

The ethics of an ambiguous cosmopolitics: citizens and entrepreneurs in the European project

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This paper reflects on the ethical possibilities and limitations of cosmopolitanism as practice, with particular reference to the contemporary European project. It begins with an exploration of the relationship between what I term a ‘market’ and a ‘legal’ cosmopolitics in the European context. Inspired by Foucault’s recently published work on liberal government, the paper argues that these cosmopolitics and the subjectivities that they seek to produce variously overlap, reinforce one another, and conflict in practices of contemporary post-national government: in short, they co-exist in an inherently ambiguous relationship. Animating this argument, the paper considers the politics of European citizenship; it highlights what is at stake, ethically and politically, in the recognition of an ambiguous cosmopolitics. It focuses in particular on the European Union (EU)’s 2004 Directive on the free movement of EU citizens and its relevance in the context of the high-profile deportations of Roma from France in summer 2010. The paper makes the case that the recognition and ongoing identification of an ambiguous cosmopolitics – and, essentially, an ambiguous European identity or ‘us’ – offers the prospect for ongoing resistance by and with those who find themselves designated as the ‘other’ of the European project in particular or of a cosmopolitics in general.

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Universal ethical principles of a liberal Kantian kind are inextricable from a complex history. The conditions of possibility for the realization of such principles... have the potential to subvert them, and their realization will always imply the exclusion of other ways of being.

Kimberley Hutchings (1999)

Former European Union (EU) trade commissioner and the current chief of the World Trade Organization, Pascal Lamy, has coined the term

‘cosmopolitics’. Lamy’s term is useful inasmuch as it gives normative and political content to a ‘global governance’ that is too often conceived in technocratic terms, highlighting a lineage to a liberal Kantian cosmopolitanism. As Lamy (2001) says, cosmopolitics ‘describes a new world that is coming into being. But in part, cosmopolitics is needed in this new world to organise and mediate between different interests’. The term can, then, be understood as capturing the ambivalence of ‘global governance’, which is both already present or emergent – the *cause* of globalization – and required – the proposed *solution* to problems precipitated by globalization. On the one hand, cosmopolitics can be treated as the ‘world that is coming into being’. This might refer to the enactment by private and public individuals and institutions of a form of government that seeks to transcend the state and, in particular, create ever larger and more integrated markets; markets are, from this perspective *made* by government, broadly conceived. Cosmopolitics is, then, the attempted realization of what in this paper I term a ‘market’ cosmopolitics. It is the realization of a form of government that relies upon and maximizes the market as system of social organization. On the other hand, the prescribed need for cosmopolitics seems to refer to something more than a ‘market cosmopolitics’. Perhaps Lamy can be read as finding cause here with what I term in this paper a juridical or ‘legal’ cosmopolitics: a form of post-national governance that attempts to variously re-invent democracy, liberty, and justice in the context of conditions of globalization and finds voice in a range of explicitly normative cosmopolitan literatures (among many others, see Held and Archibugi 1995; Archibugi 1998; Held 2000).

Etienne Balibar (2010) has recently alluded to this distinction with reference to the contemporary European project. He argues that, ‘whether Europe works as an effective system of solidarity among its members to protect them from “systemic risks”, or simply sets a juridical framework to promote a greater degree of competition among them, will determine the future of Europe politically, socially, and culturally’. As these words suggest, Europe and the EU has frequently been presented in recent times as facing a critical choice. This is a choice that has been brought into sharp relief by an acute political-economic ‘crisis’. Such a perceived crisis and the choice associated with it is, according to many prognoses, the consequence of the prevalence of ‘the market’ in Europe and beyond; a market that is not sufficiently mitigated by political-economic systems of European solidarity. This is certainly Balibar’s conclusion and the conclusion of German theorist Jürgen Habermas and a group of scholars who published letters in the European press in summer 2011 (Habermas 2011b). In accord with the aforementioned ‘legal cosmopolitical’ logic, they argue that political integration has failed to keep pace with economic integration and this lies

at the heart of the crisis of the single currency and perhaps of the European project itself. For others – associated with a ‘market cosmopolitics’ – this crisis is the consequence of a failure to sufficiently respect the signals issued to government by ‘the market’. The invocation of ‘the market’ has certainly been omnipresent in media discussions of Europe at the end of the first decade of the current millennium. Not only private institutions, but – in the context of a sovereign debt crisis – also governments are repeatedly enjoined to remain credible to markets and their agents. On the one hand, then, ‘the market’ is presented as that to which EU nation-states must collectively respond; in this sense it is the very *telos* of government and that which dictates individual and collective identity. On the other hand, ‘the market’ is that which government must seek to tame; in this sense it is the servant of government and ought not be permitted to undermine supposedly deeper collective identities and solidarities. There is, then, a confusion or ambiguity at the heart of the contemporary European project – arguably at the heart of global or transnational governance more generally – which is starkly exposed in the contemporary news cycle. But the talk of ‘crisis’ ought not lead us into the mistake of thinking that these ambiguities are something novel. Indeed, these governance dilemmas have been at the heart of the European project since its inception and, indeed, are central to the very liberal cosmopolitan ideal that inspired it.

This paper sets out to critically consider the ethics of transnational governance as cosmopolitics and in particular, the relationship between a ‘market’ and ‘legal’ cosmopolitics with reference to the EU and its antecedents. Europe as EU has been conceived as the embodiment of a liberal cosmopolitan ideal from the perspective of both a ‘market’ and ‘legal’ cosmopolitics and variously celebrated or reviled on the basis of its association with either. What is particularly interesting for current purposes is the way in which Europe serves as a microcosm or ‘laboratory’ within which to analyse the relationship between these cosmopolitics. It is a site that has been founded on the basis of the extension of market principles: the common or single market is, to a large extent that which post-national European government is *for*. And yet Europe is often invoked as more than a market construction: it is a geopolitical entity that in practice guarantees certain transnational rights, provides limited redistributive schemes and in theory it is invoked as a space within which the features of a solidarist European nation-state might be sustained or revived, including a post-national *citizenship*. In European practice these two ‘cosmopolitics’ are not easily separated – we see manifestations of both in its institutions, as this paper will highlight.

The argument offered in this paper is inspired in particular, by Foucault’s prescient lecture series on ‘liberal government’ – entitled

The Birth of Biopolitics (2008) – and, to a lesser extent, his lectures on a juridical mode of political thought, ‘*Society Must be Defended*’ (2003). In many respects, this paper represents an attempt to develop and extend his thinking in these lectures – delivered in the 1970s, but only recently published in both French and English – to the post-national realm. I concur with Donzelot (2008, 116), who notes of *The Birth of Biopolitics*, that, ‘what quickly struck me was the astonishing topicality of this analysis of liberalism more than a quarter of a century after it was formulated’. Indeed, his analysis speaks critically to contemporary debates on globalization and global governance; in particular, timely debates on the role of markets and governments in contemporary world affairs. More specifically, Foucault’s analyses in these lecture series are instructive for present purposes inasmuch as they critically appraise both a governmentality rooted in a utilitarian liberal political economy – which, he claims, has become increasingly prevalent since the 18th century – and a governmentality rooted in an older juridical sovereign rationality of *raison d’état*, which is not entirely expunged by the former. As Foucault (2008, 42) notes, these two governmentalities entail ‘two absolutely heterogenous conceptions of freedom, one [*raison d’état*] based on the rights of man, and the other [political economy] starting from the independence of the governed’. Whereas *raison d’état* produces and fosters what Foucault terms ‘subjects of right’, a liberal political economy produces and fosters ‘subjects of interest’. The former emphasizes the importance of government (and law) in guaranteeing freedom as rights, whereas the latter emphasizes the importance of removing government (and enshrining this legally) as the guarantee of freedom. While in practice, these modes overlap and sometimes rely upon one another, they are incommensurate at the level of their underlying governmental rationalities and subjectivities. As discussed in detail below, these modes of government map on to the distinction between a ‘market’ and ‘legal’ cosmopolitics noted above and the subjects of ‘interest’ and ‘right’ map, respectively, on to the contemporary subjectivities of ‘entrepreneur’ and ‘citizen’ promoted in and through a contemporary cosmopolitics in Europe.

