. 200–206) has persuasively argued that there is a mutual incompatibility between national political self-determination, economic globalization and the exercise of democracy, which means that – until polities and voting procedures are somehow extended internationally – democratic political sovereignty can only be preserved by restricting economic globalization. The same 'trilemma' has, in effect, been recognized with respect to national sovereignty, democracy and *legal* globalization. There may be international courts with a remit over human rights cases, but these cannot be allowed to override national legal and judicial decisions without eroding democracy, unless that democracy is somehow re-created at the international level. Democracy matters to the debate on human rights and cosmopolitanism and has gained in importance over time because the concept of rights has broadened from protections against interference in individuals' activities to promotion of individuals' ability to act. Views of government or 'the state' have correspondingly progressed (even among liberals) from the liberal depiction as a principal threat to intrinsic rights towards the social-democratic depiction as a principal enabler of rights that require access to baseline resources. As the traditional 'laissez-faire' liberal view slides towards voluntary cession to libertarians, with liberals acknowledging a role for the state in tackling fundamental resource constraints through redistribution, the concept of rights acquires a political dimension. The modern concept includes 'rights to assistance when one suffers the consequences of market transactions . . . Hence it is misleading to distinguish rights from distributive justice and to link rights only to the defence of individuals against mistreatment by the state' (Jones 1999, p. 4). Once state-organized redistribution is admitted as necessary for preserving universal rights and preventing some exercising their rights to others' exclusion, the state takes on (or regains) an appropriative power that makes its democratic control essential to a full development of rights.

Political-philosophical arguments and legal programmes that seek to generalise rights across community and national boundaries without similarly extending democratic rights reflect a 'democratic deficit' which has long existed in western theories or rights and is today reflected in non-western countries (notably China) which seek to expand people's economic rights and capabilities without expanding democracy:

> Rights represent the conventional account of limited government, an account that makes no necessary room for collective decisions by the democratic polity. This account does not explicitly value democracy. . . Since the subjects of rights are members of the polity, and not the polity itself, there is no necessary connection to the democratic value of self-government.
>
> (Bedi 2009, pp. 14–15)

The charge seems readily applicable to such contemporary cosmopolitan proposals as global redistributive taxes (Caney 2005) and a global resources dividend (Pogge 2002), which assume a cooperation among nation-states and/or technocratic intervention by supranational agencies, none of which is within reach of current democratic arrangements.

When the search for people exhibiting 'cosmopolitan awareness' or engaging in 'cosmopolitan practices' leads cosmopolitan scholars to conclude that 'states no longer constitute the exclusive unit for analysis' (Cotesta et al. 2013, p. xxviii), their hope is that the unit will be geographically widened until wider regions and eventually the world as a whole observe compatible rules and recognises comparable individual rights, promoting interchange among and of people. But the recognition that this would project political decisions upwards – to supranational levels of government over which there is no democratic control and no obvious progress towards establishing it – leads to a retreat from the 'global' towards the unintentionally local. Polities are dropped from the account, and the exclusive unit for analysis is projected downwards to the contextually abstracted individual. 'Every human being has a global stature as the ultimate unit of moral concern' (Pogge 2002, p. 169). But in reverting to this unit, the individual of classic liberalism, government's role in constituting and conserving individual rights is necessarily forgotten to avoid the problem of internationalizing governments' actions without the scope for similar extension of their democratic mandate.

Most systems of thought, to spread geographically, must adapt to variations in local terrain. Cosmopolitanism was earlier criticized for being individualistic and unable to deal with particularizing identities such as ethnicity. The suggestion was made of a fundamental tension between cosmopolitanism and communitarianism, which is more questioning of the extent to which norms and values can be 'universalized'. The communitarian perspective leaves more room for customs, practices and attitudes being locally standardized and defined. This may be entirely appropriate when it represents an adaptation to the needs and circumstances of different communities, involving a choice among several inoffensive alternatives.

For example, standards of modesty in dress might differ according to climate, or alcohol restrictions might develop in communities whose members commonly lack the enzymes to digest alcohol safely. However, such local variations raise problems regarding rights and obligations that escalate as communities expand and diversify with more people moving across their boundaries.

New forms of cosmopolitanism emerged which tended to be hyphenated to overcome this impasse. Contemporary versions include, among others, thick cosmopolitanism (Dobson 2006); cosmopolitan federalism (Benhabib 2004), cosmopolitanism as an ethical project (Lu 2000), rebellious cosmopolitanism (Hayden 2013) and cosmopolitanism to come (Douzinas 2007). Thus, for example, Dobson (2006) has argued that thin cosmopolitanism does not work because it is based on the motivation of being simply membership of humanity which is not, he contends, adequate. This is because it does not deal with the conundrum of 'nearness', that is, that we are most likely to have empathy towards those who are near us. To bring this nearness about, Dobson (2006) suggests, is to introduce causal responsibility, which triggers a sense of obligation to others. Thus he concludes that this 'brings those related by causal responsibility nearer to one another in a way that might be described as "thickly cosmopolitan"' (Dobson 2006, p. 182). The thickest cosmopolitanism to date is perhaps represented by Appiah (2006), who argues that connections to family, friends, community and locally shared culture are not only compatible with cosmopolitanism but actually essential for its survival, even though this seems to step extremely close to enshrining the local cultural variation (and assimilation to it more usually associated with communitarian accounts).

This chapter will outline the movement from old cosmopolitanisms to contemporary ones. While some attention will be given to the history of cosmopolitan thought and its key historical moments, this chapter's main focus is contemporary cosmopolitanism in its various manifestations and, in particular, its relationship with human rights.

Early cosmopolitan moments

The history of cosmopolitanism has been punctuated by a series of key historical moments. It can be traced back to ancient Greece and Rome, the Enlightenment and totalitarianism before resurfacing in the 1990s as the 'new cosmopolitanism' (Fine 2007b). In its ancient form it was articulated by the Cynics and, more explicitly, the Stoics. Theirs was a movement of opposition and rebellion aimed at the realization of human potential. The philosopher widely regarded as the originator of cosmopolitan thought, Zeno, passionately challenged established institutions and practices thought to inhibit human fulfilment. Cosmopolitan virtue was presented as the ultimate goal, and its realization depended on people breaking free from traditional constraints, slavery, poverty and religious and ethnic conflict. The Stoics followed this path, condemning existing institutions for impeding justice and arguing that genuine justice could only be achieved outside the

state (Douzinas 2007). Inevitably, early cosmopolitanism was an elite project, proposed by the small numbers with the wealth, power and education needed to assert and exercise rights across multiple locations. It has 'democratized' over time, but in a way that challenges nationally contained democratizations, insisting that rights should be enjoyed by all people and not be selectively conferred on them by particular jurisdictions.

The universalism of human rights thinking can therefore be traced back to ancient cosmopolitanism – as can the idea of an essential antipathy between universal human rights and the particularism of nation – or city-states. Aristotelian politics, which placed the city-state at its centre, was regarded as inward looking and subordinate to the commitment to humanity. This, it was claimed, provided the best moral compass for human practice (Cohen and Fine 2002). According to this thinking, the state, which recognized arbitrary and accidental statuses such as birthplace or ethnicity, could not be an effective vehicle for justice. Local, state-based systems of law and justice would reflect and exacerbate social and economic inequalities when the purpose was to overcome them (or ameliorate their effects) through a system of rights that transcended locality or social status. Real justice could only be won through world citizenship because it was premised on the principle of equality between people irrespective of their ethnic or religious status or whether they were free or slaves. For the Stoics, world citizenship would provide the platform for co-operation rather than conflict.

It was through Roman Stoicism that the idea of world citizens first developed. For the Stoics, the citizen's principal moral attachment was with humanity, considered the 'guiding thread of conduct'. Stoicism insisted on the importance of belonging to the whole of human-kind, recognition of which would create a commitment to the whole of humanity based on the principles of rationality and morality. The status of world citizen, which created an impulse for co-operation rather than conflict between people, overrode 'dangerous' factional divisions. Anticipating and pre-empting much later debates, the Stoics did not regard this primary attachment to humanity as a reason to abandon local identities. Rather, they drew a picture of the citizen as being at the centre of a series of concentric circles, starting with the family, moving on to the city and country and then finally to the largest circle – humanity – such that it encompassed rather than contradicted the other identities (Nussbaum 1997, pp. 4–9). Social harmony based on cohesive community at the city or state level was a necessary component of moral attachment but not a sufficient one, being only the foundation for the outer circles.

While committed to high moral principles such as human fulfilment, it is not possible to understand the rise of ancient cosmopolitanism without reference to expedient economic factors at the time. The commitment to humanity and its corollary of openness to strangers arose in part out of the need for trade, which conferred the biggest economic gains when conducted over long distances with members of very different societies. Trade, which depended on interaction and communication with outsiders for the purpose of exchange, was critical to the emergence of cosmopolitanism, if only as an unintended consequence (Turner 2002).

Ancient Rome and Ancient Athens were cosmopolitan primarily because of trade. The commercial movement of goods and services (and of armies needed to secure the transit routes) entailed a movement of people, which meant ancient Rome hardly contained any native Romans. Most of the inhabitants were imported either by those who settled there or those who were brought there by the Roman Emperors. Rome also strengthened its empire by recruiting the best foreign soldiers and commanders into its armies and co-opting local elites as indirect rulers to keep the colonies quiescent. At the same time, Venice, Genoa and Amsterdam were the centre of the world, attracting immigration.

Cosmopolitanism and the Enlightenment

The Enlightenment provided the next key historical moment of cosmopolitan thought and, with it, the seeds of human rights thinking. Here the figure of Immanuel Kant was central to the revival of cosmopolitan thinking and the roots of human rights. At the core of Kant's Republicanism lay the principle of the 'rights of man' as the source of universalism (Fine 2007a). This fresh wave of cosmopolitanism was a reaction to the rise of national sovereignty. While the French Revolution invented the nation-state and the ideology of national citizenship, as well as ideals such as the Rights of Man, Kant highlighted the intractable contradictions of the revolutionary spirit. He noted that the invention of national citizenship demanded the exclusion of foreigners. This shift was based on a newly perceived risk, springing from warfare and civil unrest, which gave way to a profound fear of enemies from the outside (or foreigners) above all others. So while dismantling jurisdictional boundaries and espousing cosmopolitan ideals in relation to France's links with the rest of the world, France created an inward-looking identity (Brubaker 1992) against which Kant rebelled.

Kant's position on the nation-state acknowledged the paradox and conflict between the espousal of universal principles through the Rights of Man and the regime of containment through the spread of the enclosure-based system of industrial politics that accompanied the rise of the nation-state. The enclosure movement defined the modern national project, producing excluded groups who were considered inhuman and, consequently, creating the idea of a civilized human race as opposed to unruly, uncivilized groups thought to be sub-human (Guardiola-Rivera 2009, p. 141). The elevation of Europeans to the exclusive status of human could be found in the work of classical liberal theorists, such as Locke and Mill, who supported missions to civilize non-European cultures as morally imperative (Malik 2009, p. 102). Imperialism was not an exercise in Republicanism and instead elevated the principle of national sovereignty to such a high status that the communities that were conquered were excluded from humanity (Fine 2007a).

Kant exposed the acute contradiction lying at the heart of the relationship between national sovereignty and universal rights. He therefore invented a cosmopolitan position composed of three solutions: first, the spread of republicanism across the world to render the universal rights of man applicable across all

political communities, second, the creation of an international legal order that would undermine wars between states and, third, the enactment of cosmopolitan laws guaranteeing the right of hospitality. He saw that the nation-state could not, by definition, be free from its exclusionary traits. He believed that the tension between universal rights and national sovereignty would implode through international conflict, colonial oppression and state exclusion of foreigners. For Kant, the only viable solution to this paradox was the creation of not a world state but a Federation of Nations, whose legal authority would subordinate domestic law to cosmopolitan law, providing an end to international wars and colonial violence and facilitating openness to strangers, ultimately creating a state of perpetual peace. Rationality and reason would overcome irrational impulses because it was recognized that a universal community would be based on political and economic utility as the costs of the alternative would become self-evident (Douzinas 2007).

However, Kant's (1795) commitment to hospitality was based on an understanding of it as a qualified right. Unlike other rights, Kant saw that the application of this particular one was anomalous because it fell outside any particular civic jurisdiction. It embraced the rights people held by virtue of their membership of humanity and those they possessed by virtue of their membership of a given republic. Membership of humanity implied certain obligations to humanity, setting the scene for subsequent attempts to link the exercise of rights with the discharge of set responsibilities. Far from being an absolute right given to strangers, Kant claimed that they only had a right to temporary residence. He maintained that the right to indefinite stay should be conditional upon the services provided, for example commercial or professional, by the newcomers.

Kant made a link between cosmopolitanism and human rights through his view that perpetual peace could be achieved through the realization of these rights:

> Since the narrower or wider community of the peoples of the earth has developed so far that a violation of the rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of the public human rights and hence also of perpetual peace.
>
> (see Fine 2007a)

The cosmopolitan tradition could also be found in other classics – including Marx, Weber and Durkheim, for all of whom it was closely tied to the project of uncovering general principles of human development and social structure. Against the view that the classics were too nation oriented, classical sociology provides the foundation for a departure from a nation-centric sociology because it was always about the social and not the national, and because the social was a moral issue, it contained the potential for an interest in cosmopolitanism (Turner 2006). Fine (2001, 2002) has suggested that it is possible to read in the methods and substantive texts of the classics the origins of contemporary human rights

thought. Durkheim, he argues, developed a theory of human rights as a possible source of social cohesion in the modern world. For Durkheim, human rights were not based on the human condition but on what is bestowed on individuals by society: it is the state that creates, organizes and makes a reality of these rights. Harmonious division of labour reinforces rights by expanding the resources that allow them to be bestowed and exercised, but its establishment is in some ways also a product of the exercise of rights. The cult of the individual expressed in the institution of human rights is the product of society itself. His approach provokes the sociological question of how far rights serve as a route to social cohesion, how far there is public support for a system of rights, how far the state serves to secure or undermine human rights and how far civil society groups are capable of both generating and defending rights.

Durkheim cemented his place in the Enlightenment tradition by advancing a universalistic view of history, eschewing cultural relativism. His sociology was not nationalistic but rather cosmopolitan in its emphasis on the social, which means the retention of a strong sense of the universality of its moral field (Turner 2006, p. 140). Sociology was, indeed, a discipline intended to show the regularities (of choice and outcome) hidden beneath cultural differences, thereby revealing the extent of the universal. There is also evidence of cosmopolitan thinking in the work of Max Weber. In particular, Weber's methodology can be understood as a cosmopolitan ethic of care because understanding other cultures necessarily involves a degree of respect for their truth claims and a care to understand them correctly and carefully (Turner 2006, p. 142).

Prototypical human rights thinking can also be found in the thought of Karl Marx, according to readings such as Fine (2002) and Cannon (2015). Marx, while supporting the entitlement of Jews to full civil and political rights, views their claims as being limited by the individualistic, private property–based outlook of contemporary capitalism and begins to offer a social theory of rights. He contrasts political emancipation (full civil and political rights) with human emancipation not to demean the rights of man but the opposite: not to treat it as nothing because it is not human emancipation. Right of property means abolition of privileges associated with traditional property, that is, the abolition of property qualifications in the civil and political sphere. Right of religious freedom means right to be religious or not in any way one wishes. Capitalism moves society towards liberty by sweeping away past arbitrary status and wealth differences and unifying activity around increasingly integrated international markets, even though it then entraps society in a new form of wage slavery due to capitalist exploitation. Moreover, Marx upholds the rights of Jews regardless of whether they choose to remain Jewish. He characterizes the rights of man not only as a huge step forward but as the only way forward. States which cannot yet politically emancipate the Jews must be rated under-developed by comparison with states that do recognize the rights of Jews. The state may subsume freedom of religion to freedom from religion, but it requires the exercise of terror for its success. Fine (2002) suggests that in the young Marx, there is the beginnings of a sociological theory of human rights, and this becomes full-blown in the mature Marx.

Classical writers again recognize trade as an essential feature of the rise of cosmopolitan thinking during the Enlightenment. Although there is a tendency to think of the Enlightenment as being a purely intellectual movement, it was also motivated by trade. The Enlightenment coincides with the rise of Spain and England as international trading countries. As Adam Smith (1979 [1776]) said,

> Commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals, among the inhabitants of the country, who had before lived almost in a continual state of war with their neighbours, and of servile dependency on their superiors. This, though it has been the least observed, is by far the most important of all their effects. Mr Hume is the only writer who, so far as I know, has hitherto taken notice of it.
>
> (Smith 1979, p. 503)

And on the same theme: 'The cities of Italy seem to have been the first in Europe which were raised by commerce to any considerable degree of opulence. Italy lay in the centre of what was at the time the improved and civilized part of the world (Smith 1979, p. 503).

In tracing prosperity to the division of labour within countries, and expansion of trade between countries with contrasting production and consumption patterns, Adam Smith put cosmopolitan diversity at the heart of modernity. The 'market' offered equal terms to everyone who wanted to buy or sell, with money giving the same opportunity to anyone who held it. Market-based exchange required a degree of trust which may have been most easily established among people of similar ethnicity and background (Greif 1993). But the bigger gains awaited those societies that extended their transactions beyond the familiar, to territories and peoples with markedly different natural and human resources. Liberal economic historians who follow Adam Smith's tradition (e.g. Seabright 2004; Ferguson 2012) now invoke western cosmopolitan values as the original source of such long-distance engagements, rejecting the earlier suspicion that western imperialism and use of force played a decisive role. Seabright (2004), expressing a confidence built by evolutionary theorizing and experiments with repeated 'games', argues that cosmopolitan engagement emerges when people begin to calculate the benefits of long-term, repeated transactions, whose recurrence is ensured by a deep human instinct for reciprocity.

> An eye for an eye, certainly, but also a gift for a gift . . . It has surely been reciprocity that, prehistorically, tipped the balance between hostility to strangers and a cautious willingness to deal with them. Often that reciprocity will have been betrayed, as many of the North Americans who dealt with the first European visitors discovered to their terrible cost. But their case, though tragic, ultimately made less difference to the future of human society than the reverse – namely, the discovery that a willingness to trust others could produce important benefits to both sides.
>
> (Seabright 2004, pp. 54–58)

Cosmopolitanism and totalitarianism

The next cosmopolitan moment arrived with the rise of totalitarianism. It was in this context that the work of Hannah Arendt on cosmopolitanism and human rights was constructed. Clearly influenced by Kant, who had observed the conflict between national sovereignty and hospitality towards strangers, Arendt built this into her thinking on human rights. As Benhabib (2004, p. 50) comments, 'For Arendt, totalitarianism was the most vicious expression of the denial of human rights, where the "stateless" were denied the right to have rights through the absence of national status – it was not just a matter of losing citizenship rights'. She was acutely aware of the impossibility of effective human rights in the context of the nation-state. Observing an era in which leaders sought acclaim for 'building' and 'embodying' their nation-state and commanded unprecedented administrative and military power with which to do so, Arendt was more pessimistic than Kant. Like Kant, Arendt believed that 'The nation-state system, established in the wake of the American and French Revolutions, and bringing to culmination processes of development at work since European absolutism in the sixteenth century, is based upon the tension, and at times outright contradiction, between human rights and the principle of national sovereignty' (Benhabib 2004, pp. 60–61). But while acknowledging the tension between national citizenship and human rights, she also spoke of 'the decline of the nation-state and the end of the rights of man', indicating her complete lack of faith that nation-states could be transcended. A world state would offer 'no sense of belonging, as a means by which universal justice and equality could be achieved'.

Traumatized by the Holocaust, Arendt's (1951) passionate appeal to cosmopolitan law was shaped by the exigencies of the moment – the creation of a safe place for the Jews – and the paradoxes of the nation-state, which, despite rhetoric to the contrary, was based on the exclusion of strangers: refugees, minorities and displaced persons. Thus, Kant's concern that the nation-state was hostile to foreigners infused her heart-felt account of the disaster of statelessness in a state-centric era. She, like Kant, saw that the nation-state was unable to accommodate those lacking formal belonging or formal national citizenship. Thus, the right to have rights was impossible in a historical era when national sovereignty was sacrosanct. Experiencing at first hand the vicious face of nationalism, she saw Israel as a necessary 'homeland' for those who had been made stateless. A new nation-state had to be created to accommodate those who did not 'belong' in other nation-states sufficiently for even their most basic rights to be reliably protected.

Arendt originally saw the Nuremberg trials as a form of realized cosmopolitanism and the fulfilment of Kant's dream – holding national power to account and forcing states to take responsibility for crimes against humanity. However, her views were transformed in response to the Eichmann trial. The reality of the trial (which followed Eichmann's abduction from Argentina and led to his execution) led her to develop a more sceptical perspective, viewing the trials as the antithesis of cosmopolitanism. That they were held in Israel prompted her to regard them as

a nationalistic expression of Jewishness, show trials to emphasise Jewish nationalism at the expense of ethnic divisions among Jewish emigrants to the country. Far from being a form of realized cosmopolitanism, the new geopolitical environment meant that the trials strengthened ethnic and national conflict, dividing rather than uniting humanity. For Arendt, the victims had become perpetrators of conflict. The very institutions that were thought to hold accountable those who had committed crimes against humanity and that had destroyed totalitarianism had themselves become drawn into a world which divided humanity into 'us' and 'them', which was politically vacuous and drew on the 'banality that obliterates all distinctions' (Fine 2000).

Because these cosmopolitan moments emerged in times of upheaval, conflict and division, doubt was cast over their durability. Cosmopolitanism, historically, coincided with periods riven by ethnic division and religious and national conflicts. It therefore came to be seen as an ideology of contestation and rebellion and existed in parallel with such conflicts – which included England's Glorious Revolution of 1688, the American War of Independence (1775–1783) and the French Revolution (1789). This made it Janus faced, dismantling jurisdictional boundaries in a way that could transcend the nation-state while also providing the basis for national sovereignty and national identity. The constitutional document that outlined France's relations with the rest of the world espoused cosmopolitan ideals (see Brubaker 1992).

New cosmopolitanisms and human rights

In the post-war period and until the 1990s, the social and political sciences were preoccupied with nationalism and national sovereignty – their origins, appeal and political significance (e.g. Anderson 1982; Smith 1983; Hobsbawm and Ranger 1983). Nationalism was widely viewed as providing the social solidarity that could underpin redistributive welfare systems, which expanded substantially after 1945, especially in Europe. The Bretton Woods arrangements for the international economy, agreed in 1944, were designed to safeguard national economic management, letting nation-states choose their own balance of inflation and unemployment, scale of public sector and degree of inequality. However, with the rise of post-colonial theory, nationalism came to be viewed as a reactionary ideology, inextricably linked with the extreme right in Europe and with repression and genocide in other parts of the world. This view was echoed in the new interests of social and political theory (Cheah 2006, pp. 20–21).

In comparatively peaceful times, contemporary cosmopolitanism is also a reaction to change and the so-called global revolution. It has emerged as an oppositional movement to what critics have viewed as the ugly aspects of globalization, exposing the deep 'discontents' and divisions provoked by entrenched political exclusion and economic exploitation, by pervasive social inequalities and global poverty (Stiglitz 2012). Cosmopolitanism appears to offer a framework that detaches rights from those of private property and 'consumer sovereignty' and so

counter-poses free-market, corporate-dominated globalization (Klein 2001; Monbiot 2000) without retreating into nationalism or protectionism, by exploring the global dimension to theories of justice which (typified by Rawls 1971) implicitly assume a nationally distinct, strong-bordered polity.

The close relationship between cosmopolitanism and human rights is set out by Benhabib (2006), who argues that since the UN Declaration of Human Rights in 1948, there has been an increasingly intensive shift towards the realization of human rights norms. Grounding her view in the Kantian concept of hospitality, Benhabib (2006, p. 16) calls for a universalization of cosmopolitan norms which would find concrete expression in nation-states upholding human rights. Thus she claims that 'we have entered a phase in the evolution of global civil society, which is characterized by a transition from international to cosmopolitan norms of justice'. Her concept of democratic iterations is used to denote a dialogue between the universal and the particular through which the cosmopolitanization of law can operate as states. Thus, for Benhabib (2006) cosmopolitanism is part of the process by which human rights norms and laws can be fulfilled. For Benhabib (2006) this process of democratic iterations has already started in Europe, where human rights are most overtly articulated.

Contemporary cosmopolitanisms lie on a spectrum between the strongly normative and the more descriptive (Lu 2000). Martha Nussbaum's work (1997, 2000) represents one of the strongest versions of the normative approach (Scheffler 2001). For Nussbaum cosmopolitan belonging is ethically superior to other attachments people have, including local, regional, national, ethnic or religious ones (Calhoun 2008). Drawing on the Stoics' concentric circles of loyalty, Nussbaum's universalism (2000) concludes that a commitment to universal humanity is singularly important, although it may embrace rather than eradicate other ties such as familial ones.

Her argument fundamentally rejects nationalism and what she sees as its most unattractive version, patriotism. She considers the two to be analytically indistinguishable. For Nussbaum (1997) patriotism is a particularly dangerous ideology, based on morally arbitrary national boundaries. Her stand on patriotism is illustrated largely through its American form. The insularity of national citizenship to which allegiance is given over and above allegiance to humanity is the source of major conflicts, and so the solution to questions such as world poverty and environmental sustainability rest with relinquishing a primary identification with nationality (Turner 2006). Nussbaum's (1997) position leaves no scope for the legitimacy of special loyalties to the nation or an ethnic group. She therefore regards any claim to community membership, even of humanity, as springing from a particular loyalty as 'morally questionable' (Calhoun 2003).

For Nussbaum (1997) failure to jettison such inward-looking associations prevents the realization of human rights. She regards such rights as the ability to fulfil a variety of capabilities, which should be an aspiration to which all governments should strive. Nussbaum lists out a set of capabilities the fulfilment of which would count as the realization of human rights. These include life; bodily health;

bodily integrity (that is freedom from assault); ability to use the senses, with freedom of expression and potential for creativity; emotional capability and reciprocity; practical reason; affiliation with others on an equal footing; co-existence with other species; play and enjoyment and control over the environment facilitated by political participation and material rights. Like Sen (1999), Nussbaum (2000) argues strongly that economic needs should not be met through the abandonment of liberty. The link between cosmopolitanism and human rights rests with her view that cosmopolitanism facilitates critical reflection on – or a narrative imagination of – our customary values and practices which enables people to empathise with others from different cultures. The meeting of common needs should not therefore depend upon sameness. Rather, they can be met differently and in different circumstances (Douzinas 2007).

Already existing cosmopolitanism

At the other end of the spectrum is the idea that cosmopolitanism is already existing, even if not fully formed – with recent internalization being more conducive to it than the critics of 'corporate-led globalization' tend to concede. The weakening of national state power, a source of complaint for critics of 'neo-liberalism' who associate national governments with welfare states and benign regulation, can be a source of inspiration for cosmopolitans for whom the state is more divisive and regressive. Held (2003) is one of the key theorists to suggest that globalization had already undermined the authority of the nation-state and that national governments could no longer be seen as the sole source of political authority. He (2003) maintains that globalization has reshaped European politics in particular over the issue of challenges arising out of governance in the new circumstances. He suggests that by doing this, he could shed light on why nationalism and statism provide inadequate political resources to meet the problems posed by a more global age. Rather, he argues, cosmopolitanism is a more apt way of framing politics today. Held sets out four cosmopolitan principles as a strategy for cosmopolitan institution building and defends his thesis against the charge of utopianism by arguing that the cosmopolitan project is already entrenching itself, that it is no longer in the imagination but is a project that is already underway.

Other authors who see cosmopolitanism as already existing include Kaldor (2001, 2003) and Beck (2006), also writing from a largely European perspective. Beck and Beck-Gernsheim (2009, pp. 25–36) argue that cosmopolitanism is already a reality, resulting from globalization and the outward expansion of social and political connections that automatically accompanies (or follows from) expanding economic and commercial ties. Beck (2006) suggests that cosmopolitanism is part of the human condition already and that it has emerged through globalizing processes including the mobility of capital, of people and human rights. It is important for Beck's (2006) argument that cosmopolitanization can be 'unwilled' as well as 'banal'. The reason it did not take root in the past is because the conditions were not ready for it (Holton 2009, pp. 50–51), even if people wanted it.

Fine (2007b, p. 2) suggests that while there are different strands within various cosmopolitanisms, they have some important core features whose common themes make this a more coherent project than terminological differences often suggest. There is common ground, in particular, over the principle of overcoming entrenched national prejudices. There is also recognition that we now live in a period of significant mutual interdependence, going beyond the purely economic. But there is, at the same time, an acceptance that economic integration will not (as the founders of the European Union and other regional trade blocs may have hoped) lead automatically to closer social and political integration across borders – deepening trade links may even cause frictions that slow the forging of complementary connections. So, finally, there is a need to create normative and prescriptive theories of cosmopolitan democracy and global justice.

Beck (2006) contends that the priority of the nation-state has collapsed already, partly because it has become too small a unit in a world of integrated markets and mass movement of people, meaning that the social sciences have no way of understanding the world so long as they hang on to methodological nationalism. Rather, he argues, we need a new methodological cosmopolitanism to ensure effective understanding of the world. In a time of insecurity generated by 9/11, there is, for Beck, the need to rekindle a currently inactive cosmopolitanism, because the changes we are currently living in are as tumultuous as they were in earlier revolutionary periods. He thus poses a stark choice between regressive multilateralism based on surveillance states or progressive multilateralism based on cosmopolitan states. While both seek security in the context of unprecedented change, it is only through human rights and international law that cosmopolitanism can be realized (Fine 2007b, pp. 8–9).

If economic integration sets up a positive force towards international consciousness and cosmopolitan values, the recurrence of political disintegration and conflict in the 'post-war' period introduces an arguably even stronger negative force. In *Global Civil Society: An Answer to War*, Kaldor (2003) discusses how European cosmopolitan values are shaping contemporary wars. She argues that our ideas about power are out of step with reality, still dating back to 1945 when war was about exerting power in the sense of reversing invasions and changing regimes. Contemporary military power is not so useful for exerting power and imposing your will on a combatant. While the destructive use of military power can eliminate divisive forces to an extent, its constructive use is more difficult. It has proved difficult to use 'hard' power to rebuild and broaden communities and institute more effective governments, as shown in Afghanistan and Iraq; and the exercise of destruction without follow-up reconstruction can easily leave power vacuums that make the situation worse. For Kaldor (2003) America cannot be powerful because of its military capability in this respect and requires a different international division to apply the alternative 'soft' power effectively to the same ends. If the US really wanted power to impose its will, it would do better (in her analysis) to do so through cosmopolitanism.

The end of the Cold War accelerated a process of – and launched a conversation about – globalization which those at the forefront of it were frequently slow to recognize. This marked a big change, Kaldor argues, in particular promoting the growth of norms against warfare and a widening of its definition (to include aggressive acts against regions or groups of people that stopped short of declared war). The new approach was instituted formally through retrospective action against the architects of war – notably trials, epitomized by Nuremberg – and prospective action to stop any recurrence of conditions for war, including the creation of supranational free-trade blocs and the negotiated dismantling of European empires. But these government-led initiatives were only part of the story, more important elements in which arose from popular action often provoked by out-of-date governmental strategies. Cosmopolitan anti-war values were evident in the growth of a worldwide peace movement which acted against the Vietnam War and later the Stop the War campaign in relation to Iraq. Waging war appears increasingly unacceptable in global civil society, even when presented as the only way to achieve humanitarian aims (such as the overthrow of brutal dictators or the aversion of famine or genocide). Distinguishing between new wars and spectacular wars, Kaldor (2003) suggests that the outcomes of military action may be political without involving the imposition of power. She suggests that the answer to contemporary conflicts – some of the longest and most costly in history – is through the adoption of cosmopolitan norms. These have become embedded in Europe and are, she argues, the path that the US should take. In Europe, one of the ways some states have strengthened themselves has been through engaging in multinational rule making, largely through the EU following its geographical enlargement in the 1990s and its deepening through successive treaties, notably Maastricht (1992) and Lisbon (2009). Cosmopolitanism in this respect resonates with the Kantian peace project, with its implications of a federation of nation-states and a permanent peace treaty. Kaldor (2003) argues that this is what she means by cosmopolitan rights, what we would now call human rights. Cosmopolitanism has retained Kant's universalistic concept and extended its remit well beyond the right of hospitality that he envisaged, embracing the right of different cultures to be treated with equal respect.

The formalization of human rights has been one of the major developments serving to convince social and political scientists of the need for a cosmopolitan 'turn' by striking a chord with the universalism of previous cosmopolitan movements. The 'human rights era' is defined by literature suggesting that globalization has generated a new discourse of human rights, which by confirming their extra-national nature allows the concept of humanity to take centre stage once again (Turner 2002, p. 46). The claim of an 'age of rights' (Bobbio 1996) is based on the proliferation since the end of the Second World War of international treaties enshrining and advancing them, backed by international courts that gradually increase their power to instruct national governments. This can be viewed as reflecting the Kantian analysis of cosmopolitical democracy and its applicability

to a world brought closer by modern telecommunications and the increasing demand of human rights. The end of the Cold War further accelerated the process by which human rights were taken increasingly seriously in international law and in international legal and political theory as well as in the popular imagination. The use of human rights to justify military intervention (Werner 2008) confirms the unprecedented power of the concept by enabling it to take over as the justification for a use of force for which traditional motives have been disowned.

While human rights were not invented in the post-war period, the age of rights cannot be understood outside of the post-war initiatives among the allied countries and the adoption of the UN Declaration of Human Rights in 1948 – a non-binding proclamation of minimal standards of treatment of citizens by their state authorities across the world (Douzinas 2007, p. 15). This was followed by the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which was adopted in 1965; the International Convention on Economic, Social and Cultural Rights (ICESCR), which was adopted in 1966; the International Convention on Civil and Political Rights, also adopted in 1966; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted in 1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was adopted in 1984; and the Convention on the Rights of the Child (CRC), which was adopted in 1989 (Hafner-Burton and Tsutsi 2005, p. 1375).

Throughout the age of rights, with its multiplicity of new conventions, charters, courts and rights organizations, human rights have been presented as perhaps the most significant sign of global progress. This often meant its taking over from earlier concepts of economic 'development', under which expansion of per-capita GDP had often been argued to take precedence over (or be a precondition for) the exercise of rights, leading to the possibility that rights could be curtailed in the interests of faster growth. The new range of 'universal' human rights, starting with United Nations initiatives, have become entrenched in regional human rights regimes through the European Convention System, the Inter-American System and the African System. Bobbio (1996) characterises the new age of rights as a significant symbol of progressive politics in Europe, which transcends the traditional political oppositions between left and right.

The 1989–1992 revolutions and their impact

The political events surrounding the 1989–1992 revolutions generated a wave of cosmopolitan optimism. For some authors, this marked the end of history, as western liberalism triumphed over alternative forms of social organization that had proved economically or politically unsustainable. For Fukuyama (1992) the collapse of communism was a triumph not only for liberal democracy but also for the attachment to universal principles of human rights. He argued that with the conflict between communism and the west now ended and Eastern Europe's new leaders racing to adopt western-style democracy and market economies, human

rights would be more meaningfully embedded. The potential for world peace and co-operation was seen to be a realistic dream with the breakup of the Soviet Union, ending 40 years of confrontation between nuclear-armed superpowers and enabling governments on both sides of the old divide to take a long-awaited 'peace dividend' from lower defence spending. The fall of the Berlin Wall and the welcoming in the west of 'liberated' easterners who streamed through this and other breaches in the Iron Curtain seemed to show Europe and America fulfilling Kant's vision of hospitality. Within 15 years, 'new member states' from the East were joining the EU's border-free Schengen Zone. With an echo reaching beyond Europe, the year 1989 was quickly hailed as ending the 'era of catastrophe', which had included such atrocious breaches of human rights as the Rwandan genocide (Fine 2006, p. 51). During the 1990s, with an increased incidence of humanitarian crises following civil and ethnic conflicts, human rights came to the fore and became a primary motive for interventions by the international community. Military intervention now reflected state power even though non-state actors had been engaged in humanitarian rights politics (Calhoun 2003); but intervention to defend and assert human rights, (re)build states and deliver economic assistance was held up as a new form of 'new liberal imperialism' (Cooper 2003),[1] fundamentally different from and possibly atoning for the old.

This optimism was not confined to popular politics but also found its way into social theory, with the lead protagonists including Beck (2002, 2006), Habermas (1997) and Derrida (1997). While these authors differ in their approaches, there is some agreement on what counts as the enemy of cosmopolitanism: narrow or rigid nationalism; neo-liberal global economics and political authoritarianism. Those who invoke the nation-state and neo-liberalism, the essence of the 'American dream', are reminded of the cost of so doing, as the dream becomes a nightmare for many (Beck 2002). In essence, cosmopolitanism stands for a celebration of the progress of global, democratic social, political and economic institutions and the spread of representative democracy and human rights. According to this narrative, the end of history is one in which cosmopolitanism, based on a respect for humanity over parochial interest, triumphs (Appiah 2006).

The optimistic case cites many broad indicators of advancing cosmopolitanism including the end of the Cold War, the breakdown of old enmities, borders and walls, and economic integration, which allows for not just the mobility of goods and services but also of people. In Europe the dissolution of borders was signalled especially through the extension of 'Schengen space' and the lure of visa-free travel as an incentive for EU membership applicants (including former Soviet satellites and Turkey) to pursue the reforms required before accession. As the west's Cold War enemies began to open up their economies, their commitment to social and economic human rights was supplemented with a commitment to western human rights, notably the right to private property and free speech, central to the European Convention of Human Rights (ECHR). The commitment was formalized as growing numbers of former communist countries became members of the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE).

Global mobility has been celebrated for opening up the mind to cultural diversity and introducing a cross-over of cultural practices, creating a mosaic from which everyone can draw. Thus, national loyalty, while still present, has been accompanied by a flourishing of multiple loyalties and ties, transnational activities, organizations and identities and the rise of non-state political actors including the anti-globalization movement (Beck 2006, p. 9). Increasingly frequent humanitarian interventions, in Iraq in 1991 and Yugoslavia in 1999, and the exponential growth in peace-monitoring operations throughout the 1990s and 2000s were also portrayed as manifestations of the progress of cosmopolitanism (Kaldor 2003, p. 134). Such interventions, despite inflicting 'collateral damage' on civilians and 'friendly fire' on combatants, are nevertheless understood as a key mechanism for the enforcement of cosmopolitan law (Fine 2006, pp. 60–61). Even the tension – highlighted more recently in Libya and Syria – between protecting citizens from their own government and harming them in the name of humanitarianism – has generally been resolved (also with a debt to Kant) by citing the benign motives of the intervention as extenuating its sometimes bloody consequences.

Human rights and cosmopolitanism

Human rights have, in many respects, become the gold standard for cosmopolitan theorists. They are frequently presented as the embodiment of cosmopolitanism, commitment to which has the potential to erode xenophobia and generate hospitality for strangers. Human rights and cosmopolitanism are integrally related (Derrida 1997), with the fulfilment of human rights obligations often viewed as affirming a transition to cosmopolitan values. For Beck and Sznaider (2006, pp. 12–13) human rights are sufficient evidence for the 'cosmopolitan moment'. Their global recognition as the basis of individual freedom provides the impulse for people to extrapolate from their own experience and to extend that respect for rights to 'foreigners and strangers'. Defence of one's own cultural identity will, instead of stoking chauvinism, spawn a defence of cultural and political variety and the culture of others. For example, the collective memory of the Holocaust (the 'cosmopolitanization of memory') is argued to have created global norms which create overlapping solidarities and underpin the spread of human rights. Cosmopolitan memory is thus a form of 'practical enlightenment'.

The progress of cosmopolitanism through globalization has created the hope, among some theorists, that human rights will be freed from their 'historical bondage to the instrumentality of sovereign national states' (Cheah 2006, p. 5). As cosmopolitanism spreads, national governments can be relieved of the role as the framer and guarantor of human rights – a role with which, on Kant's reasoning, they should never have been entrusted because of the divisions their national boundaries necessarily sow. There appeared to be a firm economic underpinning to this border-dissolving optimism. To maintain and enhance economic prosperity, nations needed to remove border controls in a way that enabled people as well as goods and capital to move across them. National restrictions became increasingly

difficult to maintain when people could move outside the nation – temporarily or permanently – to escape them. By going abroad in sufficient numbers to get the education, healthcare, ordination, marriage dissolution or termination that national laws denied them, people could force those national laws to change.

Conceptualized as post-national, universal and rooted in the Enlightenment project based on rational application of the rule of law, human rights have the potential to enshrine cosmopolitan justice; and their rise in the late twentieth century is understood, by advocates, as confirming cosmopolitan progress. Cosmopolitan law holds that states not only pursue and prosecute those responsible for violating human rights but that they do so irrespective of the national citizenship of the victim and of where the violations took place – most evident therefore in war crime tribunals (Nash 2009a, pp. 39–40). The growth of universal human rights institutions, treaties and law has thus been construed as proof of 'cosmopolitan law' – abandoning state-centred international law for the universalism of the 1993 Vienna Declaration of Human Rights, which held that human rights – civil, political, economic, social and cultural – were indivisible.

Initiated by the Nuremberg trials, international accountability for war crimes and genocide culminated in the formation of the International Criminal Court (ICC) in 2002. Today, national governments that sign up to human rights conventions can expect to be brought before a human rights court for breaching these agreements, either by other states or by private individuals. The trials at the International Criminal Tribunal for the former Yugoslavia of Serbian, Bosnian Serb and Croatian leaders or generals for their role in the Bosnia war seemed to show that national sovereignty was retreating under the weight of the international human rights regime. NATO's 1999 intervention in Kosovo, the subsequent Anglo-American–led invasions of Afghanistan and Iraq and air-strikes against Libya in 2011 further eroded the principle (traced to the 1648 Treaty of Westphalia) that governments were sovereign within their own borders. ECHR law became increasingly central to the human rights regime, evidenced by the ever-growing claims lodged with the ECtHR at Strasbourg (Greer 2006).