This paper will argue, in particular, that these cosmopolitics exist in an ambiguous relationship. On the one hand, temporally, each of these governmentalities constitutes the condition of possibility of the other; a market cosmopolitics and its animating entrepreneurs might render possible the spatial extension of social relations beyond local ties on which a legal cosmopolitics and post-national citizenship relies. This was, broadly speaking, the functionalist wish of Europe’s founding fathers, Monnet and Schuman. Similarly, a legal cosmopolitics and its solidarist ethic of citizenship might be that which provides the social trust upon

which the market and its cosmopolitical extension is initially based. Arguably, it was such a sense of solidarity that precipitated the integration project and the ‘pooling’ of sovereignty, albeit on a market basis. In practice, of course, we see the emergence of an ‘economic constitution’, which reflects the conflation of political economy and sovereignty; of ‘market’ and ‘legal’ cosmopolitical logics. On the other hand, at any given moment in time, these cosmopolitics are in conflict; a self-interested ‘subject of interest’ is in conflict with a solidarist ‘subject of right’. Those advocating the promotion of more market in Europe lament the extent to which government at various levels continues to impinge on the single market, whereas those advocating a more social democratic Europe lament the degree to which the solidarist features of government have been eroded rather than bolstered by contemporary cosmopolitics. In theory and practice great efforts are made to overcome or deny this ambiguity, which sits uneasily with a modernist desire for certainty. But, as elaborated below, there may be good ethico-political reasons for sustaining what I term an *ambiguous cosmopolitics*.

Some Foucauldian scholars working in international studies might balk at the idea of tackling a subject as ‘big’ as cosmopolitics. However, while he was certainly interested in disciplinary tactics or micro-powers, which constrained individual bodies – exemplified in his work on the prison and madness – he was clear that ‘power takes control of life in both general and specific terms’ (Elden 2008, 23). Indeed, his own interest in a liberal ‘biopolitics’ – the government of population at large – exemplifies an interest in considering the ‘bigger’ rationalities within which individual subjects are governed. As Merlingen (2008, 273) notes,

...if the philosophical and empirical are brought together – by scaling up governmentality studies to incorporate conceptions of the social whole and by scaling down biopolitical studies to give them stronger empirical content – then we have the beginnings of a powerful critical sociology that pulls the analysis of subjectivity into the exploration of world order.

This paper, will, it is hoped, contribute to such a critical sociology of world order. Cosmopolitics is the conceptual hook via which a ‘governmentality’ studies is ‘scaled up’ and instances of European cosmopolitics offer the ‘empirical content’ via which any pretensions to ‘excessively grand philosophical speculations’ are resisted.

The paper proceeds in three sections. The first offers a genealogy of a market cosmopolitics in Europe, weaving insights from Foucault’s work on liberal government with a discussion of the development of the European project, showing how particular market ideas both constituted and found their manifestation in the post-national realm of government.

The second offers a genealogy of a legal cosmopolitics in Europe, highlighting the ways in which a social contractarian rationality has never been entirely expunged in the European project. In particular, this section shows via Habermas's work on Europe the way in which a legal cosmopolitics is often presented in opposition to a market cosmopolitics. These genealogies are far from definitive histories. As Hutchings (1999, 110) says, 'a genealogy... constitutes an exploration of the discursive conditions which make regimes of truth possible and of the effects of power inseparable from those discursive conditions'. In particular, then, these parts serve to highlight the emergence of European subjects of 'interest' and 'right' as, respectively, 'entrepreneurs' and 'citizens' in contemporary Europe and reflects on the ethical possibilities and limitations of each. The third section considers the ambiguous nature of the relationship between these cosmopolitics and their respective subjects with reference to the politics of European citizenship, which is not citizenship as we know it, but embodies both the imaginary of mobile entrepreneur and of solidarist citizen. Taking heed of Foucault's assertion that a consideration of practice, 'is sometimes more effective in unsettling our certitudes and dogmatism than is abstract criticism' (cited in Merlingen 2006, 188), it focuses specifically on the recent and well publicized treatment of a particular European 'other' – the EU's Roma citizens – who have frequently been portrayed and produced as both delinquent entrepreneur and delinquent citizen. Demonstrating what is at stake in the sustenance of an *ambiguous cosmopolitics*, it is, in short, argued that the ambiguities in a European cosmopolitics and associated identities offers the space for strategic resistance by and with Europe's marginalized 'others'. Finally, in the fourth section, the paper engages with some potential critics of the Foucauldian approach adopted, arguing that a conception of freedom as the possibility for *being otherwise* is sustained in the identification of an ambiguous cosmopolitics.

Market cosmopolitics in Europe

The basic law of the European Economic Community is liberal. Its guiding principle is to establish undistorted competition in an undivided market. Where rules are necessary to achieve this, they are rules to make freedom possible. For – to adopt a quotation from Kant – even freedom is 'not the natural condition of man'.

Walter Hallstein (1972)

A market cosmopolitics might be regarded as the founding governmental rationality of the contemporary European project. The European Coal and

Steel Community (ECSC) sought to deploy economic means to political ends, creating interdependent markets in a set of industries of central import for European states' war regimes and thereby taming the anarchical relationship that had precipitated inter-state conflict. The Rome treaty extended this market rationality to many more domains of economic activity and this became increasingly solidified or constitutionalized via, *inter alia*, the jurisprudence of the European Court of Justice (ECJ) and the lobbying of European business interests (Mattli and Slaughter 1998; Apeldoorn 2002). Such insights are consistent with a range of contemporary European Studies scholarship – both normatively critical and complimentary – which implicitly or explicitly regards the market as performing a 'role of veridiction' (Foucault 2008) – acting as the guiding principle – for contemporary post-national government in Europe. From a mainstream liberal perspective, Moravcsik implicitly celebrates the realization of market rationalities in the post-national institutional context in general and in the EU in particular and Majone is explicit in his celebration of the EU as a (re)-regulatory depoliticized entity that essentially coheres with a liberal notion of government concerned with 'the tyranny of majority' (Majone 1996, 1998; Moravcsik 1997, 1998). From a Marxist perspective, the emergence of a supranational economic constitution and monetary policy is variously understood as supporting the agenda of the (neo)-liberal state or bemoaned as establishing a 'new constitutionalism' that delimits popular sovereignty (Gill 1998, 2003). The point, in short, is that what I term a 'market' cosmopolitics is widely conceived as prevalent in the EU and variously celebrated and reviled.

A market cosmopolitics informed by a liberal political economy is, I would concur, the central rationality of contemporary post-national government in Europe. Foucault's (2008) lectures on liberal government, provide a history of ideas from which we can develop an account of the conditions of possibility and aims of contemporary post-national or cosmopolitical government in/for Europe. Emerging in 18th century Europe, a liberal mode of rule is conceived in extremely broad terms by Foucault and contrasted with the preceding mode of *raison d'état*. A liberal government imposes limits; it objects to excessive government rather than focusing on the abuse of sovereign power, which formed the oppositional framework for constraining the reality of police state. In Foucault's account, the emphasis on a liberal government in the 18th century is closely associated with the emergence of political economy at this time. A central indicator of nature or truth, which was identified by political economy and to which government is enjoined to respond, is the organizing terrain of market. The market as a field of activity for the

population becomes useful in unveiling a set of natural laws or principles, which inform the art of government from the 18th century onwards. While it was a site of extensive jurisdiction in the Middle Ages and 16th and 17th centuries, it increasingly becomes rendered as a natural domain in which government should only intervene in order to preserve those spontaneous competitive natural tendencies. In particular, the tendency of the market to produce a natural price that regulates the relationship between the cost of production and demand is regarded as important and something to be respected by government. Thus, political economy, 'pointed out to government where it had to go to find the principle of truth of its own governmental practice... [I]t is [the market's] role of veridiction that will command, dictate, and prescribe the jurisdictional mechanisms, or absence of such mechanisms' (Foucault 2008, 32). This turn to the market, Foucault is clear, does not in fact mean less government, but rather government *for the market*.

As it moves into the 20th century Foucault's account focuses on the work of Germany's 'ordo' or 'neo' liberals, whose ideas became prominent with their adoption by powerful political allies in the aftermath of the Second World War. These scholars built upon the foundations of classical liberal scholarship, perceiving the state's very legitimacy to follow from an assessment of its performance of the market making function. The ordo-liberals were concerned, then, with the question of how to use the concept of economic freedom and competitive free markets as *the very foundation* for a post-war German state lacking in legitimacy. Foucault argues that in post-war Germany there was a political expediency to the deployment of an economic rationality. The German state required a uniting idea, both in addressing its own people and its political partners, which was not rooted in any traditionalist–statist conception that had proved so damaging in the guise of National Socialism. Neo-liberalism would appease American interests while also offering the people a sense of freedom over their own economic affairs. Thus, a juridical framework is presented as creating a space of freedom in the economic domain, since prevailing contingencies did not permit a juridical power of coercion. As future Chancellor Erhard, one of ordo-liberalism's key political proponents, said in 1948, 'only a state that establishes both the freedom and responsibility of the citizens can legitimately speak in the name of the people' (cited in Foucault 2008, 81). For ordo-liberalism economic freedom is thus both the state's foundation and its limitation; its guarantee and its security (Foucault 2008, 102). As Foucault (2008, 116) tells us, the ordo-liberals argue that we should adopt the free market as organizing and regulating principle of the state, from the start of its existence up to the last form of its interventions. In other words, we

witness a ‘political reversal’: a state under the supervision of the market rather than a market supervised by the state (Foucault 2008, 117). However, this does not mean the absence of government or even a *limited* government. Indeed, ‘[g]overnment must accompany the market economy from start to finish. The market economy does not take something away from government. Rather, it indicates, it constitutes the general index in which one must place the rule for defining all government action. One must govern for the market rather than because of the market’ (Foucault 2008, 121). Thus, we see the emergence in this German context of an *economic* constitution that would, in large measure, find its way into European level government.

Indeed, the treaty of Rome was in large part inspired by ordo-liberal ideas and certain key proponents – such as Walter Hallstein, the first President of the Commission – were key in its formulation (Gerber 1994). That said, it was arguably *the interpretation* of the Rome treaty in ordo-liberal or market cosmopolitical terms that was decisive in placing states in a deferential position vis-à-vis markets. While the Rome treaty envisaged the ECJ as the institution before which *member state* and *Commission* claims of non-compliance would be heard, as Mattli (1999, 73) highlights, ‘the treaty evolved from a set of legal arrangements binding upon sovereign states, into a vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private, within the European Union’. The central point for current purposes is that it is the delegitimization of the state and privileging of the market – to some extent politically achieved by the ordo-liberals – which paves the way for a governmentality that is not territorially bounded in the same way as were the ideas of the 18th century liberals. The notion of a transnational or global free market place becomes more easily realizable when the state is downgraded in importance or, rather, when its *raison d’être* becomes the service of the market.

But what would it mean governmentally for a state to be under the supervision of the market? It would mean, as mentioned, the constitution of the state on the basis of the economy, or, in other words, the formulation of an *economic constitution*. The state is to be constituted not in terms of its granting of political rights to its citizenry, but instead in terms of its commitment to enable the competitive market within and *possibly also beyond* its territory. While the ordo-liberals celebrate the market form and, in particular, the governing role of prices in a truly or perfectly competitive market place, they do not consider pure competition to be a ‘primitive given’ and hence part of government’s non-agenda as conceived by classical liberalism. Rather, as history reveals for the ordo-liberals, pure competition is fragile, ‘it can only be the result of lengthy efforts and,

in truth, pure competition is never attained' (Foucault 2008, 120). Competition is no longer then a naturalistic reality, but a normative concept, never to be entirely obtained, but nevertheless the regulative ideal according to which the success of government should be gauged. The economic constitution is thus associated with the need for 'permanent vigilance, activity and intervention' (Foucault 2008, 132).

This is reflected in the ordo-liberal conception of social policy, which does not seek to impact directly on the market, as a brake or counterweight to it, or as a tool geared towards the easing of economic disparities, in the way in which Keynesian economists, the New Deal and the Beveridge plan envisaged for 'welfare economies'. Indeed, the very regulatory social forces that are privileged by the ordo-liberals – market competition and the price mechanism – require differences, not equality, if they are to function properly (Donzelot 2008). The subjects that animate these forces paradoxically require for their security a space of freedom as *insecurity* or uncertainty. Thus, 'for the ordoliberal the economic game, along with the unequal effects it entails, is a kind of general regulator of society that clearly everyone has to accept and abide by' (Foucault 2008, 143). Hence, instead of 'collectivization by and in social policy', the ordoliberals promote 'individualization of social policy and individualization through social policy' (Foucault 2008, 144). This means providing everyone with a space within which they can take on and confront risks, or, more concretely, the privatization of risk and uncertainty via technologies such as individual and mutual insurance and private property. Within this picture, economic growth becomes the pre-eminent goal of social policy and it becomes possible to talk about something called the 'social market economy', which has found its way into contemporary EU discourses and may even be gaining constitutional significance (Joerges and Rödl 2004). In its original rendering, the social market economy permitted socially oriented goals, but not at the expense of the functioning of the competitive market and we perhaps see something similar in contemporary Europe.

Foucault's genealogy highlights that as it developed via a US or Chicago school, a neo-liberal government increasingly promotes the market as a generalizable framework and competitiveness or enterprise as a generalizable telos. This is the case for states and for supranational institutions, as evidenced in the EU's Lisbon and 'Europe 2020' competitiveness agendas of 2000 and 2010, respectively (European Council 2000; Apeldoorn 2009; European Commission 2010b). Such a framework is also extended within populations or societies; indeed, it becomes a tool for governing all social relations, not only economic relations. Governing technologies have, in accordance with this conception of neo-liberal government, conducted

what Foucault calls ‘an economic analysis of the non-economic’. They have sought to construct markets in non-economic domains, for example in the domain of society and work. As Foucault (2008, 220) notes, ‘classical political economy has never analyzed labour itself, or rather it has constantly striven to neutralize it, and to do this by reducing it exclusively to the factor of time’. Concerned with analysing relational mechanisms of capital, investment and production, classical liberals did not, from a neo-liberal perspective, sufficiently focus on human behaviour, internal rationality, or the strategic programming of individuals’ activity. The neo-liberals re-render the worker; he is no longer merely an object in economic analysis, ‘but an active economic subject’ and the wage is reconceived as a return on capital (Foucault 2008, 223). The notion of ‘human capital’ invented by Chicago school economists thereby links the abilities or skills of the worker (capital) with a possible earnings stream and in such an understanding ‘the worker himself appears as a sort of enterprise’ (Foucault 2008, 225). Following from this, whereas the classical liberals conceive of homo oeconomicus – the ‘subject of interest’ – primarily as ‘a partner of exchange’, for the neo-liberals ‘homo oeconomicus is an entrepreneur, an entrepreneur of himself’ (Foucault 2008, 226). The entrepreneur thus becomes a generalizable figure in a way that classical liberals never imagined possible. Once human capital appears in an important field of knowledge/power, it makes sense that it is something that both governments and individuals should concern themselves with.

Considering the strategic orientation of contemporary Europe, this subject of entrepreneur is indeed of central importance. An economic constitution constrains ‘social’ policy in the EU such that it is enjoined to march to the tune of a neo-liberal monetarist agenda (Schafer 2004, 8). There is here a mirroring of a more general trend where, increasingly, ‘new welfare’ regimes privilege a ‘third way’ politics. As Jayasuriya (2005, 2) says, ‘to see this new welfare governance as a part of a movement back from economic to social policy is to miss the fact that this new policy strategy seeks to entrench a form of “market citizenship” that differs from that reflected in the political grammar of post war social democracy’. In the EU context specific policies include, the recent promotion of ‘flexicurity’, where security is redefined in terms of ‘coping with uncertainty’ and the accent is firmly placed on flexibility in labour markets (European Commission 2007; Keune and Jepsen 2007); ‘lifelong learning’ aimed at fostering human capital (European Commission 2001); and the closely related attempt to celebrate and promote ‘entrepreneurial mindsets’ through education and learning (European Commission 2006). Such policies are championed as ‘modernisation’ and they are increasingly tasked with enhancing the welfare or security of individuals, to the detriment of

a concern with the sort of ‘security’ offered by both a redistributive social justice and substantive worker protection. Such ‘modernisation’ permits the retrenchment of worker protection and redistribution, as the burden of risk is placed increasingly on the individual as entrepreneur who is, by definition, prepared to handle such risks. This devolved ‘risk management’ conceptualizes ‘human capital’ – like capital in general – as ‘mobile’. As Foucault (2008, 230) says of this position,

Migration is an investment; the migrant is an investor. He is an entrepreneur of himself who incurs expenses by investing to obtain some kind of improvement. The mobility of population and its ability to make choices of mobility as investment choices for improving income enable the phenomena of migration to be brought back into economic analysis.