In seeking justice for all human beings irrespective of any particular national, cultural or religious trait and given that the vast majority of states have committed themselves to human rights agreements, human rights are, in the abstract, universal (Nash 2009a, pp. 9–10). A widely held conviction that certain basic rights (such as personal security, freedom from arbitrary imprisonment and torture and freedom from hunger) exist unarguably, regardless of social and geographical context, reinforces this universalism. The essential ideological commitment of human rights to humanity as a whole rather than any sub-group has lent credence to the view that human rights are detached from particular interests – national, regional or local – to the extent that they have been hailed as the 'glue' of post-nationalism and post-colonialism, laying the foundation for a global language forging loyalties in a post-national context (Turner 2002, p. 46). Europe, perhaps because of its earlier identification with the rise and refinement of the nation-state (Milward 2000) and its commitment to integration as a solution to Cold War and

earlier world war divisions, is presented as the region in which the cosmopolitanization of justice has been most complete. Nash (2009b, p. 1071) notes that while cosmopolitan law is unevenly spread globally, it is most developed in Europe because here the protections offered by human rights are accessible to citizens and non-citizens. Moreover, all 47 member states of the Council of Europe (CoE) have, by ratifying the ECHR, committed themselves to cosmopolitan justice.

Starting with the premise that human rights are internally contradictory because of the diversity of rights contained within them, Fine (2007b) argues that they can ultimately be rescued by cosmopolitanism. Modernity, he argues, initially operated against cosmopolitan ideas – but it was 'out of the various forms of resistance to these historical conjunctures that brought to life a more real cosmopolitanism'. This emerged from 'the anti-totalitarianism that reconstructed the idea of humanity from out of the death camps of the Gulag and the Laager' (Fine 2007). While acknowledging their imperfections, cosmopolitans assert their confidence in the capacity of today's multilateral and supranational institutions to prosecute and punish politicians, bureaucrats and military commanders who abuse their power or commit atrocities.

> Cosmopolitanism finds a home in the world through our taking our bearings from the idea of being a world citizen. Of course, there is a danger of turning human rights into an abstract ideal of global citizenship. What I want to suggest, however, is that the cosmopolitan perspective can begin to confront the radical incompleteness of human rights politically – that is, without reducing the idea of right to the logic of power, conspiracy or mere contingency.
>
> (Fine 2007b, pp. 6–7)

Revolutionary change – from below, according to the more optimistic readings of the 1989 events – was also pivotal to the rise of the new cosmopolitan movement. The revolutions across Eastern Europe, which culminated in the reunification of Germany and the breakup of the Soviet Union, introduced a decisive new energy into cosmopolitan thinking. The potential for world peace and co-operation became a realistic prospect with the lifting of the Iron Curtain, and China's drive (already under way by 1989) to create a modern economy more complementary than competitive with those of Europe, America and Japan. The image of cars streaming from East Germany to the west was also, however, understood as a graphic illustration of triumph of capitalism and social democracy over communism. When declaring the 'end of history', Fukuyama (1992) relished the irony that western liberalism had endorsed Marx's view that a world-wide community could emerge when conflict ended – but with capitalism rather than socialism winning out and obliterating class distinctions by declaring rights for all.

Note

1 Cooper, R. (2002) The new liberalism, *The Observer*, 7 April.

Chapter 3

Post-national theory, citizenship and human rights

The perceived waning significance and effectiveness of national borders and emergence of human rights as a key cause of their dissolution creates substantial common ground between cosmopolitan thought and new theories of post-national citizenship. Through the nineteenth and twentieth centuries, the concept of rights as universal came under mounting threat from the practical reality of rights as attaching to national citizenship and underpinned by nation-states. To reverse the 'nationalization' of rights and re-assert their universal application, cosmopolitans sought a new standard of citizenship and have generally found it in 'post-national' social theory.

Cosmopolitans' ascription of rights to all individuals was from the outset a challenge to past conceptions of the nation, membership of which has traditionally required particular characteristics (of culture, faith, shared history, language and/or ethnicity). The term 'nation' originally designated a group of people who were born in the same place (Hechter 2001, p. 10). Others who came to dwell among 'nationals' tended to be viewed as different from them, not necessarily to be included in their collective practices or accorded the same entitlements; and when nations became geographically dispersed through migration or expulsion, ethnicity and language were the usual criteria for continuing to identify them as one. The nation-state, a political unit whose boundaries coincided with a nation, enabled a significant modification to ideas of nationhood. It could now be assigned to all those who were assembled in the same place rather than born there – perhaps excluding some who had moved away and including some who had moved in. But in general the rise of nation-states reinforced the identification of rights with national boundaries. Cosmopolitans were left with the substantial task of re-universalizing rights, questioning their variation within and between nations by detaching them from the political operation of the nation-state.

The nationalization of citizenship emerged out of nineteenth-century warfare when state sovereignty became the foundation of the international system and national boundaries solidified just as human rights in France and the US were born. Theories of citizenship have therefore been tied to the nation for the largest part of modernity (Turner 2014). Scholars of citizenship conceptualized it as a uniquely national phenomenon along with the creation of nation-states when national

sovereignty became an overriding principle by which politics was ordered. During the second part of the nineteenth century, a citizen became defined in terms of national identity, which was premised on the notion of cultural cohesion and homogeneity. At first, this 'nationalization' was a geographical broadening, not a constriction, of citizenship rights, which had previously been identified with cities and city-states. St Paul used his status as 'a citizen of no mean city' (Tarsus) to sidestep charges under Jewish law and secure a trial under Roman jurisdiction, which rejected any death penalty for his maverick religious ideas. As towns and cities were brought together into nation-states, the rights assigned to their inhabitants were similarly integrated, but there were still restrictions for those who moved into them or lived outside their walls.

The cosmopolitan project required this broadening of the application of rights to continue so that they ceased to be differentiated among national citizenships and jurisdictions. By the eighteenth century, Enlightenment thinkers had recognized that nation-states were inimical to human rights, because they privileged a nation's citizens and downgraded or excluded the rights of others. This was thrown into painfully sharp relief by the French Revolution. The king's overthrow turned subjects into citizens, on whom the National Assembly bestowed its Declaration of the Rights of Man. Ostensibly that provided a basis for social cohesion based on standards that applied to anyone (or at least any man). But the republic, requiring a new source of unity, found it most easily in specifically French civic values and shared history. The United Kingdom, United States and later-forged nation-states such as Italy and Germany found a similar sense of national solidarity in the perception that their citizens were uniquely privileged and free.

The expanding role of national governments through the twentieth century reinforced their role as creators and guarantors of citizenship and the reliance of citizenship on relative cultural homogeneity. Additional rights delivered through welfare states – to work, adequate income, housing, support in sickness and old age – had to be linked to obligations if they were to remain economically sustainable and politically supportable. Redistributive welfare arrangements have become increasingly hard to maintain, even at times of comparatively low migration, because the net contributors feel more distanced from (and less responsible for) the plight of the net recipients and become more inclined to vote for cuts to 'benefits' that enable lower tax (Taylor-Gooby 2005). Resistance has been observed to increase further (in Europe, North America and Asia) when immigration raises the possibility of rights being exercised by people too recently arrived to have performed any corresponding obligations, especially the payment of tax towards any benefits received. In 2016 the EU conceded, as part of a 'new settlement' with the UK, the principle that

> The right of economically non-active persons to reside in the host Member State depends under EU law on such persons having sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State, and on those persons having comprehensive sickness insurance.
>
> (CEC 2016)

By implication, the increasingly expensive social and economic rights under-pinned by welfare systems of richer nation-states are only open to those who have long been citizens, who are making a sufficient contribution to 'pay their own way'. Extending the same rights to all who reside or pass through is ruled out as excessively burdensome and unfair to those who have 'invested' in the nation-state's rights provision.

The modern nation-state, emerging in the nineteenth and twentieth centuries, enforced tightly drawn borders, and national polities decided who did and who did not count as national citizens. The nationalization of citizenship thus depended upon a process of social closure whereby some groups were deemed to belong to a given nation and others were deemed outsiders. In Europe, nationalization occurred in different country-specific ways, broadly reflecting the distinctions between those born in the same place, those living in the same place and those possessing similarities of character or practice whether or not they were born in or inhabit the same place. The importance of national trajectories in shaping citizenship can be demonstrated through a comparison between France and Germany and their respective treatment of immigrants. Particular forms of social closure are evident in the different ways these nation-states enforced citizenship until recently, namely the *jus sanguinis* in Germany and the *jus soli* in France (Brubaker 1992).

T. H. Marshall was widely regarded as the most significant theorist of citizenship in the second half of the twentieth century. For Marshall (1950) citizenship comprised three core elements: civil, political and social. He attributed to these an historical timeframe suggesting that the age of civil citizenship – such as property rights – developed in the seventeenth century in response to absolutism and was institutionalized in courts of law. Important components of civil citizenship, designed to protect individuals from an overbearing and acquisitive sovereign, were *habeas corpus* (the right to go free unless lawfully imprisoned) and individual legal rights to a fair trial. Political citizenship – which included rights such as the right to vote – developed in the eighteenth and nineteenth centuries in response to the establishment of parliamentary democracy. Marshall's third phase of citizenship was social citizenship, by which he meant the spread of social rights to include entitlements to various aspects of welfare (Turner 1993a, pp. 5–6). This analysis was put forward at a time when international trade and migration were recovering after global conflict and groundwork for supranational structures (especially in Europe) in anticipation of nation-states becoming too small to stay viable as political or economic units. Nevertheless, Marshall clearly set out the parameters of modern citizenship – denoting civil, political and social rights as the key defining features of full citizenship – within the nation-state. His empirical focus was Britain with the emphasis on how citizenship evolved to form the basis of the welfare state, which had been much expanded after 1944. Despite its universal applicability, Marshall's conception of citizenship was firmly tied to nationality, namely, the right to remain within a territory or to move freely (Cohen 2009, p. 41).

Citizenship in Europe has historically been based on a nationally segregated, communitarian interpretation of human rights. Formal citizenship depended on

being a durable member of the community – speaking the language, sharing the culture, working, paying taxes and social insurance contributions and voting in elections. 'Newcomers', denied this participation, did not enjoy the same rights. This approach helped European nations build enlarged welfare states, combining contributory (national) insurance schemes and social and health services supplied according to need. But the viability of contributory systems was severely damaged by the economic slowdown of the 1970s, which caused a lasting lapse from the full employment on which national insurance was predicated and left many EU countries with particularly high levels of youth unemployment. Welfare states then received a double blow at the end of the Cold War with the disappearance of a common enemy to instil social solidarity between the system's contributors and beneficiaries. An increasing economic reliance on migration and internal labour mobility, exacerbated by the ageing of populations as birth rates fell and longevity rose, further raised the distance between those who viewed themselves as net contributors to redistributive welfare and those they viewed as net recipients. Governments came under pressure to disassemble citizenship's solidaristic supports, and formal citizenship had to change to adapt to the rise in collective claims from diverse communities (Turner 2002, p. 46).

Whereas the protection of the nation-state in the late nineteenth and early twentieth centuries allowed the development of an exclusive, nationalistic citizenship, later twentieth-century experience suggests that citizenship is substantially 'thinned' in the process of de-nationalization. The 'neo-liberal' approach to social and economic policy which promoted internationalization (through free movement of goods, services, capital and labour) simultaneously encouraged a retreat from universal rights towards more narrowly targeted entitlements (given only to those who had made qualifying contributions) and benefits (given only to relieve acute need). Global institutions such as the EU, IMF, World Bank, and GATT/ WTO imposed new constraints on national economic management after the 1971–1973 breakup of the Bretton Woods arrangements, which had maintained scope for governments to choose their monetary and fiscal policies by deliberately restricting international capital movement. Supranational organizations' effectiveness as a block to warfare for the sake of economic integration was reinforced by the integration of national military machines into collective security alliances (NATO and the Warsaw Pact). The waging of war, which depends upon 'thick' loyalties, does not sit easily with the cool loyalties demanded by global markets – diluting national citizenship even within the state, as national courts have been compelled to act as international instruments (Sassen 2002, pp. 277–280).

With globalization it has been claimed that the old nation-state–based model could no longer have a monopoly on citizenship. Citizens' loyalties are argued to become necessarily 'thinner' as their greater geographical (and perhaps social) mobility lessens their sense of identity and solidarity with those immediately around them. The thinning of loyalties is seen as undermining support for redistributive welfare, which relies on contributors viewing recipients as part of the same community, whose members collectively benefit from the transfer. Faced

with the dissolution of the Soviet Union, the globalization of the economy and of culture and communications, mass migration and the reconstruction of human rights institutions and discourses, social and political theorists began to reinvent citizenship, which could broadly be contained within the umbrella of post-nationalism (Turner 2014). Far from lamenting the decline of the post-war welfare consensus, the re-inventors were inclined to celebrate the demise of what were viewed as the negative aspects of Bretton Woods and post-war welfarism: the restricted international mobility of capital and labour, the stifling of entrepreneurialism and work incentives by high taxes to finance 'universal' benefits and the fuelling of nationalism by national welfare states. The changes leading to 'post-nationalism' triggered more optimistic takes on citizenship, as the new forms were seen to be more in tune with minority cultures and the rights and identities of immigrants. New forms of citizenship did not, it seemed, have the harsh exclusionary contours of the nation-state–based forms and were presented as having an affinity with human rights.

The intellectual opposition and tension between citizenship as a national identity and citizenship as a human identity lies at the heart of the shift towards post-national theories of citizenship (Turner 1993b). Modern citizenship theory suggested that we needed a battery of new concepts and approaches to citizenship to understand migrants who enjoy only limited rights in a global labour market. With the various developments associated with globalization, social theorists began to question whether the conception of citizenship as a national category had ongoing analytical validity when the world seemed to be changing so fast. It was suggested that to grapple with these issues, new concepts such as notions of post-national sovereignty were needed (Turner 2012). Such a context, it was thought, could no longer sustain nationally bounded conceptions of citizenship. Hence, a new trend emerged which involved jettisoning the nationalistic conceptions of citizenship that previously dominated political and social theory.

Previously defined as a static status, conferred by public authorities on individuals who passively received it, citizenship has recently been reconceptualized in a more active way, with the emphasis on claims-making rather than national membership (Isin and Nielsen 2008). Whereas 'national' citizenship had been negotiated by governments or international colloquies, rigidly defined in formal conventions and imposed from the top down on necessarily passive publics, post-national citizenship could be generated from the base up by an active citizenry and continually changed or renegotiated as its composition and aspirations changed. For Isin (2008, p. 16) there has been an intensification of struggles over citizenship because of the flux created with global movements of capital, labour and people. This, he suggests, deserves a new theorization in terms of *acts* of citizenship. The emphasis is on deliberate and calculated acts, recognizing a need to move away from the current emphasis in citizenship which focused primarily on routine actions or the habitus of citizenship. Acts of citizenship relevant to this new conceptualization might include, for example, the Montgomery Bus Boycott in 1955 or the hunger strike of British suffragette Marion Wallace Dunlop in Holloway

prison in 1909 when she was refused the status of political prisoner (Isin 2008, pp. 16–17). Acts of citizenship for Isin (2008) needed to accomplish some sort of rupture or change, thereby distinguishing themselves as fundamentally different from actions of citizenship which might be routinized.

Post-national citizenship

In Europe, the rise of human rights has – from a cosmopolitan viewpoint – been connected with the decline of national-based citizenship and its replacement with post-national, de-nationalized and disaggregated citizenship. The obverse side of this is the broadening and 'thickening' of rights defined at the supranational level and enforced by supranational courts which can override national policies and judgements on right-related matters. The shift in rights entitlement from the nation to supra-national bodies such as the European Court of Human Rights (ECtHR) is the cornerstone of post-national theory (Soysal 1997, 2000).

For example, Turkish immigrants in Germany who do not have citizenship are protected by European-level institutions, such as the ECtHR. Changes to German nationality law in 1990 and 2000 recognized the entitlement to nationality of long-standing residents who had made an economic contribution (Hailbronner 2012). According to Soysal, that nation-state–based conception of citizenship has become increasingly redundant, and theorists of citizenship needed to 'catch up with the changes in the institutions of citizenship, rights and duty', because existing models of citizenship no longer fit reality (Soysal 1994, p. 393). It is not enough, from this perspective, to conceive citizenship in terms of a territorially bounded population with a specific set of rights and duties. The reasons, in Soysal's view, for their growing ineffectiveness were twofold: first, post-war immigration, which has undermined the nation-state model, and second, the way in which individual rights have increasingly been couched in terms of human rights at the transnational level. While national boundaries may be tightening, she argued, alongside this was the paradoxical development by which previously exclusive citizenship rights were being given to non-citizens, a prime example of which were Turkish guest workers in Germany.

For Soysal (1994) this process of internationalizing citizenship is closely tied up with the rise of human rights. In particular, she notes that national citizenship has become subordinated to the 'logic of personhood', based on a tension between nationally differentiated treatment of the individual and universal human rights. Critical for Soysal (1994, p. 164) is the way rights and obligations which were previously located in the national sphere have, with the rise of human rights, been shifted to what she calls the universalistic plane, transcending nation-state boundaries. This represents a reversal of the situation regarding the Declaration of the Rights of Man, which were integral to national citizenship. In contrast, Soysal argues, human rights today have undermined national identity and have been universalized and legitimized by the transnational level through an interruption of the state's closure of nations. The human rights that were once connected

integrally with the rights and privileges of national citizenry have become globally sanctioned norms and components of a supranational discourse. Delanty (1997, p. 294) observes that:

> Soysal's (1994) model is largely based on human rights: the rights of individuals previously codified in national constitutions, are increasingly being deterritorialized and the resulting globalized discourses of rights is moving in the direction of a post-national order of the rights of personhood. The upshot of this is that the distinction between citizenship, as the domain of particular rights, and human rights, as the domain of universal rights, is increasingly blurred.

This disconnect has opened up opportunities for the extension of rights to non-citizen immigrants. Studies of citizenship which focus on the nation-state, Soysal (1994) argues, prevent researchers (and policy makers) from seeing the implications of global processes such as immigration, which compels us to accept the dichotomies of citizen and alien, native and immigrant – rendering invisible new modes of inclusion and exclusion. It is no longer appropriate to see national belonging as the legitimate basis of membership. Soysal (1994) therefore urges us to go beyond what she calls 'nation talk' which so overwhelmed the popular and political rhetoric of the time. Post-national citizenship (Soysal 1997, 2000) suggested that citizenship was evolving through the growing trend of political actors operating across borders and appealing to supranational institutions such as the United Nations (UN) and the ECtHR. In this vision, political activism was increasingly centred around universal rights and politics with a 'global dimension' (Sassen 2002, pp. 281–287).

For Soysal (1997, pp. 513–524) even 'state-less' communities no longer depended on national citizenship because they could access supranational organizations such as the UN or the Council of Europe for protection of their rights. For example, Turks in Germany without German citizenship could still benefit from *de facto* citizenship through associations that organize access to welfare and education as well as political activities hinging on human rights (Soysal 2000, pp. 1–5). Palestinians used the United Nations and its agencies to secure humanitarian assistance and refugee relief and to fly their national flag during decades when their statehood had no formal recognition.

These developments reflected what Soysal (2000) has described as the two paradoxes of citizenship, reflected in critical developments within European diasporic cultures. Paradox one is a decoupling of rights and identities (key to citizenship). Paradox two is a tendency towards particularistic claims in public spheres and their legitimation through universalistic discourses of personhood. For Soysal (2000) these developments are rooted in post-war transformations that have subsumed the national. Citizenship has become detached from the nation-state to incorporate the local and transnational too. Turkish immigrants in Berlin, for example, make use of the city's authorities. Pakistani immigrants in

Britain have mobilized around a Muslim identity, for example when they make a claim for teaching Islam in state schools, but resort to the universalistic language of human rights within which to couch their particular claims – sometimes by claims-making to the ECtHR.

With respect to the first paradox, Soysal (2000, p. 5) says that 'Rights that were once associated with belonging in a national community have become increasingly abstract, and legitimated at the transnational level'. This has intensified with the breakdown of the link between rights and duties and identity rooted in national status such that citizenship is no longer confined to membership of the nation-state. 'What are considered particularistic characteristics of collectivities – culture, language and standard ethnic traits – have become variants of the universal core of humanness or selfhood' (Soysal 2000, p. 6).

> While rights acquire a more universalistic form and are divorced from national belonging (thus giving rise to more inclusionary forms of membership), at the same time, identities become intentionally particularistic and exclusionary practices (on the basis of identity) prevail. And this we observe in the increasingly restrictive immigration policies of European countries, the vocalization of ethnic minority and religious groups for cultural closure . . . So more inclusionary forms of rights clash with more exclusionary practices of identity.
>
> (Soysal 2000, p. 7)

European integration is said to have eroded the 'national monopoly on rights and practices of citizenship' and paved the way for European citizenship through the transfer of rights across EU member countries. Europe has been forced by economic and geopolitical-security pressures to transcend its national borders by removing barriers to the cross-border movement of people, capital, goods and services (Milward 2000). It has become impossible, according to cosmopolitan theorists, to internationalize markets and level the 'playing field' for cross-border business without also internationalizing the social sphere and creating a level playing field for citizenship, allowing rights held under one country's cultural or legal system to be upheld in another's. In effect, in internationalizing the rights of corporations (as 'legal persons') – including the right to draw on migrant labour – in order to attain economic benefits, EU members opened the door to internationalizing the rights of individuals (as 'natural persons') without necessarily making the same calculation regarding social benefits. 'European citizenship', while not having the same 'depth' as traditional national citizenship, nevertheless confers a set of legal rights to European citizens, which includes the granting of rights to culturally specific groups, such that the state's duties have been stretched to include individuals as members of groups rather than just individuals (Tambini 2001, p. 201), with specific implications for Council of Europe (CoE) member countries.

Denationalized citizenship

While post-national citizenship appeals to institutions outside the nation, denationalized citizenship refers to the 'disruption' of national citizenship. Disruption can arise from national institutions having to answer to international authorities and civil actors making appeals to universal human rights principles *within* national courts (Sassen 2002). The 'decoupling' of traditional citizenship from national status has, it has been suggested, had an impact on the making of claims in the public sphere, leading these to be mobilized in universal terms even when centred on particular identities. A collapse in the public/private divide was evident, for example, in calls to take minority religious practices out of the private realm and into the public. This political change was attributed to shifts in the ethnic and religious composition of Europe, the rise of human rights, the emergence of cultural rights, the right to self-determination and the breakdown of national sovereignty (Soysal 2000). At the national level, citizenship has thus been 'denationalized' to the extent that cosmopolitan norms, expressed in human rights, have intruded into the national sphere, compelling national courts (as well as other areas of life) to take account of the universal principles of Europe's human rights institutions (Sassen 2002).

Sassen (2002) argued that globalization involved two key transformations which theories of citizenship would have to recognize. First, external pressures led to changes in nation-states' activities and institutions, usually resulting in more convergence and harmonization between them – involving, for example, economic privatization and deregulation and the growth of international human rights. Second, there was a movement among grass roots actors – forming cross-border networks (greatly helped by the Internet and social media) or engaging in political projects centred on human rights or environmentalist concerns. On the basis of changes associated with globalization, Sassen (2002) sets out to challenge the way most theories of citizenship conceptualize it as bound to the nation-state. She wants to dislodge the idea that citizenship needs to be or can any longer be national. In doing this she aims to expose the historicity of the scholarship on citizenship, arguing that the conditions that underpinned this scholarship no longer have primacy, although there has not been a complete detachment between citizenship and the nation-state.

The economic changes associated with globalization have, as depicted by Sassen (2002), largely weakened the nation-state and the power of its governments to deliver distinctive, enriched forms of citizenship. The increased mobility of large companies and entrepreneurs has put downward pressure on tax rates, making it harder to finance the redistributive welfare systems that expanded after 1945. Growing voter preferences for lower taxes have worsened the erosion of revenue at a time when the costs of welfare provision are rising due to ageing populations, rising expectations and difficulty raising public-service productivity. The privatization of state enterprises, designed to boost their efficiency and contain the

growth of public debt due to chronic budget deficits, further reduces national governments' scope to manage the economy or directly provide employment. At the same time, governments have come under increasing pressure to observe international standards, notably through the rise of the international human rights regime.

Simultaneously, Sassen (2002) argues, there has been an emergence of multiple actors who no longer automatically identify with a nation as represented by the state. New communities have been established, facilitated by new media, which target the state with claims about their interests. These claims may be professionally based (as structural change expands the scale and influence of professional jobs) or issue based, particularly relating to human rights and to an environmental agenda that increasingly bears on human rights. Post-national theories of citizenship have been bolstered by developments outside the nation-state, which extend well beyond the EU to include a 'reinvigorated cosmopolitanism and a proliferating of transnationalisms' (Sassen 2002, pp. 277–278). The practices of citizenship are, in short, no longer confined to the boundaries of the nation-state. While it might remain an important site for the enactment of citizenship, the state no longer has the monopoly over it.

A second development identified by Sassen (2012) has affinities with post-national transition but needs to be distinguished from it – namely transformations within the nation-state that appeal to international practices or institutions. These appear when, for example, national courts use international instruments or a national parliament adapts its legislation to transpose an international agreement. This is a distinctive 'denationalization' which, Sassen contends, post-national scholarship has either overlooked (as it takes place inside the nation-state) or uncritically incorporated into the post-national framework. Sassen (2012) prioritizes 'deborderings' in support of her general argument about post-nationalism and denationalization. While walls and borders continue to be heavily policed, and governments may ostensibly have stepped-up 'border security' in response to perceived terrorism and immigration threats, the general underlying trend is one of greater openness – either forced on the nation-state by internal and external pressures or conceded to prevent those pressures from building up. Two particular processes are identified as having 'chipped away at' state sovereignty and the state's control of its borders. One is the change in state sovereignty itself, becoming decentred and partly denationalized, for example through World Trade Organisation (WTO) obligations or Human Rights law. The second consists of new bordering capabilities that produce bordered spaces across national borders, namely, the construction of transversal sites (Sassen 2012, p. 118) in which two or more dividing lines are intersected and, by implication, joined.

Sassen (2002) thereby identifies a critical relationship between human rights and post-national citizenship, which has become central to wider cosmopolitan thought. Interpreted this way, 'the growing prominence of the international human rights regime has played an important theoretical and political role in strengthening post-national conceptions even as it has underlined the differences between citizenship rights and human rights' (Sassen 2002, p. 280). Her analysis suggests

that novel ways of looking at citizenship, even if it remains formally nation-based, require that it be given a substantially wider definition and an acknowledgement of emerging mechanisms that will create further variations and international extensions. These developments open the way, at least in principle, for national governments to concede the new reality by relinquishing exclusively national control of the ways in which citizenship rights are defined and enforced.

Disaggregated citizenship

Just as past centuries' 'nationalization' of citizenship meant a scaling up (from city or regional level) as well as a scaling down (from international level), those who identify a contemporary 'denationalization' of citizenship find evidence in downward as well as upward transfer of rights from the nation-state level. Unshackling from the nation-state is also integral to disaggregated citizenship, which involves the opening up of sub- and supra-national spaces for democratic activism (Benhabib 2004, p. 3). Examples of this process are again drawn heavily from European experience. Thus for Benhabib (2005, p. 14) citizenship rights have become disaggregated as a result of complex developments across the EU. Citizenship rights have been, in her account, transformed by a two-tiered system of membership arising (by accident or design) from the succession of treaties that have widened and deepened the EU structures since the early 1990s. As a result of these, EU citizens resident in countries other than that of their nationality have rights – including voting rights – that are denied third-country nationals. Rights have therefore been disaggregated along a number of axes in the EU. Disaggregation has occurred primarily because of the new human rights regime which provides scope for rights of third-country nationals. Its consequence is that people no longer need to be a citizen of the country where they are resident – permanently or even temporarily – to have access to a widening range of social rights.

Benhabib (2005, p. 14) identifies six axes for this disaggregation. First, the entitlement to civil and social rights is no longer dependent upon citizenship status alone. This is because human rights regimes and other supra- and sub-national legislations have been incorporated into national law, applicable to all residents regardless of citizenship status. Second, resident aliens (including refugees and asylum seekers) are no longer straightforwardly excludable but occupy a status between legality and illegality. Some may have social rights, for example access to health care, and others might qualify for certain benefits despite being illegal migrants who are denied rights and benefits. Third, entry conditions into member countries of the European Union are defined by the national legislatures of member states within the limits set by common EU guidelines and the Geneva Convention on the Status of Refugees. Fourth, because entry conditions are still determined by individual states, the status of third-country nationals is subject to considerable variation across individual EU borders – rights of mobility, domicile and employment not yet being given a Union-wide definition, so that in this respect the extension of civil rights to third-country nationals remains incomplete.

Fifth, throughout the EU a decoupling of national and cultural origin from the privileges of political membership is visible: European Union citizenship makes it possible to vote and run for and hold office in local as well as Union-wide elections for all EU citizens, but this is not extended to third-country nationals, whose entitlement to political rights remains attached to their national and cultural origins. Sixth, some European countries (such as Denmark, Sweden, Finland and the Netherlands) do allow third-country nationals to participate in local but not regional or national elections (Benhabib 2005, p. 15).

Contemporary globalization is, according to Benhabib, critical to the disaggregation of citizenship. This is therefore a signal of the deterritorialization of citizenship, which has the potential for triggering cosmopolitan citizenship. 'Disaggregated citizenship permits individuals to develop and sustain multiple allegiances and networks across nation-state boundaries, in inter-as well as transnational contexts. Cosmopolitanism, the concern for the world as if it were one's polis, is furthered by such multiple, overlapping allegiances which are sustained across communities of language, ethnicity, religion and nationality' (Benhabib 2002, p. xxx). The disaggregation of citizenship is, moreover, considered to be an indicator of cosmopolitan human rights norms through which such citizenship rights might be realized. Cosmopolitan theorists have consequently extrapolated from these observations of shifting citizenship boundaries, especially in Europe, to anticipate (and argue for) the emergence of a citizenship that retains the elements built up under nation-state tutelage breaking through the borders on which this previously relied.

Cosmopolitan citizenship

The idea of cosmopolitan citizenship or world citizenship first appeared in Ancient Greece in the fourth century BC, when the city-state *polis* and civic virtues associated with it were in obvious decline. The cynic philosopher, Diogenes, called himself a citizen of the world because he believed the *polis* no longer had first claim upon the individual's political allegiances. In Diogenes's thought the idea of world citizenship was used to criticize the polis rather than to develop some vision of a universal community of humankind. European Enlightenment thinkers like Kant used the concept of world citizenship more positively to promote a stronger sense of moral obligation between members of separate sovereign states.

(Linklater 2002, p. 317)

Kant is widely recognized as the first major political philosopher to use cosmopolitan citizenship to challenge exclusionary sovereign states. In so doing he drew upon the stoic conception of the equality of all human beings as exemplified by Cicero's claim that since 'we are all subject to a single law of nature . . . we are bound not to harm anyone'.

(Linklater 2002, p. 322)

Cosmopolitan citizenship differs from post-national theory because it does not depend on the erosion of national sovereignty. Rather, it refers to 'the reclaiming and the repositioning of the universal – its iteration – within the framework of the local, the regional, or other sites of democratic activism and engagement' (Benhabib 2004, pp. 23–24). Minority groups have contributed to the cosmopolitanization of citizenship in Europe through their 'democratic iteration' of cosmopolitan norms, translated into law. Democratic iterations are 'complex processes of public argument, deliberation and learning through which universalist right claims are contested and contextualized . . . throughout legal and political institutions as well as in the public sphere of liberal democracies'. They become 'jurisgenerative politics' in which people cease to be mere passive subjects of laws but also become their 'authors' (Benhabib 2004, p. 177). Illegal migrants to the US appear to have achieved similar jurisgenerative changes, supplementing their economic contribution with political demands in such a way that successive administrations (Republican and Democrat) grant amnesties that effectively transfer citizenship. More than half a million illegal immigrants used President Obama's 2012 amnesty to secure rights that led to their 'being granted work permits and Social Security numbers, opening the door to government benefits ranging from tax credits to driver's licenses' (Dinan 2015).

Benhabib (2004) has developed the argument that citizenship itself is now becoming cosmopolitan through developments in human rights, especially within Europe, a process accelerated and strengthened by widespread and long-term migration. Her analysis implies that citizenship is now becoming cosmopolitan because universal human rights are not just moral norms; they are being translated into positive law that is binding on states, especially in relation to legal and illegal citizens. For Benhabib the democratic iteration of cosmopolitan norms of human rights within democratic societies alters national law to conform with universal principles of international law (Nash 2009b, p. 1068), a prospect that national governments may dislike but can do little to control.

Cosmopolitan theorists argue that, before this iteration, 'sovereign communities repeatedly invoke the language of ethical universalism to demonstrate their allegiance to purposes beyond themselves, but all too often override obligations to humanity without adequate moral justification' (Linklater 1998b, p. 24). The contradiction becomes untenable because non-citizens can mobilise around the universalist rhetoric, challenging the exclusions which national governments and courts impose in practice through their national definitions of citizenship. 'Cosmopolitan citizenship is used to challenge a deep moral contradiction at the heart of the modern state. It is used to remind citizens of the unfinished moral business of the sovereign state and to draw their attention to the higher ethical aspirations which have yet to be embedded in political life' (Linklater 1998b, p. 24). The concept of world citizenship is wrested from abstract philosophy and put to work on the very practical task of overturning the injustices arising from nationally differentiated citizenship in a world of internationally shifting populations. People who have recently arrived in a community, often drawn by its professed adherence

to human rights and other universal norms of decency and fair treatment, can use their predicament to rally those around them against 'the false supposition that the interests of fellow citizens necessarily take priority over duties to the rest of the human race; [cosmopolitan citizenship] is a unique device for eliciting their support for global political institutions and sentiments which weaken the grip of exclusionary separate states' (Linklater 1998b, p. 24). Linklater and others who develop this insight acknowledge their philosophical debt to Kant but trace the force of their argument to contemporary political events and new social theories that strengthen the foundation of cosmopolitan citizenship. This moves beyond mere compassion towards outsiders and encompasses new means and incentives for creating universal frameworks of communication. Dialogue on equal terms between members of a community replaces top-down instruction from lawmakers and governments so that coercive allocation and restriction of rights – inseparable from the battle-forged boundaries of the nation-state – gives way to a negotiated form of citizenship which, more consensual in origin, is inevitably more inclusive in application.

These new theories of citizenship, advanced immediately after the dissolution of Cold War divisions and consequent widening and deepening of European Union institutions, shared the optimism of cosmopolitan theorists. It is thus claimed that Europe has been pivotal to the protection of minority rights, including those without formal citizenship, through access to supra-national organizations such as the ECtHR and through the entry of rights-based principles in the national sphere and other regional or local fora. At the national level, citizenship has thus been denationalized to the extent that cosmopolitan norms, expressed in human rights, have broken through into the national sphere, compelling national courts (as well as other areas of life) to take account of the universal principles of Europe's human rights institutions (Sassen 2002).

Proponents of post-national and cosmopolitan citizenship forms have referred to the rise of claims-making among European Muslims to support their case. The 1989 *foulards* affair has been cited as the watershed trauma that kick-started cosmopolitan citizenship. This signified a growing trend towards communitarian ethnic politics among French Muslims. The affair developed when three Muslim girls, two of Moroccan descent and one of Tunisian descent, insisted on wearing their headscarves during classes in their public-sector school in the commune of Creil. The head teacher responded by expelling them from the school. The affair created a significant political controversy across France, generating a divided national crisis. The controversy exposed the divisions between 'hard-core' secularists and more tolerant ones and a division between those who condemned the wearing of the scarves as an unacceptable expression of aggressive religious particularism and those who saw it as an expression of the right to difference (*le droit à la difference*) (Feldblum 1993, pp. 52–53).

The *foulards* episode transformed itself from being a specific case about the three schoolgirls to reviving existing controversies, of which four stand out as having lasting significance. The first concerned the definition of secularity and freedom of religion in the country's public-sector school system. The second was

the question of women's equality, hinging on the division between those who saw the headscarf as a sign of women's subordination and those who stressed women's right to choose to be different. The third was the fear of fundamentalist Islam, for which the scarf is an evocative symbol. The fourth issue revolved around the integration of immigrants – especially those of North African origin – into France (Feldblum 1993, p. 61) and whether the strict 'integrationism' the country had traditionally pursued served it better than the more relaxed, diversity-tolerant 'multiculturalism' pursued in some other EU countries. The timing of these debates was not accidental. They reflected a reinforcement of the French government's reaction to the increasingly popular anti-immigration stand of the far right and attempts to steal its ground (Scott 2007, p. 21).

Following the 1989 affair there was a succession of similar controversies in 1994, 2003 and 2004 when the French government claimed that the Muslim veil violated French republicanism. While France is the principal arena for banning the headscarf, other countries have become part of this trend too, including Turkey until recently. Other EU countries debating the ban included (by 2016) Belgium, the Netherlands, Spain, Italy and Bulgaria. Despite the seriousness of the ban and the debates generated by the headscarf, the controversies are mainly of symbolic significance. Muslims are a minority in all EU member states and other European countries apart from Turkey. The actual numbers wearing the headscarf or other forms of veiling are very low in all EU countries. Just before the 2004 ban in France, for example, only 14 per cent of Muslim women polled wore the *hijab* despite 51 per cent of them saying they actively practiced their religion (Scott 2007, p. 3). The headscarf's symbolic significance, given the small number of women who wear it, rests with, among other things, old ideas about Islamist politics and the clash of cultures: all sorts of dichotomies which do not reflect the complexity of European Muslim geopolitics in Europe.

European Muslims have responded to legislative clampdowns on the *hijab* by mobilizing against the ban, adopting human rights language, arguing that wearing the headscarf is a 'natural right' of individuals to manifest their religious identity in public (Soysal 1997, pp. 512–518). From a cosmopolitan perspective, Europe's Muslims are appropriating universal frameworks to defend particular practices associated with religious freedom. In practice the French case divided Muslims as well as the majority population, with almost half agreeing that the headscarf should not be worn at school (Scott 2007, p. 26). Nevertheless, the 1989 debates marked the start of ethnic politics as a form of political mobilization by France's Muslims, who are largely of North African origin. This was the start of a communitarian form of politics by the country's largest minority, whereby the scarf came to be seen as a marker of ethnic identity as well as religious identity and the arrival of the *beur* vote (Feldblum 1993, p. 52).

Problems with post-national theories of citizenship

Post-national approaches to citizenship depend on an understanding of citizenship as having moved on a historical trajectory, from being based on the city in

ancient Greece to national citizenship (associated with the rise of the Westphalian system) and then on to post-national forms. The ancient Greek is preferred to the ancient Roman model because it is multi-national, not just transnational. While St Paul could use his Roman citizenship to be tried by Romans under Roman law, escaping the wider charges and coarser punishments of Jewish law, a true multi-nationalization would confer Greek citizenship rights on all, regardless of residence or location. This way of understanding how citizenship developed is useful for providing an historical account of its different phases.

However, the inevitability of the conclusion – that we now live in a world of various forms of post-national citizenship – is misplaced when viewed against wider historical evidence and the practical consequences of the human-rights mobilizations which cosmopolitan theorists have highlighted and celebrated. Even when, historically, national citizenship was invented and cemented, there were hangovers from the past city-state era – for example in Italy and Germany, whose federalism means that city and regional identities remain very strong. Post-national forms of citizenship are intellectually teleological and out of touch with recent political and legal developments, as the following chapters will show. In Europe, this is partly a consequence of structural features of the international integration project and political motivations behind it, which – because rooted in ongoing national interests – cosmopolitan analyses have tended to leave out of account. It is more plausible to argue that supra-national projects, such as the EU one, restored national sovereignties (and citizenships) rather than laid the foundations for any realistic federalism or multi-national citizenship (Milward 1992).

There is a need to explain why European citizenship has not essentially been realized. The EU has, instead, reinforced national citizenship. Milward's observation of the way in which Europe re-invented the nation-state, although confined to the pre-1989 period, highlighted factors that render national governments and borders enduringly powerful and remains a necessary counterweight to the inferences made about more recent internationalizations under the EU legal framework. The EU can only persuade member states to surrender any sovereignty (to the Commission) by ensuring they get additional benefits so their net national sovereignty expands. When member states think Brussels has acquired any power from them, they demand re-negotiation to regain it – a tendency brought to the fore when the UK negotiated a roster of 'special status' concessions to national sovereignty at the start of 2016, in advance of a referendum on whether to continue its 43-year-old membership. The European Economic Community (EEC), which UK 'eurosceptics' held up as the acceptable limit of international integration, was based on a division of labour between the European level, which was responsible for economic market integration, and the member state level, which was responsible for social welfare. It was closer to an intergovernmental confederation than to the federation which euro enthusiasts believed would lead to 'ever-closer union'. The sympathetic hearing received for the UK's renegotiation demands and the defensive reaction from the European Commission highlighted the extent to which European states still harboured dissent from the mainstream

federalist views on European integration, as a goal-bound project towards a European federation. European integration began, as Milward (1992) noted, not as a federal project but as part of a re-assertion of the war-damaged nation-state. This remained the foundation of the Bretton Woods design for post-war international governance – specifically designed to preserve national governments' control over economic and social policies. The Cold War amplified its importance for maintaining national unity, ensuring prosperity and the legitimizing delivery of welfare policies (Strath 2011).

In a fairly explicit rebuff to political theorists who had tried to de-nationalize his 'Theory of Justice' (Rawls 1971), turning it from a community-bounded into a cosmopolitan prescription, Rawls (1999) sets out principles under which global interaction is intermediated by the nation-state, whose shared history, culture and social arrangements binds its people together while clearly differentiating them from those in other states. Rawls's 'Law of Peoples' deliberately echoes the title under which Emer de Vattel had presented his 'society of states' two centuries earlier (Beitz 2004, p. 16). Rawls's principles establish that so long as all peoples have a set of institutions that enable citizens to lead decent lives, any global inequality that might remain is not morally troubling' (Brock 2015). The inequality that may legitimately arise between people in different nation-states applies to rights as well as (economic) resources, since countries with national governments may find different (incommensurable) ways to resolve the conflicts that arise when interdependent people exercise a variety of rights, as well as of delivering the resources required for a decent life at very different levels of average income.

The ultimate test of the extent of 'post-national' citizenship rights is not the claims that they enable people to make but the extent to which those claims are upheld when tested in national or international courts. The empirical studies that follow suggest that, when European citizens make claims citing universal rights or international conventions, these claims are systematically rejected, and the cases are passed back to the particularistic judgement of national courts. Just as the creation of an international market required the re-assertion of state sovereignty over commercial laws and regulations, the internationalization of society requires a re-affirmation of national sovereignty over individual rights and obligations. Borders matter more, not less, as increasing numbers of people move across them and settle beyond them. When theoretical ideas about new, internationalized forms of human and social rights are confronted with the relevant legal practice, very different interpretations of citizenship emerge, especially in Europe and North America, where post-national thinking has mainly been forged.

Chapter 4

The rise of human rights activism

Discussions of the politics of European Muslims tend to focus on the attraction of a small number of extremists, especially young males, into radical politics. This focus on 'Islamism' sharpened following the series of terrorist attacks in New York (2001), Madrid (2004) and London (2005) and other incidents such as the murders in the Netherlands of anti-immigration politician Pim Fortuyn (2002) and filmmaker Theo Van Gogh (2004) and the controversy in Denmark over the 2005 publication of cartoons of the Prophet Mohammed. In the UK, fears of radicalization were fuelled by the Glasgow Doctors' plot (a 2007 attack on Glasgow Airport for which prime suspects were National Health Service doctors), protests in 2009 against a British soldiers' homecoming parade in Luton and the 2013 murder of a soldier outside a barracks in south London. The tracing of terrorists who struck twice in Paris in 2015 to the Brussels suburb of Molenbeek added to fears that 'no-go' areas of some European cities had become hotbeds of Islamic radicalism. By then, the fear resonated strongly across the Atlantic, where 9/11 had been followed by smaller-scale but comparably shocking terrorist incidents including the 2013 Boston Marathon bombing and 2015 shootings in San Bernardino, California. In December 2015, Donald Trump jumped back into the lead of the Republican presidential nomination contest with a call for all Muslims to be banned from entering the US until the causes of their discontent with its way of life were more fully understood.

Incidents such as these have enabled some political parties and media outlets to encourage a popular perception of a new 'enemy within': 'home-grown' Muslim terrorists, who react against the society around them and their western home country's interventions in the Muslim world. The impression of an unassimilated, subversive element was reinforced after 2013 by increasing numbers of European and North American Muslims joining Islamist rebel groups (notably Islamic State or ISIS/ISIL/DAESH) in Syria. People returning from Syria after fighting there, or joining the large refugee exodus from Syria that escalated during its civil war, became further targets for suspicion of terrorist sympathies. It was recently reported by the Metropolitan Police Commissioner in London that five British citizens are joining ISIS every week, and the number in Europe as a whole is thought to stand in the thousands.

Radicalization and militant Islam

Radicalization has often been traced to social exclusion, poverty and the dislocations associated with globalization. These arise from discrimination and racism against 'settled' populations of minority religion, ethnicity or culture, as well as the difficulties experienced by those newly arriving as refugees or economic migrants. Exclusion and poverty are also, however, the roots of peaceful protest and political or legal activism which stop short of any violence or confrontation. There has been considerable effort to distinguish analytically and treat separately in practice legitimate mobilization using legitimate channels of dissent and illegitimate radicalization which crosses a boundary into violence and intimidation. Non-mainstream religious views, especially those founded on the view that the conventional faith has become complacent and compromised, are among the suggested factors that can trigger this step into extremism.

The radicalization of young, European Muslims has been attributed to separatist politics informed by Islamic ideology such as Saudi-based Salafism (Kepel 2004; Roy 2004). There has been talk of a 'wave of Islamization' in Europe (Esposito 2003; Hussain 2003). A number of reasons have been advanced for European Muslims being particularly vulnerable to radicalization and to social conditions that promote it. These include slow economic growth, especially in the public-debt-constrained Eurozone countries and the Balkan periphery; high levels of educational attainment which worsen the mismatch between capability and job prospects; clustering in deprived urban centres, which creates a sense of solidarity in adversity; and a shortage of 'local' imams, resulting in exposure to visiting (especially Arabic-speaking) religious leaders who are less attuned to European social norms and more inclined to transmit the sense of injustice felt by Muslims in ex-colonial, war-afflicted Middle Eastern or South Asian locations. European Muslims may be vulnerable to a double alienation – feeling displaced from an ancestral homeland (often due to conflict or economic constraint that can be traced to European colonial action) but not fully integrated into their new home country because of labour-market disadvantage, discriminatory attitudes and a still visibly Christian culture in most parts of Europe.

For those who take it seriously, radicalization conjures up an image of young European Muslims intent on destabilizing the liberal democracies in which they live and undermining what are regarded as essentially European values of tolerance and openness. This openness, and an inclination towards 'multiculturalism', is in turn held responsible for fuelling an upturn in Islamic radicalism, especially under governments that are constitutionally weak or struggling to address severe social problems (such as Bosnia-Herzegovina and Albania). Ironically, multiculturalism and democratic institutions may make it easier to pursue a radicalized vision of Islam from a European base than from more repressive regimes with majority Islamic regions. Such a vision is less likely to be pursued by legal means and more likely to become a militarized and coercive project, in countries where the rule of law is weak and corruption widespread.

The appeal of contemporary Islam and literalist movements such as Salafism is tightly bound up with the cultural disruptions and dislocations that characterize situations of migration in a globalizing world, making uprooted people susceptible to simplified and fundamentalist forms of Islam that are not connected to particular cultural backgrounds (Eisenlohr 2012, p. 8). Recent converts to Islam, who interpret other Muslims' adaptation to their (non-Muslim) surroundings as a dilution or desertion of their faith, have often been involved in the incidents that grab most attention in the US and Europe. The comparative youth of most of those at the centre of these attacks also evokes two aspects of a generational divide. Younger people (especially males) have often struggled to find remunerative work, even after attaining qualifications, due to perceived discrimination and a depressed labour market (especially after the global downturn of 2007–2008). Partly inspired by this negative experience, younger people with immigrant family backgrounds have often sought to re-connect with the culture and religions that their parents or grandparents 'left behind' or brought with them only in a westernized or even secularized form.

In the European context, the claim is that the dislocations of globalization and accompanying identity crises have triggered a rise in radical Islamic politics among the young (Kepel 2004; Roy 2004). This generational cohort, insecure in the globalizing climate and alienated nationally, is depicted as remedying these insecurities through attachment to a global ummah, which may encourage radical politics or involvement in neo-fundamentalist movements promoting a universal religious identity that transcends any particular culture; thus, rather than harking back, nostalgically, to the 'loss of pristine cultures', Islam is being reinvented, facilitated by and reacting to globalization and, ultimately, being emptied of any authentic content (Roy 2004).

Studies of radicalization suggest that young Muslims pose a real threat to security, social democracy, pluralism and 'western' universalism (Kepel 2004). Transnational links with their countries of origins through, for example, madrasahs in Pakistan and reliance on imams from overseas in British mosques, are popularly seen as responsible for the importation of radical political ideas (Roy 2004). This argument raises the fear that younger Muslims' higher levels of (especially technical) education has, far from integrating them into western social and political culture, fuelled their desire to react against it and given them the organizational and technological means to do so. Neither 'assimilationism', under which Muslims are required to adapt fully to the local language, laws and conventions (as in France), nor 'multiculturalism' that permits retention of cultural difference and some application of sharia law (as in the UK), has insulated European countries from extremist acts. The idea of danger, militancy and threat is captured in Kepel's (2004, p. 241) assertion that Europe is going to be the 'battlefield on which the future of global Islam will be decided'. Thus, the prevailing view – reflected in recent public policy – has been one of young discontented and potentially destabilizing Muslims, both in their western home countries and in their countries of origin.

However, discrimination against Muslims cannot be discounted as a factor in radicalization. 'Islamophobia' can be a cause of hostile acts by disaffected Muslims as well as a consequence of it, and the rise in incidences of random abuse against Muslims (in public and online) in the aftermath of publicized terrorist attacks is likely to have assisted recruitment for further attacks. To probe the interface between the state and Muslims in France and the UK, Beckford et al. (2005) provide an analysis of the way Muslims are treated in prisons as a microcosm of the larger context. They are interested in how the state categorizes Muslims and the discrimination against them and how Muslims participate politically and organize, that is, whether they organize around ethnicity or religion. In their study, they find significant differences between the French and British prison service and suggest that the UK prison service is more advanced than the French because it has the capacity to institutionalize Islam through the provision of imams, for example, whereas the French prison service does not acknowledge Muslims' religious needs. Explaining the different levels of radicalization, Beckford and colleagues point out that in the UK Muslims came from the New Commonwealth so they arrived with citizenship which gave them some political clout, which was absent in France. Also in the UK, there is no separation between the state and church (which remains 'established'), so religion is recognized, whereas in France the separation of church and state allows no recognition of any religious minority. *Laïcité* refers to the neutrality of the state, which means that religion has no place in the prison sector. This allows *laïcité* to be instrumentalized against Islam in the prison structure. For example, in French prisons, kosher food is provided but not halal, which exacerbates the situation where the prison holds radical Islamists.

Even if their crimes were not political, Muslims arriving in French prisons have often suffered the effects of unemployment, discrimination and marginalization. There is no guidance by imams in prison to dissuade young people from turning to radical Islam. So the unintended consequence of French prisons is that they radicalize young Muslims from the poor banlieus, as inmates have reason to rage against French society. Moreover, they are subjected to a form of racism which means they are found 'guilty by their faces'. This frustration among second- and third-generation Muslims is a European phenomenon stemming from their marginalization. However, in the UK (in contrast to France) there have not been any riots. Beckford et al. (2005) suggest this is because Britain has the policy tools to address these issues because of multiculturalism. The 1976 Race Relations Act is another tool: although it does not address religion, it explicitly enforces equal treatment for different ethnicities that may be closely associated with particular religions. So UK Muslims are less likely to be radicalized in the prison setting. In this respect, the authors claim that France is 20 years behind the UK.

A key implication of Beckford et al. (2005), that the French approach to assimilationism may be out of date, has been highlighted by subsequent events, with France suffering a series of high-profile terrorist incidents linked to radical Islam despite intense security efforts because internationalization has introduced a new

zeitgeist to recognizing diversity, and France will have to fall in line with this. Thus, it is concluded that French society could learn from the British experience.

Targeting 'moderate' Muslims: the attempt at co-optation

One of the problems with the literature on radicalization is that it leads to a 'ghet-toization' of knowledge, derived from traditional theological thought and an institutional focus on the mosque, thus necessarily side-lining 'ordinary' young Muslims and women (Amiraux 2006). Islamic culture and values are compounded with Islamic religion in a way which is no longer done with Judaeo-Christian culture. Others have questioned the supposed association between religious iden-tity and violent political action (e.g. Macey 2007), and there has been important research on 'moderate' Muslims to counterbalance radicalization theories (e.g. Modood and Ahmad 2007; Werbner 2007).

While recognizing that the concept of 'moderate' is a controversial one, Modood and Ahmad (2007) carried out a study of high-profile Muslims whom they had deemed to be such by virtue of their kinds of views. They claimed that by 'moderate Muslim' they meant Muslims who are anti-terrorism (whether in the name of Islam or otherwise) and who are opposed to the invocation of Islam in militant political rhetoric. More specifically, they are opposed to the 'clash of civilizations' thesis, as espoused by, for example, American neo-conservatives and radical Islamists (another potentially controversial term), which claims that Islam and the west are two monoliths that are at war with each other and that the war is inevitable and stems from a deep civilizational difference and antagonism.

European governments have long appeared confident that 'moderate' Islamic forces would prevail, promoting cultural and religious diversity rather than sub-verting it, because of the well-entrenched systems of democracy and rule of law in the enlarged EU. This was assumed to guarantee Muslims equal economic oppor-tunity and political treatment and plentiful peaceful channels (via national and local government and the courts) for expressing and addressing any grievances. Educational discrimination was avoided by strict secularization of schools (under integrationist systems) or by freedom to set up specialist religious schools under any denomination (under more multicultural systems). Europe's long tradition of internationally defined and defended human rights was regarded as especially effective for channelling Muslim activism in a moderate and rule-based direction by ensuring relatively fast and effective ways to assert rights and get injustices corrected.

European governments have openly co-opted Muslim organizations deemed to be 'moderate' as a way of managing Islam. So recent research has found evidence of a new tendency for European governments to take up interventionist policies: first by institutionalizing representative Islamic bodies and empowering desig-nated Muslim negotiators and second by facilitating the construction and mainte-nance of Islamic spaces. Effort has been made to ensure that 'moderate' Muslims

and their leaders have as much interest as the wider non-Muslim community in defending these spaces against extremists. Although in Europe there have been widely differing patterns of church–state relations and national traditions, it would seem that a consensus has been achieved to deal with radicalization through a process of 'religion change' and the construction of an 'acceptable Islam' (Haddad and Golson 2007, p. 487). By these means, state policy that ostensibly protects minority religious rights might actually serve to manipulate Muslims' private religious identity in the interests of national security. While some have suggested that the state has been responsive rather than initiating religious needs, in fact the opposite has happened, as European governments have 'crafted' representatives of Islam in their countries. This process is thought to have happened through three routes, namely, the recognition or incorporation of Islamic organizations, second, the building of mosques or Islamic schools and third, treatment of Muslim clergy (Haddad and Golson 2007, pp. 498–499).

As they are administered at national government level in response to nationally differentiated threat perceptions, these processes result in a form of 'domestication' of the perceived problems even if they are initially common across the region. In France, this process began in 1989 following the headscarf controversy. However, it was not until 2002 that Nicolas Sarkozy, then the Interior Minister, was instrumental in the construction of a French Council for the Muslim Religion (*Conseil Français du Culte Musulman*, CFCM). Continued under subsequent governments, the CFCM had two functions. It provided government authorities with an Islamic organization with which they could 'work', and it tried to de-radicalize Islam by bringing Muslim populations under government control (Haddad and Golson 2007, pp. 501–502). Similarly, the British government has created strong links with the Muslim Council of Britain (MCB), an organization which was set up in 1997 with the help of the then Home Secretary, Jack Straw, to operate as a 'semi-official channel of communication' between Muslims and the government. The MCB grew to have more than 400 affiliated organizations and a large consultative network. While ostensibly independent, the MCB came to be considered a 'pet project' of Tony Blair's Labour government (Haddad and Golson 2007, p. 503). The MCB was part of Labour's mission to find Muslim representatives with whom it could cultivate relations and whose representatives were deemed to be acceptable or moderate. After 7/7, the multiple terrorist attacks in London in July 2007 linked to Islamic militants, the British government went beyond the MCB to find Muslims who could become members of a working group as a way of dealing with radical Islam.

Reversing the co-optation: the new politics of human rights

Contact between Islam and European democracy has developed in the shadow of relations of imperialism and colonialism, making Muslims a 'post-colonial' minority. In France the majority of Muslims came from North Africa; in Britain

from the Indian subcontinent, before and (mostly) after its post-independence subdivision into India, Pakistan and Bangladesh; and in Germany from what is now Turkey, through the links between the nineteenth-century formative German imperial state and the then gradually decaying Ottoman Empire (Cesari 2004, p. 12). These backgrounds clearly shape the political trajectories of Muslim minority communities in Europe. The situation is far more complex than the radicalization thesis can offer proposed by authors such as Roy (2004).

Pan-European and national Muslim organizations have taken a lead role in alternative trends, a development which has been described as a meeting between 'Islam and democracy' (Cesari 2004, pp. 185–213). Reviewing the recent historical evidence of this encounter across European countries, Cesari (2004, p. 175) identified three modes of integration among Muslims, namely, acceptance, avoidance or resistance. Acceptance refers to the adoption of the dominant host culture and a tendency towards assimilation. Avoidance refers to types of behaviour or language that try to separate the Muslim from the non-Muslim environment as much as possible. This might, though unintentionally, give the appearance of sectarianism, especially if Muslims are clustered in particular geographical areas. Finally, resistance means deciding to contest the narrative about Islam put forward by the host society. While this form of hostility to integration on unacceptable terms might involve violence, it does not necessarily do so (Cesari 2004, pp. 175–176). Resistance may also be expressed through education that preserves or emphasises distinctive Islamic values and by determined adherence to faith while simultaneously keeping in tune with wider prevailing social trends. In the situation now characteristic of most European countries, where a majority are nominally Christian but practise no faith in any observable fashion, simply attending a mosque or showing adherence to Islam in any way can be an effective form of resistance. Cesari (2004, p. 178) concludes that throughout Europe a new generation of organizational and religious leaders is emerging as part of the larger phenomenon of Islam's acculturation to secular society. This acculturation takes place, she suggests, by two apparently contradictory methods: the individualization of Islamic religious practice and a greater social role for Islam. In Europe, the presence of third- or even fourth-generation immigrants allows for a wider dispersion among these three responses and greater variety of approach within each one than might have been observed with earlier migrant generations. There can be a more developed French-, British- or Belgian-Muslim identity as opposed to the ethno-national culture of the first immigrants.

It is therefore also important to consider alternative trends of political participation among European Muslims and especially those representing second and third generations, including the rise of human rights activism. For example, there has been a rise in Muslim women campaigning from the west, drawing on resources only available in their new European context. Some of these women were born in western countries, others are refugees. Swiss-Yemini academic Dr Elham Manea has promoted 'Humanistic Islam' as an answer to Salafi Islamism, and has argued that human rights and women's rights are at the core Islam. Deeyah

Khan, a Norwegian film maker, has campaigned against honour-based violence using her films and new media outlets to protest through, including the *Honor Based Violence Awareness Network*, and *Memini*, a website which remembers those murdered as a result of violent cultural perceptions of honour. In 2013 Malala Yousafzai, the teenager from Pakistan's Swat Valley whose campaigning for Muslim girls' education led to her near-fatal shooting by a Taliban terrorist, made her home and campaign base in the UK. Other Muslim women campaigning against honour-based violence include Raheel Raza, the president of the Council for Muslims Facing Tomorrow from Toronto, Canada and author of *Their Jihad, Not My Jihad*; and the writer and commentator Raquel Saraswati, who has combined protests against honour based violence with opposition to fundamentalist interpretations of Islam. Other activists continue to struggle for women's rights across the Middle East.[1]

The rise of human rights activism among European Muslims has a parallel movement in the Middle East and North Africa. Since the 'Arab Spring', the wave of pro-democracy protests that broke out across the Middle East and North Africa in 2011–2013, a growing number of Muslim women have articulated claims about gender equality in human rights terms. Countries in these regions have seen a growing trend of high-profile women protesting against gender inequality through networking on new social media. After her near-assassination Malala Yousafzai became an icon for the women's movement and for campaigns to establish girls' universal right to education. In Tunisia, Dr. Amel Grami has occupied a high profile position in the women's movement and Dr. Khadija Arfaoui, also from Tunisia, has campaigned for women's rights for many years, working with the International Civil Society Action Network and the Tunisian Association of Democratic Women amongst other organizations. Her activism started in the 1980s, and despite suffering harassment by the police for her political activity, she has continued to campaign, and she has remained an activist after retiring from academia. Thus, contrary to the perception that Muslim women comply powerlessly with oppressive religious fundamentalism, women across the Middle East and North Africa were protesting in human rights language even before the Arab Spring gained worldwide attention and continued to do so after the Spring collapsed with the return of military-backed dictators in Egypt, Syria, Libya and Yemen.[2]

In Europe, this growth of human rights activism has been accompanied by a wider commitment to post-national, global politics and departure from the transnationalism of the migrant generation. First-generation migrants tended to be oriented transnationally towards their country of origin, remaining accustomed to its language and media and focusing their international travel on it (with their access to other western countries often still restricted by visa requirements). The second and third generations have had more scope and incentive to develop a more global orientation – receptive to developments outside their family's original country (especially in regions in which their new home country has engaged or intervened) and frequently freer than their parents to travel there. The global

perspective is more attuned to human-rights concepts and arguments, grounded in the principle of common rules and standards applying everywhere. There has been a growing trend towards articulating particularistic demands within the universalistic discourse of human rights. So when, for example, Muslim immigrant associations have asked for recognition of the headscarf in schools or halal food, they have done so by using a language which stands on the rights of individuals rather than collectivities. Although Muslim identity, symbolized by the headscarf, was emphasized as the motive for taking a stand on this particular issue, the language used was based on individual rights (Soysal 2000).

In France, during the debates on the 1989 *foulards* affair, the head of the Great Mosque of Paris stated explicitly that the rules preventing the girls from wearing the headscarf to school constituted discrimination in terms of 'individual not religious rights'. In this case, Muslim identity, while symbolized by the headscarf, was asserted and authenticated by the very categories and language of the host society – that is, through a discourse that accentuates individual rights. The identity asserted could be cultural, ethnic or generational as much as religious. And as an individual assertion, which did not have to be supported by (and might even stand out against) any Islamic organization, it expressed an individualist ethos more often associated with the secular West. When Muslim associations in France call for veiling in schools, they are couching their claims with reference to the natural right to education. Similarly, in Germany in November 1995 the Shi'ite mosque in Berlin celebrated International Women's Day, focusing on the rights of women to wear the headscarf and to enjoy freedom from discrimination. Referring to the Beijing Conference on women, organized by the UN Commission on the Status of Women in Beijing in September 1995, the head of the mosque claimed that 'women's rights are human rights' as an original teaching of Islam and its culture, emphasizing that they had stood up for these 1,400 years ago (Soysal 2000, p. 8).

Such Muslim claims are not made with reference to religious teachings or traditions but with a language of rights that can be viewed as substantially more universal. Whereas Islam and all other major religions have experienced a differentiation of their doctrines and organization along national lines (and frequently within nations and regions), human rights and the agendas they motivate are not necessarily nationally defined. When Muslim associations in France make demands about veiling in schools, theirs is not a claim for belonging to an existing French collectivity but to the educational system itself, which they see as first among their natural rights. Such claims are not necessarily disconnected from collective life, but they go beyond national boundaries (Soysal 2000, pp. 8–10). In the UK in the 1990s when the local authorities refused to open another Islamic primary school, the Islamic Foundation in London decided to take the issue to the ECtHR.

Translation of claims into human rights language – even when they relate to religion-specific issues like Islamic schooling or religiously symbolic practices such as veiling – enables minority groups to overcome what they view as local prejudice by appealing to general principles enforceable across much wider geographical boundaries. Europe, with its extended statements of individual rights

defended by European Courts (of Justice and of Human Rights), offers particular opportunities for ascending actions to national or supranational level when the exercise of rights is locally blocked. As Soysal (2000, p. 10) suggests, Muslim associations have been increasingly making their demands at the European level and making use of umbrella organizations to create a European-level agenda. In essence, this is consistent with the basic Cosmopolitan claim that human rights are inherently transcendent of political or cultural boundaries. In practice, the implications are different when judged by results, as evidence in later chapters will make clear.

Two important areas of conflict have arisen from Muslims' recent experience in the west and especially in Europe. Attempts by the political mainstream to engage with representative 'moderate' Muslim organizations, under the banner of a pre-existing civil society observing human rights and governed by the rule of law, have been countered by Muslims' critical re-examination of the human rights agenda for adaptation to their own situation. Human rights have enabled the shift of important claims from a narrow religious or cultural niche into a wider political arena and the assertion of those rights by individuals. In consequence, human rights politics and religious claims-making have collided. Muslim organizations in Europe generally and in the UK in particular have started to mobilize around human rights abuses, demonstrating a new, active citizenship among this cohort (Werbner 2000, pp. 319–320).

In France, the insistence by the Great Mosque of Paris that it opposed the ban on the *hijab* in schools as a discrimination against individual rights became emblematic of French Muslims' wider case for protesting against the ban on headscarves. They argued that *laïcité*, a century-old removal of the influence of organized religion from French public life, was compatible with wearing religious signs in public. Some claimed that such freedoms reached into the heart of what it meant to be French, using slogans such as 'France is my Liberty, So is my Scarf!' So even when they hinged on a religious issue, the political arguments around the right to 'difference' were based on human rights language – wearing the headscarf was claimed to be a 'natural right' of individuals to manifest their cultural identity in public (Soysal 1997, pp. 512–518). This seemed to satisfy established (western) concepts of human rights, going back to Tom Paine and J. S. Mill, as individuals could exercise this natural right without infringing on anyone else's liberty or imposing any social costs. The premise of campaigners against headscarf bans was fundamentally no different from that of other social movements – including those for lesbian and gay rights and for racial and gender equality – which, in most western countries, had by this time established their legality of action both in private and in public.

Intellectual and popular movements in Europe

European controversies over the headscarf need therefore to be understood as part of the new politics of recognition. This involves contending with misrecognition by wider society, aspects of which might be internalized. Breaking away from the

ways in which diaspora communities have been depicted leads to some degree of authenticity and dialogue on equal terms (Taylor 1994). Minorities are increasingly claiming that their cultural or religious differences should not be confined to the private sphere but rather should also be recognized in the public sphere. From this perspective the veiling movement across Europe is part of the new politics of recognition. Moreover, there has been a growing tendency to target demands in terms of the existing legal framework, mobilizing the law for articulating the politics of religion (Malik 2008, pp. 131–132).

The interest in connections between Islam and human rights has been reflected and reinforced in the scholarly domain. The peer-reviewed *Muslim World Journal of Human Rights* focuses exclusively on the question of human rights and Islam. At the theoretical level, its typical content focuses on current debates such as the relationship between universalism and relativism, between individualism and collectivism, between positivism and pluralism between deontology and instrumentalism and internationalism and sovereignty. At the substantive level it addresses civil and political rights; social, economic and cultural rights; women's rights; religious freedom and the rights of religious minorities living in Muslim states; the rule of law, constitutionalism and notions of Islamic constitutionalism; the influence of political Islam and reformist theological and jurisprudential thought on Islam and human rights debates and refugee rights.

Human rights politics also enters popular discussion in numerous magazines and non-academic journals widely circulated in Europe and North America. For example, the previously influential magazine *Q-News* pursued a human rights agenda in the UK. Their expression extended to a series of cartoons based on ironic observations on the double standards applied to Muslims. One of the cartoons depicted a white British woman telling a British Muslim woman wearing a headscarf, 'You're in *Britain* now! You can't just *think* whatever you like!!!' The cartoonist turns the language of human rights on its head by suggesting that the transgressor of freedom of expression is the white British woman, traditionally the person who upholds such rights. On a continent where visual imagery has always been important for transmitting opinion across language barriers, highlighted by the global controversy sparked by depictions of the prophet Muhammad in a Danish newspaper in 2005, the cartoon thus makes a serious political point and underscores the contention that the very conditions that contribute to subordination may be those that produce active resistance (Mahmood 2001, p. 210). In holding up a mirror to the host country's self-perception of freedom and rights, these individuals and groups are appropriating rights-based discourses as part of a new, active citizenship in which the authority of the governing institutions is challenged (Barras 2009, p. 1242) in a way the governing classes would have most difficulty objecting to.

This new rights movement has also been illustrated by Muslim associations calling for the establishment of Shari'a courts with legally enforced power to rule on Muslim civil cases. While generally accepting the secular legal frameworks of their countries, European Muslims have, to varying degrees, mobilized for limited

accommodation of Shari'a law. In the UK, the intervention of the former Arch-bishop of Canterbury, Rowan Williams, who argued that Shari'a law in family and divorce cases should be accepted, provided some momentum to this cause (Cesari 2010a). Despite concerns raised about the verdicts of some Shari'a judges (espe-cially in relation to the treatment of women) this intervention from the respected former head of the established Anglican church gained a sympathetic hearing because of its potential to reduce the case overload in conventional courts and keep the administration of justice local. The British government agreed officially to recognize a group of Shari'a courts in London, Birmingham, Bradford and Manchester, allowing rulings that can be enforced by county and high courts, a development which parallels Jewish Beth Din courts.

The Forum of European Muslim Youth and Student Organizations (FEMYSO) acts as an umbrella organization for student Muslim societies across Europe. It has long been involved in human rights campaigns in Chechnya, Sudan and Palestine but has also forged alliances with Jewish groups to promote mutual understanding and share experiences of overcoming prejudice. Islamic organi-zations such as the Muslim Public Affairs Committee UK (MPAC) have placed human rights at the centre of their political agenda to emphasise that there is a rights-based rather than religious-based agenda. Organizations such as MPAC defended women's right to choose to wear the headscarf as a human right, reflecting wider feeling among young British Muslims who prioritize human rights over other political causes. This organization was also prominent in the campaign against greater detention powers under the UK's new anti-terror laws (Nash 2009a, p. 66). Muslim students and organizations condemned France's and Turkey's ban on the headscarf, arguing that it breached women's right to personal autonomy. Politically diverse Muslim organizations such as the British Islamist organization Al-Muhajiroun and MPAC have united around the lan-guage of human rights for political purposes.

The Islamic Human Rights Commission (IHRC), established in 1997 as an independent, non-profit-making organization based in London, has consulta-tive status with the UN Economic and Social Council and provides assistance for litigation against discrimination. The IHRC works for justice irrespective of religious background and has fought cases for non-Muslims as well as Muslims, affirming that its mission is to pursue human rights as an integral part of Islam rather than just human rights for those who practise it. It claims that it is inspired by the Qur'anic injunctions that command believers to rise up in defence of the oppressed. As part of its activities, the IHRC submits reports to governments and international organizations and writes reports on hate crime and discrimination as well as war crimes. It also gets involved in advocacy work by referring and taking on discrimination cases.

The central goal of the British Muslims for Secular Democracy (BMSD) is the promotion of rights for religious minorities through tackling discrimina-tion. Established in 2006, BMSD set out to challenge the way particular forms of Islamic thought were represented. It took aim, in particular, at the supposed

radicalized versions, presented by critics who argued that Islam was incompatible with democracy because it denied the separation of state from church and so invited self-declared representatives of the church – often those with 'fundamentalist' views – to dictate affairs of state. This tendency towards theocracy and fundamentalism was, BMSD claimed, not representative of British Muslims, and the organization sought to fill a perceived institutional gap by bringing together 'progressive, enlightened and liberal Muslims, foregrounding the rich cultural, ethnic and doctrinal diversity of British Muslims'. It was especially concerned to address the lack of proper representation for women and the way the media was more interested in publicizing extremist views rather than those of the majority of British Muslims. BMSD campaigns were built on the idea that this focus had serious repercussions for community relations. As well as misrepresenting Islam to non-Muslims, in particular fuelling the stereotype of extremists with a repressive social agenda and radical political ideas, it was viewed as misrepresenting Islam to Muslims. The organization therefore offered a set of aims and objectives which sought to bring to the fore a more 'enlightened British Muslim identity – one that is more democratic and equitable'. Most importantly, it sought to demonstrate the compatibility between Islam and democracy and human rights.

Human rights activism can be found among Muslim associations of diverse political persuasion. Although the three groups might use human rights language for political purposes, MPAC has nothing in common with the British Islamist organization Al-Muhajiroun, which has been banned by the British government for glorifying terrorism, or with Hizb ut-Tahir, a pan-Islamic organization which seeks the establishment of an Islamic state. European Muslims are responding to being 'cast out' of law through hard and soft securitization measures by accusing those governments who regard themselves as having the monopoly over human rights of transgressing their own rights culture.

Despite some scepticism, the potential for shared interests between human rights groups and Islamist movements should not be ignored. As Hicks (2002, p. 361) observes in relation to the Middle East, there is considerable overlap between the two since both criticize authoritarian governments in the region for disregarding democratic principles, for flouting the law and for engaging in widespread violations of human rights. The surface hostility between the two, whereby Islamist movements accuse human rights organizations of pursuing a western agenda and where human rights activists characterized Islamists as backward (Hicks 2002, pp. 361–362) could potentially be overcome – illustrated most clearly in the case of Turkey.

Turkey became the site of such protests as religious groups and human rights organizations joined together to challenge the country's secular policies on the grounds that a rights-based movement, including one recognizing religious rights, was compatible with secularism. In Turkey, the Islamic party in its various manifestations has further blurred the church/state distinction by running welfare systems that parallel and sometimes substitute those of the state, thus adopting a 'western' rights-based discourse which, because of their secular nature, were

considered to be a powerful political weapon (Barras 2009, pp. 1237–1245). A rights based discourse was mobilized by religious groups and individuals in Turkey from the 1990s as a challenge to the strict secular policies of Turkey at the time which led to linkages between secular human rights groups and religious ones. This new way of conceptualizing challenges represented a shift from the former mobilization of religious claims through a religious discourse until the late 1980s and thus blurred the divide between secularism and Islam (Barras 2009). Turning to human rights in this way was part of a wider movement in Turkey, where religious actors began increasingly to use human rights language to frame religious rights, and this development was considered to be more inclusive and to resonate with a wider circle (Barras 2009, p. 1246).

A good example of the meeting between Islamism and human rights in Turkey is the case of Mazlumder (The Organization of Human Rights and Solidarity for Oppressed People) by a group of activists in 1991. Mazlumder was from the start a non-sectarian organization, setting itself up as a defender of the rights of all. While being created as a counter to other human rights organizations, which it saw as too narrow, Mazlumder co-operated with other human rights groups. It came to be one of the largest nongovernmental human rights groups in Turkey, with branches in Istanbul and Ankara (Hicks 2002, p. 378).

One of the most significant cases representing this shift was that of Merve Kavakci, who won a case in April 2007 against Turkey at the ECtHR. Kavakci was the first woman elected in Turkey running for an Islamist party – the Virtue Party – who chose to wear a headscarf when she went to take her oath in Parliament (Barras 2009, p. 1247). Revealing the importance of transnational networks, Kavakci was supported by the Geneva-based International Parliamentary Union (IPU) on the grounds that she was prevented from doing her duties as an elected member of the Turkish government and deprived of her membership without any valid legal basis. She also got support from the US–based Becket Fund for Religious Liberty, showing how far these transnational links stretched (Barras 2009, p. 1247).

Islam and human rights

Human rights have often been portrayed as western and, more specifically, antithetical to Islam. It has been argued that because human rights originated in the west, they are irredeemably western, that is, confined to Europe and the US and connected, culturally and philosophically, to the occidental tradition. In contemporary political thought, the most prominent representative of this kind of thinking is Samuel Huntington, the author of the clash-of-civilization thesis. For Huntington, human rights, along with democracy, liberalism and secularism are firmly rooted in western civilization. Hence, he concludes that human rights could only become truly universal if other cultures adopted western culture and civilization. This way of looking at human rights has different consequences depending on where one stands politically. So for cultural relativists on the left, it means that

human rights are essentially Eurocentric, whereas for those such as Huntington on the right, human rights are doomed to fail (Bielefeldt 2000, pp. 90–91). Dalacoura (2007, p. 49) has also noted that when it comes to discussion about the compatibility of human rights and Islam there seems to be a big divide between those who argue that Islam was the first historically to introduce the notion of rights and is therefore their best guarantor to those who suggest that Islam is completely incompatible with rights, as the emphasis is on duty not rights.

Religions of various sorts have also claimed that human rights originated with them. Scholars have argued that it is possible to find the roots of human rights in Christianity by taking various 'humanitarian motifs' from the Christian tradition which seem to support this view. But Bielefeldt (2000, pp. 94–95) argues that such thinking is teleological, resulting in an essentialized reading of human rights. Just as embedded in the western tradition, for example, can be found arguments against human rights and 'the fact that the Catholic Church, as well as other Christian churches, rejected human rights over a considerable period of time indicates that human rights cannot appropriately be described as an "organic" result of occidental history and culture as a whole' (Bielefeldt 2000, p. 97). Rather, human rights emerged as a result of people fighting over them.

While it is clear that religion constitutes just one factor that may inhibit or prohibit human rights, particular attention should be paid to Islam, because it is this religion that is so often cast as the antithesis of human rights. One of the difficulties of looking at the relationship between human rights and Islam is Shari'a law. Understood in a literalist way, there are clear conflicts between Shari'a and human rights, in particular on questions relating to gender equality and religious liberty. In terms of contemporary human rights, it is in the areas of gender and the family that there are particular difficulties with Shari'a and in its reaction to apostasy (Bielefeldt 2000, pp. 102–103). However, it is not just the west that has laid claim over human rights.

There have been different ways of dealing with the potential clash between Islam and human rights. One response has been the Islamization of human rights, which involves the denial of any conflicts and suggests that Islam has always adhered to human rights. However, this is not a necessary response. Rendering Islam compatible with human rights can be made possible by reference to the pragmatic strands of Islamic thought. As Bielefeldt (2000, pp. 106–107) notes, 'if Conservative Muslims frequently are reluctant to undertake an open criticism of the traditional Shari'a, this does not mean that changes toward modern human rights are completely excluded'. Shari'a has always had to accommodate the environment and modify some of its precepts accordingly, for example in relation to the kinds of punishments prescribed as well as attitudes towards religious tolerance. Islam has this flexibility. The Muslim world generally showed more tolerance towards religious minorities than the Christian 'West'. But reformist scholars also render possible a joining between Shari'a and human rights by insisting on the basic normative trajectory of Shari'a while simultaneously challenging some of its legal tenets.

Islam is not inherently illiberal, and it can be reconciled with the principles of human rights at the level of ideas even though the idea that human beings have rights qua human beings is explicitly lacking from the Qur'an and the Shari'a, for which only God has rights and people have duties (Dalacoura 2007, pp. 41–43). There is therefore a deep-rooted ambivalence in Islam on all issues that relate to human rights. But it is because of this ambivalence that one depends upon the historicity of Islam and the revelation as a way of reconciling Islam and human rights, even though this is not accepted by all Muslims (Dalacoura 2007, pp. 58–63).

The academic Abdullah Ahmed An-Na'im (1990) counts among those from within the Reformist tradition who sees the possibility of a basis for compatibility between Islam and human rights. However, this does not mean a liberal re-reading of the Qur'an. In short, An-Naim proposes that the Qur'an was revealed in two stages, the first in Mecca and the second in Medina. The first deals with general principles and the second with specific rules understood in a particular historical context. An-Naim suggests that it is only the first revelation, which deals with the general, which is ultimately authoritative across time. Moreover, the Shari'a was only expounded in the second and third centuries of Islam and so needs to be reinterpreted to fit different times (see Dalacoura 2007, p. 61).

For An-Na'im (1990) the foundation of human rights is self-determination; the exercise of this is the essence of being human. Thus, human rights is a people centred idea. It is the state that is needed to protect human rights. It is human beings who force states to do or not do certain things. So An-Na'im says we cannot afford to give up on self-determination as central to human rights. This means, for example, that the citizens of the United States must dare to hold the US to account – it does not have to be other states. And it is the citizen of all countries who need to force those countries to adhere to human rights. Thus, An'Naim is taking a pragmatic approach to human rights. When it comes to Shari'a, he argues, institutions like slavery were abolished not by Shari'a but by secular regimes and laws. Secular laws, he says, give us the chance to end abhorrent institutions. So it follows from this that we cannot simply rely on secular institutions, so Shari'a needs to be rethought. The question is challenging the Shari'a as a human and not a divine institution. The essence of humanity is there, but it is not strong enough yet. It is therefore to the Reformist traditions of Islam that contemporary Muslims can turn to invoke a potential source for human rights principles which render it compatible with those human rights enshrined in the UN Declaration of Human Rights.

Notes

1 Friedland, E. (2014) Muslim women's rights activists, 5 March, The Clarion Project, online at www.clarionproject.org/understanding-islamism/muslim-womens-rights-activists [Accessed 6 July 2016].
2 Friedland, E. (2014) Muslim women's rights activists, 5 March, The Clarion Project, online at www.clarionproject.org/understanding-islamism/muslim-womens-rights-activists [Accessed 6 July 2016].

Chapter 5

Litigating for human rights

New forms of claims-making among European Muslims have been held as evidence for post-national theory (Soysal 1997, 2000). Now that Muslims are an established part of European life rather than transitory 'guests', representative groups and associations have started to become more active in the public sphere – through mosque building, for example. This new wave of activism differs from earlier forms by framing religious rights within universalistic principles of equality, freedom, and individual rights – amounting to a 'recasting of national citizenship rights as human rights facilitated by transnational connections' (Soysal 1997, pp. 515–517).

Post-national theorists regard the 1989 *foulards* controversy in France and the Rushdie affair in the UK as evidence of this trend (Joppke and Moravska 2003, pp. 194–196), as well as protests against the 2004 French ban on wearing conspicuous religious signs in schools because these campaigns mobilized their demands within a human rights framework. French protests depicted the ban on the *hijab* in schools as undermining core values, such as individual freedom, for which France itself stood and declared that *laïcité* was compatible with wearing religious signs in public.

Benhabib (2004) uses the *foulards* affair in France and the German case of Fereshta Ludin, who lost her post as a primary school teacher for wearing the headscarf at school, to illustrate her theory. The public debates provoked by these cases are understood as examples of jurisgenerative politics in which advocates of the 'rights of others' have a transformative political effect through a process of (reciprocal) contestation and reflexivity. Dialogue – between Muslim women, imams, Islamic organizations, human rights organizations, the government and the media – re-signified the meaning of the headscarf, secularism, universalism and French republicanism. Such conflicts, she suggests, were made possible by the transformation of citizenship as multifarious cultural and religious groups jostle in the public sphere.

These controversies transformed Muslim women from passive subjects into active ones by 're-signifying the role of the universal with tradition' (through the headscarf). The lead players in the 1989 affair claimed to exercise their freedom of religion as French citizens but also with reference to being Muslims of North

African origin, challenging the public/private divide. Banning the *hijab*, without due consideration and based on assumptions about proselytizing and sexual oppression, has the effect of excluding Muslim women who choose to wear headscarves. Thus, in Belgium, as Eva Brems has observed, there have been examples of employees sacked for wearing the headscarf, resulting in discrimination in employment and exclusion.

The headscarf ban prompted a 'cascade of democratic iterations' as the cases entered the political agenda, provoking debates about French national identity and ending with the 'public act of re-signifying Marianne' (Benhabib 2004, pp. 187–197). The debate was transformative, as the original aim of winning the right to wear a garment that expressed religious identity transmuted into political activism as women started 'to talk back to the state' (Benhabib 2004, p. 209).

Benhabib (2004, pp. 185–190) thus argues that the *foulards* affair represented an instance of cosmopolitan citizenship because it involved a process of democratic iteration in which the key actors exercised the principle of freedom of religious expression as French citizens, thus targeting the state with universal principles based on particular identities. The affair, she says, expressed 'all the dilemmas of French national identity in an age of globalization and multiculturalism . . . generated through the presence of second- and third-generation immigrants from Muslim countries'. She presents the Ludin case in Germany as comparable because it exposed the clash between two elements of the complainant's citizenship rights, namely her right to the full protection of the law and her cultural right to be an observant Muslim. Benhabib (2004, p. 210) concludes that cases such as these demonstrate that 'outsiders are not at the border of the polity, but within'; although she recognises their limits as both the Conseil d'État and the German Constitutional Court, despite acknowledging the right to religious freedom (and, in Germany, equal access to public offices), failed to uphold pluralism by deferring the decision making to the democratic legislatures and national government (Benhabib 2004, pp. 199–200). While the Ludin case failed the test of cosmopolitan citizenship in part, for Benhabib (2004, p. 210) it still illustrated the potential for its realization in the process of resignification of citizenship and by challenging ideas about homogeneity, provoking public debate that could have long-term (positive) consequences.