In summary, from this market cosmopolitical perspective, the knowledge/power of a (neo)-liberal political economy is central in the ongoing constitution of a post-national regime of government and such a regime at once facilitates the deepening of a liberal rationality in the face of potential challenge from national democratic opposition. From a mainstream liberal EU studies perspective, such a regime ensures the functioning of the market in the manner of an *ordo-liberalism* and from a critical (often Marx or Gramsci inspired) perspective, it ensures the closure to popular scrutiny of the EU’s economic regime and the inequalities that it precipitates. For the former, the economic constitution facilitates freedom in the face of inexpert masses and/or a potentially tyrannical factionalism (Majone 1998; Moravcsik 2002), whereas for the latter it hampers freedom by excluding economic decision making – which via a neo-liberal power/knowledge extends its reach into the non-economic – from popular scrutiny (Gill 2002, 2003, see also a number of chapters in Nousios *et al.* 2012). In the context of the ongoing politico-economic ‘crisis’ we are arguably witnessing an extension of this logic with the reinforcement of an economic constitution – particularly the tougher supranational policing of national budgets and (social) policies in the Eurozone – and the installation of unelected bureaucrats as leaders in struggling Eurozone member states in an attempt to appease ‘the markets’.

The crisis has precipitated an understandable and widespread opposition to a market cosmopolitics of a kind that mirrors to some extent the long-standing critiques of the aforementioned critical scholars. However, a market cosmopolitics clearly entails both ethical possibilities and limitations. The extension and deepening of market has had an irenic effect in contemporary Europe. While, as noted above, a neo-liberal market cosmopolitics relies on economic difference as the driver of competitiveness and entrepreneurship, it is formally blind to other kinds of difference.

It seeks to guarantee a level playing field, for business through competition policy, but also for individuals through the assertion of anti-discrimination policies and laws. Equality of opportunity is not equality, but it is, nevertheless, of significance in the context of a Europe that has been historically divided and enacted divisions on nationalist, racial, gender, and ethnic lines. However, a logic of competitiveness obviously creates its own winners and losers; it creates socio-economic disparities and a logic of competitiveness can thereafter easily spill-over from a delimited economic domain. Indeed, a dogmatic Chicago school neo-liberalism promotes an economic domain in areas that were once considered 'social' or 'public'. The 'virtue' or 'sympathy' of a classical liberalism associated with the likes of Adam Smith is eroded through the extension of competition 'all the way down'. Unlike a dogmatic neo-liberalism, the *ordo-liberals* clearly recognized the limits on competitiveness. As Wilhelm Röpke noted of their programme, it 'consists of measures and institutions which impart to competition the framework, rules, and machinery of impartial supervision which a competitive system needs as much as any game or match *if it is not to degenerate into a vulgar brawl*' (cited in Allen 2005, 205).

In the European context these limits are also recognized. While it is prevalent, a neo-liberal logic of competitiveness is clearly not *the only* or an *all-pervasive* rationality of government in/for Europe. In accord with Foucault's (1982) conception of power as implying a space of freedom, we might, in short, consider both the possibilities and realities of *resistance* to a market cosmopolitics in/for Europe. In particular, we might consider an alternative genealogy of European cosmopolitics: a legal cosmopolitics.

Legal cosmopolitics in Europe

[T]he challenge before us is not to invent anything but to conserve the great democratic achievements of the European nation-state, beyond its own limits.

Jürgen Habermas (2001b)

Remaining consistent with Foucault's insight that a liberal mode of government rooted in knowledges associated with political economy has never entirely displaced a sovereign juridical rationality, this section seeks to tell another story about contemporary cosmopolitics in Europe. This is a legal rationality that is much more than a pared down economic constitution. It is a rationality rooted in the imaginary of social contract and associated with the sovereign nation-state, but extended beyond the nation-state. It is a rationality that exists within both institutional realities and scholarly visions of integration; indeed, in both practice and scholarship,

we have seen the extension of such features of the juridical nation-state as citizenship and an (albeit thin) political constitution to the post-national realm. Thus, cosmopolitan scholars such as Habermas (2001a, 2001b) emphasize the importance of a political constitution for Europe that might offset a neo-liberal economic constitution and, in practice, some redistributive schemes have emerged: for instance, in the form of structural funds and the common agricultural policy. Habermas himself provides a compelling critique of a 'market' Europe from the perspective of an advocate of a legal cosmopolitics and post-national citizenship. He pitches the citizen in opposition to a neo-liberal 'rational decider' (herein, 'subject of interest' or 'entrepreneur'). As he says (2001a, 94),

The concept of the person as a 'rational decider' is not only independent of the idea of the moral person who determines her will through an insight into what is in the interests of all those affected; it is also independent of the concept of the citizen of a republic, who participates in the public practice of self-legislation under equal rights. Neoliberal theory deals with private subjects who 'do and permit what they will' according to their own preferences and value orientations within the limits of legally permissible actions.... Neoliberalism is ... unreceptive to the republican idea of self-legislation, according to which private and civic autonomy presuppose one another.

Habermas is concerned that in the European context, the market cosmopolitical economic constitution may undermine social contractarian rights to the extent that it impinges on the capacity of national governments to provide them, and, in neo-republican fashion, on the ability of the people to ensure that national governments provide them. In short, a market cosmopolitics has a pernicious impact on both solidarity and democracy. He notes increased capital mobility, increased flexibility in mass production, and the emergence of multi-national corporations as three factors that have eroded the balance between economic liberalization and national economic autonomy that was established in the Bretton Woods period, or the period of 'embedded liberalism' (Ruggie 1982). It is in this context that he notes the possibilities inherent in the European space for the re-assertion of a social contractarian rationality; a legal cosmopolitics. The subject of this governmentality is not the entrepreneur but a post-national solidarist citizen who both sanctions and benefits from redistributive policies – social and economic rights as well as liberal fundamental freedoms – in the face of (neo)-liberalism's emphasis on welfare retrenchment and the promotion of competitiveness. Thus, in his more explicitly political interventions, Habermas (2001a) argues for and seeks to promote a 'constitutional patriotism' in the

European space; concretely, this means a common bond or identity rooted not in national or ethnic identity, but in a set of shared principles (Habermas and Derrida 2003).

A legal cosmopolitics of this sort is not and has not been entirely absent from the European project. In practice, the ordo-liberal ‘reversal’ in the priority of state and market serves as only a partial explanation for the willingness of states to surrender or pool sovereignty and thereafter develop a European level of government. It may, in short, have been *one* condition of possibility, but perhaps not the only condition. In practice, a legal cosmopolitan rationality lay at the heart of many post-war visions of a federal Europe and was central to the creation of the Council of Europe in 1949. While some saw the Council of Europe as the harbinger of Churchill’s United States of Europe, in practice it developed a narrow remit that focused on the Europeanization of a human rights and democratization discourse via a number of treaties, notably the European Convention on Human Rights (ECHR), which led to the establishment of the European Court of Human Rights (ECtHR). While the ECSC and European Economic Community (EEC) were largely grounded in the aforementioned ‘market’ cosmopolitical rationality, the long-term inspiration for this community certainly lay in the popular political desire of the time to establish a pacific federal Europe. Both Schuman and Monnet were clear that the ECSC should represent but one small step in that direction. In this sense, Monnet’s proposals can be read as both pragmatic and idealistic. Pragmatic in the sense that they sought to nurture a market in the specific industrial areas of coal and steel, but radical in the sense that – in accord with a functionalist logic – the ceding of sovereignty would ultimately lead to a more substantive federal European entity. The point is that the imaginaries of social contract and citizen associated with juridical nation-state were present at the outset and have never been entirely expunged from the reality of Europe. In short, a legal cosmopolitics is also significant and its citizen as ‘subject of right’ is irreducible to the entrepreneur as ‘subject of interest’.

From a Foucauldian perspective, the power of a supranational logic of convergence around neo-liberal knowledges necessarily implies a resistance to such logics from alternative power/knowledge nexuses, given that liberal government *requires* a space of choice, of responsibility, essentially a space of freedom. As Burchell (1996, 26) says,

Liberal government is pre-eminently economic government in the dual sense of cheap government and government geared to securing the conditions for optimum economic performance. There is a sense in which the liberal rationality of government is necessarily pegged to the

optimum performance of the economy *at minimum economic and socio-political cost*. And yet there are no universally agreed criteria for judging the success of government in this respect.

There is, then, a considerable space even within liberal government for the assertion of a legal rationality – and an associated solidarist citizen – that is concerned with the *socio-political cost* of economic government. This is a space within which scholarly accounts such as Habermas's and practical legal cosmopolitical realities have (re)-asserted themselves in the cosmopolitical European domain. Thus, even as a market cosmopolitics can be regarded as prevalent, both globally and within the EU, a legal rationality has always exerted itself in post-national and European politics at a number of different levels and in a variety of ways. In this regard, we might cite, in particular, the Charter of Fundamental Rights, which formalizes a *de facto* recognition of transnational fundamental rights by the ECJ and includes, for instance, provisions relating to social and economic rights that reinforce and overlap with the ECHR (Sabel and Gerstenberg 2010). More generally, discourses of borders, security, justice, home affairs (formerly pillars two and three), and even a redistributive social policy have always been present in the practice of European level government, even as these discourses are often refigured in accordance with a market cosmopolitics.