European women who are actively campaigning for the right to wear the *hijab* and litigating for their rights are confounding old and current representations of themselves as 'docile subjects' and becoming vocal public actors. As an example of 'mirroring', just as the Haitians appropriated the Marseillaise, young French Muslim women have appropriated the image of Marianne and the language of the French revolution. In appropriating national symbols in their fight for the right to religious freedom, they are placing themselves at the centre of the national polity and refusing to accept the marginal status conferred on them (Benhabib 2004, p. 197; p. 209–210). Use of national symbols in political campaigns is a statement that the values around which these groups are mobilizing are the same as those purportedly held by the nation. In France, Muslim organizations have used the

national symbol Marianne. In the UK, Muslim organizations – such as MPAC – have appropriated the Union Jack as a part of their political campaign, with a logo superimposing the image of a mosque on the British flag.

Litigating for religious freedom

Islamic organizations in Europe thus started to target their claims-making at national, regional and transnational public spheres. The European judicial process requires them to begin at the local level and move upwards if their grievance is not resolved. But because they are seeking to be judged by a universal rather than a local cultural standard, taking test cases to the supra-national level would appear to be the most appropriate forum. Thus, the *foulards* issue moved from the local education authorities to the ECtHR. Indeed, Muslim associations are increasingly operating at the European level, establishing umbrella organizations to coordinate their activities (Soysal 1997, pp. 519–520).

There followed a rise in litigation concerning religious freedom, especially around the question of Islamic clothing in public spaces. When in 2004 France passed a law banning all 'conspicuously' worn religious symbols from public schools, those protesting against the ban did so in the language of human rights, using, for example, slogans such as 'Right to School, Right to Knowledge'. The Collective Against Islamophobia in France (CCIF) was established in 2003 in reaction to growing numbers of Islamophobic incidents (Barras 2009, p. 1242). In France, propelled by the 2004 law, the CCIF began to litigate on issues relating to religious freedom and challenged the confinement of Islamic practices to the private sphere. It claimed that the state's ostensible commitment to neutrality was breached by arbitrary discrimination over which religions were incompatible with *laïcité* without regard to public order. The CCIF saw the French law as departing from international law and France's commitment to human rights by discriminating against Islam and thus abandoning the commitment to 'Liberty and Justice' (Barras 2009, pp. 1237–1245). The organization had three goals: first, to survey acts of Islamophobia through its *Observatoire de l'Islamophobie* compiling a list of written and oral statements; second, to provide legal advice to support victims of Islamophobia; and third, to carry out sensitization activities with politicians, civil society organizations and citizens (Barras 2009, p. 1243).

There has therefore been a rise in claims-making among European Muslims with a focus on human rights (Soysal 1997, 2000). It is to human rights that European Muslims are turning to defend the right to wear the *hijab* or other forms of Muslim dress. Controlling what women wear, whether it be through enforced covering as, for example, in Iran or through bans in countries as diverse as Turkey, Tunisia, France, the Netherlands and Belgium, are all seen as a curtailment of Muslim women's rights. Now that Muslims are an integral part of European life rather than transitory 'guests', representative groups and associations have started

to become more active in the public sphere. While this phenomenon is not entirely new (for example, British Muslims called for a change to the blasphemy law during the late-1980s Rushdie affair), what distinguishes this new wave of activism is that these associations are pitching their religious rights within universalistic principles of equality, freedom and individual rights – a trend which has been held as evidence of a 'recasting of national citizenship rights as human rights facilitated by transnational connections' (Soysal 1997, pp. 515–517).

This appropriation of human rights as a vehicle for winning religious rights has been illustrated by the rise in litigation concerning the headscarf ban taken to the European Court of Human Rights. The late 1990s and the early 2000s saw an increase in the number of cases of Muslims litigating for religious freedom through appeals to human rights both in the national courts and at Strasbourg. While cases were taken on the grounds of violations of the right to religious freedom in general, they primarily concerned national bans on wearing Islamic dress, especially the *hijab*, in schools and higher education institutions.

The late 1990s and the early 2000s therefore saw a rise in cases of Muslims litigating for religious freedom (Article 9 ECHR) through claims in national courts and the ECtHR, mainly concerning national bans on wearing Islamic dress, especially the *hijab*, in schools and higher education institutions. Out of 16 religious freedom cases taken to Strasbourg, 12 related to the banning of Islamic head-scarves in public education; 6 involving students and 6 involving teachers. Reflecting national politics, they have also been made mainly against Turkey and France, with only one case relating to the UK (*X v. the United Kingdom)* and one to Switzerland (*Dahlab v. Switzerland*). In contrast, five have been taken against France (*Atkas v. France*; *Bayrak v. France*; *Ghazal v. France*; *Gemaleddyn v. France*; *Dogru v. France*; *Kervanci v. France*) and nine against Turkey (*Şahin v. Turkey*; *Kose and others v. Turkey*; *Kavakfi v. Turkey*; *Karaduman v. Turkey*; *Balut v. Turkey*; *Kurtulmus v. Turkey*; *Caglayan v. Turkey*; *Yilmaz v. Turkey; Tandogan v. Turkey*). Only three cases were considered on the basis of merit. *Şahin v. Turkey*, *Dogru v. France* and *Kervanci v. France*, with the others, including *Dahlab*, dealing only with admissibility. National cases include *Begum v. the Head teacher and Governors of Denbigh High School* in the UK and the *Ludin* case in Germany (see Rorive 2008, pp. 2676–2678).

Şahin v. Turkey is a watershed case, brought by Leyla Şahin, who, after defying Istanbul University's 1999 prohibition on the headscarf, was prevented from enrolling on her degree. Şahin complained that her Article 8 right (to private life), Article 9 right (religious expression), Article 10 right (expression) and Article 14 right (non-discrimination) had been violated by the ban. *Dahlab v. Switzerland* was another landmark case concerning a primary school teacher who, having converted to Islam, started to wear a headscarf to school and lost her post after refusing to remove it after the intervention of the Directorate General for Primary Education in 1996. Dahlab alleged a violation of Article 9. The prohibition was upheld by the Geneva cantonal court, then the Federal Court, and later by the

ECtHR, which declared the case inadmissible as 'manifestly ill-founded' according to Article 35 (3) of the Convention (McGoldrick 2006, pp. 121–130).

Dogru v. France and *Kervanci v. France* involved two schoolchildren, Belgin Dogru and Esma-Nur Kervanci, who were expelled from the school of Flers in l'Orne in 1999 for wearing headscarves during physical education lessons despite this being a contravention of school regulations. In October 1999, the Caen Administrative Court and the Nantes Administrative Court of Appeal upheld the school's decision. The application in the *Dogru* case was lodged with the ECtHR and the *Kervanci* case on 22 July 2004. In both cases, the Court unanimously judged that there had been no violation of Article 9 (freedom of thought, conscience and religion) of the ECHR.

In Germany, Fereshta Ludin, originally from Afghanistan, was refused a permanent post as a primary school teacher in the state of Baden-Württemberg for wearing the *hijab*. She took her case to the German Federal Constitution Court in September 2003, claiming that the constitutional provisions concerning freedom of religion in Article 4 (1) and (2) of the Basic Law and equal eligibility of all German citizens for employment in the civil service Article 33 (3) of the Basic Law had been breached. Despite winning at Germany's Constitutional Court, the Court concluded that the legislature of the *Länder* could choose to introduce such bans (McGoldrick 2006, p. 294), a decision which the Federal Administrative Court upheld in 2004, inducing Baden-Württemberg, Bavaria and several other *Länder* to introduce bans, thus undermining Ludin's victory.

In the UK, the *Begum* case involved a teenage schoolgirl who wanted to wear the *jilbab* at a school where only the *hijab* was permitted. After refusing to change her practice, Begum was excluded from the school and took her case to the High Court, claiming a breach of Article 2 of Protocol 1 of the ECHR, section 6 (1) of the Human Rights Act (HRA) 1998 and Article 9 of the ECHR. Begum appealed through the Court of Appeal and won a technical victory on the grounds that the school's decision had not been reached through an assessment of the human rights principles – a ruling which was later overturned by the House of Lords, which concluded that there had been no interference and that the Court of Appeal's decision had been based on procedure rather than substance (McGoldrick 2006, pp. 180–204).

In each of the cases reviewed so far, the sanctity of national interests was preserved in assessing the right to religious expression, a qualified right which the courts treated with a wide margin of appreciation. The judgements consistently claimed that practices such as wearing the *hijab* in educational institutions undermined the secular principles of the relevant states, that they had a proselytizing effect and were oppressive to women. Moreover, these conclusions were made without close analyses of the cases but based instead on generic conceptions of Islam. In trying to exploit the secular and individualistic outlook of western legal systems, by framing their arguments as assertions of individual rights rather than religious rights, Muslim claims-makers invited a dismissal of religious specifics

that rebounded against them. The judgements they received prioritized the secular principles of the national governments over the individual's right to freedom to manifest religion. The weighing of whether such a right clashed with the rights and freedoms of others (necessary to qualified rights) was assumed rather than demonstrated (see Rorive 2008, pp. 2685–2686).

In the Ludin case, the defence of the ban was also couched in national interest terms. The defence of the Baden-Württemberg Court claimed that Germany's constitutional principle of state neutrality was at risk in the context of increased immigration, which required that special attention be paid to the 'signalling' aspect of choosing to wear the headscarf. While the Constitutional Court subsequently overturned the ban, it judged that regional institutions could legislate to regulate the relationship between state neutrality and religious freedom such that future legislation on headscarves would represent a 'permissible restriction of the freedom of religion'. Several *Länder* duly elected to implement bans.

In the Dogru and Kervanci cases, the judgements uniformly prioritized generic principles – potential for proselytizing, the oppression of women and constitutional secularism – over possible personal reasons for wearing the veil, such as commitment to faith and modesty. Individual motives were given no weight in the balancing of rights. The uniform decision making seemed in these cases to override national contexts such as church/state relations, federal versus centralized politics and demographic and historical differences, revealing deep-seated ideological presuppositions.

In the *Şahin* case, the ECtHR agreed that wearing the headscarf could threaten Turkey's secular democracy (Westerfield 2006, p. 654). This deference to national governments over such regulations was made clear in the summing up, which stated that

> Where questions concerning the relationship between state and religions are at stake, on which opinion in a democratic society may reasonably differ widely, *the role of the national decision making body must be given special importance. . . .* This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially, (as the comparative law materials illustrate) in view of the diversity of the approaches taken by national authorities on this issue.
>
> (emphasis added)

The same deference to national decision making was evident in the admissibility decision of *Dahlab v. Switzerland*. The Court deferred to the denominational neutrality of the Swiss education system in its finding that the action was not a disproportionate interference (Lewis 2007, p. 406) when it was appropriate to weigh 'the protection of the legitimate aim of ensuring the neutrality of the state education system against the freedom to manifest one's religion'. Contending that 'it may be necessary to place restrictions on this freedom in order to reconcile the

interest of the various groups and ensure that everyone's beliefs are respected', the Court deemed that the prohibition on wearing a headscarf while teaching was 'necessary in a democratic society'.

The judgement in *Dogru* reinforced the general regard to national governments, restating the right of the national state to determine regulations over religious practice in its conclusion that

> Having regard to the margin of appreciation *which must be left to the member States with regard to the establishment of the delicate relations between the Churches and the State*, religious freedom thus recognized and restricted by the requirement of secularism appears legitimate in the light of the values underpinning the Convention.
>
> (emphasis added)

The margin of appreciation refers to the latitude given to national authorities by the Court while satisfying its obligations under the ECHR. ECtHR judgements have systematically used a wide margin of appreciation to defer to national governments, expressly contradicting any post-national thinking. The judgements have accepted that wearing the *hijab* in public institutions threatens the balance between protecting public interest and individual rights. In all the cases heard at Strasbourg, a wide margin of appreciation has been applied, giving considerable autonomy to the national states and ensuring that the Court has not established a European-wide principle on this important matter.

Being directly linked to the subsidiarity principle, the margin of appreciation does not apply to national cases. However, it implicitly shaped domestic decision making as the Courts drew on comparisons between ECHR principles and national policy. The *Begum* case relied heavily on the authority of the court in Strasbourg, because the Human Rights Act (HRA) 1998 calls for judgments to consider the necessity of interference in the right to religious expression (Gibson 2007, p. 677). Because Britain is not a secular state, the principle of secularism was not addressed, but the question of national identity was invoked, as the House of Lords judgment based their arguments on 'relating to community versus democracy as part of the major principle of the "cohesive multicultural state"' (McGoldrick 2006, p. 144).

Both the ECtHR and the German Constitutional Court (in the *Ludin* case) delegated the final authority concerning the legalization of religious symbols to the respective 'sub-units' of each: in the case of the ECtHR, to the contracting Member States and in the case of the Constitutional Court, to the states or *Länder*. So, rather than developing a European perspective, the judgments upheld governmental control over religious practices (Skach 2006, p. 194). The House of Lords, in the *Begum* case, deferred to other national courts (Vakulenko 2007, p. 722). This contrasts with the UN Human Rights Committee, which regulates state obligations in relation to the International Covenant on Civil and Political Rights (ISCOR). In its conclusion in the *Hudoyberganova v. Uzbekistan* case

involving a student expelled from university for wearing the headscarf, the Committee argued a breach of the ICCPR, Article 18, on the grounds that 'the freedom to manifest one's religion encompasses the right to wear clothes or attire in public which is in conformity with the individual's faith or religion' (Rorive 2008, p. 2675). However, the Committee's findings are not judgments in law in the way decisions originating in the ECtHR are.

Explaining the limits of post-nationalism

These cases expose the limits to post-nationalism in this context, which can be explained by a number of factors. First is the tension between European judicial membership and national sovereignty, which is brought into sharp relief in cases involving qualified rights such as religious rights. Article 9 is based on a distinction between the internal dimension of the right to freedom of religious belief (*forum internum*), which is understood as an absolute right, and the external dimension of this freedom (*forum externum*), which balances the absolute right against public order and democracy (Rorive 2008, pp. 2673–2674). Thus, while the first confers an absolute right to 'freedom of thought, conscience and religion . . . either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance', the second qualifies this right, stating that this freedom 'shall be subject only to such limitations as are prescribed by law, and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'.

In determining the extent of margin, the Court balances the importance of the right in question with the importance of the restriction and considers the extent of European consensus on the matter before the Court (Westerfield 2006, pp. 673–674). In religious rights claims, therefore, national authorities are given considerable autonomy because the Courts need to demonstrate that interference was necessary for the effective functioning of a democratic society. Interference has to be, first, an appropriate means for achieving the end; second, the only way in which the legitimate aim could be achieved in the absence of less restrictive alternatives; and third, the interference has to pass the strict proportionality test, which entails balancing the competing interests at stake (Rorive 2008, pp. 2680–2681). While the judgments conceded that Article 9 (1) had been breached, the national bans were upheld by appeal to Article 9 (2).

Despite this high bar of 'necessity' in finding that interference with the right is justified, the judgments consistently accepted the national governments' claims that banning the wearing of Islamic dress in educational institutions was a justifiable interference with Article 9 (2). This 'collective interest' argument establishes a high threshold in terms of the wider destabilizing impact ascribed to one (or a few) individual's actions, which meant that, for example in the *Şahin* case, European supervision was absent in the over-reliance on the margin of appreciation for a concern – religious freedom – which was not unique to Turkey, as noted by the

dissenting judge. This failure to establish a supranational position gave national governments more power to restrict religious expression through dress (Lewis 2007, p. 396).

Second, European case law, in upholding national restrictions on the grounds that the *hijab* could threaten the public interest, implicitly drew on popular Islamophobia, which has become embedded in post–9/ 11 Europe. Political debates in the context of the 'war on terror' have centred on an assumed relationship between Islam and terrorism and the potential for violent politics among Muslim minorities (Monshipouri 2010, p. 47). The judgments appeared to accept uncritically Turkey's and France's position that wearing the *hijab* in these secular countries could be construed as a political statement or sign of religious extremism and therefore a threat to public order. The individual right to practice religion was subordinated to a generic principle of defeating Islamic fundamentalism and prohibiting proselytizing (McGoldrick 2006, p. 145) in the absence of any actual evidence in the cases under consideration.

The Grand Chamber in the Şahin case associated wearing the headscarf with 'extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts'. Thus, the Court's defence of secularism combined with deeply rooted fears about Islamic practices meant that the specificities of the case were sidelined, undermining the commitment to pluralism and the principle that 'freedom of thought, conscience and religion is one of the foundations of democratic society' on supposed grounds of neutrality (Rorive 2008, pp. 2683–2684).

By failing to examine the facts of the cases carefully, the Strasbourg judgments did not, therefore, properly address the test of necessity, giving the national governments considerable scope to restrict the public practice of religion. The Court therefore failed to use sufficiently the test of whether the action taken by the state to limit religious freedom was 'necessary in a democratic society' to uphold the bans on this basis (Evans 2006, p. 52). This stance signals to Muslim citizens that their acceptance in these European countries depends upon their abandoning cultural and religious practices which are central to their identity (Monshipouri 2010, p. 47).

Third, the bans were uniformly upheld by reference to gender equality such that the judgments drew, unreflectingly, on the popular assumption that western women were 'liberated' and Muslim women were 'oppressed' by their culture. All of the ECtHR cases accepted the argument that gender equality justified the bans, thereby accepting a conception of the headscarf as incompatible with gender equality and thus beyond the scope of 'liberal toleration'. Similarly, the Begum case in the UK showed the readiness with which ideas about liberated secular women contrasted with women whose agency is suppressed by Islamic culture were accepted (Vakulenko 2007, pp. 728–730).

Implicit was the popular image of the Muslim woman as both victim and aggressor: victims of an inherently misogynistic religion who need protection by the state but also aggressors in trying to impose Islam on others – both are

imagined to threaten liberal egalitarianism (Evans 2006). The unspoken assumption in the ECtHR, the UK and Germany was that of an unreflective dichotomy between progressive, liberated, western women and women oppressed by their cultures (Vakulenko 2007, p. 728). ECtHR judgments are made without any reference to the implication of wearing the headscarf for an individual's identity, which is protected by Article 8, which indicates that this jurisprudence appears to adhere to a conception of equality based on homogeneity rather than a form of equality based on recognition of differences among people, including cultural and religious practices and beliefs (Marshall 2008, p. 189).

This assumption also meant that there was no full consideration of the facts of the specific cases, and no attempt was made, in the Şahin and Dahlab cases for example, to demonstrate an evidential link between their decision to wear the headscarf and their subordination as women. While the issue of the relationship between any religion – not just Islam – and gender is complex, the judgments failed to probe the circumstances of the women in question or find evidence of the women having been pressured to wear the headscarf (Hopkins and Yeginsu 2008, pp. 29–34). Şahin's testimony that she had not been pressurized was ignored, and there was no evidence of pressure in the *Dahlab* case (Rorive 2008, p. 2680; Westerfield 2006, p. 657). In the UK, the House of Lords, by deferring to popular ideas, failed critically to reflect on whether banning girls' dress was not itself an infringement of gender equality (Vakulenko 2007, p. 724).

The cases have in common that the Court examined them out of context, considering the applicants as generic individuals in hypothetical circumstances, and then applied reasoning which required the reinstatement of national context, which could only be done by referring them back to national courts. ECtHR judges rendered their verdicts entirely in the abstract, asking whether a generic individual's scarf wearing is compatible with harmony and full exercise of (generic) individual rights in the wider society. They did not pass judgment on – or even look into – the exercise of rights of the specific individual cited in the case. Indeed, the European and British judgments drew on national stereotypes: while the *Şahin* case equated wearing the headscarf with radical Islam, the *Begum* case assumed that such clothing was oppressive both in terms of child development and gender equality (McGoldrick 2006, pp. 154–155).

Litigation has provided the opportunity for disproportionate scrutiny of Muslim women by the popular press and other media. The women concerned have been exposed to intense scrutiny and moralizing, often through 'expert' commentaries, and others have reported being victims of hate crimes to which such commentaries might have been a contributing factor. Litigation also has potential to promote the over-regulation of religion, as the Court adjudicates over what are acceptable and unacceptable aspects of religious manifestation. Such judgments could be exploited for political purposes and invite further regulation of how Muslim women choose to dress (Vakulenko 2007, pp. 734–735). This level of scrutiny also has the potential to divide Muslim communities in Europe from which litigants are drawn. Individuals such as Begum have been judged, in the press, by

other Muslims, some in very critical terms (see Idriss 2006). Negative press coverage has attended cases such as Aishah Azmi's, when she lodged a complaint with a UK employment tribunal after being dismissed as a teaching assistant for wearing the *jilbab* (Marshall 2008, p. 179).

Since activity in the public sphere is an important aspect of citizenship, the bans that governments are seeking to impose on European Muslim women upheld by the Courts have solidified a move to retract citizenship rights from these women – who, after failing in Europe, have no other forum to turn to for protection. In evoking the principles of defending national secular traditions and guarding against women's oppression, the judicial process may have served to dismiss the claims of Muslim women without examining their individual complaints and to dilute one of their key forms of access to citizenship, namely community building and participation in the public sphere. Legislation that sanctions the wearing of garments such as the *niqab* risks causing the further immobilization of Muslim women by compelling them to restrict themselves to the private sphere (Turner 2007, p. 297). As Malik (2008) has argued, the growing numbers of Muslim women who are choosing to wear the *hijab* reflect a 'complex' axis of equality – by which she means the realignment of criteria such as gender, religion, culture and class – and thus facilitates the inclusion of Muslim women as equal citizens in the European public sphere.

The fourth explanation for the failure of post-nationalism in these claims was the ECtHR's deference to the principle of secularism, specifically *laïcité* (in France) and *laïklik* (in Turkey). Both countries' defences appealed to secularism as the custodian of equality between citizens and essential to public order and social cohesion. They claimed that wearing the *hijab* in public education institutions – secondary schools in France and institutions of higher education in Turkey – jeopardized the secular principles for which their countries stood. Thus, the governments responded with a generic statement on their view of human rights and the contention that secularism and neutrality are perceived as promoting the public good by, for example, freeing the government and judiciary from the previous domination by one religion. The ECtHR accepted the French and Turkish governments' restrictions on wearing the *hijab* in public education institutions on the grounds that they accorded with these two principles, adopting an unquestioning stance in relation to successive French governments' contention that banning the *hijab* protects the neutrality of the public sphere and thus social cohesion (Barras 2009, p. 1240) and fairly to consider the possibility of discrimination against particular religions.

In the Şahin case, the ECtHR Grand Chamber ruled that Turkey's principle of secularism was 'in harmony with the rule of law and respect for human rights'. Similarly, in *Dogru* and *Kervanci v. France* the Court's judgment that there had been no violation of Article 9 (2) was based on previous case law arguments about secularism – *Şahin, Dahlab* and *Köse* and others – noting that 'in France, as in Turkey or Switzerland, secularism is a constitutional principle and a founding

principle of the Republic to which the entire population adheres and the protection of which appears to be of prime importance, particularly in schools'. And that 'the State may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety' (see Rorive 2008, pp. 2685–2686).

This suggests a pan-European trend towards increased privatization of religion according to a secular model. Europe's attempt to 'define itself in terms of the secular values of Liberalism, human rights, political democracy and multiculturalism' is proving problematic in the face of increasing politicization of European minorities. The solution, to date, seems to have been to seek to repress the manifestation of religious signs from the public sphere (Cavanaugh 2007, pp. 10–11).

This brings us to a deeper explanation, namely the ambiguous relationship between human rights – which are essentially secular – and religious freedom. The Court's deference to national governments on this issue is, in part, rooted in the liberal, secular paradigm that underpins human rights. The implicit assumption is that human rights, which hinge on individual freedom of choice, are compromised by religious duty, which, in essence, compels an individual into giving up autonomy and thus limits the plurality of moral positions from which choices can be made. Moreover, closely linked with state neutrality, autonomy means that the state should not interfere with the choices people make from the plurality on offer or ally itself with beliefs that are thought to deny autonomy (Lewis 2007, pp. 396–403).

Rights such as religious expression are understood as secondary to rights such as public expression, because they are not seen as central to the effective operation of democracy. The degree to which religious rights are secondary, to be relegated beneath any other rights and principles they might infringe, is likely to increase the more secular a society becomes. This will increase the risk of a clash with the priorities of minorities within the society who try to preserve (and might even increase) their religious observance against the background of increasing secularism. The level of discretion given to states varies such that the closer the issue at stake is to the core values of democracy, the narrower the margin of appreciation will be (Westerfield 2006, p. 644). The Court's treatment of religious freedom cases rests on a division between, first, individual rights versus protection of the rights and freedoms of others and, second, the relationship between state regulation of religion and its obligation to protect religious communities and promote tolerance of religious diversity. To date, it has restricted religious practices under the principle of tolerance, pluralism and secularism defined in a way which has imposed 'an unacknowledged cost to religious freedom' (Langlaude 2006, p. 944).

While the outcomes of ECtHR judgments analysed earlier could have reflected the idiosyncratic views of individual judges, a clear pattern of decision making has emerged. The pattern suggests they drew on cultural orientations that could fairly

be described, in their assumptions about Islam and deference to national governments, as anti-cosmopolitan. The fact that the judgements drew on a common set of presuppositions about the meaning of the veil suggests that they embodied wider cultural thinking, whose orientalist connotations prevailed over the cosmopolitan commitment to pluralism through a balancing of rights.

Decision making has followed a common pattern despite the different national characteristics of the countries concerned in terms of church/state relations, federal versus centralized polities and the diverse demographic features of Muslim populations. While Turkey is an overwhelmingly Muslim country, France, Germany, Switzerland and the UK have minority Muslim populations with very different histories of immigration, ranging from the migration of North African Muslims after violent decolonization in France and the relatively peaceful economic migration from Pakistan and Bangladesh to post-war Britain. Moreover, the fact that the majority of the cases were directed against France and Turkey and that in Switzerland the canton concerned – Geneva – is committed to a strict separation between religion and state suggests the importance of this factor (McGoldrick 2006, p. 120).

SAS v. France

Since the *hijab* complaints, some EU governments have taken a further step, imposing explicit bans on the wearing of full-face covering in public. The *burka* ban is not confined to France; there has been a similar ban in Belgium. Nevertheless, it was France that led the way with its *Loi no 2010–1192 interdisant la dissimulation du visage dans l'espace public* of 11 October 2010. The ban was approved by Parliament at the instigation of the communist MP André Gerin after he proposed the creation of a commission of inquiry examining the *burka* and *niqab* on national territory. Gérin proposed the ban on the grounds of women's rights, arguing that such garments undermined 'women's freedom and . . . the affirmation of femininity' and that they represented reclusion, exclusion and humiliation of women. A commission set up under Nicolas Sarkozy's presidency proposed a law that would prohibit the wearing of any kind of face covering in public spaces, including streets, businesses and public buildings. The French National Assembly passed the bill on 13 July 2010 with only one dissenter, and the Senate passed it on 14 September with a vote of 246 to 1 and about 100 abstentions (Korgeweg and Yurkadul 2014, p. 16). The ban represents a substantial extension of previously adopted *laïcité* curbs, which ban the wearing in schools of the visible symbols of any religion. It remained in place when Sarkozy's centre-right administration was replaced by a Socialist government under Francois Hollande in 2012.

The ban reflected France's already-established principle of *laïcité* and its anti-communalist ideology, allied to the fear that allowing head covering would be the thin edge of a wedge allowing Islam to enter France through immigration (Korgeweg and Yurkadul 2014, p. 17). 'Veiling' in political and public debate came to signify the oppression of women and deliberate curtailing of their engagement

with society, putting it at odds with the principles of the Republic. The views of those women who chose to veil were given minimal space in the debate, in contrast to newsworthy stories in which veiled women were portrayed as dominated by male members of their families (Korgeweg and Yurkadul 2014, p. 33). While the immediate cause of the new law was the advocacy of a commission to investigate the impact of women wearing the veil, a significant trigger for its adoption was the refusal of the Conseil d'État to grant citizenship to a woman who was married to a French citizen and had had three children in France but who continued to wear the *niqab*. This was judged by the Conseil d'État to mean that she had not integrated (Korgeweg and Yurkadul 2014, p. 38) and so did not fulfil the conditions for citizenship.

The extent of public support for the ban on the headscarf (and later the full-face veil) was considerable and came from some unlikely places. It drew in prominent feminists such as Gisele Halimi, of Jewish-Algerian descent, to argue that the veil was a 'terrible symbol of women's inferiorization', with no attention given to whether women had chosen to wear headscarves themselves. The French filmmaker Rayhana, who had been brought up as a Muslim, endorsed the ban on grounds that *burka* wearing is as 'a sign of submission' even when the wearer has chosen to do so (Brumley 2015).[1] The legitimacy of the veil when women said they chose to wear the veil was implicitly questioned on the basis that this might not be informed consent, the wearer feeling compelled by religious obligation or by an imposed sense of inferiority that required her invisibility, even if no one had explicitly pressured her to put it on. The inadvertent effects of the veil on its wearer were also cited as reasons for banning it. In December 2003, *Le Monde* reported that a group of well-known women had published a statement in *Elle* magazine calling for a ban on the headscarf on the grounds that it subjected all women to intolerable discrimination.

The irony that this mirrored the defence of the *burka* by some Islamic scholars (who view it as protecting women from unwanted male attention) was disregarded in part because some Muslim groups also supported the original ban on the headscarf. The organization *Ni Putes Ni Soumises* (Neither Whores Nor Submissives) or NPNS supported arguments that linked the headscarf with the oppression of women. NPNS saw the headscarf as worn by girls to protect themselves from sexual violence. It implied that such violence against women was endemic to society and could not be tackled by other means, and thus it could not be supported on the basis of tolerance for communalist values (Korgeweg and Yurkadul 2014, pp. 34–35).

It was not long before the first case objecting to the ban in France was heard at the ECtHR. In the case of *SAS v. France*,[2] the complainant argued that the ban on full veiling in the public sphere was a violation of her rights. The applicant argued that by preventing her from wearing the *burka* the ban violated a woman's rights under ECHR articles 3 (right to freedom from torture or inhuman or degrading treatment or punishment), 8 (respect for private and family life), 9 (the right to freedom of thought, conscience and religion), 10 (freedom of expression),

11 (freedom of peaceful assembly and freedom of association with others) and 14 (the right not to be discriminated against on the grounds of sex, race, colour, language or religion). This case was different from earlier cases taken to the ECtHR on headscarves because it was not confined to public institutions such as schools or public offices but to the whole of the public sphere. The applicant was a French national who submitted that she was a devout Muslim and wore the *burka* and *niqab* in accordance with her religious faith, culture and personal convictions. She emphasized that neither her husband nor any member of her family put pressure on her to dress in such a manner. The applicant wore the *niqab* in public and privately. She was content not to wear the *niqab* at all times in public but wanted to be able to choose to do so depending on her spiritual feelings. There were certain times when she felt she ought to wear it in public to express her religious, personal and cultural faith. The applicant did not claim she should be able to keep the *niqab* on when undergoing security checks at the bank or airport and showed her face when necessary for identity checks.

The ECtHR held unanimously that the complaints concerning articles 8, 9 and 10 taken separately and together with article 14 were admissible and the remainder of the application inadmissible. But the claims admitted for consideration were then emphatically rejected. The Court determined by 15 votes to 2 that there had been no violation of article 8; by 15 votes to 2 that there had been no violation of article 9; unanimously that there had been no violation of article 14 taken together with articles 8 or 9; and (6) unanimously that no separate issue arose under article 10 taken separately or together with article 14 of the Convention.

The Court arrived at these conclusions after hearing submissions from various human rights non-governmental organisations (NGOs). Amnesty International argued that the right to wear clothing with a religious connotation was protected by the ICCPR in terms of the right to freedom of thought, conscience and religion and the right to freedom of expression. It also argued that the applicant had the right to freedom from discrimination and that the applicant could be a victim of intersecting discrimination in which there is an intersection of sex with other factors such as religion, which could amount to stereotyping of women. It also suggested that restriction on clothing could incur other restrictions, such as the right to work and the right to education.

The NGO *Article 19* also stressed that the wearing of religious dress was covered by the right to freedom of expression and the right to freedom of religion and thought. It referred to the UN Human Rights Committee in the case of *Hudoyberganova v. Uzbekistan*, in which a decision had been reached in line with this right. The London-based organization Liberty argued that the ban put women in an intolerable position between choosing to stay at home or go out and remove the veil. Liberty also noted that human rights themselves stood on the wartime atrocities of crimes against a religious group where there is an intersection between religion and race and that the right to freedom of religious expression was therefore fundamental.

The Court's decision making in *SAS v. France* indicated some development in legal thought since the previous cases on the *hijab*. Some of the Court's reasoning departed significantly from the earlier jurisprudence. In particular, it did not accept the view that wearing the *burka* represented the oppression of women and instead argued that gender equality could not be evoked to defend a ban when it related to a practice agreed and chosen by women. This contrasted significantly with the decision making in the *Dahlab* and *Şahin* cases mentioned earlier. The Court also departed from earlier decision making in not adhering to the essentialization of Islam when it dismissed the government's claim that the *burka* ban protected human dignity and observed instead that such an expression of cultural identity contributes to the pluralism of democracy.[3]

However, the Court again deferred to national authority in its final judgement that the ban did not violate human rights. Thus while the Court did not accept the ban on the usual grounds of gender inequality and public safety, it accepted it on the basis of the legitimate aim of 'living together' under 'the protection and rights and freedoms of others', even though this concept was regarded by the dissenting judges as 'vague'.

Retracting post-nationalism

This chapter has shown that, even with these diverse national trajectories, there has been a convergence of policy. This can be explained by two recent developments. First, there has been a growing secularization across Europe and privatization of religions. Second, as a direct result, the way the principle of subsidiarity has operated over the issue of religious freedom in Europe has not been around liberal pluralism but rather 'illiberal secularism expressed in illiberal restrictions on religion in the public sphere' (Cavanaugh 2007, p. 2), and what has been described as 'fundamentalist secularism', creating a climate of fear of Islam and demanding its increasing confinement to the private sphere (Westerfield 2006, p. 651).

These cases show the limitations of arguments about denationalized and post-national citizenship when applied to European Muslims, the primary litmus test (Soysal 1997, 2000). While European Muslims are increasingly using human rights as a vehicle for gaining religious rights, they have been ineffective, because case history to date has delegated responsibility for decision-making to the national governments. The applicants' rights were not protected by appealing to European courts because the subsidiarity principle gives greater autonomy over the imposition of restrictions on religious expression than on other rights to national authorities (Lewis 2007, p. 396).

On the question of the ban, human rights institutions in Europe seem to be uniformly reinforcing national policy and national stereotypes, missing the opportunity to establish cosmopolitan law by ensuring that international law is applied to domestic constitutional law (Skach 2006, p. 194). On this matter, universal principles of human rights continue to depend on the consent of nation-states for

their enforcement, revealing a disjuncture between rights as a set of legal principles and their realization, which means that minority religious rights are not protected by appeals to supra-national human rights organizations (Basok 2003, pp. 1–2). While the margin of appreciation does not operate in the national cases, as mentioned earlier, there is a process of *double deference* in the judgments – first to the ECtHR and then its reliance on national policy. Thus, the two national cases, *Begum* and *Dahlab*, reveal the limits of denationalized citizenship.

The trend towards post-national or denationalizing of citizenship is, therefore, fragile and incomplete. In the context of instability or national crisis, the drawbridges are quickly drawn back in, showing that national allegiance continues to be a demand for Muslims who are also European citizens. Protests against the Iraq war are seen as disloyalty to the nation for Muslims but not for non-Muslim citizens. The paradox is that European Muslims, in seeking to use human rights mechanisms for dealing with their claims, are not adopting separatist strategies but acting according to a legal process rooted in 'western' traditions. Their actions signal an aspiration to be integral to European culture (Hellyer 2007, pp. 34–35). Yet their resort to litigation has been unproductive and in many cases counterproductive, with negative consequences beyond the rebuff to the plaintiffs, who seek supranational remedy for locally compromised rights. The reluctance of legal institutions to uphold those traditions, when national laws or attitudes depart from them, deals a potentially significant blow to those aspirations.

In relation to the *hijab* ban, the ECtHR has failed to establish cosmopolitan law (Skach 2006, p. 194), because on this matter there was excessive reliance on the nation-states exposing a disjuncture between rights as a set of legal principles and their realization such that the supra-national human rights organization did not protect minority religious rights (Basok 2003, pp. 1–2). In the competition between Europe's commitment to human rights, cosmopolitan citizenship and national exigencies (Benhabib 2004, p. 198), the latter won. This prioritization of the national above a supra-national European principle was confirmed by the European Commission's President Jose Manuel Barroso when he stated that 'this [the bans] is not a European Union competence so as president of the commission I will not take a position on the issue'. Cosmopolitan citizenship, in the light of these developments, can be judged to have failed.

Democratic iterations in which Muslim women took part resulted in an intensification of their exclusion from the polity rather than a shift from the margins to the centre. Women whose religious convictions mean they cannot go out without covering will be confined to the private sphere as a result of these measures. Since activity in the public sphere is an important aspect of citizenship, the bans that European governments are imposing upheld by the Courts have eroded Muslim women's citizenship rights – who, after failing in Europe, have no other forum to turn to for protection. In evoking the principles of defending national secular traditions and guarding against women's oppression, the judicial process may have served to dismiss the claims of Muslim women without examining their

individual complaints and to dilute one of their key forms of access to citizenship, namely community building and participation in the public sphere. Legislation that sanctions the wearing of garments such as the *niqab* risks causing the further immobilization of Muslim women by compelling them to restrict themselves to the private sphere (Turner 2007, p. 297).

Court judgements reveal an assumption that human rights, which hinge on individual freedom of choice, are compromised by religious duty, which, in essence, compels an individual to give up autonomy and thus limits the plurality of moral positions from which choices can be made. Moreover, closely linked with state neutrality, autonomy means that the state should not interfere with the choices people make from the plurality on offer or ally itself with beliefs that are thought to deny autonomy (Lewis 2007, pp. 399–403). Fears about the importation of Sharia law by established Muslim communities in Western Europe are also pervasive and, in the absence of any full knowledge, are juxtaposed against civilized religions and deemed incompatible with human rights. After the attack on the Twin Towers, there was a politicization of Shari'a law in the popular imagination which represented it as the antithesis of civilization and the embodiment of Islamic 'barbarism' based on links between Shari'a and practices such as stoning (Cesari 2010a, p. 145).

Despite their numerous differences, cosmopolitan theories share the position that national interests should not override universal morality. The creation of international conventions on human rights by the UN and EU, for subsequent transposition into member states' national law, was hailed as the integration of this cosmopolitan principle into the rule of law. Ostensibly, any attempt by national governments or judiciaries to violate or vary individuals' human rights can now be overturned through the victims' appeal to the international court that safeguards the universal statement of those rights. Yet in practice, as the evidence of this chapter has shown, the ECtHR has systematically refused to do this – instead acknowledging the right of national governments to set a context for the statement, interpretation and prioritization of rights and deferring to national courts to make a final judgement within that differentiated context.

It is this deference to national interests by the ECtHR, epitomized by its judgements over restrictions and bans on Muslim clothing, that reveals the failure of cosmopolitanism. The failure occurs on two levels. There is a visible inability to persuade federal or supranational courts that human rights transcend national or state boundaries and can command the same significance and interpretation regardless of the jurisdiction in which a plaintiff resides. Underlying this and making it impossible to rectify, there is an incapacity to set out a set of non-trivial human rights that are not overlapping and mutually contradictory in ways which allow different national legal/political systems to resolve conflicts in different ways. It is impossible to capture the spirit of cosmopolitanism in legal structures, an impossibility confirmed in the justifications for upholding the national bans.

Notes

1 Brumley, C. (2015) Does France's 'burqa ban' protect or persecute? *Public Radio International* 30 May, online at www.Pri.org/stories/2015–05030/does-frances-burqa-ban-protect-or-prosecute [Accessed 15 July 2016].
2 Case of *S.A.S. v. France* (Application no. 43835/11) 1 July 2014.
3 Berry, S. (2014) EJIL. *Talk! Blog of the European Journal of International Law* 2 July.

Chapter 6

European immigration, asylum and the myth of cosmopolitanism

Europe's self-image depends on the idea of openness and tolerance, a haven for refugees and asylum seekers (Tuitt 1996). Since the Treaty of Rome (1957) Europe has presented itself as the harbour of four freedoms, namely, the free movement of goods, of services, of capital and of people. For a time, the priority was to promote these within the expanding European Union (EU) and its internal market, drawing accusations that a 'Fortress Europe' was restricting the freedoms to outsiders so as to promote them within. But having established itself as the world's largest trading bloc, the EU subsequently reduced its external commercial barriers and those to immigration. A traditional wariness towards 'economic' migration was tempered by the anticipated need for an inflow of skilled workers, as Europe's barrier-free economy grew faster while its workforce levelled off due to falling birth rates.

Some authors have depicted the European Dream as cosmopolitanism in action, even contrasting it favourably with the longer-celebrated American melting pot (Rifkin 2004). European cosmopolitanism has been ascribed to its mix of diversity, preserved through multiculturalism and equality before the law, which grants the same rights to everyone who follows certain legal and social rules (whose democratic determination keeps them non-discriminatory). Europe hosted the first societies partly or wholly based around a 'free market', which lets everyone buy and sell at a standardized price. As a microcosm of the new global world of diversity and interconnectedness, with the emphasis on flows of goods and people, Europe is seen as a model of cosmopolitanism. Rifkin (2004, p. 258) presents Europe as the region that does most to fulfil Beck's (2000) view of people living their lives 'here and there', immersed compatibly in their cultures of origin and destination. The diasporic communities in Europe can live this way because new communication technologies (the Internet, mobile telephones and social media) allow minorities to be settled in Europe and connected to their transnational pasts – and because Europe's liberal values and social protections allow them to do so.

Rifkin (2004) claims that whereas the American Dream was about patriotism the European Dream has a quite different vision, one that embraces cosmopolitanism and is based on the exercise of soft rather than hard power. For Rifkin (2004) European values depart sharply from those of the American Dream on

issues including multilateralism, sustainable development, community cohesion and quality of life. Far from being hangovers of the time before industrialization, globalization and democratization, these are (in his view) the values more consistent with progress in the new century, to the extent that

> While the American spirit is tiring and languishing in the past a new European Dream is being born. It is a dream far better suited to the next stage in the human journey, one that promises to bring humanity to a global consciousness befitting an increasingly interconnected and globalizing society . . . The European Dream emphasizes community relationships over individual autonomy, cultural diversity over assimilation, quality of life over the accumulation of wealth, sustainable development over unlimited material growth, deep play over unrelenting toil, universal human rights and the rights of nature over property rights, and global cooperation over the unilateral exercise of power.
> (Rifkin 2004, p. 3)

The Schengen Agreement (1985) is a way of institutionalizing these goals so that every member of the European Community (EC), as it was then, and subsequently the European Union (EU, which it became after the signing of the 1992 Maastricht Treaty) who had European citizenship could move freely among member states. The Schengen Agreement implemented the gradual abolition of national border controls and instituted limited passport checks instead. The Agreement's aim was to render internal borders invisible so as to limit traffic barriers and stimulate a free and competitive flow of goods, capital and people. Its vision was to create a common European market which could compete with the US and East Asia; but the US rise to global prominence as a country of immigration and the contribution of Japan's resistance to immigration as a factor in its post-1990 economic stagnation also pushed the EU rule makers towards greater openness. Despite its economic base, the wording of the Schengen Agreement revealed an ideological commitment to freedom of movement for all nationals of the member states (Verstraete 2003, p. 288).

This commitment was, however, strained from the early 1990s by disappointing rates of EU GDP growth and consequently high rates of unemployment across most member states. These, along with ageing populations and rising pension and healthcare costs, weakened the financing of the large welfare states to which most member states had become accustomed. Disappointing rates of production growth and job creation – belying the optimistic forecasts surrounding the 1992 single-market programme – were experienced in the build-up to the launch of the single European currency in 1999, as prospective adopters of the euro struggled to meet the 'convergence conditions' by tightening their budgets and reducing their inflation rates. The disappointment continued after the single currency was adopted by 11 countries in 1999, subsequently expanding to 19 by 2016. Persistent low growth rates led to a prolonged expansion of public debt, which made Eurozone

countries especially vulnerable to the international banking crisis of 2007–2008 and the subsequent recession.

Slower economic growth, which also afflicted North America and previously buoyant 'emerging' economies such as China, Brazil and Russia after 2008 prompt changes in business strategy which can fuel migration while worsening public antagonism towards it. Employers often respond to slacker demand and lower profitability by seeking to cut costs. Immigration may assist this by increasing the supply of (skilled and unskilled) labour and helping keep wages down. Drawing on their own research in London, Berlin and other European cities, Jordan and Düvell (2003) warn that strict attempts by high-wage countries to regulate entry will merely result in more 'irregular' migration, promoted as much by employers wanting cheaper and more flexible labour as by itinerant employees. Europe's relatively high-wage model was previously regarded (with some empirical support) as self-sustaining, because it required employers to match higher pay with higher productivity by investing in employees' 'human capital' and in physical capital for them to work with. The obverse side is that when migration drives wages down, the incentive to raise worker productivity is reduced, and a culture of low pay and relaxed employment protection can easily take over.

Internal opposition to immigration was further fuelled when, still recovering from this recession, the EU was hit by an unprecedented wave of migration from North Africa, the Middle East and South Asia following years of conflict in Syria, Iraq, Afghanistan, Libya and other predominantly Muslim countries. After initially condemning Hungary for building a razor-wire fence against its borders with Serbia and Croatia to keep out asylum seekers and economic migrants, EU leaders in 2015 accepted this hardening of the eastern boundary amid growing resistance to the Commission's plans for refugee quotas across member states. While Germany agreed to take up the million refugees from war-torn Syria, the EU reached agreement with an increasingly authoritarian Turkey to stem the further westward flow of migrants as the governments of transit and destination countries reacted to a backlash from nationalist parties raising fear about new arrivals, especially from non-Christian cultures.

This resistance was mirrored across the Atlantic, where the 2016 US presidential election focused extensively on issues of migration and international trade. Donald Trump won the Republican nomination and captured support from some traditionally Democratic heartlands, on a platform of restricting further immigration (especially by Muslims and Mexicans), ejecting illegal immigrants and abandoning new trans-Atlantic and trans-Pacific free-trade deals. In common with European nationalist groups, the billionaire Trump attracted support from low-income voters despite a strong consensus that higher rates of immigration were associated with better long-term economic performance, especially in western countries whose populations were otherwise set to age and shrink due to lower birth rates. The successful counter-argument was that unrestricted immigration and free trade benefited business owners and professional employees while eroding the pay and

conditions of ordinary (especially less educated) working people, making isolationism and protectionism the only viable strategies for reducing inequality and raising the condition of the least well off. Immigration, even by refugees, can be re-cast as the effect rather than the cause of recipient countries' prosperity. And as a route to prosperity, expanding the skills and opportunities of the existing population appears instantly more acceptable than importing ready-made talent from outside.

In the public domain there is now a consensus that migration needs to be managed and controlled. The argument that unchecked immigration could undermine ethnic harmony and internal social cohesion in host countries has enabled European and North American nationalists to shed their traditional right-wing, monochrome reputation and capture support from socio-economically more deprived groups (including some ethnic minorities who worry that community relations will break down if diversity increases any further). There are echoes of this debate in many parts of the developing world, where unequal rates of progress have caused high rates of regional economic migration (for example, from Central and South Asia into the Middle East, sub-Saharan into North and Southern Africa and Central into North America) and where recent conflict has caused unprecedented refugee flows (notably after war and economic collapse in Afghanistan, Rwanda, the Congo and Sudan).

Until the global financial crisis of 2008 and the subsequent increase in concern over the scale and impacts of migration, 'globalization' was in the ascendant as a framework for understanding migration. Theorists argued successfully that the traditional analytical focus on the nation-state should be abandoned in favour of one centred on global flows and networks. The 'borderless' world was reconceptualized as one that offers unprecedented opportunities for mobility, migration and travel and one that grew richer – economically and culturally – as rising international flows of goods, services and capital were complemented by international flows of people. National governments may have imagined that the free circulation of goods, services and capital across borders would reduce people's inclination to migrate by allowing them to prosper from wherever they were. However, in reality, expanding trade in commodities appears to promote rather than stem the movement of people, with telecommunications raising rather than reducing the desire to meet and talk in person. The causes and effects of rising migration flows, and their relation to the policy choices that lead to and follow from 'globalization' must therefore be examined in more detail to understand the present crisis of cosmopolitanism and its implications for the assertion of human rights.

Globalization and migration

By expanding economies beyond national borders and making countries ever more dependent on international trade and capital flows, globalization has long had the potential to undermine the Westphalian nation-state system. The Bretton Woods system, instituted after the Second World War, attempted to restore

national sovereignty over the economy by permitting free trade while restricting movement of capital and labour. But national controls on capital movement lost effectiveness and political support during the 1970s, making Bretton Woods' system of fixed exchange rates impossible to sustain, and associated patterns of migration have since become a further source of instability. The social and political tensions that gave rise to the Arab Spring and to simmering tensions in South and Central Asia, pitching autocratic governments against both moderate and extreme resistance movements, arose from complex contextual developments of which pressures from a globalizing economy were only one source. But one of their major consequences was to trigger unprecedented cross-border refugee flows, which compounded a trend of increase in economic migration, resulting in a 41 per cent rise (to 244 million) in the stock of international migrants between 2000 and 2015 (UN 2015).[1]

Even before the 2008 financial crisis and 2010–2012 Arab uprisings revealed the downsides to growing interconnectedness, global economic integration was weakening national cultures and identity while global markets curtailed the options available to national governments, ending the traditional 'nexus between power and national boundaries' (Castles and Miller 2003, p. 39). The widespread adoption of 'neoliberal' or 'Washington consensus' policies of privatization, business tax reduction, balanced budgeting, social security cuts and deregulation, even by centrist or left-leaning governments, underlines the difficulty of adopting a different national path under the pressures of an open global economy. Globalization has generated qualitatively different patterns of migration in terms of both geographical reach and character, being more internationally encompassing and having greater social, economic and political significance (Castles and Miller 2003, pp. 278–280). Higher rates and the increasingly long range of cross-border migration have raised the importance of 'microstructures' – forms of social capital created to support migrants in vulnerable circumstances – in destination countries where the scope to generate such social capital has often been eroded by other impacts of globalization. The spate of terrorist attacks across France in 2015–2016, many perpetrated by Muslims acting alone or in the name of the Islamic State group, revived a longstanding fear that the French state had allowed a particular dearth of such social capital to develop through its insistence on immigrants' abandoning religious symbols (including the *hijab*) to demonstrate assimilation and its persistent foreign-policy interventions to avert the rise of 'fundamentalism' in former French territories abroad (Nougayrede 2016).[2]

Even if the migration 'crisis' that engulfed Europe after the 2011 outbreak of war in Syria proves to be exceptional and ultimately containable, a more integrated world economy creates unfamiliar forms of migration (Jordan and Düvell 2003, p. 9). New kinds of economic activity, driven by multinational manufacturers' extension of supply chains across national borders (Dicken 2015) and exploitation of newly opened markets by global finance as well as by the cross-border trading opportunities created by the Internet, have triggered social and political changes. The new global markets, especially those associated with finance and new digital

technology, depend on mobile labour – recruitment, production and distribution are no longer nationally constrained. Income inequalities have increased within countries and between comparable occupations in different countries, partly as a consequence of the globalization of markets and consequent pressures on government to scale back income distribution (Stiglitz 2012). These changes have produced new forms of migration, raising issues for its management and implications for governance and political liberalism. Steps taken to adjust countries' governance for survival in a more integrated global system have raised challenges to equality, justice and liberal democracy, which some commentators associate with the 'corporate-driven' variety of globalization (e.g. Monbiot 2000; Klein 2001) but others more gloomily regard as inherent to all its forms (Rodrik 2011).

Economic migration inevitably intensifies when 'newly industrializing' nations stop being dependent on the early industrializers and gain the technologies and skills that enable them to compete on a more equal footing. Although educated Indians and Latin Americans can earn more than their peers by working locally as software programmers, call centre handlers or car assemblers, their pay is multiplied many more times if they can migrate to do these jobs in old urban centres at first-world wage rates. While economic globalization may have held out the promise of narrowing global inequality, it has more usually left inter-regional income differences comparably wide and more visible, increasing incentives to move. Richer nations then come under pressure to restrict economic immigration so as to avoid any depression of wage rates and to maintain their supply of imports made cheap by 'offshoring' to lower-wage labour abroad.

The top-down, macroeconomic nature of many of these arguments has prompted a counterpoint to global discourses and universalizing theories by authors seeking a more rooted account of the impact of global capitalism and transnationalism. Feminist and postcolonial theories of difference have provided a particularly powerful foundation for these more micro-level approaches, which replace global frameworks with an emphasis on the particular. Ahmed et al. (2003) contest the current tendency to view mobility as a destabilizing of identities (captured, for example, in notions such as 'liquidity' and 'rootlessness'). While transnationalism has changed experiences of belonging, it has not necessarily created rootless identities. Moreover, migration is not just about movement but also about 'staying put' – forcibly so as, for example, in the case of Gaza. Ahmed et al. (2003) use the concept of regrounding to show that migration does not simply undermine identities but also creates the (re-)establishment of identity through, for example, the economics and politics of establishing new homes.

Because it creates insecurities and inequalities that drive publics to demand more assistance and protection from their governments, a 'borderless world' preserves and even accentuates the importance of boundaries and borders and of the nation-state they help define. The state retains a key role in managing migration and selecting the type and numbers of migrants to accept; the re-assertion of 'national sovereignty', interpreted as control of borders and the right to set rules on who can cross them, was a major and possibly decisive influence on the

UK's 2016 referendum decision to leave the EU. States remain at the forefront of attempts to deal with the dilemmas arising from the need to accommodate new minorities and simultaneously to protect them from exploitation (Castles and Miller 2003). While individual agency creates a degree of unpredictability, governmental measures and policy continue to determine who can enter the country, who is allowed to stay, what activities they take up, what social reception they are given and what civic and economic rights they can acquire.

For example, the adoption of assimilationist policies (France) or multicultural ones (Canada, Australia, Sweden) can substantially affect early immigrants' experiences. These then influence the expectations and choices of later prospective migrants in different ways. Governments devise their initial response to new 'waves' of migration partly to send signals that will affect any later waves: for example, demonstrating a preference for younger or more skilled applicants in the settling of asylum claims or resourcing maritime rescue services in a way that leaves it uncertain whether migrant boats will get ashore safely. State action may, moreover, have counterproductive effects, especially when a hardening of attitudes is signalled and deadlines are set for a tightening of immigration rules.

The clash between open borders and European social democracy

Although economists have influentially drawn attention to the possibility of immigration filling skill gaps and offsetting population ageing in Europe and North America, migration is not likely to provide a lasting solution to the North/South divide in living standards or to western demographic problems (Castles and Miller 2003). By implication, governments will inevitably – and with some justice – seek to regulate migration even where shrinking populations and labour forces give an economic incentive to allow it. This is especially the case when, as in Europe, the levels of immigration required to solve demographic problems become so high as to be politically unsustainable. The short-run economic costs of absorbing higher immigration eventually start to offset the longer-term economic benefits, especially if there is immediate strain on public services and housing and a delay in production gains as new arrivals acquire language and labour market connections. Economic benefits may also be countered, even in the longer term, by perceived social costs – including those of adapting culture to include different cultural and religious traditions and of reducing employers' incentive to recruit and train younger workers because of the supply of experienced older workers from outside.

The social impact of migration, especially on each country's less dynamic regions and less advantaged citizens, leads to a contradiction in political priorities between opening borders for the movement of information, commodities and capital and controlling the cross-border movement of people. Controls on migration seem to contradict underlying economic and cultural impulses towards freer, less regulated exchange (Castles and Miller 2003, pp. 282–284). Like protective

barriers against particular goods or service imports, they raise a suspicion of satisfying vested political interests, sacrificing gains for a majority in order to shield a small but politically influential minority. But the success of populist movements in Europe and the US since 2008 confirms that it is substantially easier to attack the inflow of people than goods and services by arguing that it is only an already privileged minority that gains (and gains disproportionately) from open-door immigration policy.

It is not just the European right that has become hostile towards immigration, especially from places that seem less European. Robert Rowthorn (2004) has cast doubt on the idea that immigration could substitute the UK's ageing population. He argues that while with current levels of immigration there could be minimal benefits, these are outweighed by the pressure immigration puts on public resources such as housing and the National Health Service (NHS). He turns on its head the traditional economic idea that immigration improves GDP by suggesting instead that we take the measure of GDP per capita, which, he claims, will only marginally be affected positively. Rowthorn (2004) sees growth from migration as, ultimately, a negative trend having disastrous consequences on environmental resources. David Goodhart in his book *The British Dream* (2013a) makes similar arguments, but it also takes on the effect of multiculturalism and globalization and contests the global community arguments of the liberal left and instead suggests a return to pride in one's national identity, suggesting that it is being eroded by large-scale immigration.

The EU's 'rich' citizenship assumes a longstanding economic contribution to pay for the social benefits earned, but recent arrivals cannot have made long contributions. Willingness to support a redistributive welfare state and other state-provided services (for example health or education) depends on a sense of social solidarity and the rich feeling affinity with the less well off. This sense of solidarity may seem to be weakened by the arrival of 'others'. New arrivals are perceived as working harder for less pay – hence the theme of stealing jobs and driving down wages. Arguing that liberal democracies have always restricted access to the full fruits of citizenship, Jordan and Düvell (2003) explore the alternative approach of combining unrestricted 'cosmopolitan economic membership' for migrants to be rendered compatible with differentiated forms of political rights and citizenship. While implying that this might avoid the charge of 'left-wing xenophobia' levelled at those who would attach full citizenship rights to residency but therefore have to restrict this, the authors (Jordan and Düvell 2003, p. 96) admit that liberal theory's history of assigning degrees of membership is 'long and dishonourable', having in the recent past justified slavery, women's subjugation, European imperialism, workers' disenfranchisement and forced labour for those without employment. Cosmopolitan liberalism's spectre of a 'citizenship test' that might remove rights from those born into a nation who cannot or will not contribute to its economy and assign them to those who move into the nation and can do so leaves Jordan and Düvell (2003, p. 121) noting the need for 'extensive modifications of the rights given to citizens, and the powers of national political communities' without making clear exactly which changes they favour.

Investigating these micro-level aspects of migration further, Ahmed et al. (2003) suggest that attention be shifted away from mobility and instead to the relationship between migration and 'staying at home'. This approach insists on the need to understand the other side of migration: staying put either through choice or compulsion. It opens the way for a previously cosmopolitan European outlook to be modified in the direction of stronger borders and curbs on migration – not only for the negative reason that liberal-democratic political traditions and social-democratic economic arrangements could be undermined by an influx of new 'unsettled' populations but for more positive reasons relating to the arrest of 'undesirable' migration. If migration is mostly a defensive reaction by disadvantaged people seeking relief from war and hardship, the preferable response is to help resolve those push factors *at source* so that outward movement is no longer necessary. Allowing migration may be harmful because it defuses pressure through the 'safety valve' when what is really needed is to stop the pressure building up. If, at the other end of the scale, voluntary migration is the preserve of a well-off and politically privileged minority, then taking action to accommodate it will be socially divisive, and restrictions on movement can be viewed as having a socially neutral or even progressive impact.

When freedom to migrate is curtailed by economic or political constraints at home, the question of who stays behind needs to be considered. Inability to move might be enforced – a fate already experienced by the Palestinians. Ahmed et al. (2003) undermine conventional perspectives on migration which prioritize movement and promote a perspective that hinges on an analysis of the relationship between migration and 'being sedentary', for example, through the effects of migration on grounded communities (e.g. indigenous Australians). In resisting universalizing assumptions, these authors address micro political issues through themes that link migration with the body and the family. Their broadening of the concept to any act of leaving one's home for a new (or rediscovered) one creates space for discussions of 'queer migration', women's role in migrant community building and the search for other-country roots by the settled descendants of past economic migrants. All of these themes link up with the idea of social capital or the familial and friendship networks that migrant communities create. The connection between migration and embodiment is highlighted by Ankori (2003) on contemporary Palestinian art, which convincingly explores the ways migration is expressed in images of the body and the role of power relations in this. Instead of focusing on the national home through the metaphorical lens of 'the motherland', the author concentrates instead on how displacement and dispossession are expressed through the body, citing, for example, the work of artist Mona Hatoum, whose 1983 *Negotiating Table* involved her lying on a table covered with guts, bandages and blood.

The new, social-democratic nationalism argues that recent migration flows have boosted commercial profit by lowering employers' labour and training costs while restraining pay and employment opportunities for working people, especially the least skilled. Critics point out that the richest remain insulated from the social impact of immigration, which is mostly felt in the areas of lowest housing

cost, where schools, health services and other social provisions tend already to be under pressure. The 'liberal' case against large-scale migration can also cite evidence that it is not a solution to the gap between the rich North and the poor South, serving instead to perpetuate a 'brain drain' that sets back the development of the global South, which is needed to defuse long-term pressures for economic migration.

Restrictions designed to assuage the fears of host populations (for example on political, employment or residential rights) tend to be incompatible with market principles and democratic norms (Castles and Miller 2003, pp. 280–284). Such controls can also raise the inflow of unauthorized migrants, whose invisibility can make them notably more vulnerable than those who are either officially admitted or turned away. The liberal proponents of an end to open migration argue that immigration controls, far from being exclusionary or racist, ensure harmonious relations between migrants and indigenous populations. Regional integration initiatives such as the EU and NAFTA may in part attempt to defuse immigration by improving trade access for poorer countries bordering rich ones, but they also enable stronger, supranationally coordinated responses against these migration flows that are not deterred (Castles and Miller 2003, pp. 95–114).

The swing in liberal democratic opinion since the Millennium, from accepting migration to acknowledging a case for controlling it, has raised the need for an ethical theory to acknowledge the role of boundaries (Jordan and Düvell 2003). Coming from a political economy perspective, these authors present justice as being about equal distribution of rights, duties and resources. When applied to migration, questions of justice cannot be addressed through assumptions of a borderless world. The problem with existing theories of social justice, they maintain, is that these are influenced by the idea of a social contract. As advanced by its classical proponents (Hobbes, Locke) and its more recent developers (such as Rawls and Gauthier), social contracts start with the abstract idea of boundary-less society whose membership is unchanging across space and time so that a choice it makes at any moment will be morally applicable through time. Such a level of abstraction makes it impossible to grasp 'real' issues of mobility and shifting membership. Critics have therefore identified a limited number of existing solutions to the management of migration, which may be characterized as nationalist, globalist, federalist and ethical. A nationalist approach calls for stronger national sovereignty and tighter border controls. A globalist approach demands more effective international governance, making the problem more manageable for national governments while leaving them the scope to choose their own form of border control. A federalist approach envisages new, global systems of membership, altering (usually enlarging) the borders across which control is exercised.

An ethical approach seeks new solutions to help vulnerable communities and requires other aspects of immigration policy to be guided by this priority. While it may in principle be compatible with one or more of the other approaches, none has found it easy to accommodate. The EU attempted a federalist approach after 2010 in response to increased migration from North Africa, the Middle East and

Afghanistan, envisaging neutral treatment of new arrivals once they crossed its external border and using national migrant quotas (linked to population and per-capita income) to relieve pressure on point-of-entry member states. But many of those who were farther from the south-eastern border resisted this policy of dispersion, and the UK exempted itself altogether. Not content with this opt-out, the UK decided in 2016 to leave the Union, campaigners for 'Brexit' citing the re-nationalization of immigration policy as a major gain from doing so. But years of acrimony seemed likely to ensue as remaining member-states sought free movement as an ongoing condition for access to their internal market, obstructing UK plans to bring the EU into its points-based immigration system.

In relation to refugees, the UK stood Germany's open-door policy on its head, deliberately raising its barriers to escapees of the Syria, Iraq and Afghanistan civil wars who had made it into Europe so as to concentrate assistance on those that had stayed in refugee camps close to their country of origin. In promoting this solution, the centre-right governments of 2010–2016 led by David Cameron were implicitly extending the 'liberal imperialism' that had characterized their centre-left 'New Labour' predecessors. Refugees should stay close to their home country and prepare to return there, according to this stance, because they were culturally and linguistically unsuited to settling and integrating into Western Europe. But before they returned, the west had to intervene to make their home countries habitable again by restoring peace, with increased democracy and human rights. While experience in Libya (whose government disintegrated after the Anglo-French deposition of the Ghaddafis in 2011) left the Cameron governments disinclined to repeat the wars fought by Labour's Tony Blair in Afghanistan and Iraq, the aspiration towards defusing emigration at source by 'reconstructing' migrants' countries of origin remained unchanged, if substantially unfulfilled.

Power, migration and mobility in Europe

In their discussion of globalization and transnationalism, Ahmed et al. (2003) explicitly set out to oppose theories that underplay the role of the state or borders in constraining or facilitating choice. They conclude that contemporary conditions require a redefinition of citizenship and that national states and international organizations need to cooperate to protect vulnerable people's rights to move and to remain. Their perspective on transnationalism departs from typical approaches in two ways. First, they question the transnationalist distinction between disconnected locations, arguing instead that locations are flexible and boundaries between them blurred (encapsulated in the idea of 'border zones'). Second, they challenge reliance on the concept of cosmopolitanism, defined as a sensitivity to local cultures conveyed through more cross-border activities with an openness to globalization. This is criticized for promoting a utopian perspective on global migration, based on the idea of a levelling out of inequality as populations become more mobile. Their overall project is thus to call into question 'the romanticization of mobility as travel, transcendence and transformation' (Ahmed et al. 2003, p. 1).

Cosmopolitanism fails, according to this analysis, to acknowledge the salience of nationally structured power relations. The enduring power of these relations is illustrated, for example, by the transnational Chinese, who continue to operate according to national principles in a variety of expatriate locations. It is not possible, they claim, to understand migration or staying put without an awareness of power relations, which might inhibit or facilitate choices. Some features, such as the trauma of migration, might be relatively constant across time and space, but even then there will be culturally determined variations, such as the way it is expressed physically or the sort of political motivation to which it gives rise.

Power is exerted both by formal institutions (e.g. border police, immigration and employment laws) and by informal attitudes (e.g. racial prejudice and treatment in the workplace). Migration is a symptom of the 'spatialization' of power relations, which grows as a result of globalization as conventionally depicted. For example, migration is deliberately inflicted when villagers are moved out to make way for dam reservoirs or bomb tests or accidentally inflicted when nearby industrialization poisons traditional fishing and farming grounds. The notion of mobility being unconstrained and voluntary is sometimes over-emphasized in optimistic accounts of globalization, just as involuntary mobility (driven by conflict and poverty) tends to be the exclusive focus of pessimistic accounts. Whether voluntary and opportunity driven or involuntary and threat driven, mobility continues to be structured by power relations, and power imbalances are exacerbated by the differential incidence of the two types. To put the contemporary experience bluntly, 'unlimited mobility' is the 'preserve of the privileged white propertied nationals' (Verstraete 2003, p. 243), and it is a serious error to conflate this with the mobility of the unprivileged majority, which is generally undertaken because an already disadvantaged situation has further worsened.

On this basis, the notion of Europe as a borderless space, as encouraged by the cosmopolitan viewpoint, may in fact be an invention. The very idea of European identity depends on there being borders and rules for entry that create a category of illegal immigration. There is now a mutual reinforcement between external boundaries and the growing industry of illegal migration. Trafficking of prostitutes from Eastern Europe, a major EU concern before it was eclipsed by non-European immigrants, became as much a product of the construction of the EU's borders as of the coercive practices of East European countries. Even if, economically, it no longer needs high external trade barriers to promote its barrier-free internal market, the EU appears reliant on external social and economic barriers to break down those within and to highlight the value of doing so. Internal and external frontiers co-evolve and may be regarded as co-creations of the nation-state. 'Rather than declaring the nation state extinct in an age of globalization it is probably more correct to state that European states are differentially embedded in complex cross-border networks of transnational capital, digital technology, (illegal) migration, and policy making' (Verstraete 2003, p. 243).

While the Schengen countries celebrated their supposed openness, other processes were occurring which solidify external frontiers and refine internal

borders rather than dissolving them. Europe's Schengen space is, therefore, full of contradictions, and mobility within Europe is shaped by complex geopolitics. While the emphasis is on free movement and the political aspiration is to 'ever closer union' among EU states and peoples, it is national (rather than 'European') territory and identity that become stronger as part of the process of keeping non-European nationals out. The contradictions of unlimited mobility serve three purposes, according to the historically grounded assessment of Verstraete (2003, p. 227). They are, first, expanding national sovereignty to the external borders of the EU; second, generalizing the national subject's position as European citizen; and third, projecting the EU's national differences over the admission of migrants and refugees on to non-European others, who can therefore only enter Europe illegally. The problems encountered by the nation-states in dealing with migration in a unified way and thinking beyond national sovereignty expose the superficial nature of the idea of Europe as an open space and instead reveal how the old nation-state project is still ongoing.

Unlimited mobility is confined to a privileged cohort of European nationals who have business interests or other property (Verstraete 2003, p. 227) and so possess both resources and legitimate reasons for frequent crossing of borders, both intra- and extra-European. New frontiers had to be constructed to distinguish between Europeans and non-Europeans in order to differentiate between authorized travel and unauthorized migration. Freedom of mobility for some is dependent therefore on the exclusion of others. Migration from outside Europe creates a need to reinforce internal frontiers (Verstraete 2003, p. 229). So the Schengen countries have, along with building strong external barriers, had to depend on strong internal measures to guarantee that only EU nationals enjoy unlimited mobility. Ironically, the EU's ostensible aim to accept migrants from the rest of the world is constrained by its higher-priority aim of promoting intra–EU migration.

Although it is the only member state to have decided to withdraw because it wants to limit its total net immigration, most others share this aspiration and have seen it reinforced as job creation fails to keep pace with the numbers seeking work. If they cannot disallow immigration from other EU countries – one of the 'four freedoms' of the single market on which Brussels is very unlikely to compromise – their only alternative is to block immigration from outside the EU. For many, including the UK as it awaits its exit deal, this has meant keeping out a high proportion of Muslim refugees from Syria and Iraq. The EU has indirectly given its member states the right to keep out non-Europeans so as to allow the free movement of Europeans, fully aware that this will look like discrimination to those kept out.

European authorities' composition of border controls affects Muslims disproportionately because they are a community that often retains overseas links. People revisit the South Asian/Middle Eastern and North African countries that their parents and grandparents come from. Frequent travelling might give the impression they are not fully integrated into Europe and/or that they are

importing non-European attitudes and values from other places. Travelling to certain regions where terrorists or their trainers have been active has begun to spark the automatic suspicion of an inclination to subversive activity or at least the threat of radicalization. The UK has had comparable earlier experience with, for example, Muslims from Pakistan and Bangladesh going home to enter arranged marriages, even though many more make such journeys for innocuous family reasons or to do business which benefits the UK economy. France has the same issue with Muslims who revisit Algeria and Germany with those that revisit Turkey, especially since this became the main European entry point to war-ravaged parts of Syria.

The strengthening of external barriers has led to a new migration industry, exerting increasing power as more resources are drawn into it. The industry has two sides, one promoting and one deterring migration, with potential for mutually reinforcing profitability that encourages an 'arms race' between them. The commercialization of migration is revealed in the corporate interests behind new surveillance technologies and the money-making potential of the border control 'industry'. For example, there has been co-operation between the Belgian harbour Zeebrugge and the US company Dielectro Kinetic Laboratories (DKL) over the use of surveillance technologies. Zeebrugge has adopted DKL's remote sensing equipment, a technology originally devised for law enforcement, search and rescue and security, for detecting stowaways. The company subsequently refined its technology specifically for this purpose, selling its Lifeguard system for detecting stowaways to other clients including China's Shekou Container Terminal (DKL 2005).[3] Zeebrugge adopted the technology under corporate pressure by companies like Ford and Vauxhall, whose goods were being damaged by stowaways, and in response to unprecedented numbers of refugees hiding in lorries. As Verstraete (2003, p. 226) observes, 'the science of saving lives became the science of removing them'. European countries also make use of technology to interdict migrants offshore. Spain put up an electronic barrier along the part of the coast closest to Morocco and invested in patrol boats and night-vision and heat-seeking equipment (Price 2009, p. 210).

Other commercial opportunities opened up by migration and made more profitable by restrictions on it include the provision of money transfers for expatriates making remittances to their home countries, the recruitment and supply of migrant labourers with the necessary documentation and the services often needed by migrants including translation, affordable accommodation and lawyers to fight naturalization or extradition cases. These legitimate activities run alongside and may find their market either undercut or expanded by the 'underground' activities surrounding people-smuggling, illegal recruitment and manufacture of false documentation (Castles and Miller 2003, pp. 114–117). Motivated by the 'push' of war, poverty and persecution and the 'pull' of lucrative low-wage labour and sex trades, human smuggling and trafficking are one of the newest and most disturbing forms of migration in the new global era.

Asylum, detention and deportation

Far from facilitating the cosmopolitan movement of people in Europe in accordance with the Geneva Convention (1951), which gives the right to claim asylum, recent member states' policy has been one of rolling back the Convention. Sivanandan (2007, p. 48) has stated that

> The war on asylum and the 'war on terror' – one the unarmed invasion, the other, the armed enemy within, has produced the idea of a nation under siege, and, on the ground, a racism that cannot tell a settler from an immigrant, an asylum seeker from a Muslim, a Muslim for a terrorist. All of us non-whites, at first sight, are terrorists or illegals. We wear our passports on our faces.
>
> (quoted in Lentin 2008, p. 116)

There has been a fusion in the popular imagination between immigration and asylum seekers and terrorists and Muslims. This has sometimes been deliberately encouraged by the language of nationalist political leaders and not always discouraged by the political mainstream. For example, German right-wing parties seized on a spate of attacks on women by migrants in Cologne on New Year's Eve 2015 to argue that male Muslim immigrants had an inherently deficient understanding of women's rights; the incident prompted the German Christian-Democratic government of Angela Merkel to streamline the deportation process for asylum seekers convicted of such attacks (Chambers 2016)[4] and a number of EU governments to consider new civic education requirements for Muslim migrants. Donald Trump led his US presidential campaign with frequent denunciation of Mexican immigrants as drug dealers and rapists (Neate 2015),[5] and UK Independence Party leader Nigel Farage, dismissing critics who detected racist undertones in a poster showing refugees queuing at the EU border under the caption 'Breaking Point', told journalists 'I can't apologise for the truth' (Cowburn 2016).[6] Governments in Europe have been increasingly reluctant to intervene to dismantle this confusion of refugees with economic migrants and of fugitives from war with fugitives from justice, as it serves a political purpose, namely that of justifying tougher responses to all immigration.

Immigration ranked alongside the economy, crime and healthcare as an issue at the 2015 UK general election, with all three main parties proposing specific control policies. In the UK, the UK Independence Party (UKIP) moved into third place, overtaking the Liberal Democrats who had been in Coalition government with the Conservative Party. It presents itself as a party with tough policies on immigration from EU and non–EU countries and calls for the UK to exit from the EU as well as tighten controls on all forms of immigration, including health tourism. The effect of UKIP's growing popularity has meant that the two main parties, the Conservatives and Labour, have now succumbed to anti-immigration politics and placed immigration and its control at the centre of their political agendas.

In France, Marine Le Pen's far right party, *Le Front National*, is making political headway as she becomes a serious contender for the presidency in the upcoming presidential elections. The manifesto of Marine Le Pen's party, like other similar groups in Europe, talks about a 'reduction in five years of legal immigration . . . [and] of asylum seekers', a review of the free movement of EU citizens, the 'renegotiation of the European Convention of Human Rights', strengthening the rules for granting French nationality, the application of a Jean-Marie-like 'national priority' and a 'reaffirmation of our [French] republican model against Anglo-Saxon multiculturalism'. National governments' main goal in relation to asylum claims is to prevent false claims from being successful. The mechanisms used to do this can, however, unfairly undermine genuine claimants. Governments may use a multitude of restrictive measures which include first, barriers to entry (such as visa requirement, the internationalization of territory and off-shore interdiction); second, procedural restrictions (including making use of safe countries of origin, safe third-country rules, filing deadlines, corroboration requirements and expedited removal); and third, deterrence strategies, which include benefit cuts and detention in harsh conditions (Price 2009, pp. 207–234).

In relation to visa requirements there has been an increased demand for would-be asylum seekers to be obligated to possess visas in order to be admitted and for the screening for this to take place at border points, such as airports. The UK, for example, in 2003 introduced a visa requirement for Zimbabweans which brought about a drop from 7,600 applications in 2002 to 3,300 in 2003 and just over 2000 in 2004. And when Sweden introduced a visa requirement on Bosnians in 1992, the number of asylum seekers from Bosnia-Herzegovina dropped from 2,000 per week to less than 200 (Price 2009, p. 208). Rules governing the internationalization of ports hold that asylum seekers have not actually entered national territory, so their removal does not constitute a denial of the right to apply for asylum. For example, France has designated areas of its airports to be 'international zones' where asylum seekers can be detained without the normal protections of French law. Denmark and the Netherlands have similar measures (Price 2009, p. 209). Off-shore interdiction involves the interrogation of asylum seekers before they have reached national territory. Thus, in the US, boats from Haiti were intercepted and passengers screened and then repatriated.

With respect to procedural measures, governments have adopted lists of 'safe' countries of origin irrespective of whether such countries might engage in torture, for example. Thus, in 2004, 25 countries were listed on Britain's safe list, including Bangladesh, Bolivia, Brazil, Ecuador, South Africa and Ukraine. Many so called 'safe' countries have been described as countries with serious human rights deficiencies (Price 2009, p. 210). Governments have also introduced safe third-country rules, which means that if asylum seekers enter one country in transit through another deemed safe, they will be returned to the third country. The Dublin Convention effectively treats all EU members as coming from safe third countries.

Turning to filing deadlines, national governments have restricted the deadline for filing an asylum claim, failure of which to meet leads to repatriation. Then there are corroboration requirements used to decide whether asylum seekers are genuine or not. Corroboration, however, is hard to come by and asylum seekers often have no documentation or witnesses to support their cases and so such procedures discriminate against genuine seekers as well as combatting potential fraud. Another procedure followed is that of expedited removal whereby countries at which asylum seekers arrive can be assessed in a speeded-up process and returned immediately on the grounds that their cases are manifestly unfounded (Price 2009).

Governments have also resorted to stringent deterrence policies. These include benefit cuts, which, alongside the restriction of rights to work before gaining citizenship, can make it impossible for asylum seekers to support themselves financially. There are also threats of detention and deportation. Asylum seekers may be detained in detention centres while their cases are being assessed. Such policies are thought particularly to deter economic migrants. They also have the effect of making the deportation process, when a claim has failed, far easier to prosecute (Price 2009, pp. 214–215). While these measures may seem a fair way to protect countries from false claims, they have a negative effect on genuine asylum claims, which contravenes the spirit of the Geneva Convention even if its letter is not overstepped.

Asylum applications to Europe have followed a cyclical pattern, but the peaks are sufficiently high and the gaps between them sufficiently long to enable every upturn to be labelled a 'crisis', requiring a tightening of previously accommodative rules. In 1984 there were only 104,000 applications in Western Europe. Applications reached a peak in 1992 when approximately 672,000 applications were made. Numbers then declined during much of the 1990s but grew again to 350,000 in 1998 and about 400,000 in 1999. There was another peak in 2001 when 424,000 asylum claims were made. This was followed by a decrease in numbers until 2014, when applications rose again to 626,000. This increase reflected the rise in numbers of asylum seekers from Syria, Eritrea and Kosovo, with asylum becoming one of the principal means of immigration into the EU. Most significantly is the case of Syria, from where came 122,000 asylum claims in 2014, which accounted for 20 per cent of the total number of cases from non-EU countries. Syrians made up the highest number of applications in 11 of the 28 EU countries. In 2014 there were 41,000 applications from Syria to Germany and 31,000 to Sweden. The largest number of asylum seekers from outside the EU made applications to Germany at 203,000 and Sweden at 81,000. This was followed by 65,000 to Italy, 64,000 to France, 43,000 to Hungary, 32,000 to the UK, 28,000 to Austria, 25,000 to the Netherlands and 23,000 to Belgium.

European governments adhere to the principle of non-refoulement, that is not to return an asylum seeker to a country deemed unsafe for their return. While this is a laudable principle and held up by Europe as part of its narrative about itself,

national governments do not necessarily abide by it or consider the second-order consequences of deportation where these could be unfavourable. For example, in 2005 Italy returned more than 1,000 migrants to Libya, some of whom were sent home to Eritrea, where they might have faced persecution (Price 2009, p. 210).

The inclusivity of the EU and its Schengen Agreement, which was set up (symbolically and literally) to facilitate the internal movement of people by creating a supra-national community, is reversed into a more powerful exclusivity when admission to that community is refused. If a request for asylum has been denied in one country, this rejection will automatically apply to the whole of the EU. As Verstraete (2003, p. 234) observes, this is 'nothing less than national sovereignty making its reappearance on a European scale and vis-à-vis generalized others'. So extending national borders to Europe's external frontiers has had two important consequences: first that the powers of the nation-state have increased and second that internal national differences are also made invisible (Verstraete 2003, p. 234).

Criminalizing asylum seekers

A new culture of control has developed in the US and Europe which relies on the use of imprisonment of undocumented migrants. The practice of detaining asylum seekers represents a strong departure from the United Nations Convention on Refugees. After the Second World War the US along with many European countries ratified international and domestic laws requiring the provision of a safe haven for people fleeing persecution on the grounds of their race, religion, national origin or social and political groups. Now it seems that the countries concerned have rolled back on their commitments to refugees and asylum seekers (Welch and Schuster 2005, p. 331), often giving them similar treatment to that of suspected or even convicted criminals. The phenomenon of 'crimmigration' – treating immigrants with the assumption that they have acted criminally or deserve to be treated as such – follows from governments' presumption that social or human rights arise from community membership and do not apply automatically to those from outside the community (Stumpf 2006). Fears that immigration will boost crime and undermine security by allowing in more religious and political radicals or common criminals under the guise of seeking asylum or better prospects have enabled politicians to strengthen the public perception of 'crimmigration' and justify stronger borders on national security grounds.

After the Second World War, the US and a number of its allies ratified international and domestic laws compelling them to provide a safe haven for people who had a realistic fear of persecution on the grounds of race, religion, national origin, social groups or politics (Welch and Schuster 2005, p. 331). The usual governmental response to those fleeing persecution was a combination of containment, punishment and deterrence – all of which, according to Welch and Schuster (2005, p. 346) are key aspects of a new culture of control propelled by perceptions of difference and presumed threat.

It has now become routine in the US and Europe to detain migrants seeking refuge from persecution. The new culture of control is sustained through a criminalization process that marginalizes those pursuing asylum such that they tend to be perceived as bogus. The US, despite its rhetorical commitment to individual freedoms and civil liberties, has become the 'world's leader in incarceration', and asylum seekers are characterized as 'menacing strangers who threaten . . . individual safety but also the entire social order (Welch and Schuster 2005, pp. 331–332).

In the UK in the 1990s there was a surge towards the establishment of detention centres for asylum seekers. The government made use of barracks and other such buildings but also began to establish permanent detention centres including Oakington, Harmondsworth and Yarl's Wood (Welch and Schuster 2005, p. 337). While there has been this growth in detention centres for asylum seekers, the punitive nature of these is often underplayed by the euphemisms by which they are called. For example, in the UK they might be known as immigration removal centres; in Canada, immigration holding centres; in France, *centres de retention administrative*; foreigners' guesthouses in Turkey and service and processing centres and contact detention facilities in the US (Silverman 2014, p. 600).

The US, despite its reputation for commitment to individual freedoms and civil liberties, has become the 'world's leader in incarceration due to its commitment to mass imprisonment'. The detention of asylum seekers has to be understood against the background where they have come to be seen as a threat to individual safety and also the whole social order. The impact of 9/11 was to provide the impulse behind a general clampdown on all migrants, including asylum seekers. There was a growing suspicion about bogus asylum seekers and terrorists posing as asylum seekers to the extent that between September 11, 2001, and December 2003 more than 15,000 asylum seekers were detained at US airports and borders. One of the policies to be implemented was Operation Liberty Shield, which allowed the government to detain asylum seekers from 33 countries Al-Qaeda was known to operate in (Welch and Schuster 2005, pp. 332–335).

In the UK until the 1990s there were no permanent detention centres, the numbers of asylum seekers being so low. However, this changed in the 1990s when the 1999 Immigration and Asylum Act increased the trend towards detention. In this context a number of purpose-built detention centres were opened including at Oakington, Harmondsworth and Yarl's Wood. Prisons were also used and sometimes for punishment. There was no legal limit on how long a person could be detained, contrary to the recommendation of the UN Working Group on Arbitrary Detention. While in the 1999 Immigration and Asylum Act the government said it would introduce automatic bail hearings, the 2002 Nationality, Immigration and Asylum Act overturned this, meaning that detainees were often unaware that they could appeal for bail (Welch and Schuster 2005, p. 337).