Particularly significant in this story is the much discussed category of a post-national EU citizenship (among many others, see Wiener 1998; Maas 2007; Hansen and Hager 2010), which was formally born with the Maastricht treaty in 1992. Prior to the introduction of this status, the right of an individual to claim rights commensurate with citizenship in another EU member state was tied to their economic subjectivity – their designation as mobile 'worker' (we might say 'human capital' or 'entrepreneur' in the language adopted in the preceding section) – but the emergence of 'EU citizenship', a unique *post-national* citizenship, has at least blurred this picture. Post-Maastricht ECJ case law has in many respects maintained what we might crudely term a *cross-border-plus-human-capital* test – reserving access to European jurisdiction for those passing both elements of the test – and thereby delimited access to European justice for many who enjoy the formal status of EU citizenship. However, in the past few years – 20 years after Maastricht – there has arguably been an important shift that has allowed post-national citizenship to come closer to citizenship as we know it at the national level. As a consequence of such anomalies, as 'reverse discrimination' – whereby nationals who have never exercised a right to move within the EU do not have recourse to European jurisdiction and therefore potentially have access to *fewer* rights than their co-nationals

who have exercised such a right – the ECJ has in some cases allowed those who have not moved to another member state to also access its jurisdiction (for a comprehensive review of relevant case law, see Kochenov 2011). Such moves are potentially significant for the lives of those with the formal status of EU citizenship, because they can be read as heralding a situation whereby ‘the scope of EU law has the potential to constrain the Member States’ ability to regulate virtually any issue independently’ (Kochenov 2011, 86). Indeed, this direction of travel confirms the notion that ‘*civis europaeus sum*’...hangs over the Court as a self-fulfilling prophecy’ (Kochenov 2011, 92). Leading on from this and of more direct significance for the present argument, the development of a substantive or ‘real’ conception of post-national citizenship is permitting the Court to move away from its ‘strong bias towards market-based conceptual underpinnings, which [have] become logically inconsistent with the post-Maastricht situation’ (Kochenov 2011, 72, see also Kostakopoulou 2005). In short, this is to argue that with the emergence of the legal category of post-national citizenship the economic constitution is increasingly challenged at European level by a far more political or legal constitution, which allows for universal individual recourse to a substantive supranational legal framework.

The potential emergence of a ‘real’ post-national citizenship is not to declare the victory of a legal cosmopolitics vis-à-vis a market cosmopolitics. In practice, we are witnessing in the EU territorial space jurisdictional co-operation and competition that involves, *inter alia*, member states, ECJ, and ECtHR (for a nuanced if perhaps over optimistic account, see Sabel and Gerstenberg 2010) and these two cosmopolitical rationalities increasingly cut across these various jurisdictions – interacting *within* each of them – rather than mapping on to them. Thus, even if a full extension of EU citizenship and the emergence of a substantive federal situation were to occur, both cosmopolitical rationalities would be present, as they are within the contemporary (neo)-liberal nation-state. That said, the emergence of a substantive EU citizenship nevertheless serves to highlight that even in the context of the current crisis and the apparent reinforcement of economic constitution, there is an important contemporary story to be told about a social contractarian legal cosmopolitics in Europe.

More generally, the point is to highlight that in both the theory and practice of post-national government in/of Europe a legal rationality rooted in the imaginary of nation-state has not been entirely displaced by the liberal market rationality described in the foregoing section. Indeed, it has often operated as a critique of a market cosmopolitics via its invocation of the social, solidarist, democratic, inclusive, and redistributive

aspects of the European welfare state, which the promotion of the market at European level is said to be undermining by stealth. Much normative scholarly work has thus sought to generalize and embed an immanent legal cosmopolitics; it has promoted a European social model, European citizenship, and a European (political) constitution. Such efforts are evident, for instance, in Habermas's aforementioned work on Europe [and the work of those inspired by him, such as the ARENA group (Eriksen 2009)] and have found their way into the policy prescriptions of a range of actors at the EU level. These legal cosmopolitans do not explicitly promote a European federal state, but their prescriptions certainly render the EU as an entity that more closely resembles a nation-state. From this perspective, it is possible to understand how many on the left supported the monetary union that in the context of today's 'crises' has become the scourge of the left. It is possible in theory to extend this union beyond a delimited interest in market 'credibility' – and the current obsession with austerity in national fiscal policies – and open the way to a genuinely redistributive politics. In general, the EU might from such a perspective, represent a social model in more than rhetoric and even support the refiguring of neo-liberal globalization on a more social basis; a refiguring of the relationship between market and government (see, for instance, Jospin 2002).

Such a vision of Europe is, of course, itself subject to significant critique. A range of perspectives and institutional positions concerned with the EU's supposed democratic deficit would be concerned that this vision of Europe would require the *imposition* of a political constitutional settlement in the absence of widespread popular support for anything that resembles a federal Europe or European superstate (Grimm 2005). This might also go some way to explaining the aforementioned hesitant progress in ECJ case law in response to the emergence of 'EU citizenship' in the treaties. Such a critique speaks to widespread contemporary concerns about the legitimacy of the EU, often conceived as an entity without 'demos' (Weiler 1999) or an elite project. Indeed, aspirations to uniformity have in practice often led to resistance of the sort manifest in public opposition to, for example, Maastricht or the Constitutional/Lisbon treaty. Moreover, the notion of a substantive European constitution and associated identity or citizenship might lead to the replaying of the exclusionary tendencies of the nation-state as reflected in a range of critiques of Habermas's work on Europe (Parker 2009). The invention of a European constitution – and citizenship – relies on a methodological nationalism that fails to respect an extant plurality in the contemporary EU (Beck and Grande 2007) and potentially reproduces the violence of exclusive nation-state, now as 'fortress EU'.

In his *Society Must Be Defended*, Foucault offers, *inter alia*, a critique of a juridical political discourse that he associates with Hobbes. He offers a critique of the notion of social contract, which can be interpreted as an attempt to expunge extant difference via the claim that such a contract encapsulates a consent for Leviathan's rule (2003, 98). A similar critique can be levelled at Habermas's and similar attempts to foster a substantive European citizenship in post-national politics. Indeed, Habermas's thought – particularly his discourse ethic – relies on an ontology of consensus; the notion that consensus is inherent in language and reason giving can arrive at a genuine consensus. For Foucault, such an assertion expunges the political, the conflict and struggle that gives rise to any constitution. The effacement, *a la* Hobbes, of *all* identities of rebellion and opposition with a logic of consensus can paradoxically tend to the very totalization that the deployment of a Kantian legal cosmopolitics intends to target. Indeed, a legal cosmopolitics may seek to limit the possibility of a civil war, *produce* solidarity, an ethic of care and a sense of *social* security for an 'us' – the citizenry – but it must simultaneously secure this 'us' from a host of 'others' conceived as threat to the social *body* and the two moves may be mutually dependent.

Indeed, while the 'patriotism' that Habermas advocates in the European space is based on allegiance to a constitution and is rooted in ostensibly universal principles, Habermas (2001a, 107) acknowledges that it relies on some notion of *cultural* closure, of defining a self and other, insiders and outsiders:

Any political community that wants to understand itself as a democracy must at least distinguish between members and non-members.... Even if such a community is grounded in the universalist principles of a democratic constitutional state, it still forms a collective identity, in the sense that it interprets and realizes these principles in light of its own history and in the context of its own political form of life.

Habermas's strong belief in the juridical-philosophical form, in Kant and enlightenment (see, in particular, Habermas 1990 (1985)), is perhaps because it is considered that it is discourses of race and permanent war as inevitable drivers of history, which have legitimated a practical politics of will to power. This is a politics that is conceived as having had such devastating consequence in the modern history of his own country, Germany, in the case of Nazism, and, for him, threatens to (re)-emerge in the egoism of a contemporary 'post-modern' neo-liberalism. In targeting a prevalent neo-liberalism, Habermas essentially reproduces the *universal* nation-state at European level; a sovereign nation-state that, in its appropriation of a historico-political discourse, claims to cast war to its margins. As Valverde (2008, 141) notes, 'in so far

as sovereignty cannot be dispensed with, even in social democratic and/or republican regimes, racism continues to be not only possible but even necessary'. To be clear, this is not to claim that Habermas advocates an exclusionary politics – he clearly promotes the opposite – but aspects of his modernist mode of thought and certain of his legal cosmopolitical stances on/for Europe might inadvertently reinvent certain exclusionary or assimilatory features of the nation-state, along with the solidarist features of the post-war European state that he is so keen to preserve. In short, to paraphrase Foucault, the society that he cherishes and wishes to re-make as European, *must be defended*.