France has the strictest limits on the time a person can be held in detention, but the conditions under which people are detained are intolerable, lacking basic sanitation or adequate food (Welch and Schuster 2005, p. 338), and there have been high levels of violence. Likewise in Germany conditions for detention can be

very poor, with no scope for exercise, for example. Detainees' money was taken from them on arrival and put to the cost of detention. In Italy, like in France, the maximum period for which a person can be detained was increased in the early 2000s from 30 to 60 days. Italy has fewer asylum seekers than other countries partly because most asylum seekers want to go to the UK, France or Germany. Italy has some purpose-built detention centres but otherwise has used converted schools, barracks or freight containers in railway yards, often in intolerable conditions (Welch and Schuster 2005, p. 342).

There is then evidence of an emerging culture of control adversely affecting asylum seekers, and there appears to be support for Bauman's (1998, p. 69) thesis that there is 'a "global hierarchy of mobility" in which freedom of movement is a trait of the "dominant" and the "strictest possible constraints" are forced upon the dominated'. A similar point has been made by De Giorgi (2005), through the observation 'that even in the wake of globalization, borders still sustain their symbolic and material impact against the circulation of some classifications of people, most notably asylum seekers and underprivileged non-western workers' (Welch and Schuster 2005, p. 344). From De Giorgi's perspective, 'what we witness is not so much the disappearance of borders, as their fragmentation and flexibilization: these no longer operated as unitary and fixed entities; instead borders are becoming flexible instruments for the reproduction of a hierarchical division between deserving and undeserving populations, wanted and unwanted others' (Welch and Schuster 2005, p. 345).

Although there are parallels between the US and the UK and continental Europe, there are also differences in the way the question of asylum seekers is addressed. While in the UK the issue has become a moral panic played out in the pages of the popular press, asylum seeking is largely hidden from public view in the US and is not the subject of publicly shared construction, coinciding with the division between transparent and opaque moral panics. 'In brief, American culture retains its identity as an immigrant nation whereas Britain continues to be influenced by colonial politics' (Welch and Schuster 2005, p. 345). 'Still, even among the well-intentioned and seemingly benevolent programs intended to assist asylum seekers, the prevailing governmental response to those fleeing persecution has been a combination of containment, punishment and deterrence – all of which are chief elements of a culture of control driven by perceptions of difference and putative threat' (Welch and Schuster 2005, p. 345).

The retributive aspect of detaining asylum seekers is exposed by research which has shown the detrimental impact of detention on those detained, especially children. Criminalization of asylum seekers is revealed in the way these centres often resemble prisons, so even though the practice of detention cannot legally be used to punish migrants and asylum seekers, this is undermined by its routine practice. While it is understood to perform an administrative rather than punitive function and as an efficient way of overseeing immigration (Silverman 2014, p. 601), its effect is ultimately disciplinary.

Detention can inflict damage on those detained because they often have no idea how long they are going to be held. In the UK and the US there are no official time

limits on detention, but it can be between six months and a year or even longer. The 2008 EU Returns Directive recommends a maximum stay of six months of pre-removal detention with an optional 12-month extension, but the UK has refused to implement the recommendation. The uncertainty behind the length of stay is particularly damaging to mental health, with suicide and self-harm being more prevalent than in the prison population. Considerable psychological stress is inflicted on the detainees, and children are the most vulnerable (Silverman 2014, pp. 603–604).

The criminalization of asylum seekers is also exposed by the practice of 'externalization' of asylum such that centres for processing asylum applications are established outside the EU frontier as part of a programme of interdicting potential asylum seekers. This process of holding asylees outside their destination has been described as containment or warehousing by NGOs and advocacy communities, that is, arrest and detention by another name (Silverman 2014, p. 610). The ostensible aim of detaining asylum seekers in this way is to stop people from absconding. However, research shows that few asylum seekers abscond, and they do better with community supervision, and even those who do abscond have been shown to do it more out of fear or the need to help family than for criminal reasons (Silverman 2014, p. 607).

Facilities used to keep detainees have been found to act more like prisons than removal centres. Yarl's Wood in the UK was established as a flagship detention centre by the government, but from the beginning it has been the subject of deep criticism and controversy. In September 2003 the inspector of prisons found the provision was 'not safe'. In March 2004 the prisons and probation ombudsman found evidence of a number of racist incidents. In October 2004 the prisons and probation ombudsman found use of sprinklers could have prevented fire damage that resulted from a disturbance among detainees in 2002. In February 2006 the chief inspector of prisons found substantial gaps in services. In 2006 Legal Action for Women found that 70 per cent of women had reported rape, nearly half had been detained for more than three months, 57 per cent had no legal representation and 20 per cent had lawyers who demanded payment in advance. In April 2009 the children's commissioner for England found children held in the detention centre are denied urgent medical treatment, handled violently and left at risk of serious harm. In April 2014 the UN's special rapporteur on violence against women, Rashida Manjoo, was barred from Yarl's Wood by the Home Office when she tried to investigate complaints as part of her fact-finding mission into violence against women in the UK. A further deterioration of conditions led the chief inspector of prisons to brand Yarl's Wood 'a place of national concern' in 2015, with particular failings in ensuring the safety of women.

Conclusion: lessons of the new migrant 'crisis'

Europe's image of itself as the embodiment of cosmopolitanism has been dramatically undermined by the recent treatment of refugees coming into Europe from conflict zones such as Syria, Iraq and Sudan. Europe has today been described

as the 'deadliest migration destination in the world' and the Mediterranean as an 'open-air cemetery'. While there has been international condemnation from civil society and global institutions such as UNHCR, the EU has failed to come up with a 'joined-up' policy, merely saying that it deplores the problem while leaving Italy to deal with it. The failure of the EU to respond effectively to the tragedy in the Mediterranean belies its supposed commitment to a common migration and asylum policy. While this was originally seen as providing the potential for freedom of movement, in fact, the situation has created a 'Fortress Europe' for most outsiders. In 2004, between 700 and 1,000 died each year as they tried to cross into Europe from Africa, a number which increased threefold in 2011, which included migrants dying in the Mediterranean, off the coast of Libya, Egypt, Tunisia, Malta, Italy, Spain, Algeria and Greece.

Far from creating greater openness, Europe's response to migrants fleeing poverty and violence has been to create a restrictive common EU migration policy – which allows fewer legal ways of coming to Europe – and more sophisticated surveillance to enforce this policy. The deterrence aspect of this can be seen in the way the most popular migrant routes are increasingly becoming less popular. For example, the West African route, which involved taking sea passage from West African countries, mainly Senegal and Mauritania, into the Canary Islands, is no longer used. While in 2008 Fronted detected 31,600 illegal migrants, this number fell to 275 migrants taking this route in 2014. Now migrants are more likely to go through the Mediterranean route around Syria such that human traffickers have increasingly focused on Libya in their efforts to facilitate the movement of migrants into Europe. Growing restrictions in countries such as Israel and Saudi Arabia have meant that many migrants have started to leave East Africa for Europe. Syrians are the greatest numbers fleeing civil war, but after that Eritreans are the most common nationals to turn to the central Mediterranean route.

The prolonged migrant crisis in the Mediterranean and the consequent public outcry against deaths at sea has forced the European Union to respond but not necessarily with solutions that answer the basic humanitarian need. One solution adopted by member states, for example, involves a proposal to destroy the boats used by migrant traffickers before they can leave Libya. This might reduce the number of rescues the EU is forced to conduct and lessen the risk of widely publicized deaths at sea, but it would not solve the problem for people who are in need of refuge. Considering how the ECtHR might think about member country solutions, Marie – Benedicte Dembour (2015) turns to its 2012 judgement in the case of *Hirsi v. Italy* to give some sense of where the Court might stand. In this case, the applicants were irregular migrants, travelling without a visa and intercepted by the Italian authorities on the Mediterranean Sea. The migrants boarded an Italian military ship, apparently after having been told it would take them to Italy, but were instead returned to Libya without any chance to claim asylum.

The court's findings would at surface level seem to be progressive. It found multiple violations of the European Convention on Human Rights, including a breach of the provision prohibiting the collective expulsion of aliens (Article 4,

Protocol 4) and it ruled that Italy had exposed the migrants to the risk of inhuman and degrading treatment by returning them to Libya (contrary to Article 3) and finally, the court reproved the Italian authorities for not having offered the migrants a domestic remedy in Italy (contrary to Article 13). However, as Dembour (2015) points out, the court's conclusions would logically mean that the migrants would be asked back to give them the chance to claim asylum, and while one judge strongly argued that this was the right response, all other 16 judges took a different position. The court does not usually say anything about how a state should repair violations. In the *Hirsi* case, unusually, it suggested that the Italian government should take all possible steps to obtain assurances from the Libyan authorities that the applicants in the case would not be subjected to inhuman and degrading treatment in Libya or arbitrarily repatriated to other countries.

This position made little sense given that one of the reasons Italy had been accused of violating the ECHR was that the court believed that Libyan promises to respect human rights would be unreliable, thus leading to what Dembour (2015) describes as 'double talk' or even hypocrisy. Ultimately, therefore, the court's decision making sounded more like a concession to Italy, since the stance it took on redress more or less cancelled out the consequences of finding multiple violations. Given the court's primary aim is to protect human rights and so it asserts that there can be no exception in any circumstances to prohibiting inhuman and degrading treatment, it failed in this case to enforce this. The double talk of which Dembour (2015) speaks therefore exposes how the court's public image is belied by specific judgements.

Germany's response to the crisis at the time of writing seems to have been an exception to the prevailing trend in its more accommodating approach towards the migrants. The German government has agreed to take in 800,000 refugees, the largest number in the Union, with Sweden just behind it. Angela Merkel has also warned off the far right calling on everyone to be hospitable towards the refugees. In this respect Germany seems to be following a cosmopolitan path, albeit with mounting political resistance, which by 2016 was causing an electoral swing against Merkel's previously popular government. This exceptionalism rests on a number of factors, including the need for more labour, preference for non-European migrant labour (which is cheaper and more flexible), the fact that Merkel is from old East Germany with a different legal tradition and a degree of historic consciousness. The memory of Germany 'accepting' Jewish migrants from Hungary under the Nazis (Fisk 2015) might still have contemporary resonance, at least among the political class. So on this issue the government is willing to impose a humanitarian solution rather than bat it across to the European Commission. However, it is important to see what happens when other EU countries are forced to accept migrant quotas with the question of whether the applications are successful and whether there will be enforced assimilation. Already there are reports of some Catholic churches getting the new arrivals to convert and some local administrations demanding further dispersal of Muslim refugees or civic education to adapt their social attitudes.

The cosmopolitan European Dream has become strained in the post-Communist, post–9/11 world, where migration and immigration have become an important area of public interest. Since the 2001 attack on the World Trade Center, subsequent incidents such as the bombings in Madrid (2004) and London (2005) and the rise of the Islamic State (ISIL/DAESH) in the Middle East and North Africa since 2014, immigration fears have fused with those over national security. Strained welfare state arrangements and the reawakening of suppressed regional conflicts have sustained this interest. The collapse of the Soviet Union since 1991 and wars in Bosnia (1992–1995) and Kosovo (1998–1999) led to new waves of economic migrants, guest workers and asylum seekers in Europe. Migrants from the post–Soviet bloc countries, including Poland, Hungary and the Czech Republic among others, who acceded to the European Union (EU) in 2004, for many years faced internal restrictions by a number of pre-enlargement EU members motivated by fear of their wages being undercut and cultures diluted. New ethnic conflicts, creating refugee crises, have concentrated attention on asylum seekers. The murders in the Netherlands of politician Pim Fortuyn (in 2002) and filmmaker Theo van Gogh (in 2004) stirred up popular fears, reinforced by media coverage, that immigration might damage the liberal democracies that tend to attract it by undermining the social solidarity that permits present citizenship and welfare arrangements (a fear exploited by Fortuyn) or by curtailing free speech (a fear exploited when van Gogh was killed after screening a documentary that was critical of Islam).

National governments in the 1990s reacted with a range of measures to curb the numbers of refugees coming into their countries. Since the late 1980s, the number of people applying for asylum in the EU increased sharply. As Costello (2012) has noted, liberal democratic states may publicly avow the principle of asylum but use 'fair means or foul' to prevent as many asylum seekers as possible from arriving in their territory where they could claim protection. Border controls have been 'offshored and outsourced', that is, they have been extended beyond the territory of the state and privatized (Costello 2012, p. 287).

In the current migration crisis, European double standards have come into sharp relief as the countries signed up to the Geneva Convention seem to ignore its spirit. Refugees fleeing war-torn Syria, Iraq, Afghanistan and Libya have been met with national governments in the main reacting by strengthening national security. The UK is one of the worst offenders, putting up barbed wire fences in response to refugees seeking to leave Calais for the UK, having tried to cross through the tunnel unseen. At least 2,500 migrants died between January and August 2015. Germany has accommodated more refugees than all other EU countries and plans to accommodate 800,000. Sweden has also been more accommodating. The rest of the EU countries have failed to help. Theresa May, the UK interior minister from 2010–2016 who became prime minister in July 2016, blamed Europe's borderless system, 'Schengen', for fuelling the crisis and demanded tighter EU rules on free movement, saying, 'When it was first enshrined, free movement meant the freedom to move to a job, not the freedom to cross borders to look for work or claim

benefits . . . We must take some big decisions, face down powerful interests and reinstate the original principle'.

In Western Europe, politicians vie to find a 'solution' that satisfies competing economic and political demands. Signatories to Schengen established strong external barriers and instituted internal measures with the goal of guaranteeing that only EU nationals, not residents, could benefit from unlimited mobility. Immigration controls that used to be at land frontiers have now been replaced with inland forms of control such as random spot checks at the border or on the street, and these checks are racialized. On the Belgium/Netherlands border for example, rules for the EU's 'borderless' Schengen Area have been observed as allowing white Europeans freedom from suspicion, while ethnic minorities are the key targets. So it is that ethnic minorities in Brussels and Rotterdam are constantly targeted. Such practices increase racial tensions, but they are also a violation of human rights, of the freedom of movement, the right to privacy and the right to equal treatment (Verstraete 2003, p. 230).

This chapter has shown how, under pressure from rising immigration due to conflict and economic hardship outside Europe, EU member states have shifted from a cosmopolitan approach ascribing universal human rights to new arrivals to a distinctly more communitarian approach, locating those rights in a settled community whose values need protection from an influx of too many 'others'. The EU's defensiveness has arisen not only from its self-perception as a place of liberal values and social-democratic provision which depend on societies with a relatively stable and homogeneous membership. It also reflects a view that migration is a 'second-best' solution to social and political problems, better tackled at the source through initiatives to make refugees' and economic migrants' homelands safe to return to. To the extent that it requires the restoration of peace in wartorn areas of the Middle East, North Africa and South Asia and the introduction of greater prosperity to regions beyond Europe through the institution of more accountable polities and stronger private-enterprise arrangements, this tallies with an earlier self-perception – held by US as well as EU administrations – as pioneers of liberal democracy with the capability (and possibly duty) of exporting it. Political parties in the EU traditionally associated with inclusiveness, equality and non-discrimination have found a justification for limiting migration and enforcing assimilation, even as liberal political theorists struggle to integrate such restrictions with any concept of universal rights or social contract. It is possible that a more open and accommodating approach to immigration, with less uncritical elision of economic, asylum-seeking and criminal motives, will return when migrant numbers again descend from their post-2014 peak and faster Eurozone growth restores the need for additional labour. But the speed with which objections to immigration spread across the political spectrum when inflows rise or absorptive capacity is seen to fall highlights a reality about the limits of modern liberal democracies' openness to new arrivals which is substantially adrift from cosmopolitan visions and hopes.

Notes

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From cosmopolitanism to securitization

It is important to be cautious about the connection between cosmopolitanism and human rights (Cheah 2006) given the ambiguities that arise even in supposedly model cases of cosmopolitan justice. Cosmopolitanism can never be coterminous with human rights, many conceptions of which regard them as differentiable across communities – being constituted through the human interaction within a community and/or in some way conditional on obligations performed through membership of a community. Nor can cosmopolitan values be solely encapsulated in human rights, as most accounts have extended them much further, notably to include the promotion of justice and fairness, which are not reducible to rights. Some proponents of Kantian cosmopolitanism have also argued that the obligation to protect vulnerable members of (or entrants to) a society does not equate with assigning those members a right to be protected and that such a right has no meaning if there is no one to fulfil such an obligation (O'Neill 1988).

Optimism about new forms of activism among Europe's Muslims must therefore be moderated with a closer inspection of the relationship between Muslims and European human rights, for which strong claims have been made in terms of fulfilling the cosmopolitan ideal. The outcomes of Muslim claims-making via European legal and political institutions, whose outcomes have often disappointed the human-rights advocates who backed them, has fuelled a sense among Muslims and other 'non-traditional' social groups in Europe that normal cosmopolitan rules do not apply to them or are deliberately weakened once newly active groups start to demand their application. Internal and external security, although among the original provisions expected from governments and judiciaries, have risen up the political agenda again since the brief burst of peace-dividend optimism at the end of the Cold War. The development has made the (re)growth of 'securitization' a major source of changes in political rules and social attitudes that disturb the uniformity of treatment that cosmopolitans expect.

The rise of securitization

Growing social concerns about security and governments' need to respond to them has further complicated the relationship between cosmopolitan aspirations

and human-rights practicalities. Europe's Muslim communities are encountering disproportionate impact from the issues raised by and political effects of these concerns. Security in its broad sense is essential to the exercise of human rights and a basic intended outcome of public policy. It denotes individuals' freedom from – and freedom from fear of – violation of their person and property, excessive compulsion by other individuals, organizations or governments and punishment or other negative consequences from taking actions that are legal and which others are allowed to take. As well as allowing its individual members to feel secure, a functioning society must enjoy collective security (the freedom of a country and its allies from invasion, terrorism, war, threats of war and intimidation) in order to create, strengthen and sustain individual rights.

The maintenance of security at the individual and collective level requires some qualification and curtailment of individuals' rights and freedom of action. These restrictions can include subjection to surveillance, routine or discretionary checks in public or private spaces, entry restrictions or outright bans from certain places, relaxation of normal protections (such as habeas corpus and maximum sentences) for certain types of people or offences and restrictions or bans on certain types of clothing. Where such restrictions – intentionally or inadvertently – impact one section of society disproportionally, members of that group may feel discrimination and injustice. They (or advocates acting on their behalf) may seek to assert human rights against such infringement of their individual freedom of action, even if there is a clear legal basis for this infringement arising from the defence of rights of other individuals and the nation as a whole. Others will oppose these assertions if they regard them as justified, either by the individual's rights not having been violated or by the damage from the violation being outweighed by the contribution to the general public good.

Securitization is a response to the *fear* of some individuals or groups in society that other individuals or groups might endanger their security, a fear which – because of its subjectivity – may justify actions that go much wider than reacting to objectively verifiable threats. Terrorism works, in large part, by using sporadic large security violations that result in death and injury to spread the fear that such violations might happen again at any time in any place, so that more death and injury might be lurking round every corner. So large terrorist incidents (in the US, Europe, North Africa, south-east Asia and various other locations) early in the twenty-first century that were perpetrated by Muslims and linked to networks of Muslims in extreme views could easily spread the fear that any Muslim presence might somehow raise the risk of other incidents occurring. Such fears were highlighted and sometimes promoted by mainstream politicians and pressure groups as well as those on the political fringes who had long pursued anti-Islamic agendas. Although the risk of being caught in a terrorist incident remained very small, even for those dwelling in capital cities that had witnessed previous incidents, the extremely dire consequences of large acts of terrorism when they happened enabled governments to introduce restrictions for the 'security' of the general

population even when they knew that these would disproportionally affect some specific groups whose exercise of rights was already constrained.

The 'Islamization' of securitization

Some conservative commentators have long argued that new forms of terrorism are the predictable outcome of a clash between Islam and the west based on a long-standing conflict between Islam and Christianity (e.g. Barber 1995, Huntington 2001–2002). Despite the original 'clash of civilizations' thesis having been successfully challenged back in the 1990s (e.g. Brah 1996), it has now become part of the popular and political vernacular. The suggestions of a 'confederal' solution, in which people with distinct cultures and attitudes are grouped together with different rules and only loose links between the communities, have not gone away, and there is an ambiguity over the geographical level at which such 'confederation' should be organized. On the political left, the perception of a clash collides with broad ideological aspiration towards universal equality and justice but elides with many practical policy realizations, not least the need to gain votes from less affluent communities whose members may be induced (by political opponents) to blame the 'other' for their deprivation. The UK left has long found it difficult to resolve the tension between large Jewish and large Muslim constituencies, as highlighted by the many internal conflicts on the way from endorsing the Israeli state to recognizing the plight of Palestinians (Edmunds 2000) and the rumbling charges of internal anti-Semitism which exploded when Jeremy Corbyn became Labour Party leader.

Talk about a clash is rooted in western governments' identification of a new enemy in the post–Cold War era, accomplished in part by identifying not just an enemy 'without' but also 'within'. During the 1990s, NATO started to portray Islam as a new threat to global stability. Contemporary conflicts between the west and Islamic countries have been presented as a manifestation of traditional rivalry between Christianity and Islam – illustrated by President George W. Bush's description of his anti-terrorist measures as a 'crusade'. As well as the blood shed between them in the past, the two faiths have been presented as fundamentally divided over such issues as their willingness to separate church and state, separation of powers within the state apparatus, treatment of women and apostates and capital punishment for non-violent crimes.

In the post–Cold War period, many of the major political conflicts revolve around the Middle East and Muslim countries. Thus, concerns about the rise of Islamic extremism, especially among the young, can be understood in terms of wider geopolitical changes which have displaced communism as the alleged threat to the progress of social democracy and global stability (Hussain 2003; Roy 2004). The Iranian revolution of 1979, the rise of the Taliban in Afghanistan and Pakistan and Islamic-inspired uprisings in countries as diverse as the Philippines (sporadically since 1972), Trinidad (1990) and Mali (1913) has enabled critics to

deny that Islam has been misleadingly conflated with Middle Eastern or Arab politics and that the religion itself is peculiarly resistant to other cultures. However, for Muslims, the direction of violence has often been the other way: adherents of the faith have often suffered political discrimination and economic disadvantage, and if they resort to violence it is often because all peaceful attempts to reverse their disadvantage and preserve their culture have been rebuffed. Iraq, Sudan, Algeria, Afghanistan, Palestine, the Balkans war, dramatically televised massacres in the former Yugoslavia (such as those at Bratunac in 1992 and 1995 and Srebrenica in 1995) and the long-unresolved fate of displaced Palestinians all provide vivid testimony of 'barbarism' against Islamic peoples, their culture and their religion.

In the European context, the claim is that the dislocations of globalization and accompanying identity crises have triggered a rise in radical Islamic politics among the young (Kepel 2004; Roy 2004). This generational cohort, insecure in the globalizing climate and alienated nationally, is depicted as remedying these insecurities through attachment to a global *ummah*, which may encourage radical politics or involvement in neo-fundamentalist movements promoting a universal religious identity that transcends any particular culture. Instant audio-visual communication and easy travel enable European Muslims to observe and experience the protests of Muslim contemporaries in other countries – directed against autocratic rule and economic mismanagement, sometimes exacerbated by a 'bulge' of educated youth – and harness the same energy to contest their own situation. Thus, rather than harking back nostalgically to the 'loss of pristine cultures', Islam is being reinvented, facilitated by and reacting to globalization and, ultimately, being emptied of any authentic content (Roy 2004).

In a state of heightened national security, this new immobility regime has mainly targeted Muslims. The global 'war on terror' launched by US and European leaders after 9/11 established an international military campaign which cycled through an evolving and mutating series of fundamentalist enemies – the Taliban, Al-Qaeda, Islamic State, and regional franchises which switched allegiance among these umbrella groups. The war on terror, legitimating wartime restrictions in ostensibly peacetime conditions, has triggered an assault on human rights, including absolute rights such as the prohibition on torture and the right to a fair trial (Gearty 2009). After 9/11 Muslims became a category that needed containment, a measure that took two forms: de-legalization (loss of fundamental human rights protections) and hyper-legalization (loss of cultural/religious rights; Malik 2008/2009). While national and international security naturally became a concern for multiple governments, in the hardest of cases Muslims lost their most fundamental human rights. The treatment of suspected terrorists at Guantanamo Bay and Abu Ghraib became a stain on the US's human rights record which, while exceptional, reaffirms a tendency that long pre-dates the contemporary 'cosmopolitan' era, echoing for example the rounding up of ethnic Japanese in the US after Pearl Harbor (1941) and of Jews in Nazi-occupied France in 1942.

The shift of focus to internal security

These hard containment measures have been mobilized alongside softer ones, focusing on Muslim dress and the display of religious signs in public spaces through the *hijab*, *niqab* and *burka*. The equation between Islam and terrorism has become entrenched in the media and public and political forums, such that women wearing the *burka* have come to signify the 'terrorist lookalike' (Puar 2007), producing a form of governmentality that switches effortlessly between hard and soft forms of containment. Drawing on historical images of resistance to colonial rule which, in Algeria, included an adoption of such clothing on the part of the fight against colonialism, governments and political parties are linking the headscarf and the *burka* with terror (Scott 2007, pp. 1–7). By 2016, various forms of *hijab* or *burka* ban in public places were in force in France, Belgium, Bulgaria and the regions of Lombardy in Italy and Ticino in Switzerland, with the Netherlands and Egypt also moving towards their adoption. France was also leading moves towards a ban on the '*burkini*' – a head and body covering used mainly for bathing – as coastal mayors who had imposed the ban defied a high court order to rescind them.

The French *burkini* bans created the paradoxical situation of tourists in one part of Europe being criminalized for wearing too much in public, while tourists in the more conservative Catholic parts were castigated for wearing too little. The sight of police officers pursuing Muslim women across beaches in order to force them to roll their sleeves up or remove their upper clothing (Quinn 2016) troubled observers including non-Muslim holidaymakers who witnessed the pursuits. Proponents of the *burka* and *burkini* restrictions seek to dispel the paradox by arguing that these are as much a defence of the security of the wearer of the clothing as of those around them when they wear it in public. If women dress this way because an oppressive culture has made them do so and made them want to do so, then their own security is being violated, whether or not the offending garment might conceal a weapon.

Europe, considered the main site of cosmopolitan justice, has also been the site for the withdrawal of rights from religious minorities – particularly suspected Muslim terrorists as well as established Muslim communities. In the UK control orders were introduced, immobilizing people who had been neither charged nor tried for an offence; suspected terrorists were arbitrarily detained at Belmarsh and Woodhill prisons (Nash 2009a, pp. 93, 101–102). Despite enacting the 1998 Human Rights Act and establishing an Equality and Human Rights Commission, the UK passed the Terrorism Act (2000) and the Anti-Terrorism, Crime and Security Act (2001), which provided for indefinite detention of non-national suspected terrorists. This was followed by the Terrorist Act (2006), which allowed for a period of detention before trial to be 28 days (Gearty 2009, pp. 96–104). Europe has been implicated in extraordinary rendition flights and disproportionate anti-terror legislation. Police monitoring and detention powers were intensified by, for

example, the UK's Anti-Terrorism, Crime and Security Bill and France's 2001 Law on Everyday Security (Cesari 2010b, p. 21).

The UK, while resisting any restrictions on what Muslims could wear in public, was taking an increased interest in monitoring their movements amid a general tightening of surveillance. In 2011 CCTV cameras were removed from streets in two areas of Birmingham after West Midlands police yielded to concerns that these predominantly Muslim communities were being disproportionally monitored. The cameras, which tracked vehicles through number-plate recognition and stored the data for up to two years, were installed on the basis that they would make residents feel more secure by contributing to crime reduction. Residents used public meetings to express their opposition on the basis that the cameras had been paid for from a counter-terrorism fund, were installed without community consultation and would mean Muslims coming under disproportionate surveillance within the city. Although the Safer Birmingham Partnership (between the city council and local police) switched off and removed the cameras within a year of their deployment, their assurance that 'the camera sites were chosen on the basis of general crime statistics as well as counter-terrorism intelligence' (quoted in Lewis 2010) did not overcome local grievances. Muslim activists who continued to express the suspicion that UK public authorities, while routinely condemning as Islamophobic any ultra-nationalist suggestion that ordinary Muslims posed a security risk, continued to treat them as if this were the case.

Going to their heads

The human rights activism of Muslims, initially celebrated as a manifestation of cosmopolitan citizenship, has had unexpectedly inverted results, moving from being merely unproductive to provoking judicial and public reactions that are counterproductive to the original intentions. Its longer-term consequence is now observable as a process of *de-cosmopolitanization* and law based not on openness but on closure and exclusion. A first unintended consequence has been even greater surveillance, as Muslims – especially women – who challenged the state come under more scrutiny than previously. This level of scrutiny, traceable to unsuccessful activism, also has the potential to divide Muslim communities. In Europe, litigants such as Begum were judged negatively not just by non-Muslims in the general public but also by other Muslims, who saw the action as divisive and provocative (see Idriss 2006). The criminalization of wearing religious garments in public captures, with often painful clarity even when not pursued into litigation, the conflict between growing mobilization around human rights among European Muslims and the question of how religious freedom, protected by the ECHR, sits with European secularism.

Few items of clothing have generated such heated debate as the Muslim headscarf and other forms of 'veiling' including the *niqab* and *burka*. Such controversies have long troubled France under the banner of *laïcité* and Turkey, whose foundation by Kemal Atatürk in 1923 mirrored the French principle of *laïcité*

(Korgeweg and Yurkadul 2014, p. 57). However, they have now captured the imagination of less obvious countries including the Netherlands and Germany, whose tradition of state neutrality in religious matters and, in the Netherlands' case of tolerance of diversity, has inclined them towards more accommodating stances (Korgeweg and Yurkadul 2014, p. 10). 'Veiling' has thus united the most unlikely of political allies, aggravated public opinion and divided feminism and Muslims in an unprecedented way. Debates about the headscarf, which started in earnest in 1989 in France, cannot be understood without reference to the domestic and international context in which they took place. Thus, Scott (2010, p. 106) has concluded that domestic reasons include a crisis of national identity and international events, threats from abroad (e.g. Iran) which are translated into disproportionate responses to potential internal threats (Malik 2008, p. 132).

Thus in the Netherlands, the far-right politician Geert Wilders gained notoriety for describing the *hijab* as a 'headrag'. In Germany the Social Democratic politician Thilo Sarrazin condemned girls who wore the headscarf for overpopulating the country (Korgeweg and Yurkadul 2014, p. 13). In France, the communist MP André Gerin denounced the *burka* for striking 'at women's freedom' and for forcing women into 'an unbearable situation of reclusion, exclusion and humiliation' (Korgeweg and Yurkadul 2014, p. 16). The pro-choice French feminist Gisele Halimi described the veil as a 'terrible symbol of women's inferiorization' (Korgeweg and Yurkadul 2014, p. 34), and European and Turkish Muslims grew deeply divided over the bans, with some Muslim organizations supporting the French bans.

Speaking on behalf of the organization *Ni Putes Ni Soumises* (NPNS), over which she presided until 2007, Fadela Amara puts forward her case for banning the *burka*. She suggests that the root cause of the problem rests with the dynamics of the banlieus (suburbs) in France. In particular, she claims that whereas in the 1960s and 1970s there was solidarity in these neighbourhoods, at a certain stage a division emerged between those who had wealth and those who were forced to remain in degrading circumstances. It is this period that she identifies as the context for the veiling movement. A working class ghetto became an ethnic ghetto. Amara claims that there emerged a paradoxical situation where outside of the banlieus feminism was starting to make some progress, however, inside them disturbing developments were starting to affect women. Women began to be forbidden from wearing lipstick and tight jeans, hanging around with boys, circumcision was introduced, and polygamy and the headscarf were introduced. These she describes as the introduction of archaic practices by Salafists who had moved into the neighbourhoods. In the 1990s she says the neighbourhoods deteriorated but adding into the mix was a fundamentalism from people from Algeria and Egypt. In this context NPNS carried on with its fights, including against any form of poverty and exclusion but they now had to fight on another front and that was for women to go to University, to choose their life partners and to choose how they wanted to dress. So the larger concerns of the outside world became more remote.

Amara insists that the *burka* is not a religious sign but a sign of oppression against women. She says there are three categories of women who wear the veil. The first are those who do so out of religious reasons. The second are those who are told to wear it from within their context of living, and then the third stream, the one she opposes, are those women who have instrumentalized Islam by wearing it for political reasons. It is this third reason that she most opposes and which underlies her opposition to veiling. She claims that it is right that women should support the ban on the *burka* for this reason. In part, her argument can be understood in a wider context. In her view, Amara argues that if feminists in France do not support the ban, then women in the wider international community who are being forced to cover, for example in Iran or Saudi Arabia, are having to pay the price.

Given how such a seemingly inoffensive garment as the *hijab* has come to symbolize such varied phenomena as fundamentalism, a national security threat or the oppression of women, it is important to go beyond immediate explanations, such as political expediency, to shed light on the implications debates about veiling, the *hijab* in particular, have for defining nationhood in a transnational era. This overarching focus contains three sub-issues, namely, how Muslim women are redefining national narratives, what the implications are for women's politics and how Muslim women are appropriating a new sense of national belonging. The current climate of instability generated by globalization and new conflicts in the Middle East and terrorist attacks in Europe have provided a compulsion to draw back the bridges and to introduce narratives which identify a new other to create a more secure national identity (Korgeweg and Yurkadul 2014).

French president Francois Hollande encapsulated the additional hurdles being placed on Muslims for 'acceptability' when, interviewed in 2016 by two *Le Monde* journalists, he was quoted as saying:

> There's a problem with Islam because Islam demands places (of worship), recognition. It's not that Islam is a problem because it's a religion that is in itself dangerous, but because it wants to assert itself as a religion in the Republic. What might also be a problem is if Muslims don't criticise acts of radicalisation, if imams behave in an anti-Republican way.
>
> (quoted in Davet and Lhomme 2016, reported by Willsher 2016)

Muslims are condemned in this statement for openly asserting their religion and its symbols in a country where Catholic Christians, though nominally a large majority, had ceased to make such assertions by largely withdrawing from church congregations; and, at the same time, condemned for not openly asserting their moderate faith in opposition to Islamic extremists. Too active in expressing a mainstream version of their faith and at the same time not active enough in denouncing radicals in their midst, they seemed no longer to have a chance of fulfilling the conditions of responsible citizenship short of giving up active faith and becoming as secularized as the rest of northern Europe. In other opinions quoted by Davet and Lhomme, the president ventured to suggest that a Marianne,

the traditional symbol of the French republic, could one day be represented by a Muslim woman, but only when the Republic had 'liberated' her by making her remove the veil – an act that could be justified because only on arrival in France could she escape the external threats from which the veil was worn as protection.

Through an association with economic migration, Muslims are also painted as a threat to the economic security of Europeans and North Americans, who were once confident of this being protected by their governments through base-line employment and income protections. Although the wave of migrations from Muslim countries since the 1990s has been largely driven by terrorism and civil conflict, generating plausible claims for asylum by victims who often express commitment to returning home when peace is restored, it has occurred alongside a wave of increased economic migration, enabling nationalist politicians to conflate those fleeing war-torn countries with those seeking higher-paid employment in richer ones. This enables the new arrivals – although often prevented from seeking work – as the cause of wage stagnation and work casualization for established residents, even though these can usually be traced to completely separate changes in economic policy and labour law imposed by national governments under wider international pressures (Reich 2009; Stiglitz 2012).

Once religious clothing bans have been put in place or even seriously debated by mainstream politicians, political capital can be made from upholding them and making the case for their enforcement. This has given far-right groups a legal principle with which they can defend what was previously an intolerant and illiberal stance and even justify violence. For example, a man jailed in Scotland for pulling the veil off a Saudi woman in Glasgow came to represent a 'hero' for the far right, representatives of which described him as 'the first prisoner of Shari'a law'.

So far, Muslim engagement with human rights law has led to an intensification of a pan-European movement to ban the wearing of religious signs in public spaces rather than compromise and reflection. France's law banning the *burka* in public came into effect in April 2011. The symbolic significance of the ban is exposed by the very small number of French women who wear it – estimated to be around 2,000 – and only 10 women came out to protest on the day of its introduction. Belgium has followed suit after its parliament voted unanimously to ban full-face coverings in public and called for fines and jail if convicted, with the Act coming into force in July 2011, reinforcing local developments at the national level. The new federal Act makes it an offence to publicly 'cover or conceal one's face in whole or in part, so that one is unrecognisable'. Such measures thus effectively criminalize outward manifestations of religious conviction and have only the potential to exacerbate tensions. In Italy women have been fined for wearing full covering.

The *niqab* ban introduced in the Netherlands in 2015 was confined to certain public spaces (educational and healthcare institutions, government buildings and public transport) and was presented as a security measure, with the government explicitly denying that it was introduced on religious or cultural grounds and

pointing out that it would also extend to face coverings such as helmets and bala-clavas worn by non-Muslims. But it was introduced despite the ruling coalition being able to re-form in 2012 without the involvement of the Freedom Party led by Geert Wilders, which had proposed a more extensive ban when part of the previous coalition. The ongoing influence from beyond the government of the Freedom Party, whose platform is singularly anti-Islamic, provides further evidence that such views are starting to win widespread support.

In the Netherlands, the headscarf, but even more so the *niqab* and the *burka*, have produced higher levels of ambivalence and 'discomfort' stemming from its customary tolerance towards cultural diversity. Thus, the debates in the Netherlands are not as clear-cut as in France, but even so they veer increasingly in the direction of supporting bans. And Germany's debates over the headscarf have been shaped by its shift from national belonging being based on *jus sanguinis* to *jus soli*, its federal system and commitment to separation between religion and the state. There is, therefore, less agreement about the headscarf. However, the Fereshta Ludin case – in which the plaintiff claimed she had been denied a teaching post because of her religious beliefs – triggered controversy over women's oppression. German feminists generally presented the headscarf as a symbol of women's subjugation such that when a Muslim actress, Sila Şahin, posed naked, they presented this as a sign of empowerment and integration (Korgeweg and Yurkadul 2014, p. 164). German federalism also informed the debates, as the principle of state neutrality did not mean that 'all states treated all religions equally' and where Christianity was given a privileged status and the Judeo-Christian tradition was pitted against Islam (Korgeweg and Yurkadul 2014, p. 159).

There has been comparatively little controversy over veiling in Austria. In cases where the issue of the veil has arisen, in relation to schoolchildren for example, the government's response has been one of tolerance. This can be explained in terms of the 'pluralistically inclusive' church–state relations that characterize the country's constitution and which protect the expression of religious rights. There are no legal restrictions on the *hijab* or the veil in Austria. Nevertheless, there are signs that this tolerance is starting to lose ground. So long as Muslims are deemed to be a religious minority, represented by the Islamic Religious Community in Austria (IRCA), which officially represents the country's Muslims, support for banning the veil has been dealt with by a call for tolerance. However, the political right in Austria has started to reframe the issue as an ethnic-cultural one, which is starting to have a negative effect on the tradition of tolerance. Moreover, alongside this tolerance for religious expression, Austria has strong anti-immigration politics, which have the potential for framing veiling (Gresch et al. 2008, pp. 411–432). In 2010, Austria's Women's Minister, Gabriele Heinisch-Hosek, said that a ban on veiling should be debated if the number of women wearing it significantly increases. While the veil has been supported by the country's two main political parties, the ÖVP (the Austrian People's Party) and the SPÖ (the Social Democratic Party), it has been opposed by the political right (Gresch et al. 2008).

Governing dress

Those who hold the instruments of securitization and governmentality are those who, by tradition, determine dress. Prisoners and patients are stripped of their own clothing for institutional clothing on entry into total institutions, stripping them of any sense of their own identity and humanity (Goffman 1961) – a practice that was brutally deployed in the Nazi concentration camps, now replicated in the orange jumpsuits un-tried detainees at Guantanamo are compelled to wear. This is why governments become disturbed (or are compelled to reflect their electorates' disturbance) when migrant communities, already considered outsiders, refuse to comply with the dress standards imposed by mainstream society. Such dress is deemed, increasingly so in the context of micro-surveillance of Muslims, to display irreverence towards European authority and hence a threat. While deciding to wear the veil may signify modesty, it can also be understood as a symbol of political resistance to the west's commoditization of women's bodies (Mahmood 2005, p. 16), especially when, in Western Europe, wearing of the *hijab* is not necessarily connected to transnational attachments (Cesari 2008).

In reality, young women who choose to wear the headscarf may be breaking from family tradition and are not necessarily importing practices from 'back home' where women's clothing might be tightly regulated (Roy 2004, p. 192). Moreover, women who choose to wear the veil or the *burka* are challenging the view that such clothing represses them as women. Rather, they are justifying their right to wear such clothing in terms of women's right to choose. In response to then-French president Nicolas Sarkozy's view that such covering debases women and the ban on the *burka* in France, which came into force on 11 April 2011, a French woman who has decided to defy the ban is doing so on the grounds that she will not be pressurized by either the mosque or the state, contradicting the government's argument that wearing such clothing is a sign of her subordination to Islam or men.

The curtailment of Muslims' rights has been strengthened since the turn of the century by a re-focusing on dress and the perceived defiance on the part of a minority of western Muslims whose clothing is understood to represent a threat to national identity in the new insecure environment. This explains the pursuit of legislative action against wearers of religious dress who, in Europe, tend to be extremely small in number and often rarely seen in public, some even confining their veiling to private spaces or places of worship in which western governments otherwise refrain from intervening. In May 2010 the German Member of the European Parliament Silvana Koch-Mechrin called for a Europe-wide ban on the *burka*, arguing that the full veil represents the antithesis of European values by symbolizing a 'massive attack on the rights of women' in being a 'mobile prison'. This demand represents the culmination of a momentum, which began in Western Europe in the 1980s, towards restricting the rights of Muslim minorities from engaging in religious practices (including wearing particular garments) regarded as negating European values. Since the initial attempt in France in the late 1980s

to prohibit schoolgirls from wearing the headscarf (the *foulards* affair), such pro-
hibitions have, especially in the crisis of security following the New York attack,
the Madrid attack and the London bombings, become widespread. In this period,
a number of western countries have adopted measures which amount to what has
been called a pan-European Muslimization of Muslim minorities, where these
minorities are understood as Muslims first and citizens second, leading to growing
concerns about religious discrimination among Muslims (Amiraux 2006).

The 'veil' has become a political preoccupation for secular European govern-
ments which insist that the secular neutrality of the public sphere is negated by
religious dress or 'conspicuous religion signs'. The French government, under
Sarkozy, is legislating against wearing full-face covering in all public spaces on
the grounds that they are 'legislating for the future' to prevent any further wear-
ing of the veil deemed to be 'a sign of a community closing in on itself and of a
rejection of our values'. Belgium has followed suit, and the recent electoral result
for the Freedom Party in the Netherlands, whose platform is singularly anti-Islam,
provides further evidence that such views are starting to win widespread sup-
port. Given that in countries such as France, only a very small number of French
women wear full covering, these garments have accrued a political significance
that goes far beyond their use. Drawing on historical images of resistance to colo-
nial rule which, in Algeria, included the use of such clothing as part of the fight
against colonialism, governments and political parties are linking the headscarf
and the *burka* with terror (Scott 2007, pp. 1–7).

These bans are justified in terms that echo the stereotyped thinking of Euro-
pean colonists who saw it as their duty to free women from the harem. Today's
'imperilled' Muslim women are, it is claimed, the victims of Muslim brutality and
misogyny (Razack 2008, pp. 83–86). While liberal, left and feminist opinion is
deeply divided over the question of the *hijab*, the dominant argument is that the
clothing worn by European Muslim women is inflicted on them by men deter-
mined to hinder their freedom. Defending the ban on the *burka*, President Sarkozy
argued that 'France is an old nation united around a certain idea of personal dig-
nity, *particularly women's dignity'*. However, such discourses, set in the language
of liberal freedoms, impose barriers to Muslim women. As Turner (2007, p. 297)
has pointed out, legislation that sanctions the wearing of garments such as the
niqab will result in further immobilization of Muslim women by compelling them
to restrict themselves to the private sphere.

The use of the metaphor of 'mobile prison' is interesting given that the late
twentieth and early twenty-first centuries have seen the growth of camps that have
been used to erode the human rights of large numbers of Muslims on the grounds
of national security. Guantanamo Bay stands out as one of the clearest illustrations
of the continuing purchase of national sovereignty over human rights, holding
inmates without charge, without access to lawyers and including, even, unac-
countable 'disappearances'. The US government determined that Guantanamo
Bay would fall into a 'legal black hole' between international law and national

law so that it could by-pass human rights conventions and justified its position by posing a false choice between national security and the rights of terrorists (Nash 2009b, pp. 78–80). Evidence has subsequently accumulated of several European nations which are signatories to these conventions allowing US agents to 'process' Guantanamo suspects on their soil in ways which have been described as a violation of those conventions.

Thus, it can be argued that Muslims have been 'cast out' of the political community in the period following 9/11. The 'war on terror' has triggered a legally authorized suspension of rights on the grounds of national security, enabling the increased use of surveillance and erosion of citizenship rights that follow from this (Razack 2008, p. 4). The post-national citizenship argument, which suggests that European minorities, even stateless ones, are now protected by supra-national human rights organizations, seems overly sanguine in the context of the legal vacuum that is Guantanamo Bay (Nash 2009a, p. 1). The mirage of unfettered mobility, characteristic of theories of globalization, is undoing itself in the context of heightened national anxiety and parallel adoption of ever-tighter forms of global security to restrict the movement of those peoples – mainly Muslims – identified by NATO in the post–Cold War era as the new threat to national and social order. The concept of cosmopolitanism (defined as a sensitivity to local cultures through more cross-border activities with an openness to globalization) has promoted a utopian perspective on global migration based on the idea of a levelling out of inequality as populations become more mobile. This 'romanticization of mobility as travel, transcendence and transformation' fails to acknowledge the continuing salience of national power, often operated through micro-surveillance (Ahmed et al. 2003, p. 1).

Failing Muslims: the paradoxes of human rights and cosmopolitanism

The securitization of minority communities in Europe and the US, of whom Muslims have become the major target since the 1990s, reflects a fear of Islam and its followers which can easily lead majority populations to regard them as a special security risk. The perceived 'danger' is traced to multiple, sometimes contradictory sources. Muslims who are impoverished due to exclusion from high-quality education and employment are viewed as dangerous because they may have a 'grudge' against the wider society and feel they have no stake in it, making them able and willing to attack it. Paradoxically, Muslims who have escaped poverty and become highly educated – especially in engineering and maths-based subjects – are viewed as dangerous because they may put these skills to destructive use, making explosives or hacking computers. This belief appears to have persisted even though stereotypes of the bearded bomber with the engineering degree turned out to be largely based in an unrepresentative sample of early cases; 'radicalization' and the desire to fight 'jihad' for an Islamic state turned out to be

more prevalent among less-educated Muslims with a very basic interpretation of Islam and frequently little knowledge of the Qur'an. Muslims with roots in countries afflicted by internal conflicts (such as Syria, Afghanistan, Iraq and Pakistan) were widely suspected of having a more-than-average chance of wanting to spread those conflicts or engage in violent protest relating to them, even though they had usually arrived in Europe due to their opposition to the warring factions and wish to escape the insecurity that resulted.

Special restrictions and conditioning of rights on 'security' grounds have become another reason why the 'democratic iterations' of which Benhabib (2004) speaks have failed to occur or failed to secure for European Muslims the protections offered by human rights. Benhabib (2004) recognises this, acknowledging that the outcomes of these democratic iterations set up a clash between European Muslims voicing universal human rights claims and national governments who represented state power. However, the focus on iterations makes it difficult to capture the reality of the unequal playing field between the contestants. This exposes the limits of analysis which focuses on fluid discourses and contestations. Nash (2009b, p. 1069) objects that the abstract level at which Benhabib's (2004) conceptualization of cosmopolitan citizenship is pitched limits its ability to make sense of the real world.

The contestants in the debates over human rights for Muslims were unevenly matched, with the privileged position being held by governments sensitive to popular opinion and (in Europe) the long-established forum of cosmopolitan justice, the ECtHR. These institutions have been successful in turning the rights talk on its head and casting Muslims, including those who want only to wear the headscarf in public, as treading on the rights of others, leading to ever more entrenched forms of containment. Hostile politicians (now from all political sides) have been able to follow up by arguing that being forced to give up the headscarf is a form of 'liberation', restoring the former wearer's own rights and actually achieving the preconditions for their freely exercising other rights.

Nash (2009b) has argued that the cosmopolitanization of law – exemplified by the growth of internationally agreed human rights measures – has not necessarily created equal access to justice. She discusses cosmopolitan citizenship (Nash 2009b) in a more concrete way, introducing the idea of 'actually existing' cosmopolitan citizenship which involves multiple status groups whose ability to challenge the status quo is unequal. The inequality reflects differential access to resources and rights depending on membership of different citizen cohorts, designated 'super-citizens', 'marginal citizens', 'quasi-citizens', 'sub-citizens' and 'uncitizens'. The cosmopolitanization of law in Europe, she argues, has contributed to the 'complication of citizenship as a rights-bearing status, to the concretization of new forms of inequality between citizens and non-citizens and even to violations of human rights as such' (Nash 2009b, p. 1070), a development which can intensify rather than eliminate inequality.

Super-citizens enjoy the widest array of citizenship rights as members of the cosmopolitan elite; marginal citizens have full citizenship rights but do not enjoy

full citizenship status through marginalization mechanisms such as poverty and racism (Nash 2009b, p. 1073). These arguments have a strong affinity with the 'capability' view that rights can exist separately from the physical, social and economic resources needed for full exercise of those rights – which are therefore more effective for those who are (among other comparatives) richer, healthier and better educated, even though everyone formally enjoys them. European Muslims fit this category. In France (and other parts of northern Europe), for example, Muslims of North African origin are economically deprived, living in 'ghettos' of deprivation. Similarly, Muslims with Pakistan or Bangladesh origins in the UK have long suffered from economic deprivation. To the extent that they escape it, this is often through engaging in forms of economic activity (such as small-scale trading, retailing and manufacturing) that are of low status, are subordinated to the larger companies and organizations that employ the majority population and mostly generate low incomes and low investment returns. Where these groups lack basic economic and employment rights and basic capabilities like education and literacy, they do not have the requisite economic or symbolic resources for exercising cosmopolitan rights (Nash 2009b, p. 1075).

Racism also contributes to their marginal status and to fears that they present a disproportionate security problem. The literature on Islamophobia has generally neglected race and racism, partly because racism has been viewed as an essentially secular aspect of modernity stemming from Atlantic slavery and the colonial encounters of the Enlightenment period. However, there is evidence of the racialization of Muslims (as well as of Jews) well before this historical juncture. Evidence that the concept of race has long been associated with religion as well as with blood can be found in references to the Prophet Mohammed as being dark skinned and Satanic. Thus, cultural portrayals of Muslims have been 'saturated' with racial idioms, and the imagery can be traced back to Shakespeare, who wrote of Muslims and Jews in racial terms (Meer 2013).

France's preoccupation with the veil goes beyond immediate justifications, such as preserving women's dignity. Rather, it expresses lingering colonial attitudes which have fixed ideas about Islam – extremist and misogynistic – and the relationship between religion and the state, embodied in the concept of *laïcité*. It is thus a loaded symbol, carrying with it associations with Islamic extremism, masculinity and femininity, without countenancing other interpretations of the veil including religious piety but also empowerment through rejecting sexualized ideals about women (Scott 2007, p. 71). Today's bans and the rhetoric about political extremism and the oppression of women can be understood as part of France's unbroken civilizing mission (Scott 2007, p. 84).

Racism and racialization

It is not possible to understand migration, or 'staying put' through compulsion (as in Palestine's 'Occupied Territories'), without an awareness of vested national interests, which might inhibit or facilitate individual and collective choices. Power

is exerted through both formal institutions (immigration law and anti-terror legislation) and informal attitudes (cultural prejudice, often enacted unconsciously until challenged by those it adversely affects). The notion of unconstrained mobility is soon discovered to be a myth: 'unlimited mobility' is (still) the preserve of people who are privileged, white and wealthy. The very idea of European identity depends on borders and instruments of national security to maintain itself. Increased surveillance has been central to the new Europe project (Verstraete 2003, p. 243). While Western Europe has sought to construct an image of itself as a uniquely progressive safe haven for those whose rights had been abused, it is here that asylum seekers find themselves in high-level security detention camps, where a distinction between illegal and legal migrants is drawn and ' religious zealots' may be deported.

Nor is it possible to separate the failure of human rights and cosmopolitanism to accommodate the freedoms Europe's Muslims are asking for without reference to a wider development, unforeseen in most cosmopolitan discourse. This is 'the return of "race"' and the racialization of minority groups such as 'Arabs' or 'Orientals', assuming a 'mentality' based on ancestral origin (Balibar 2008). The optimism of cosmopolitanism, one aspect of which is that minorities' rights are being increasingly recognized, neglects the climate of Islamophobia which is not just about prejudice against a religious group but, also, the racialization of Muslims and thus racism.

This kind of racism has a very long history – where race has been linked with religion and people – the surfacing of which is contingent upon economic and geopolitical crises (Meer 2013). But it has been given a modern slant in Europe by politicians and thinkers whose outlook is far from exclusionary but who are forced to differentiate entitled 'insiders' from less entitled 'outsiders' in their efforts to defend complex welfare arrangements that depend on a sense of collective purpose and shared obligation. This has encouraged the perception – now advanced on the political left as well as right – that welfare states depend on a social solidarity and long-term contribution record that is undermined when too many itinerants or 'guest workers' and their descendants acquire permanent residency with associated rights (Kleinman 2003; Rowthorn 2004; Goodhart 2013a, 2013b). It follows from this that the decision making of human rights institutions, supposedly beyond national considerations, cannot be separated from the dominant ideologies of European nation-states (Berry 2012) and therefore from the growing hostility towards Muslims which is expressed in an essentialization of their supposed traits despite the heterogeneity of Europe's Muslim communities. Muslims have become a particular target for such essentialization due to their recent migration in large numbers due to home-country economic and political breakdown and sectarian conflict and their adherence to distinct practices which are often identified as denying the need for or defying the process of assimilation. They can be perceived even by those with normally liberal attitudes as a 'dangerous race', and the more unpopular the minority groups in Europe, the more the Court reflects this. Human rights' failure to deal adequately with racial tolerance

and discrimination against Muslim minorities in Europe has been demonstrated by Sian et al. (2013).

While Muslims have been discriminated against on religious grounds for hundreds of years, especially in Europe, it has received comparatively little attention in the academic literature. Studies on historical racism have tended to focus on anti-Semitism at the expense of long-held anti-Muslim prejudices throughout European history. This has meant that they have failed to reflect on the ways in which anti-Jewish and anti-Muslim discrimination have been interlinked. For example, Jews in concentration camps who were close to death were described as *Muselmann*, signifying a Muslim praying, and both Jews and Muslims have historically 'shared the fate of anti-religious rhetoric which incorporates both and discriminates against both through dehumanization'. More recently, there has been widespread adherence to the equation made between Muslim and terrorist (Selod and Embrick 2013, pp. 646–647), a slight which was previously aimed at Jews especially with the rise of some former anti-colonial terrorists through Israel's political hierarchy after its creation in 1948.

Muslim men and women typically experience racialization in different ways. Muslim women wearing the most recognisable symbol of Islam, the *hijab*, means they become easy targets for abuse by members of the public and security officers acting on the public's behalf. The situation tends to be different for Muslim men (and those perceived, often wrongly, to be Muslim) who are viewed as potential terrorists and a threat to national security. For example, immediately following 9/11 at the international level the US waged its war on terror in Afghanistan and Iraq, and domestically it did so through monitoring non-citizens as well as citizens: 'The first step in the war was to define the enemy, which resulted in the widespread acceptance of the socially constructed terrorist as a Muslim . . . Thus, gender plays a significant role in how Muslims are racialized. Muslim men are targeted by the state as potential threats to national security. The combination of laws and policies in addition to the internalization of existing stereotypes created the political and social contexts for the treatment of Muslim men as the "other"' (Selod and Embrick 2013, p. 650).

Indeed, Razack (2008) demonstrates how Muslim women are sometimes viewed as endangered by Muslim men. In the United States, as in Europe, the *hijab* has often been associated with inequality and the subordination of women rather than evidence of women's agency. Second, women who are identifiable as Muslim are viewed as a threat to western ideals of feminism and equality of the sexes. Thus, 'a Muslim identity racializes women as subordinate, oppressed, and powerless women in relation to violent and aggressive Muslim men' (Selod and Embrick 2013, p. 650).

Social hierarchies were once based on religious differences (Meer and Modood 2010). This meant that differences due to religion came before biological racism in Europe and was the basis for the widespread hatred and abuse of Muslims and Jews. The ethnic cleansing of Bosnian Muslims has been said to represent a return to this ideology (Meer and Modood 2010). Cultural racism incorporates religious

difference as a way to differentiate individuals into deserving and undeserving of certain rights and privileges. When cultural traits are racialized, Muslims have come to be seen as possessing essential racial characteristics such as foreign, violent, aggressive and misogynous. Such negative stereotyping means that Muslims are thought to be incapable of upholding democratic or western ideals and values. Ultimately, the whole symbolic caricature can be used to justify the surveillance of Muslims as disloyal citizens and a threat to national security and, in the end, to provide an ideology to legitimize military action against Muslim populations around the world (Selod and Embrick 2013, pp. 650–651).

Europe's failure to escape its colonial history

European colonialism was long coloured by what Said (1978) influentially called Orientalism, which targeted 'Arabs' or 'Muslims' for special treatment as the dangerous 'other'. As Said (1978, pp. 1–2) observed, the proximity of the 'Orient' to Europe has been particularly significant as well as the fact that the Middle East has been Europe's 'greatest, richest and oldest' colonies, 'the source of its civilizations and language, its cultural contestant, and one of the deepest and most recurring in the age of the Other. In addition the Orient has helped to define Europe (i.e. the West) as its contrasting image, idea, personality, experience' (Said 1991, pp. 1–2). In the context of the conflict between the Palestinians and Israel, Israel has been characterized as seeking peace whereas the Arabs have been depicted as 'warlike, bloodthirsty, bent on extermination and prey to irrational violence' (Said 1992, p. xvi). Palestinian resistance to Israeli dominance is attributed to the so-called 'Arab mind' and their 'fierce vengefulness' (Tuastad 2003, p. 592).

The current resurfacing of orientalism relates to the new insecurities relating to Europe's standing in the global economy: after the loss of empire has come the loss of geo-political and economic power in the face of emerging powers in Asia and Eastern Europe. Europe has reacted to this threat by backward-looking nostalgic appeals to its old power, which involved the subjugation (physically and symbolically) of Muslim populations, portraying them as standing in the way of Europe's modernization project and the ideals of the Enlightenment. The irony of this is that the recent veiling movement, which has swept across Europe, is not a return to tradition but an innovative reaction to modernization (Carvalho 2013).

It is also in this context – of the insecurities generated by globalization and the emergence of new global economic powers – that European countries have been compelled to draw back the bridges and secure themselves through a tightening of national borders. The social insecurities noted in Chapter 2 have been exacerbated by the EU's long phase of economic growth without significant rise in living standards, followed by one of the longest recorded recessions – for which excessive labour-market competition, from workers located in emerging economies or migrating from them, is a popular explanation. The increasingly cross-party perception of European-style welfare states relying on a social solidarity

that is disrupted by recent arrival and ethnic difference has allowed this fear of immigrants to fuse with a fear of immigrant-descended communities that have insufficiently 'integrated', linguistically and culturally. The sociological case for globalization creating scope for 'porous borders' was always more myth than reality, with only an elite – equipped with express boarding passes if not their own planes and airports – able to cross freely between countries and converse freely with their counterpart elites. For all others, the common experience is now a tightening up of borders through increased surveillance of national boundaries (Verstraete 2003). As a result, asylum seekers from conflict zones such as Syria have been left to languish in desperate conditions in encampments at border crossing points such as Calais, which follow a now well-established cycle of gaining semipermanence, being dismantled as their visibility invites a policy of dispersion, and then gradually re-accreting as migrants who have not received (or sought) a locally integrating welcome re-assembly at the next blocked border.

Post-colonialism, particularly that associated with Edward Said's (1978) classic work on Orientalism, provides a valuable lens through which to view the patterns of the European Court's response to claims-making by European Muslims. The judgements thus far made in relation to the *hijab*, for example, cannot be understood without reference to the continuing hold orientalism has on European knowledge of Muslims (for example, the assumption that wearing the *hijab* is necessarily a product of the subjugation of Muslim women or a sign of sympathy for terrorism). As Europe's geo-political standing has been eroded by competition from the emerging economies, the resurfacing of orientalist assumptions expresses nostalgia for its colonial past.

As well as the climate of Islamophobia, which has spread across Europe, there are a number of more specific reasons for the 'casting out' of law and politics of Europe's Muslims. Human rights institutions themselves adhere to secularism and increasingly so: while the right to religious expression in the immediate post-war period was an absolute right, it has now become a qualified right. Close analysis of the ECtHR's decision making reflects the national characterizations of Islam – as a threat to public order – without probing the cases for an evidential basis to their decisions. The judgements are made on an unquestioning acceptance of the national governments' view of religious practices relating to clothing of Muslims, with only a few dissenters.

It could be argued that Muslims' political, social and economic exclusion has forced them to take a very formal, legalistic approach to asserting and defending their rights. The need to resort to the law rested on the fact that the issues they raised were too divisive (or affected too small a minority) for political parties and pressure groups to adopt them and too unpopular for individual petitioning and campaigning to work. However, the law – especially human rights law – is a slow, cumbersome and very blunt instrument. Their cases are forced upwards to supranational courts, which may take months or years to reach a verdict and almost invariably (in the cases thus far on Muslim dress) push the case back into a national jurisdiction, where (majority) cultural norms shape the law and

its interpretation. A more pragmatic approach is therefore needed. It would not necessarily involve the abandonment of litigation altogether but would couch the claims in rights which have greater resonance at this point with the public (e.g. the right to education and the right to work) along with campaigning that frames claims within human rights language but without necessarily going through formal litigation.

The gap between Islam (as a religion), secularism and human rights can potentially be bridged. If secular societies are not defined by the dominant religion but rather on a separation between the state and religion, there is potential for reconciliation between competing cosmopolitanisms. On this basis, the political ramifications of a state committed to human rights law is that it can accommodate religious law, such as Shari'a, without being based on it. An-Na'im (2010, pp. 351–355) rejects the assumption that Islam and human rights stand in opposition to each other, claiming that the foundation of the bridge was laid in 1948 by the United Nations Declaration of Human Rights (UNDHR), which stated that human rights transcended religious, national or sexual divisions by virtue of their appeal to humanity. Thus, there is sufficient overlap between religion, secularism and human rights to reconcile them with each other because all three contain appeals to universal principles. Indeed, he argues that all three are interdependent and need each other for their fulfilment.

However, this perspective is not enough to explain the activism and new forms of claims-making by European Muslims (Isin and Nielsen 2008). For this, it would be more useful to turn to the concept of decolonial post-colonialism, which moves beyond European critiques of colonialism to forms of activism whereby, as groups whose human rights have been limited or derogated, Muslims have held the mirror up to European political and judicial thought by exposing their Eurocentrism and engaged in a form of claims-making that sabotages the European intellectual elite's ownership of post-colonialism, which still clings to an idea of Islam as the antithesis of universalism generally and human rights in particular. This is implicit in the variety of cosmopolitanisms that social theory has invented in its effort to reconcile the universalism of cosmopolitanism with the particularism of religion. The variant forms of 'hyphenated' cosmopolitanism, reviewed in Chapters 2 and 3, may have resolved some of the conflicts at a theoretical level, albeit with substantial concessions to local differentiation and possible cultural relativism. Their severe limitations in practice have been demonstrated by their repeated collision with European political and judicial decision making. A deeper understanding of cosmopolitanism's failure in its European seedbed reveals the need for a more comprehensive re-thinking of cosmopolitan theory and strategy, a task attempted in the final chapter.

Conclusion

The relationship between human rights and citizenship is an uneasy one. Historically, human rights have been tightly bound with national citizenship, with non-citizens being excluded and thus cast as non-human. The 'foreigner' had no rights. Under colonialism, colonial subjects did not enjoy rights until they rebelled against their exclusion and created their own national status. The imposition of colonial rule and religion might sometimes have protected the rights of certain minority groups from 'primitive' practices, but only through the confiscation of rights from the larger group. Periods of social tension, external conflict or economic downturn have typically led to suspicion and scapegoating of resident foreigners and a tightening of rules against them – as when England expelled its Jews (and seized their property) in 1290, and the US deported or interned Japanese Americans after 1942.

Across the US and Europe, 9/11 ushered in a period of tightened national security which triggered a series of legal mechanisms which saw Muslims dehumanized, most grievously in Abu Ghraib and Guantanamo, and through extraordinary rendition and control orders, but also through soft forms of regulation of the expression of Muslim identity. Enforcing and introducing laws to restrict wearing of the *hijab* or the *burka* signals to Muslim citizens and immigrants that their legal and political inclusion depends upon their abandoning signs of religious or cultural difference (Monshipouri 2010, p. 47). Popular cultural motifs are echoed with old colonial discourses of Islamic barbarism and backwardness.

National identity and cosmopolitan aspiration

A close analysis of debates in the media, political policy and legislative developments in Turkey, France, the Netherlands and Germany shows that contrary to assumptions that follow from transnational perspectives, the tone and substance of discussion remain strongly differentiated by national context and demonstrate the ongoing salience of national traditions and structures. While public and political objections to the *hijab* and other forms of dress have united countries with disparate national identities, national idiosyncrasies permeate the way these countries deal with the disruptions of transnationalism (Korgeweg and Yurkadul 2014,

pp. 5–6). In France, the debates have constructed Muslims as 'outsiders', irrespective of their citizenship status, and as a threat to national integrity and potential carriers of communalism. Whereas in Turkey, despite the 2013 change in policy which now allows women to wear the headscarf in public under the premiership of Recep Tayyip Erdoğan, the debates are more about class status. Moreover, whereas in France the emphasis is on retrenching its national, isolationist orientation, in Turkey, the headscarf debates are influenced by global concerns such as anti-capitalism, minority rights and class.

National identity is continually in a state of flux and, as such, offers opportunities for creative reconstruction for Muslim minorities in parallel with greater forms of governing. Korgeweg and Yurkadul (2014) show that the various identity crises these countries have experienced – which have played out in attempts to ban Muslim dress in public spaces – have also provided a momentum for Muslim women to assert their citizenship rights and redefine national belonging. Thus a new generation of Muslim women in these countries is starting to rewrite hegemonic national scripts. In France, for example, as well as increasingly engaging the European Court of Human Rights (ECtHR) to address their religious rights, in the streets Muslim women are protesting against government bans with the colours of the tricolour painted on their faces. In Turkey, professional women are entering Parliament, working as lawyers and doctors and graduating while insisting on displaying their religious identity through dress (Korgeweg and Yurkadul 2014).

In response to these new forms of micro-surveillance and regulation – either hard (through, for example, the derogation of basic rights) or soft (curtailment of religious expression in public through the building of mosques or wearing the *hijab*) – European Muslims have begun to bridge the gap between the promise of citizenship and human rights. Encapsulated in the concept of 'realized citizenship', these groups have mobilized resources, skills and networks (through a proliferation of transnational and European Muslim associations) to transform opportunities from the abstract to the concrete and to close the gap between the citizen's right to affect political outcomes (a legal entitlement) and the reality of their exclusions (Weithman 2002, pp. 13–14). Full realization of citizenship will depend on Europe acknowledging its restrictive conception of religion in relation to civil society and citizenship (Cesari 2010a, p. 25).

Nash's (2009b) analysis enhances the concept of cosmopolitan citizenship by acknowledging differential access to economic resources which are critical to the mobilization of cosmopolitan justice. However, there is a deeper problem with cosmopolitan theory which makes the exclusion of Muslims almost inevitable. Cosmopolitan theorists tend to deal with discrepant cases by distinguishing between cosmopolitanism as a set of principles which are adhered to in varying degrees and cosmopolitanization, namely work in progress – echoing the distinction between theory and praxis (Beck and Sznaider 2006, p. 9).

This nuance means that anti-cosmopolitan trends can, despite the persistence of recent counter-trends, still be written off as hangovers from a former era. Manifestations of the durability of national sovereignty or xenophobia are regarded as

the lingering after-taste of an outmoded ideology. For example, President George W. Bush's 'war on terror' is conceived as the last vestige of national sovereignty, with the US being described as unique in being able to act autonomously as a state – 'the last nation-state'. This last gasp of national sovereignty is thought to be outweighed by more progressive developments such as the recent anti-war campaigns and the refusal of countries such as France and Germany to follow the US and to act, instead, according to 'consensual negotiation rooted in human rights law' (Kaldor 2001).

This does not explain why cosmopolitanism, through its prototypical materialization – European human rights – has failed to protect Europe's Muslims and why the spread of prejudicial social and political attitudes towards Muslims to other previously cosmopolitan regions (including the US and Central Asia) was increasingly evident in the decade after 2008. The answer to this question lies in the nature of human rights and cosmopolitanism in their European guises and a series of paradoxes that continues to beset them at the normative as well as at the practical level. The most visible of these paradoxes is the relationship between human rights and national sovereignty. To the extent that Europe as well as the US has been complicit in some of the most serious of human rights abuses, it seems fair to conclude that neither 'humanity's law' nor 'supranational right' has provided a normative basis for a cosmopolitan constitution, and there is no evidence of a cosmopolitan community as the nation-state abandons human rights.

Douzinas (2007, pp. 98, 178) argues that this is because human rights and sovereignty are two sides of the same coin; that morality and power or human rights and sovereignty, two allegedly opposing principles, are complementary in practice. They have combined in varying ways during state and empire building such that every state or empire has promoted a version of morality and of people's entitlements that fits comfortably with its interests. Natural rights accompanied the establishment of the modern nation-state in the eighteenth century, and human rights and national sovereignty were 'born together'. The very idea of universal rights was tightly bound up with the Westphalia notion, giving a privileged status to those who met the conditions, based on blood and birth, of national citizenship (Douzinas 2007, p. 99).

These rights did not, therefore, speak to the whole of humanity but to exclusive sections of the community: national citizens, which excluded, by definition, non-citizens. This paradox carried on into and shaped the post-war rise of human rights, which was not motivated by a cosmopolitan impulse committed to universal principles but the construction of an institutional apparatus that was integral to the geopolitics of the Cold War. The adversarial relations between Europe and the Soviet Union were rarely expressed through inter-state actions, with the convention refraining from making claims against other states' human rights violations in order to maintain a status quo based on the protection of national sovereignty. While the 1975 Helsinki Final Act (of the Conference on Security and Cooperation in Europe) enshrined human rights commitments, violations of which were extensively recorded, the Act also enshrined the principle of non-intervention in

other sovereign states' affairs, ensuring that the US and west European signatories would take no action against the Soviet Union and its allies. Today, this intimate relationship seems as intractable as ever. Human rights are both enforced by and violated by nation-states, the only feasible solution to which would involve the establishment of an effective global authority (Turner 2011).

National citizenship remains important to the conferring of social and political rights, which by default exclude certain groups of people, not just stateless people but also minorities, from effective membership of a polity (Turner 2011). Where people are born and where they acquire citizenship substantially affects their life chances, not least because of wide and growing differences in opportunities to acquire the requisite resources to be central to (rather than outside) the polity. The rights and freedoms which cosmopolitans see as being equalized (by international legal conventions) between citizens and non-citizens are thus the traditional liberal conception of, for example, Mill (1868). They are confined to freedoms from violation and constraint and exclude freedoms to act, comprising 'negative' freedoms but omitting 'positive' freedoms, in the way of Berlin's (2015) thinking. Although, for example, the United Nations Declaration of Human Rights (UNDHR) begins with a long list of negative freedoms that might be enforceable through international courts, it also lists positive rights as property ownership and clothing, housing, medical care and security in old age, access to which remains unequal between and within nations, and they could not be effectively universalized until the rights of most citizens in lower-income nations (and lower-income citizens in high-income nations) are enhanced by substantial economic growth. While cosmopolitans are keen to show how differences in rights and freedoms between citizens and non-citizens have narrowed, they rarely acknowledge that in some cases these differences are actually inverted because of economic inequality.

The second tension sits between human rights, cosmopolitanism and religion. Human rights are rooted in a liberal, secular paradigm which surfaces when confronted with religious minorities making religious freedom claims and has created a pressure towards the privatization of religion in order to maintain the secular nature of the European public sphere in response to the rise of multi-faith communities (Cavanaugh 2007, pp. 10–11). The ECtHR's deference to national governments on qualified rights such as the right to religious freedom exposes this deep-seated conflict. European human rights are about defending individual autonomy, a principle that seems to contradict the idea of religious duty (Lewis 2007, pp. 396–403). Whereas the protection of liberal democracy is sacrosanct in European human rights, religious freedom is not so central. Consequently, institutions such as the ECtHR give considerable leeway to national governments to determine national policy on such matters. The failure to create cosmopolitan law is rooted in an overriding deference to secularism. To date, Strasbourg has restricted religious practices in the guise of tolerance, pluralism and secularism, imposing 'an unacknowledged cost to religious freedom' (Langlaude 2013, p. 944).

Resolving the collision between security and human rights

The post-war period, with the proliferation of global human rights treaties and conventions, had been hailed by its optimistic observers as the 'age of human rights'. Their pursuit was viewed as fully compatible with and indeed an essential component of the deepening of economic and political security through forms of a social-democratic state. This concept was seemingly reinforced in the post–Cold War period through a series of ratifications of the European Convention of Human Rights by Russia and several East European countries. However, the anti-terrorist measures adopted by the United States and Western Europe have marked a shift towards greater state control over the individual that is no more clearly manifest than in the surveillance of particular ethnic or religious groups. While human rights can be derogated in states of emergency, the discourse surrounding the need to combat 'evil' lies behind the establishment of camps such as Abu Ghraib. While exceptional, events there were rooted in culturally dominant assumptions about Arabs as sub-human. The sexual torture inflicted on Iraqi prisoners in Abu Ghraib echoed the Orientalist themes that accompanied colonialism – the depiction of Arab men as especially prone to uncontrolled, aggressive sexuality. By forcing the prisoners to commit sexual acts, the US prison guards reproduced these anachronistic discourses, thereby creating what is already 'known' (Puar 2007, p. 87). What distinguished these practices from Orientalist art was the medium – digital photographs relayed through the Internet – by which they were circulated globally (Puar 2007, p. 108).

The war on terror has triggered a downgrading of human rights, including the erosion of absolute rights, such as universal prohibition on torture and the right to a fair trial (Gearty 2007). Crucially, the narrative of 'Islamic terrorism' has risen to the top of the global political agenda (Jackson 2007). While the risk of terrorism is a real one, it has nevertheless been inflated to create a more generalized 'Islam anxiety', which has now become global, and the tendency to caricature and gloss over the differences within Islam in public discourse has produced disproportionate fear (Cole 2009). Thus, the real threat of terrorism has been used to restrict human rights in the post–9/11 period (Donnelly 2007b, pp. 211–222). The actual threat has been exaggerated by the media such that restrictions have disproportionately targeted Muslims, eroding their citizenship rights and marginalizing them politically (Razack 2008).

The 'old' barbarians: from enclosures to colonies

The governance of peoples around the world has always rested and continues to rest on risk management which involves classifying those who are governed as a threat to security and civilization (Guardiola-Rivera 2009). For governments that were accustomed to exerting full control within their own borders, alongside an international policing role which led to their intermittently governing the people

of other countries, what was most disturbing about the perpetrators of 9/11 is that they had succeeded in breaking through the highly sophisticated surveillance technologies of the US government. The destruction of the World Trade Center and the attack on the Pentagon were major traumatic events for Americans, which enabled some (even moderate) political voices to draw parallels with Pearl Harbor. They produced a groundswell of emotional unity between the US and Western Europe, stretching well beyond the UK (a traditional ally) to countries with which there had been post-war tensions, including France and even Russia. The then UK Prime Minister, Tony Blair, called the destruction of the twin towers an emblem of a new type of security threat, one which called for a containment that had been unknown since the Second World War. At the Chilcot Inquiry, he observed that 'Up to September 11 we thought he [Saddam Hussein] was a risk but we thought it was worth trying to contain it. Crucially, after September the 11th, the calculus of risk changed' (Chilcott 2016).

The twin towers were symbols representing the new, global economic order and the American dollar. This was where the financial institutions of the world lay, as well as the symbol of global economic power, which was far from global in its distributive reach, and the Pentagon, the location of US foreign and defence policy, representing the source by which people who challenged US economic, political and military dominance were subjugated. The instruments the terrorists used were the very ones that had been created by this global power – electronic communications and airplanes enabling them to invade American territory in a way that mirrored US use of military technology and clearly showing the potency of 'man'-made technologies which have the potential for spiralling out of the control of those who created them to be used by those subjected to them in an act of rebellion (Guardiola-Rivera 2009, p. 139). The terrorists appropriated US military and civil technologies to turn against their creators, rendered powerless by their own inventions.

While risk management may be understood as relatively new as a public concern and hence as a requirement on governments (Beck 1992), anxiety about risk, natural and constructed, has a long history. It was central to historical upheavals such as the English and French revolutions, as well as the Enlightenment project (Turner and Rojek 2001, p. 56). Risk anxiety and the perceived need of the governing classes to contain 'unruly' subjects has been a constant thread running through a succession of historical developments: the movement from the commons to the enclosures in the late eighteenth and early nineteenth centuries, followed by mobile enclosures (slave ships) and then the global spread of the enclosure-based system of industrial politics and production and the rise of the nation-state. The enclosure movement defined the modern national project, producing excluded groups who were considered inhuman and, consequently, creating the idea of a civilized human race as opposed to unruly, uncivilized groups thought to be subhuman (Guardiola-Rivera 2009, p. 141). Assuming European superiority, classical liberal theorists, such as Locke

and Mill, supported missions to civilize non- European cultures as morally imperative (Malik 2008/2009, p. 2614).

Internal governance mechanisms were externalized through colonial conquest, imperialism and encounters with people, originally from the Americas, deemed to be uncivilized (Guardiola-Rivera 2009, pp. 158–159). In the Middle East, governance of 'Arabs' or Muslims involved the colonial powers transforming indigenous people into objects of spectacle; their practices and the objects they worshipped were seen as exotic, mysterious and dangerous. Disciplining these people operated through a body of knowledge known as 'Orientalism', which was pivotal in the reproduction of relations of domination and subordination in the Middle East and Africa (Said 1978). The west's knowledge of the 'Orient' and its people was linked with the need to provide an epistemological justification for western authority over that region: western discourses about Islam and Arabs were thus rooted in the material, political and cultural domination that accompanied colonial expansion and, later, neo-colonialism (Said 1978).

Colonial conquest involved the systematic dehumanization of indigenous peoples – physically and ideologically – who were perceived as infantile and vulnerable and yet capable of barbaric practices if their raw impulses were left unchecked in the absence of a civilizing social contract. Central to the project of micro-discipline, European literature and art reveals an obsession with the colonized's cultural and bodily inferiority. Nineteenth-century paintings of the 'Orient' depicted a timeless quality through indigenous peoples living lives based on archaic and strange rituals, such as snake charming, in sharp contrast with the rational cultural, military, economic and technological development of the colonialists. While such art often represented internal violence, it rarely depicted the violence against the colonized by the colonizers, such as that by the French in Algeria, for example. The book cover of 'Orientalism' portrayed Jean-Leon Gerome's painting, the *Snake Charmer*, which, while professing realism, revealed more about western thinking of the Orient (Nochlin 1991, p. 306) – a naked child (infantile) having an intimate relationship with the snake (the fetish) with a mysterious (thus dangerous) power to charm it.

The fixation on the bodies of colonized peoples played on the idea of women as needing protection from the aggressive male Arab but also dangerous temptresses using their sexuality to tempt European men. Orientalist observations generally presented Muslim women as 'docile' – passively subordinate to male authority (Mahmood 2001, p. 205) or as sexually inviting. French colonialists viewed unveiled women dancers from southern Algeria as prostitutes and blamed Islam for forcing them into prostitution. The veil was believed to stand for modesty and the harem as a prison where Arab men brutalized women (Scott 2007, pp. 56–58).

In the post-colonial period, the governance of peoples – risk containment through forced displacement and brutalization – has been central to the state of Israel, despite early efforts by some Zionists to create a country based on peaceful co-habitation. The status insecurity of the new Jewish state was overcome, in part,

by the resurrection of Orientalist ideas and a transformation of the Jew from victim to strong, masculine and powerful. In the period of nation building, beginning in the interwar period, the Jew as victim was transformed into the strong 'new Jew': 'From Zero to Hero' (Mayer 2000, pp. 293–308). Palestinians were forcibly displaced, turned into refugees living in ghettoes out of which would, eventually, emerge the Intifada.

The theme of a people under siege by hostile Arab countries has provided the ideological justification for arguably one of the most brutal forms of risk containment in the post-war period: successive Israeli governments in the post-1967 period, from Golda Meir through to Ariel Sharon and Benyamin Netanyahu, have won a mandate for the unrelenting surveillance, incarceration and brutal disposal of the Palestinian threat – most controversially illustrated by footage of the bodies of Palestinian refugees in the Sabra and Shatila refugee camps, killed by the Lebanese Christian Militia as Israeli soldiers watched the spectacle from the safety of high walls and buildings. Gaza has now become an open-air prison and one of the tightest 'immobility regimes' of the twenty-first century (Turner 2007).

Human rights emerge from such encounters: the experience of de-humanization eventually compels people to mobilize around their human rights (Guardiola-Rivera 2009).

Decolonization and the new 'home-grown' barbarians

Decolonization reversed the patterns of migration characteristic of the empire, facilitating migration from south to north. Economic migrants have taken on the western idea that fulfilment lies in getting materially rich, so, no longer content to stay in low-income countries of origin, they reverse the pattern of the search for wealth and riches (Duffield 2007, p. 198). In late modernity, with globalization and the alleged breakdown of national borders, security threats are thought to be coming from new sources. Now the risks are not the indigenous people of conquered territories, but those coming out of 'spontaneous migration . . . fragile states or terrorist networks', engaging the popular imagination with supposed threats stemming from ostensibly increasingly porous national boundaries (Duffield 2007, p. 198). This development has created the impulse behind the securitization of Europe and the policing of open borders (Verstraete 2003, pp. 251–272).

Risk anxiety today is focused on Muslims in two ways: as a threat to western livelihoods and as a source of 'home-grown' terrorism. The London bombers were presented as doubly threatening because they represented both the enemy without and the enemy within, creating a narrative about contempt for the civilized institutions and governance of the 'host' (secular) countries by the media and government representatives (Shooman and Spielhaus 2010). More recently, the same narrative has emerged in the context of the American Muslim who left a car containing explosive materials in Times Square. Led by Peter King, the US House of Representatives conducted an investigation of radicalization among

American Muslims in congressional hearings, which led to calls for a McCarthy style witch hunt.

Ideas about an impending 'clash of civilizations', originally associated with Huntington (1996), have resurfaced after the trauma of September 2001, demonstrating the continuing hold of ideas which posit an irreconcilable schism between European (generally Christian) civilization and the 'East' (generally Islamic). Such ideas are connected to the west's 'existential unease', expressed in obsessing on the security implications of cultural differences and the threats such differences pose not just to national cohesion but also to international security (Duffield 2007, p. 199). In January 2002 President George W. Bush gave his speech on the 'axis of evil' – Iraq, Iran and North Korea – clearly indicating the US government's perception of new security threats. The 'spectacles' so common to the art of the colonial period which served to de-humanize the governed people, resurfaced in the series of abuses against prisoners in Abu Ghraib, whose torture (often involving sexual humiliation) was captured on camera for global circulation, serving as a means by which a collective conscience of national superiority could be sustained (Razack 2008, pp. 26–59).

The use by Muslim terrorist groups of a militaristic form of resistance is met with a new negation of human rights, and the duty to protect is transformed into the loss of rights on the part of some. The series of anti-terror laws and state of emergency imposed in the United States and the UK after the attack on the Twin Towers and the London bombings, respectively, involved the derogation of basic human rights: the right not to be detained without a fair trial through the indefinite imprisonment of suspected terrorists in Guantanamo and Abu Ghraib (Gearty 2009). Obama's promise to shut down Guantanamo has been reversed, leaving detainees to be subject to military trials behind closed doors. Recent anti-terror laws in the UK have facilitated the conviction of Muslims for 'celebrating' terrorism, yet where convictions have collapsed, media coverage is limited. The UK's commitment to the absolute prohibition on torture has been compromised by its apparent cooperation with US extraordinary rendition flights. The curtailment of the right to freedom of speech among British Muslims has been highlighted in the case of the Luton Muslims who protested against the homecoming parade of British soldiers from Afghanistan.