The exclusionary possibility inherent in the promotion of a culturally strong citizenship was something of which a market cosmopolitics associated with an ordo-liberal post-war rationality was, of course, acutely aware. Indeed, to the extent that any realization of a Habermasian legal cosmopolitics avoids certain of the exclusionary effects of its proposal for citizenship or constitutional patriotism, it arguably relies upon the non-exclusionary – *non-discriminatory* – aspects of a market cosmopolitics as its condition of possibility. Thus, while in his work on Europe Habermas pitches a legal and market cosmopolitics in opposition, they can, as intimated above, at the same time be conceived as mutually dependent. The spatial realization of a Europe relied upon a market conception, which Habermas seeks to mitigate, but surely not replace. This ambivalence is something that his own work implicitly acknowledges. For instance, in the context of his analyses of the public sphere he discusses the way in which *civil society* was co-constituted with bourgeois (liberal) conceptions of freedom and government. He emphasizes the ethical possibilities of this sphere as a space for/of resistance; as Calhoun (1999, 7–8) says, summarizing his position: '[c]apitalist market economies formed the basis of civil society but it included a good deal more than that. It included institutions of sociability and discourse only loosely related to the economy'. In other words, a substantive identity, Habermas's 'constitutional patriotism', is immanent in this sphere.

Ambiguity and resistance: the politics of EU citizenship and its 'others'

How can a 'European cultural identity' respond, and in a responsible way – responsible for itself, for the other, and before the other – to the double question of *le capital*, of capital, and of *la capital*, of the capital?

Jacques Derrida (1992)

From a Foucauldian perspective we might be wary of the tendency of much scholarship and practice to reduce the citizen-subject or 'subject of

right' to self-interested entrepreneur or 'subject of interest' and vice versa. The former tendency is apparent in a liberal government in/of Europe, which emphasizes the dangers of intervention in the activities of the market and develops a 'social' policy that privileges and promotes subjects as entrepreneurs of themselves. The latter tendency is apparent in the efforts of a legal rationality that re-invents Europe as exclusive nation-state and requires the formation of delimited and exclusionary cultural identities. From an ontologically reflexive perspective, these subjectivities are singularities, but singularities that, in practice, are intimately and *ambiguously* related in a contemporary cosmopolitics. As Foucault (2008, 302–03) asserts, 'the bond of economic interest occupies an ambiguous position in relation to these bonds of disinterested interests which take the form of local units and different levels...'. Economic or particular interests pit people and groups against each other in economic *competition*, which may make for social disharmony, but also *bring people together* in the market, which is a social sphere that is co-constitutive of 'disinterested interest' or civil society. Thus, entrepreneur and citizen are at once mutually reinforcing and mutually destructive; they exist in an inherently ambiguous relationship.

Such ambiguity is present within the law and practice – *the politics* – of EU citizenship. Notwithstanding the aforementioned increased relevance of EU citizenship for member state nationals who do not move across EU borders, a post-national citizenship status is still meaningful for most Europeans as a consequence of their movement to a member state other than their own; with the claiming of the right to many of the rights granted to citizens of that member state (Bellamy 2008). This is perhaps why EU citizens regard movement as of central importance to the European project; according to a recent Eurobarometer survey, when asked 'What does the EU mean?', 42 per cent of respondents answered that the EU means primarily 'freedom to travel, study and work anywhere in the EU' (Eurobarometer 2009). The right to free movement for EU citizens is enshrined in article 45 of the Charter of Fundamental Rights and Directive 2004/38 on 'the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States'.

Of particular import for present purposes is the fact that the 2004 directive makes clear that the right of movement and residence is conditional. It specifies the rather vague reasons of 'public policy, public security or public health' as valid grounds for expulsion of EU citizens from a particular member state (Article 27; EEC 2004). As the European Commission (2008, 8) notes in its report on the transposition of the directive, 'Member States remain competent to define and modify the notions of public policy and public security'. Crudely, it seems that such

conditions correspond to a large extent with traditional or archetypical conditions of citizenship within the nation-state; what we might term social contractarian conditions, which impose obligations upon individuals to respect the law if they wish to maintain the freedoms and entitlements associated with citizenship. Of course, expulsion is not a tool that is used contemporaneously within member states, but general restrictions on liberty – through, for instance, imprisonment – are deployed. Nevertheless, EU citizens are, from this perspective, conceived primarily as ‘subjects of right’ and the category of post-national citizenship corresponds with the legal cosmopolitics discussed above. However, the directive highlights a number of further conditions or obligations commensurate with the right to movement, which effectively distinguish a post-national citizenship from an archetypical conception of citizenship commonly associated with the nation-state and a social contractarian rationality. These conditions demonstrate that while citizens have replaced workers as the category able to move freely in the EU, settled residence in another member state remains subject to an economic conditionality; the assumption of an economic subjectivity. Indeed, in order to remain resident in another member state – and effectively maintain the rights of EU citizenship – an individual must fulfil one or more of the following conditions: (a) be a worker or self-employed person, (b) have sufficient resources not to become a burden on the social assistance system of the ‘host’ member state, (c) be enrolled in education, and (d) be a family member of an EU citizen satisfying one of the other conditions (see Article 7; EEC 2004). EU citizens can only claim the rights to citizenship in another member state if they are, in effect, first designated as Foucault’s mobile ‘entrepreneurs of themselves’.

The ambiguity in the citizen–entrepreneur relationship is thus reflected in the law pertaining to EU citizenship. It is also reflected in the related *practice* of EU citizenship, as I wish to explore with reference to the difficulties encountered by the EU’s Roma citizens – perhaps the EU’s contemporary internal ‘other’ *par excellence*. The situation and treatment of Roma in Europe has been an important preoccupation of the EU since the enlargement process to eastern and central Europe began in the 1990s. Since the accession of Bulgaria and Romania in 2007 the ‘Roma problem’ as it is frequently termed, has become an increasing concern in ‘old’ EU member states and was widely mediatized in 2010 when the French government deported large numbers of Roma (who originated mainly from these countries). In late summer of that year, the French authorities received widespread criticism from media, civil society, and publics throughout Europe for their targeting of Roma populations. Such targeting appeared to be in contravention of a transnational anti-discrimination legislation that, as noted in the foregoing, is central to the post-war

constitution of a European cosmopolitics. Thus, the European Commission strongly criticized the French authorities. Commission Vice President and Justice and Fundamental Rights Commissioner Viviane Reding (2010) characterized the French action as ‘a disgrace’, stating that, ‘I personally have been appalled by a situation which gave the impression that people are being removed from a Member State of the European Union just because they belong to a certain ethnic minority. This is a situation I had thought Europe would not have to witness again after the Second World War’.

Such outspoken criticism seemed to be justified. An internal French administrative circular issued in August 2010 called for a ‘systematic dismantling of illegal camps, prioritising those of the Roma’. Following the leak of these circulars and the Commission reaction to them, on 22 September the French government notified the Commission that it had ‘corrected’ this circular, by effectively removing references to ‘Roma’; in other words, removing discriminatory language. On 30 September, the Commission nevertheless launched infringement proceedings, which focused, in particular, on the fact that France had not fully transposed into its national legislation aspects of the 2004 directive. It should be noted that France is not alone in this respect. Both the Commission and European Parliament have, in recent years, been critical of the manner in which these conditions have been deployed in national contexts, arguing that the directive has in many cases not been fully or correctly transposed (European Commission 2008, 2010c; Carrera and Faure Atger 2009). They have expressed particular concerns regarding the failure to develop in national law the legal safeguards (specified in the directive) pertaining to these conditions, which would delimit the potential for administrative authorities to enact restrictions on the general right to free movement of citizens. It was the failure to respect such safeguards in the context of deporting Roma populations – in particular, an apparent failure to treat cases on an individual basis – that led to the proceedings against France. When the French authorities agreed to ensure the correct transposition of this directive, the debacle drew to a close and it seemed that the EU’s cosmopolitical rationality had triumphed, effectively quashing the violent excesses of a residual European nationalism in accord with its *raison d’être* as peace project.