While Islam is popularly understood as irrational and aggressive, religiosity played an important rhetorical role in justifying the invasions of Iraq and Afghanistan. President George W. Bush's war speeches contained many references to God, as did some of Tony Blair's, giving the impression that 'our' (Christian) values are superior to 'their' (Islamic) ones. The mission to save Iraq (and humanitarian interventions in, for example, Kosovo) was elided with human rights and the argument that 'we' engaged in these painful but necessary interventions in order to share our superior values – the rule of law, democracy and human rights, that is, human rights supposedly coming out of Christianity – was propagated. The allegation against Saddam (and other Third World leaders with nuclear programmes) is that they acquire a western technology (the bomb) without having

the western values and democratic structures that allow them to use it responsibly. When a witness to 9/11 was quoted as asking 'Why do they hate us?', George W. Bush portrayed this attack as one by people who resented America's 'threat of a good example'.

In the past, the focus of national defence efforts was on the threat from abroad and the need for western powers to invade Muslim countries to contain it. Attention has now turned, with the presence of sizeable populations of second- and third-generation Muslims in Europe and the US, to the 'home-grown' threat. Part of the way the governing classes are seeking to discipline these new rebels is through a renewed focus on their mysterious and exotic practices, which, again, turns on the idea of the body. Suicide bombers have used the object of the European gaze as a formidable instrument for conducting a war on the west. The tactic deployed is portrayed as a form of barbarism, irrational and rooted in outmoded and archaic religious fetishes. Suicide bombers' alleged belief in virgins waiting for the martyrs in Paradise was an especially widely quoted example (Dawkins 2006).

It is useful to distinguish between 'hard' and 'soft' regimes of regulation and surveillance. In the sphere of national security, severe securitization measures affected only small numbers of Muslims – for example, in European-based rendition conduits as well as Guantanamo Bay. Such practices involve 'hard' cases of securitization, involving the breach of absolute human rights, such as the right not to be tortured. In contrast, 'soft' cases of securitization involve the 'hyper-legalization' of perceived cultural threats – for example, in measures designed to outlaw the wearing of Islamic clothing in secular contexts or the building of minarets, which recently happened in Switzerland, a country with only four mosques with minarets and no radical Islamic politics, usefully understood as forms of cultural racism (Malik 2008/2009).

This cultural racism also surfaces in the way particular identities – Muslim, Arab or North African – are defaced in French political discourse based on an ostensibly commendable concept of egalitarianism which demands the abandonment of thick attachments. Ideas about cultural inferiority associated with colonialism continue to shape political debates about the veil or the *hijab* (headscarf) in which the veiled Muslim evokes this double identity of both cultural inferiority and threat (Scott 2007, p. 17). Muslims are regarded as a threat because they refuse, by wearing the *hijab* or growing a beard, to conform with the secular and civilizing culture of France and opt instead (apparently) to maintain a commitment to 'archaic' signs of faith (Guardiola-Rivera 2009, pp. 24–26). In the post–9/11 era, new surveillance strategies based on a repertoire of 'terrorist lookalikes' developed, resulting in cases of Sikh turbans and Muslim veils being torn off, cases which exposed fundamental ignorance rooted in Orientalist fantasies about 'Eastern' masculinity and femininity (Puar 2007, pp. 175–181).

Islam alone is judged, in the media, to be fundamentalist, and other religions, which also contain fundamentalist strands, are absent from discussions of religious radicalization. And Islam alone is portrayed as a uniquely patriarchal and

misogynistic religion, ignoring the misogynist elements of other religions (Cesari 2008). The *hijab* or the veil and moreover the *burka* are, to popular western secularism, unintelligible objects or 'archaic fetishes' (Guardiola- Rivera 2009, p. 2). It seems self-evident that women who wear such clothing in a secular environment are doing so without freedom of choice, reflecting the patriarchal oppression specific to Islam. Muslim women are portrayed as subdued by the dominant, aggressive male 'Arab' and denied autonomy, and the docile subject of old colonial discourses is resurrected. Such views are prevalent in western media and among political leaders, with the French government claiming that the ban on the *burka* reflects the country's respect for the principle of equality for women.

What has long characterized French debates is now, post–9/11, finding a place in Germany, Italy, Belgium, Britain and the Netherlands. Now the social cost of being a European Muslim has increased, with governments seeing them as Muslims first and citizens second, with an implied difference between trustful Muslims (assimilated ones) and distrustful Muslims (those who wear headscarves or beards). Thus, they have become the current 'other' in public discourses; what makes them this is that they are demographically productive, apparently insensitive to European, secular values, and our knowledge of them is based on information that is focused on mosques (Amiraux 2006), now considered not to be places of worship but potential sources of political radicalization and extremism.

A growing consensus in the media and among politicians is developing around the view that European Muslims, with their distinctive signs and objects linked with the 'backward' practices of the former colonies, are a new source of threat to national identity and security. Fear of this threat pervades arguments about hidden dangers, particularly around garments such as the *hijab*, which are portrayed as literally defying governmental rights to surveillance, as the face is hidden (even when it is not), thus preventing, at least in the imagination, the western gaze from penetrating. In 2006 a storm brewed in the UK when Jack Straw sparked a debate on wearing the *niqab* (which covers the face), which he saw (later supported by Tony Blair) as an impediment to normal social interaction and as symbolizing segregation rather than integration, re-signifying religious symbols into concealment and a threat to security. The 'clash' is neatly crystallized at border-crossing points, when the western need for security through surveillance collides with the *hijab*-wearer's insistence on staying covered. The western press is keen to report stories of male Muslim criminals/terrorists who use the *hijab* as a disguise, resonating with historical forms of resistance in past anti-colonial struggles.

The problem with cosmopolitanism

What is clear from the evidence surveyed in this book is that cosmopolitanism across Europe has not worked, as either a practical project or a successful intellectual programme. The problems with cosmopolitanism are threefold (Lu 2000). Fundamentally, from any realistic standpoint, cosmopolitanism is too optimistic for a divided humanity. In this realist view cosmopolitanism is simply utopian.

Its claims are 'too threatening to key moral goods, like communal autonomy and plurality' (Lu 2000, pp. 245–246). So for realists the idea of common humanity ignores the reality of a conflict-ridden world and conflict over scarce resources (Lu 2000, p. 246). Realist critiques are caught up in a division between idealism and realism, but for Lu (2000) this rigid adherence to such a division rules out the possibility of a third way. 'The moral community of humankind posited by Nussbaum and other cosmopolitan theorists, does not accord with the reality of the human condition' (Lu 2000, p. 246). Realist critics of cosmopolitanism are not wrong to suggest that it can be guilty of utopianism – this was the nature of cosmopolitanism in the Enlightenment, for example. So some historical conceptions can rightly be accused of being utopian. But for Lu (2000) this is not an inevitability.

The cosmopolitanization of Europe, exemplified by its central human rights institutions and treaties, has been accompanied by political and social changes which more often reinforce than dismantle borders. The need to protect public safety and security against crime and terrorism, social security against 'benefit tourism', economic security against inflows of goods and people that might depress living standards and cultural security against unfamiliar norms have all been invoked to strengthen the boundaries between national states. The new, open Europe is also a region of growing border policing and the rise of the surveillance industry (Verstraete 2003, pp. 251–272). Some of the most 'progressive' European nations have used crime as a pretext to re-impose border controls within the free-flowing Schengen Area. For non-members of Schengen, the need to 'harden' borders has become a justification for staying out of the Area and demanding that it be redesigned or scrapped to avoid damaging those outside it.

The (re)imposition of borders and immobilization of those living within them does not occur only at national level but also at many levels within a country. Elite communities are gated, and disadvantaged groups are contained within ghettos. National governments have turned to measures of 'closure, entrapment and containment' for those groups deemed most dangerous (Turner 2007, pp. 289–290). So, paradoxically, the cosmopolitan age – based on global mobility, respect for cultural and religious diversity and commitment to global human rights – has been concurrent with new immobility regimes.

The narrowing radius and thickening circumference of social 'circles' has coincided with the discovery that, throughout history, beneficial change has been driven by small groups that meet on common ground. Although telecommunication and electronic networking can potentially link people with complementary interests more effectively over longer distances, frequent face-to-face meetings have been found to be more effective in exchanging information and promoting new ideas (Rosen et al. 2007) for reasons that may even be neurologically embedded (Jiang et al. 2012). Small-scale networks linking productively diverse interests are most effectively formed among participants whose shared understanding is reinforced by common experiences and values, promoting and promoted by

frequent communication, and whose sense of commonality facilitates trust (Greif 1993; Choi and Hilton 1999).

For communitarians and many other theorists (and observers) who find rights and entitlements to be contextually defined and applied, cosmopolitanism comes unstuck when confronted with loyalties that are more immediate than that to the world as a whole. Thus 'humanity is too large and abstract a category with which to evoke the passions of moral commitments, obligation and loyalty' (Lu 2000, p. 248). The idea of a human being is far more abstract than, for example, a member of a family, community or country. If these contextual ties are essential to humans' formation of their identities and worldviews, then it is procedurally inadmissible to assume that humans can make universal moral judgements (as in Rawls's difference principle or the utilitarians' greatest good for the greatest number) in abstraction from the particular space and time in which they live. This too seems to have been borne out historically: for example, history tells us that in ancient Greece the polis could attract more loyalty than humanity (Lu 2000, p. 249). Critics from this approach believe that cosmopolitanism fails to appreciate the pull of particularistic identities and loyalties. Thus cosmopolitanism from this viewpoint is too abstract and/or elitist because it assumes that a minority of thinkers *can* sufficiently abstract themselves to reach a judgement that is superior to those still steeped in their particular community.

The third critique of cosmopolitanism is that it tends towards a monistic picture of reality, which ultimately can come across as imperialistic. Holding this position, it has been observed that if you 'scratch the surface of a cosmopolitan . . . you'll find an imperialist just below the surface' (Lu 2000, p. 251). This is because for its critics cosmopolitanism's commitment to the unity of humankind will depend upon some form of coercion – forcing people to be 'brothers' with others. 'Because humankind is not a unity, a cosmopolitan ethical perspective begets a politics that must rely on coercion to bring about its vision of human harmony. The idealism of cosmopolitanism thus ends with a nightmarish quest for hegemony' (Lu 2000, p. 251). Ironically, in resisting such imperialism, Rawls (1971) 'defended a status quo position on *international* justice' (Jones 1999, p. 2), thus distancing himself from the efforts of Pogge (1989), Barry (1982) and others to apply his 'Theory of Justice' globally.

From a communitarian perspective the universalism contained within cosmopolitanism renders it unable to incorporate thick identities such as ethnicity or religious faith. Cosmopolitanism opposes the communitarian position that beliefs and norms can only be understood from within the group in which they are embedded (Dobson 2006, p. 168). Pogge (2002) noted that cosmopolitanism is characterized by individuals rather than family, ethnic or cultural communities, expressing its individualism. And its universality means it is concerned with everyone, not groups such as men, whites or Muslims (Dobson 2006).

Legal judgements on human rights provide an especially powerful test of these critiques of cosmopolitanism, because the majority of countries have formally

harmonized their legal treatment of rights through the transposition of international declarations and principles into national law. This should ensure there is substantially more universality in human rights judgements than in judgements on (for example) crimes against property or against persons, where there has long been national variation in the definition and severity of violations, and little (if any) effort at international harmonization. The cases reviewed in this book have shown consistently that, even when they formally transpose an internationally agreed (universal) principle, national legal verdicts differ according to the country's particular cultural and political context (and sometimes evolve according to changing public and lawmaker attitudes within the particular country). Furthermore, international courts to which the more controversial cases are appealed have almost always respected national jurisdictions – with full knowledge of their variations – and not attempted to hand down a standardized, cosmopolitan judgement.

Saving cosmopolitanism?

To tackle the problem, social theorists have introduced a variety of types of cosmopolitanism. Thus, to save cosmopolitanism from the challenge of the communitarians, contemporary theorists have been inclined to hyphenate cosmopolitanism. Dobson (2006) for example, talks about 'thick' cosmopolitanism. Drawing on Linklater (2002) Dobson (2006) seeks to overcome the 'tyranny of distance', that is, the distance between people that render obligations to each other to be subordinate to obligations to those closest. Dobson (2006) also suggests that this theme has been pursued by Pogge (2002, p. 3) when he asks 'How can severe poverty of half of humankind continue despite enormous economic and technological progress and despite the enlightened moral norms and values of our heavily dominant Western civilization?' and answered that it is because cosmopolitan intellectuals live separated from severe hardship and poverty and are not close enough to poverty to feel a sense of relieving others from it (Dobson 2006).

Dobson (2006, p. 178) argues that in order for cosmopolitanism to work there needs to be a breaking down of the distance between people through 'chains of causal responsibility'. He suggests that people will be more empathic with others when the distance between them is broken down and a sense of responsibility is created. This cannot be achieved, Dobson (2006) says, through a simple reference to being members of a common humanity. Cosmopolitanism for Dobson (2006) is split between principles and motivation. He maintains that at the level of principle, there is very little at dispute between cosmopolitans and communitarians. However, getting people to act in a cosmopolitan way is harder at the level of motivation. He sees this as a problem of 'nearness' and argues that cosmopolitanism needs to bring distant strangers near to each other in a way that references to common humanity are limited. He argues that this can be achieved by highlighting relationships of causal responsibility because these generate stronger senses of obligation than straightforward ethical appeals. It is in this respect that Dobson (2006) contends that relationships between people could be described as 'thickly

cosmopolitan'. Moreover, he believes that there is a surplus of causal responsibility in a globalizing world, which provides the opportunity for the emergence of thick cosmopolitanism. The appeal to globalization opens the possibility that ties can still be 'thick' when they exist between people who are a long distance apart and rarely or ever meet, drawn together by shared interest (transmitted via telecommunication networks) rather than the shared space that unites diverse interests within a co-located community.

Benhabib (2005) introduces the concept of cosmopolitan federalism. Influenced by Kant, Benhabib (2005, p. 12) suggests that hospitality is not about generosity, but it is a right and one that 'occupies the space between human rights and civil rights'. 'Cosmopolitan federalism suggests that between trans- and international norms of international law and the actions of individual democratic legislatures, multiple 'iterations' are possible and desirable. The two are not mutually exclusive. Cosmopolitan human rights norms can become, and in today's world are in the process of becoming, an aspect of the political and legal culture of individual polities. The disaggregation of citizenship, through which rights are extended to individuals in virtue of residency rather than cultural identity requirements, are the clearest indicators of the emergence of such cosmopolitan norms. Nonetheless, insofar as those whose membership status remains unresolved, such as illegal migrants, refugees and asylees whose applications are in process, are treated as if they were criminals by existing polities, cosmopolitanism in the international arena has not been attained. The recognition that such cases require resolution through negotiation – sometimes leaving applicants in limbo for months or years – is an acceptance that the principle of a universal right to residence (and to share the rights and obligations of other residents) frequently clashes with the principle that established residents may have norms and values whose upkeep entitles them to impose additional obligations or residence qualifications on those who move into their community. Benhabib (2005, p. 12) observes that 'Cosmopolitan federalism needs to be viewed as a process of multiple democratic iterations among political entities of varying sizes, none of which can claim ultimate sovereignty'.

An attempt to rescue cosmopolitanism by strategically moderating its ambitions and claims can be found in Hayden (2013, p. 195), who suggests that contemporary cosmopolitan theorists are weak in two ways: first, the tendency to think we are already living in a cosmopolitan world and, second, an unrealistic idea that we can have a world government or political order putting cosmopolitan principles into practice. In order to overcome these weaknesses Hayden (2013) draws on what he characterizes as the cosmopolitan sensibility in Camus. While Camus himself never used the concept of cosmopolitanism, Hayden 2013, p. 194) finds in his work the seeds of a 'rebellious cosmopolitanism', in particular Camus's view that while it was important to fight injustice it was futile to see this as without limits. For Hayden (2013, p. 194) it is important to prevent cosmopolitanism from becoming a new political ideology of immutable truth and that cosmopolitanism should rebel against injustices while simultaneously accepting its theoretical and actual limits. Hayden (2013, p. 214) maintains that while taking rebellion against

injustice as a guiding principle, cosmopolitanism should always seek to ascertain through continuing dialogue, solidarity and openness towards the stranger what we may legitimately do in pursuit of freedom and justice through responsibility to rebellion's inherent limits.

Another form of moderation is suggested when cosmopolitan thinking is traced back to its historically contingent origins, which tend to qualify its universalistic conclusions. But whereas some liberal theorists willingly embrace this imperialistic dimension, viewing it as acceptably imposing universal values when the motivation is right, others view the cosmopolitan project as incomplete until such historical associations are overcome. In *Human Rights and Empire* Douzinas (2007) looks at the way wars have been conducted using human rights as part motivation. He argues that human rights, have, historically, been integrally related to imperialistic goals, an association admitted by those who call their approach 'liberal imperialism' (e.g. Cooper 2002, 2004). Thus, Douzinas suggests that while cosmopolitanism might have started out as a universalistic critique of local injustice, its various versions have turned out to be bound up with imperial rule. In his view the critical theories of cosmopolitanism established by the Stoics served Macedonian and Roman imperial goals and the modernist theories of cosmopolitanism and civilization were wedded to, for example, French expansion.

Douzinas (2007) also suggests that contemporary liberal forms of cosmopolitanism have served the same purpose, pointing for example to the cosmopolitan arguments mobilized to defend the Kosovo war. Douzinas (2007) notes the cosmopolitan political philosophy at the time was used by theorists such as Habermas to promote arguments about already existing cosmopolitanism. While the war did not have international legal backing, Habermas (and Kaldor) saw the 1999 NATO intervention as an instance of cosmopolitan progress. Habermas sought to defend the war as an exercise in progressive cosmopolitanism (Werner 2008, pp. 197–198). Thus Douzinas (2007) has argued that liberal defences of the Kosovo war in cosmopolitan terms are part of the 'normative gloss of globalised capitalism in its institutional form' (Werner 2008, p. 197). Disenchanted by the way imperial interests have co-opted cosmopolitanism in the past, Douzinas invokes his own cosmopolitanism to come, one that would be free from such imperial motives. He thus talks of a future cosmopolitanism based on recognition of the other as a single and unique cosmos. Cosmopolitanism becomes a radical desire of being together based on the principle of 'the other as singular, unique, finite being putting me in touch with infinite otherness, the other in my and myself in the other' (Werner 2008, p. 199).

Re-converging with the community

These qualifications to the political and ethical outlook of cosmopolitanism rescue it from the realist critiques of utopianism and the anti-reductive critique which argues that human rights grow out of political and social communities rather than providing an individual-level building block from which large regional and global

communities can be fashioned. But they have the effect of bringing cosmopolitanism closer to the contemporary communitarianisms or cultural pluralisms that it expressly disavows and blurring the sharp contrast previously drawn between them by proponents of both sides.

A gradual convergence is becoming evident as cosmopolitans make concessions to the local context in which universal human rights are interpreted and prioritized (and acknowledge some historical contingency and locational specificity in the emergence of the cosmopolitan outlook), while communitarians recognise the diversity of origin and attitude that inheres to even the most 'homogeneous' of communities. It now is a short step for communitarians, affirming how shared values, behaviours and aspirations can bind together an ethnically and culturally diverse community, to evoke this commonality in distinctly cosmopolitan language. Etzioni, openly hoping for a convergence 'between those who argue that we should not pass judgment on the conduct of other people and those who champion universal human rights' and dismissing criticism of the human rights concept for being a western invention, finds it 'necessary to raise moral voices across societal lines in order to identify and articulate a core of globally shared values' (2003, pp. 232–242).

This project of steering between cosmopolitanism's quest for uniformity of view and communitarianism's tolerance for dissonant voices is scarcely distinguishable from that of Benhabib (1992) and highlights the concessions that cosmopolitans must make to particular national and cultural contexts once abstract rights are translated into actual legal frameworks and behavioural norms. Without embracing cultural relativism or ruling out international law, cosmopolitanism becomes – after translation from pure political philosophy to applied political action plan – entirely compatible with international courts' deferral to national standards and interpretations, as consistently observed in the cases earlier chapters have examined.

A grassroots solution – a new politics of rights

Supporters now tend to agree with critics that, as a political philosophy, contemporary cosmopolitanism cannot escape its secularism and individualism inherited from the Enlightenment. Although cosmopolitanism is not unique to Europe there is, as Calhoun (2002a, p. 150) notes, a link between cosmopolitanism and the European Enlightenment which carries with it a nostalgic appeal to eighteenth-century aristocratic culture. Cosmopolitanism of the eighteenth century was hostile to religion (Calhoun 2002b, p. 872). So there is an incompatibility between European and Muslim cosmopolitanisms, as the first draws on Enlightenment ideas about religions generally and Islam in particular. The way out of this impasse offered by other political approaches – dialogue among different elements in the community in search of pragmatic and acceptable compromise – is closed off by an approach that seeks universals which, by definition, are unique. The solution to the cul-de-sac in which European Muslims find themselves in seeking to express

their religious identity in the public sphere through human rights does not lie with cosmopolitanism.

Human rights are institutionalized in a wide array of international and regional institutions as well as those established in Europe. Europe has, however, been understood as their original incubator for such institutions, making this a particularly pertinent test case. While the design of European decision making has, to date, reflected a deep-rooted anti-cosmopolitan ethic, this does not make it inevitable in the future. More effective political mobilization could successfully challenge the trend. One way this could happen, for example, would be to mobilize around the principles as espoused by the ICCPR and the UN Committee of Human Rights, which have diverged from the European Court's decision making and overridden national government bans (for example a case on Uzbekistan) on the grounds of freedom of expression. Thus, Muslims taking their cases to the ECtHR might be more successful if they make their claims through Article 10 rather than Article 9 (freedom of religious expression).

Cosmopolitanism accepts cultural difference and political autonomy 'so long as nationalism is not ethnically communitarian and is subordinated to human and civil rights' (Calhoun 2002a, p. 150). And in essence what defines cosmopolitanism is that it subordinates nationalism to supra-national politics, claiming that people should see themselves as citizens of the world, not just their countries (Calhoun 2002a, p. 150); but even this is limited when applied to the kind of supra-national entities to which the Muslim diaspora is tied, namely global pilgrimages like the *haj* or attachment to global identities like the *ummah*. Religious identity involves a passionate commitment which is at odds with the cosmopolitan project (Calhoun 2002a, p. 154).

Cosmopolitanism has compounded its (now acknowledged) western-generated approach to human rights by conflating the pursuit of those rights by Muslims with the pursuit of Muslim rights. The situation of being Muslim, especially in a majority non-Muslim society, may expose people to harms and discriminations that require them to assert and defend those rights through actions that include litigation. But it is not especially helpful – or consistent with cosmopolitan theory – to equate the assertion of rights by Muslims with the assertion of rights *as* Muslims. Any such conflation immediately raises the danger that legal activism by Muslims will be classified as 'Muslim activism', wrongly associating cultural with religious identity and moderate with extremist protest. All faiths encounter the problem that strong attachment to the religious aspect of rights can erode support for non-religious aspects (such as free speech and equality for women). An illegitimate fusion of Muslim rights-activism with Muslim-rights activism unfairly ascribes this tendency to a particular community – a danger that, in Europe, supranational courts have tried to remedy by respecting the national courts' margin of appreciation.

The fragility of cosmopolitanism was exposed by 9/11 and its consequences. The way in which the US and its allies framed the terrorist attack was by putting

forward a sharp distinction between Islam standing for backwardness and the west standing for modernity. This picture was all the more readily swallowed, as Muslims had long been seen as the bad other to globalization, which made it all the harder to see that the attack itself was also a modernist project (Calhoun 2002b, p. 870). What 9/11 did was call into question whether the cosmopolitan project was itself limited in some ways. That is, whether it had been over-optimistic and too focused on positive aspects of globalization. After the Cold War had ended, there had been a growing belief that Kant's perpetual peace might finally be a reality (Calhoun 2002b, p. 870).

The threat of terrorism has given states the chance to derogate from human rights treaties and pass new security laws which use terrorism as a pretext for suppressing legitimate protest (Duffield 2007, pp. 129–130). It could be tentatively suggested that, ironically, the west regards 'human rights' in the same way as it regards 'the bomb' – something that western nations can handle responsibly, while other nations misuse it or lose control of it. For example, Pakistan (and many other ex-colonies), even when it tries to create democracy, is seen as a breeding ground for terrorism. This enables the west to act in defence of its own rights while denying them to others – claiming others do not merit them because they cannot be expected to understand the underlying principles and cannot be expected to use nuclear weapons sensibly. The west now ascribes to itself the insecurity of global leadership. It has also provided the excuse for the hyper-legalization of cultural and religious practices through banning Islamic clothing.

However, significant groups of European Muslims can see their future: it is to follow the path already mapped out by the 'civilized' world (through industrialization and democratization). But the west has to step into the unknown and do the work of exploration. With China taking over its manufacturing and India its service industries, it suffers 'post-industrial insecurity' – it feels it has a right to be prosperous but (especially after the financial crisis) does not know where that prosperity will now come from unless it can re-colonize the new sources of wealth. There is a real prospect of the 'semi-peripheries' taking centre stage (Guardiola-Rivera 2010). The war on terror, which has led to the suspension of human rights for suspected terrorists and legislation to prevent freedom of choice among Muslim women, expresses deep status insecurity on the part of the old powers in the post-colonial period. However, armed with the language of and access to human rights, European and American Muslims have mobilized around the progressive politics once thought to be the preserve of western liberals.

One promising solution is to return to a new politics of rights (see Scheingold 2004) and to rescue human rights from the formal judiciaries, transforming them into a political rights movement. In relation to an earlier and successful movement for minority civil rights, Scheingold (2004) identified a belief in rights that transcended the letter of rights-defining law and promoted pragmatic campaigning when formal legal rights proved judicially unenforceable, achieving better outcomes than working through formal legal channels (Scheingold 2004, p. xix).

The problems of law enforcement outlined in Scheingold's (1974) original *Politics of Rights* is even more pertinent to human rights, where the obstacles faced by complainants are multiple, with cases taking years to process.

Scheingold (2004, pp. xviii–xix) claimed that it was misleading to argue that the myth of rights (which asserts that legal rights are directly empowering) was adequate for political mobilization. This is because rights entitlements articulated by courts are not realized when they are rooted in controversial questions of public policy. Even so, for Scheingold (2004, p. xix) and based on the example of American civil rights, the belief of Americans in rights (i.e. the myth of rights) could in itself act as a resource. Such a resource could, the argument runs, be used politically in order to procure what was unavailable directly through legal channels indirectly through political channels. This is in part because the courts only hold coercive capacities in a limited way – one which may be useful for individual complainants but less effective when it comes to bringing large groups of people or powerful institutions into line (Scheingold 2004, p. 8).

Revising his argument slightly following more recent socio-legal research, Scheingold (2004) acknowledges that successful exercise of formal rights claims requires 'insider' status within a community, usually derived from continuous membership of it, weakening the effectiveness of newcomers who were supposed to subordinate rights to 'community solidarity and coherence' (Scheingold 2004, p. xxvii), thus giving the *myth of community* greater legitimacy (Scheingold 2004, pp. xxvii–xxviii). This suggests a social tendency that endorses (and may influence) judiciaries when they refuse to enforce 'universal' rights over particular political practices. It reinforces the need for groups lacking 'insider' status to pursue rights indirectly through the political process, and rather than trusting the law to override local political and social variation, this adds to the importance of 'cause lawyers' to fight campaigns aimed at changing the politics that shapes the legal interpretation. Thus a rights-based campaign depends on generating internal solidarity and enlisting external support (McCann 1994). This clearly worked for the African-American US civil-rights movement, but it will be, arguably, more difficult for Muslims given the regional, national and intra-national differences in the type of Islam they practice, the culture in which this is embedded and the interpretation of rights that results. (Their 'myth of rights' is deeply internally divided, in Scheingold's terms.)

Counter-mobilization against rights claimants is especially effective when it can link rights with responsibilities that the claimants have not (and maybe cannot have) exercised (Bakan 1997). This makes counter-mobilization especially effective against groups that have recently arrived in or are viewed as inadequately integrated into the community. Counter-mobilization is also effective among liberals who argue that a minority's claims are culturally tainted and therefore misguided – for example those who argue that women who demand to wear the *burka* are diminishing their own rights, perhaps mistakenly believing they are being enhanced.

Moreover, the small number of cases also means that public opinion is barely affected by outcomes. The answer therefore rests with particular movements mobilizing their particular causes through the wider framework of human rights language in a way that touches the experiences of everyone so that human rights start to gain a legitimacy they are thus far lacking. In the case of European Muslims, strategic use of human rights might be a more useful form of litigation, stressing, for example, how laws governing dress prevent them from gaining education or employment. Cause lawyers might have a role in this. The cultural relativism that so often accompanies critiques of universalism can be rescued by reference to Macintyre's (1989) rationalism, which suggests that there is sufficient overlap between diverse groups for a shared understanding of wrong and right that it is possible to underpin conflicting practices such as that between female genital mutilation (FGM) and wearing the *burka*, which addresses the issue of what to do when victims of one violation subjugate another victim group (Tax 2012) and chimes, in some respects but less abstractly, with Benhabib's (2011) developing solution to deal with the dilemma between growing diversity and universalism by locating human rights within 'democratic iterative politics'.

It has been argued that the human rights movement is entrapped in a way that limits political action because of an overestimation of the value and power of international law. For its critics, the human rights movement has too much invested in lawyers and procedures instead of more grassroots challenges to inequality of power through battles to express more utopian visions. Legal action is inherently expensive, slow and (in contrast to democratic politics) conducted in language and locations that are largely inaccessible to ordinary people. This means that power is moved upward to professionals working at the international level and so disempowers people at the local and national level (Nash 2015, p. 21). In contrast, it has been observed that the significance of grassroots mobilization rests on the way campaigns use human rights law but do not depend on it. So in addition to legal strategies, people mobilize and make human rights claims on their own behalf, which makes their campaigns empowering. This way people get a new sense of the 'right to have rights' as they learn that they have rights as well as the development of useful tactics in relation to their ultimate goals (Nash 2015, p. 36).

Turner (2002) argues that human rights, while global, cannot replace religion or nationalism as a way of creating a shared identity. He says there are three reasons for this. First, they are regarded as irredeemably western and associated with liberal individualism; second, they are not justiciable or enforceable, because states enforce rights and we don't have a global government authorized to enforce them, and international bodies can't because they lack legitimacy because their members are unelected; and third, rights imply obligations and despite the rise in human rights legislation, there are no corresponding obligations (Turner 2002, p. 47). The problem with Turner's argument is that he is focusing on formal human rights institutions rather than human rights as a movement.

Healing over time: inter-generational divergence, intra-generational convergence

In Europe this task will be made possible through generational turnover. Disunity and passivity defined the politics of Europe's first generation of Muslims. Young European Muslims have moved away from the religious practices of their home countries (Amiraux 2004, pp. 28–29) and from privatized, local forms of political participation to public and global activism. The politics of this generational cohort are more appropriately understood as global; their ties with their countries of origin are looser than their parents', and their political concerns and interests go beyond their home countries relative to their parents. The leaderships of these countries, which remain in a relationship of semi-subordination to western neo-colonialism, tend to be nationalistic (Werbner 2007, p. 162) – a current of thinking which is antipathetic to the more globally minded youth.

As economic migrants, the first generation of Muslims in Europe maintained strong practical and emotional attachments to their countries of origin through, for example, remittances and a nostalgic commitment to returning 'home' (Mirza et al. 2007). Their insecure guest-like status led to political passivity and communal politics, with religious rituals often practiced in private to play down the aspects of their identity which could provoke state disapproval, leading to what has been described as a 'concealed existence' and a tendency to try to 'fit in' rather than stand out (Fetzer and Soper 2005, p. 31).

In contrast, west European–born Muslims have been educated in a secular environment, which has compelled them to reflect critically on their Islamic background in a secular context; thus, a process of re-evaluation and a (re)invention of what it means to be Muslim in non-Muslim countries has been taking place (Lewis 2007). There is evidence of inter-generational differentiation over an array of issues, including personal politics and practices such as arranged marriages, but also the very meaning of Islam and, especially, how it relates to 'modernity'.

Young European Muslims seem increasingly to be by-passing traditional sources of inter-generational knowledge transfer, such as parents or local imams, signalling a shift from automatic recognition of the authority of community elders (vertical) to peer-to-peer (horizontal) contact (Mandaville 2001). They form part of the increased 'visibility' of Islam in European public spaces through a substantial growth in Muslim organizations, especially youth ones (Cesari 2004). While the migrant generation tended to confine itself to voting and local-level politics, today's young Muslims are challenging this localism and have adopted a more assertive political voice.

This trend has been strongest among the highly educated and professional: higher education institutions now host growing numbers of student organizations concerned with Muslim issues, often seeking to promote a version of Islam thought to be compatible with modernity and rejecting traditional, anti-modernist strands. Young European Muslims have been central to campaigns centring on wearing the *hijab* (headscarf). In France, debates about the *hijab* routinely mobilize an

increasingly assertive cohort of young Muslims, currently around the promotion of an identity which embraces rather than excludes Frenchness, namely, 'young Muslim' in favour of the more detached 'beur', 'second generation' or 'Arab' (Kepel 2004, p. 269) – debates which are often less to do with tradition than with establishing a new identity (Werbner 2007).

In contrast to France and other continental European countries, the UK is considered the most open to ethno-religious politics and culture (Fetzer and Soper 2005). However, there have been signs of convergence: despite France's assimilationist tradition, young French Muslims became politically active in the 1980s (Feldblum 1999), and more recently Britain's tolerance for overt adoption of religious symbols has taken on some of the contours of debates in France, illustrated for example by Jack Straw's observations on the *niqab*. Thus the divisions between France and the UK are, arguably, being narrowed as a process of convergence takes place, evident for example in the UK's recent anti-terrorist legislation, surveillance of university students and tightening up of asylum policy (Cesari 2004; Mirza et al. 2007).

To conclude, there is an important but often overlooked trend among young European Muslims which suggests that they are more 'global' in their communication and political outlooks but more 'local' and differentiated in their political participation than their predecessors. Political action is becoming more participatory, rooted in a strong sense of civic rights and responsibilities associated with being European. However, while acting locally, through the promotion of the Muslim vote, for example, members of this young generation are concerned with issues that have universal appeal: their sympathies with so-called 'Muslim' causes in Sudan, Iraq, Chechnya and Palestine are channelled through mainstream organizations such as Action Aid or Amnesty International and embedded in an overarching commitment to human rights – a commitment which is seen as integral to Islam.

However, the younger second- and third-generation Muslims are more concerned with human rights than sectarian issues and have the confidence to engage in advocacy. This new style of engagement is linked to rising expectations about rights and obligations. Young Muslims who enter higher education are confident in their national identity and in their right to engage in civic (including protest) politics. Even if they are keen to preserve separate identity and traditions in some ways, for example by wearing the *hijab* or through prayer, they are committed to mainstream political participation. They regard the 'older' (first) generations as too inclined to stay different from local culture, attached to their country of origin and organized separately politically. Thus, the politics of today's generation differ markedly from the first, being more global than transnational, more universal than local and based in a confident sense of national belonging and civic rights and obligations.

Underpinning this development is a range of factors which can be explained in terms of a generational analytical framework, though interacting with socio-economic factors. Politically conscious generations are thought to be shaped by

exposure to traumatic events – especially warfare. Unlike the first generation, whose experience of economic migration created ongoing transnational orientation (familial, financial and political), members of this cohort have grown up in a period of warfare in Iraq, Afghanistan, and terrorist attacks such as 9/11 and 7/7 – combined with access to global communications and resources which have created a horizontal rather than vertical information source and an identity which is forged therefore without the local influences of the parental generation but rather the global influences of their own generation and has produced a political awareness of events which are happening well beyond their immediate locality but also their background of origin (Edmunds and Turner 2005).

The shift from passive to active politics and transnational to global political interests among young Muslims can also be understood in terms of inter-generational contrasts in possession of resources, which have reinforced this intra-generational cohesion across boundaries and peer-to-peer information transfer. The older generation had more deeply rooted self-help traditions and extended family structures, which gave them resources to look after themselves and opt out of mainstream institutions (or survive exclusion from them). It felt more excluded through linguistic barriers, having minimal political representation and cultural unfamiliarity based on recent arrival, which led to political passivity and confinement to local mosques and imams as a way of 'fitting in' (Fetzer and Soper 2005, p. 31). The first generation felt like guests and was reluctant to make demands on social and political systems, especially as they feared racist backlash against this.

Thus, while the first generation was disadvantaged by speaking in their first languages and remaining attached to the language, and religious and cultural practices of their home-countries, the trend among second and third generations has been one of a substantial decline in participation in traditional and home-focused practices. This is particularly the case in the UK among young South Asians, who, unlike their parents are less likely to speak a South Asian language, regularly attend a mosque or have an arranged marriage (Modood 2005, pp. 468–469). Consequently, the new generation feels more included, having political and professional representatives who can work for their inclusion, and it is aware that they and their parents have contributed, so they expect the rights that go with those responsibilities. Also, unlike their parents, this cohort's social networks are structured by peer rather than family relations.

The older generation may have allowed the alternative channels to be co-opted by groups with a political agenda that the new generation does not warm to. For example, mosques did a lot of useful welfare and educational work but often centred around imams from overseas whose views did not sit easily with the growing cosmopolitanism of their youth. In contrast, the new generation has pushed for localization here (e.g. imams who grew up and were educated in the country) as a complement to inclusion in other local institutions and processes. Among some second- and third-generation Muslims in Europe there has been a dissociation from imams from abroad and a goal to work on mosques to modernize, to use

the 'host' language and imams. Increasing disaffection follows logically from the new generations' distancing from these imams' country of origin and unfamiliarity with the language they use.

A further explanation for this shift towards global politics is the intergenerational contrast in terms of access to global electronic media. The first generation had limited use of email, Internet, messaging and other electronic communication, whereas the new generation is more networked globally. The first generation's transnational politics stemmed from its dependence on print media from 'home', television and telephonic communications and networks that were largely organized around the local mosque. In contrast, the new generation is more networked globally. It has been exposed to major (mediated) global traumas in a way that the first generation was not, apart from the experience of initial migration.

It has seen major events linked to Islam and Islamic countries conveyed through the mainstream English-language media, not just the local media imported from these countries – and through new English-language Islamic media and online forums set up in response to concerns that neither the domestic mainstream nor the imported media were adequately airing and reflecting their views. These intergenerational differences have created a momentum for intra-generational cohesion across boundaries and peer-to-peer information transfer.

The shift of younger generations' interests from transnational to global, identified here, and their greater use of electronic networks, may (while mainly motivated by political and humanitarian concerns) also helps them to acquire resources to replace those of the previous generation that have become obsolete. In particular, the longer range of their social contact – across professional disciplines at university and across countries and cultures via their global organizational involvement – promotes the 'weak ties' identified elsewhere as widening economic and social opportunities (Granovetter 1973, Burt 1992). Extensive networking with diverse groups, contrasting with their parents' intensive networking within largely homogeneous groups in their home and host country, provides a richer source of 'social capital', adding to the improved 'human capital' they obtain from higher education.

Holding up the mirror: Muslims and human rights activism

European human rights institutions have failed thus far to make decisions which reflect both the intersection between race and religion and the way Muslims have been racialized, to the extent that they are considered to possess an innate set of characteristics. Most legal instruments have failed in this respect, including the Committee on the Elimination of All Forms of Racial Discrimination (CERD). CERD has failed to deal adequately with the way discrimination against Muslims has been expressed in Europe in the post-2001 period and to

apply the potential to through the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It failed because of the refusal to see the relationship between racial and religious identity. In Europe, especially Denmark, there is a growing trend for Muslims to make claims of racial discrimination (Berry 2011).

Human rights are forged out of the practice of exclusion when the governed people learn the language of those who govern them and use it against them (Guardiola-Rivera 2009, p. 84). The French Declaration of Human Rights, while committed to universalism and the rights of man, was based on national sovereignty and barred non-citizens. Women and slaves were excluded, producing a 'gap between universal "man" and national citizen' which is filled by foreigners – who do not have rights because they are not citizens, and as a result they are not fully human.

By separating humanity from citizenship, the French Declaration (and today, human rights treaties) presented the nation as the expression of humanity and established the task to civilize through conquest. It was the exclusion of groups – women and slaves – from the 1789 revolution that inspired claims for equal rights by these groups (Scott 2007, p. 12). The Napoleonic wars are an early example: it was left to the Haitian revolution, which emancipated slaves and gave political rights to colonial people, to uphold universalism against its inventors. During the battles with Napoleon the Haitians sang the *Marseillaise* (Buck-Morss 2009), appropriating the symbols of freedom held by the French.

A new generation of European Muslims has rebelled against the curtailment of its rights and the hard and soft forms of dehumanization by increasingly asserting its human rights. Muslims who are not mirroring the militaristic practices of the governing forces as part of their political resistance are starting to resist through the language of western human rights: freedom of expression, defying the supposed link made in the popular imagination between these practices in the secular contexts with those from 'back home'. European Muslim women are not necessarily wearing the *hijab* to demonstrate an attachment to their 'background country'. They are starting to defend their wearing of *hijab* in the language that the west would find most difficult to challenge: its own.

The 'war on terror' and European governments' derogation of human rights (through some anti-terror measures) and hyper-legalization (through demands for banning Muslim dress in public) have mobilized European Muslims to challenge any infringement of their rights. It is perhaps the singularly most significant factor producing a belief that citizenship rights for European Muslims, previously regarded as given, have been eroded. Hard securitization measures have been uneven across Europe. In the post-2001 period, while all European countries enacted new laws to contain national security threats, the measures adopted were nationally differentiated (Cesari 2010a, p. 21). This differentiation surfaces in soft cases too, where the UK tradition of multiculturalism means it will not follow France's

ban on the *burka* despite the recurrence of national debates. Nevertheless, the impact of these varying forms of micro-surveillance and withdrawal of human rights, either through increased surveillance or governance of Muslim dress, has been key to active political mobilization among second- and third-generation Muslims in Europe on the grounds that such practices represent an abuse of citizenship rights – such as the right to peaceful protest and to wear religious 'signs' in the public sphere.

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