However, of particular interest for current purposes is the fact that as late as August 2010 the French government had explicitly justified its actions with reference to the very directive (2004/38) that subsequently formed the basis of the Commission’s infringement proceedings (Auffrey 2010). While there was no explicit or publicized targeting of Roma as a group – no explicit ethnic discrimination – prior to summer 2010, the

particular means deployed had led a number of French associations to suggest that it was indeed just such populations that the French authorities had in their sights (Cette-France-lá 2010). The point is that French policy has generally – and mostly successfully – been able to give the appearance of operating *within* the contestable boundaries of a cosmopolitan EU law (and, indeed, its own laws on discrimination), while deploying various of its conditions to *in effect* target the majority of the foreign Roma population in France for deportation. It has done this firstly by taking advantage of an anomaly in EU law that permits discrimination on the basis of nationality: namely, the transitional arrangements applicable to mobile Romanian and Bulgarian EU citizens (many of whom are Roma). Such measures allowed administrative actors to effectively block access to the French labour market for such citizens and pushed them into activities that are considered ‘delinquent’ by society and, in many cases, law. Thereafter, both the public order and economic conditionality in directive 2004/38 have been deployed in order to facilitate expulsions.

Discrimination on national grounds via transitional arrangements and their variable deployment by member states vis-à-vis recently ‘new’ member states has certainly been significant in the practical ‘proliferation of various statuses of European citizenship’ (Carrera and Faure Atger 2009, 21), but such a proliferation is not dependent upon discrimination on this basis. Indeed, harassment by local authorities and exclusion from labour markets and/or formal residence registration – the gates through which many social and political rights are practically accessed in most member states – has been a common experience for many migrant EU Roma even in those member states where such transitional arrangements have not been in operation (EU Fundamental Rights Agency 2009). And while a European cosmopolitics has in general certainly done much to raise awareness of and tackle the problems encountered by the Roma, it cannot be placed unambiguously in ethical opposition to the local denial of rights to Roma rooted in widespread public prejudice. The important conditions that a post-national government places on the claiming of citizenship rights can be deployed (regardless of transitory arrangements) to ensure that the experience of citizenship of those moving within the EU space is extremely variable. For instance, in France, the new law on immigration, passed since the events of summer 2010 (and in part designed to transpose directive 2004/38), includes a provision that opens the possibility to expel foreigners, including EU citizens, regarded as a ‘threat to public order’, in accord with the aforementioned conditionality in the directive. However, in an ominous indication that this provision was formulated with the socially excluded Roma specifically in mind, such a threat is defined to include ‘aggressive begging’ and ‘the illegal

occupation of public or private land' (Human Rights Watch 2011; Lemonde.fr 2011). Although it has been claimed that the new law is not in conformity with EU law, it represents an attempt to draw on such law, essentially connecting conditions of socio-economic poverty and public order in a manner that facilitates exclusion and deportation of EU citizens. The point, in short, is that a post-national citizenship or cosmopolitics more generally ought not be regarded as an ethical panacea. As discussed in the first and second sections, both a market and legal cosmopolitics can be deployed to exclusionary effect: they designate ideal subjects and their 'others'. In the practical politics of EU citizenship and movement, we see how these exclusive practices can be used in combination to exclude Europe's most vulnerable.

It is, rather, in *the ambiguity* inherent in the relationship between a market and legal cosmopolitics that we might locate something ethically valuable in a European cosmopolitics, or any cosmopolitics. In highlighting the ambiguity within a European cosmopolitics, 'the normal' itself is rendered always-already 'extra-ordinary', *insecure* or *uncertain* and this opens a space for resistance. It is possible, in particular, to highlight an ambiguity at the heart of a cosmopolitical desire to *at once* promote citizens as *settled national citizens* and *mobile entrepreneurs*. With reference to the case under consideration, this might require the Roma and those advocating with them to variously associate with a market or legal cosmopolitics and accounts of post-national citizenship commensurate with both. Thus, the Roma might appeal to a 'social Europe' discourse that emphasizes the tensions in the relationship between market and welfare state. In France, a number of Roma representatives and human rights groups have in fact pursued this line of resistance, criticizing the French government's long-standing discrimination against the Roma, which, they say, is rooted in 'a presumption of guilt based on poverty' (Cette-France-là 2010). Moreover, at European level, both the EU and Council of Europe have repeatedly highlighted the issue of social exclusion of Roma (for instance, Council of Europe 2010; European Commission 2010a). In so doing the market cosmopolitical rationality at play in many deportation decisions is confronted by a legal cosmopolitics that seeks to expose EU citizenship as an austere 'market citizenship'; a citizenship that is unworthy of the name (Downes 2005). From this perspective, resistance might pose such questions as: why is it that the Roma are not afforded the social and economic rights – the right to housing, education, health and welfare – of most EU and national citizens? Why are they denied those rights that would, in short, prevent their designation as delinquent occupiers of land and beggars? Where, in practice, is the solidarity and economic equality valued by a legal cosmopolitics; by a 'European social model'? The Roma

might *at once* find useful recourse to various other European institutions in seeking to oppose all forms of discrimination that are not based on economic reasoning (see, for instance, European Commission 2010a). Various actors in these organizations may be predisposed to oppose not only explicit discrimination on the basis of ethnicity (witnessed in summer 2010), but also the use of transitional measures, which effectively render permissible the discrimination of EU citizens on the basis of nationality. Many NGOs in France and elsewhere have highlighted the absurdity of EU-sanctioned transitional measures, which amount to EU-sanctioned discrimination of EU citizens on the basis of nationality (Haute autorité de lutte contre les discriminations et pour l'égalité 2009). They ask: why is it that Roma are denied access to labour markets on an equal basis, even in those areas where the French state has identified labour shortages? More generally, why, when it suits local and national governments, do they fail to recognize and value the Roma's mobility as entrepreneurial, whereas the mobility of the wealthy is so often celebrated and promoted? Where, in short, is the much-vaunted equality of opportunity among EU citizens in practice?

Such recognition of the possibilities and realities of resistance within a European cosmopolitics should certainly not be read as complacency with regard to the precarious situation in which the Roma find themselves within France or contemporary Europe in general. Indeed, as argued herein a multi-level liberal government constantly attempts in both theory and practice to articulate its coherent ideal subjects at the expense of various 'others'. In that sense it is consistent with a European modernity that has repeatedly excluded – and at particularly dark moments even exterminated – its internal 'others', including its long-suffering Roma populations (Bancroft 2005). Habermas himself promotes a Europe where 'a reciprocal acknowledgement of the Other in her otherness' is possible (Habermas and Derrida 2003). I would argue that the case of the Roma suggests that we might need to go further and seek to render the very categories self and other constantly doubtful and precarious. This is to concur with Kristeva (1993, 51), 'that, in the long run, only a thorough investigation of our remarkable relationship with both the other and strangeness within ourselves can lead people to give up hunting for the scapegoat outside their group'. To recognize an ambiguity at the heart of a liberal cosmopolitics is to recognize an ambiguity at the heart of the ideal liberal European 'self' against which any delinquent 'other' is produced. A recognition of the uncertainty of a European or liberal identity opens an important margin for manoeuvre within the imperatives of liberal government: an opportunity for resistance, dissent, and the possibility of being *legitimately* otherwise (Prozorov 2007, 33). Ambiguity might be that which provides the motor for Foucault's 'undefined work of freedom'.

Towards an ambiguous cosmopolitics

I would define the poetic effect as the capacity that a text displays for continuing to generate different readings, without ever being completely consumed.

Umberto Eco (1994)

Foucault and certain secondary literatures deploying his concept of ‘governmentality’ have been critiqued for suggesting that a governmental rationality is that which essentially *constitutes freedom* as an idea and practice in liberal society. There is some truth in the charge. Such scholarship is certainly interested in understanding the manner in which the concept of freedom is deployed as a tool of government and given substantive content. In the analysis offered in this paper, freedom has thus been given content via both the constitution of an *unencumbered* utility maximizing ‘subject of interest’ – herein, an entrepreneur – and also of an *autonomous* reasoning ‘subject of right’ – herein a citizen. Freedom is, from this perspective, always *governed*. Thus, a ‘legal’ or ‘market’ cosmopolitics is, as noted throughout, associated with a *particular* vision of freedom; a particular, delimited ethic, ontology, or identity. Freedom, from this perspective, is no longer worthy of the name.

Habermas, among others, has identified a ‘performative contradiction’ at the heart of such thinking. He argues that in identifying the constituted nature of freedom, we are given no explicit indication from such scholarship of how we might adjudicate between different rationalities. Fraser (1994, 12) characterizes such critique in a similarly dismissive vein, noting that, ‘*it offers no solutions of its own*, but only an extremely keen nose for sniffing out hypocrisy, cant and self-deception’. Such scholarship is interpreted, then, as making the claim that it is not possible to think outside of a particular social structure or discourse and therefore, it is not possible to know how or why to challenge such a structure. Habermas is concerned that this very idea lends itself to a political complacency and, therefore, potentially blunts any efforts to challenge the *status quo*. In short, he is concerned that the conceptualization of freedom as a historically contingent construction of a particular social order, potentially nullifies any motive for action, any pursuit of freedom as change; indeed, it begs the question, ‘why fight at all?’ (Habermas 1990 (1985), 283).

Fraser’s words, it might be thought, are a particularly apt summary of this paper’s central offering: it identifies contradictions and paradoxes, but offers no ‘solutions’. That said, the decision to avoid ‘solutions’ or prescriptions is a conscious one, based on the view that any supposed ethical shortcomings in European cosmopolitics are not due to a paucity

of proposed ‘solutions’ in/for Europe. As Caputo has said: ‘the very business of coming up with normative ideas of what the individual should be, and of developing administrative practices and professional competences to see to it that such individuals are in fact produced, is precisely the problem, not [*pace* Fraser] *the solution*’ (cited in Prozorov 2007, 43). As discussed, there are a plethora of cosmopolitical proposals professing to have *the* solution for Europe. Faith in a Kantian modernism prompts a form of critique that seeks to replace one ontology with another; one ideal subjectivity with another. This was, of course, decidedly not the form of critique pursued by Foucault (1984, 45–6). As he said,

Criticism is no longer going to be practiced in the pursuit of formal structures with universal value, but rather a historical investigation into the events that have led us to constitute ourselves and recognise ourselves as subjects of what we do, think and say. [Such a critique] ... will not deduce, from the form of what we are, what it is possible for us to do and to know; but it will separate out, from the contingency that has made us what we are, the possibility of no longer being, doing or thinking what we are, or do or think.

This paper has conducted critique in this vein. It has offered an investigation of market and legal cosmopolitical forms of criticism in Europe that are, ‘practiced in the pursuit of formal structures with universal value’. It has identified their ideal subjects – entrepreneurs and citizens – and the ambiguous relationship between them. With reference to the politics of citizenship as it pertains to Europe’s Roma, it has shown that this ambiguity offers a space for ongoing resistance; ‘the possibility of no longer being, doing or thinking what we are, or do or think’.

In contrast, many scholars and practitioners of cosmopolitics, including Habermas, remain wed to discovering and/or asserting the modernist ‘what we are’. For instance, pro-Europeans have repeatedly asserted the importance of establishing a meaningful European identity upon which the European project might be further developed (Elbe 2001, 263–7). Jacques Delors has, for instance, called for greater ‘meaning’ and ‘spiritual strength’ in and for Europe; Romano Prodi has called for the development of a ‘common European soul’; and Václav Havel has called upon Europe to find its ‘soul’ and ‘spirit’ (cited in Guisan-Dickinson 2003). But the very desire for a truth or some meaning – and an associated pessimism associated with any perceived lack of such meaning – might itself be subjected to genealogical reflection. Indeed, Elbe, drawing on Nietzsche, has undertaken just such a reflection, highlighting the contingent Platonic and Christian roots of this European desire for meaning. Turning such reasoning on its head, ‘[i]t is... precisely by recognising the

questionable status of Europe's Christian-Platonic heritage itself that Nietzsche could insist that the pursuit of critical distance from this heritage constitutes a sign of strengthened spiritual vitality' (Elbe 2001, 275).

It is such vitality that Nietzsche associated with the virtue of what he called 'good Europeans' and it is a 'spiritual vitality' of this sort that this paper has sought to both draw upon – via the thought of Foucault – and promote and embody, via its critical exploration of a European cosmopolitics. It has sought, in accordance with Foucault's injunction (1984, 45–6), to 'transform critique conducted in the form of necessary limitation into a practical critique that takes the form of a possible transgression'. More specifically, it finds its ethical motivation in a recognition that particular individuals and identities are excluded (and *suffer*) in the face of *any* government of ethics, including various (ostensibly 'ethical') cosmopolitical forms of government. Thus, I have been primarily interested in elucidating the potentially dangerous or violent pathologies that an ontological truth or certainty can precipitate.

An ambiguous cosmopolitics is rooted in a conception of freedom – what might be termed a 'real' or 'concrete' freedom – as the 'potential for being otherwise' (Prozorov 2007). Freedom is not, then, a stable goal to be reached (say in human rights doctrine or in the expansion of citizenship), or truth to be discovered. As Foucault says, '[l]iberty is a practice. The liberty of men is never assured by the institutions and laws that are intended to serve it. This is why almost all of these laws and institutions are capable of being turned around'. And later: "'liberty" is what must be exercised. The guarantee of freedom is freedom' (cited in Gordon 1991, 47). Elsewhere, he has described such a freedom as an '*art* of not being governed quite so much' (cited in Prozorov 2007, 33). Such a conception of freedom is, then, associated with the possibility of ongoing change and resistance: '[o]ur real freedom is found in dissolving or changing the polities that embody our nature' (Rajchman 1985, 123).

I do not consider this approach to be unambiguously opposed to a cosmopolitical mode of thought. Even as he rejects the 'blackmail of the Enlightenment', Foucault himself recognises that such thought has, since Kant, contained an important critical edge (1984, 42). Indeed, the conception of freedom as the 'potential for being otherwise', shares a 'thin' cosmopolitan ontology to the extent that plurality or difference is promoted, not as a dogmatic end in itself, but as a means or *instance* of resistance. The cosmopolitan recognition of a potential for difference can be interpreted as establishing the *necessity* of resistance to prevailing discursive frames and the potential emergence of alternative frames. This is a resistance to which the paper has sought to remain sensitive throughout; a resistance that suggests the existence of an 'austere ontology'. As Prozorov (2007, 34) says,

this is an ontology that identifies ‘a capacity to act, be acted upon and resist force’. Its austerity lies in the fact that it does not require – indeed, positively avoids – the description (or performative production of) a substantive subjectivity. This, then, is a purposefully *uncertain* ontology, which does not know whether this ‘capacity’ will lead to action or, indeed, of what any potential action might consist. It is an ontology that identifies an essential *vitality*; this is, in accordance with the above reference to Nietzsche’s ‘good Europeans’, a vitality associated with an absence of substantive meaning or certainty. It is to the extent that a cosmopolitical Europe can be identified as a space of potential dissent or an (ontologically) plural arena, that the paper would cohere with the notion that it can be understood as a ‘normative power’ (Manners 2008), albeit one that is constantly under threat from a persistent will to knowledge, identity, or certitude (Turner 2004). The European project was founded on an ambiguous or uncertain mix of cosmopolitan rationalities – a mix of solidarity and self-interest – and this inherent ambiguity may be what constituted its ethical value. Indeed, I would argue that it is the very contrary of an acceptance of this ambiguity – a yearning for meaning and an associated security in one’s own identity – that constitutes Europe’s greatest contemporary danger.

This is not to deny the ethically positive impact that both a market and legal cosmopolitics – and the associated promotion of entrepreneur and citizen – has had in Europe, as highlighted in the first sections of the article. Nor is it to understate the importance of tactically and contingently adopting positions commensurate with these rationalities in the confrontation with the totalizing tendency of the other (or in the confrontation with dangerous parochialisms, such as a resurgent ethnic nationalism) as implied in the discussion of the politics of post-national citizenship. In the context of what might be described as the ongoing ordo- or neo-liberal enactment of a politics of austerity in Europe in the early 2010s – and the associated ongoing promotion of individuals as austere entrepreneurs of themselves – I would concur wholly with Habermas’s repeated calls for much greater post-national solidarity and associated citizenship (2011b, 2011a). However, in focusing on the *longue durée*, the paper has been sensitive to the violent universalism inherent in the performative enactment of any ‘cosmo’-politics; the enactment of any *particular* identity. Indeed, the *vitality* inherent in an ambiguous cosmopolitics is based upon a *happy reconciliation* with the irreconcilability of one’s own identity, which is constitutive of an empathy for difference and a resistance to totalizing identities. Such an ethic is perhaps best pursued via an aesthetic or poetic engagement, which draws attention to the gap between the represented and any particular representation (Bleiker 2001). The paper has proffered what Butler (2005, 41) calls ‘an ethics based on our shared, invariable and partial

blindness about ourselves'. This is to concur with Gordon (1986, 85) who notes that, '...in order for [Foucault's] question of "what are we" actually to be a question at all, it may be vital to retain a margin of uncertainty or under-determination regarding the ethical status of anthropological categories, or whatever terms occupy their place: a possibility of knowing that we do not know what we are'.

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