# Governing through freedom and control

## A Foucauldian reading of citizenship and rights in EU

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# Abstract

More than ever before the European integration project reached a point of political and economic crisis that cannot be dismissed. The main academic and political solutions presented for the crisis is to refocus on European citizens, enhance their rights and make them part of the system, a move considered to be a response to democratic deficit. The present thesis takes the discussion one step further, by refusing to take Union citizenship as a status for granted. Instead, with the help of a critical Foucauldian perspective, it moves beyond the classical political and legal conceptualisations of citizenship, and tries to explain what and how Union citizenship was developed, for what reasons and with which implications. The main claim made here is that Union citizenship was gradually established as part of the advanced liberal governmental rationality of the EU, as a mechanism for incorporating European population in their government. This creates an 'ideal' normalised category of citizens, and also provides a space for expressing dissent towards the system. And in any case, the present crisis should be read as part of an ongoing process, not an end product.

*Key words*: citizenship, European Union, Foucault, governmentality, liberalism
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This year marks three decades from the death of Michel Foucault.

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# 1    Introduction

"The European dream is crumbling. Absolutely crumbling" shouted Nigel Farage, once again[1]. Under his well-known provocative mannerism lies a certain truth, which one cannot ignore. It seems nowadays that the European integration project reached a dangerous turning point. The recent economic and political crisis appears to have alienated European citizens from the European dream, as 52 percent of the total average feels no attachment to the European Union [EU] whatsoever[2]. The 'problem' is usually defined as an issue of democratic deficit, with both scholars and officials presenting normative solutions that would make EU more democratic, accountable and legitimate (cf. Pollack 2010: 38-40). The citizenship of the EU [hereinafter Union citizenship] is perceived as a vital bridge for democratic legitimacy. As the conventional story goes, Union citizenship came into legal existence with Treaty of Maastricht [ToM], a status established deriving from and supplementing the nationality/ citizenship of Member States [MS], which grants particular rights to EU populations. With Union citizenship, European integration became a political project aiming at creating a community of people, not merely an economic project aiming for free market (Maas 2008: 583). As such, it is part of a symbolic package of measures[3] that aims to create and enhance 'European identity' and a sense of belonging, which would help reinforce the political participation of citizens in EU affairs, as a source of legitimacy[4] (Bellamy 2008: 601; Lobeira 2012: 506).

However, citizenship *per se* remains a contested concept. In scholarly terms, both in general and for EU in particular, citizenship has been studied by a variety of different angles, including sociology, history, political science, normative political philosophy, political sociology and legal scholarship (Wind 2008: 240; Meer 2010: 8; Shaw 2010: 5), which perplexes the discussion. In political theory, this touches upon the relationship between the individual and the society. It connects with "almost all political debates and controversies – the nature of justice, the proper realm of freedom, the desirability of equality, the value of politics, and so forth" (Heywood 2004: 15), and deeply divides the political

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[1] Nigel Farage: The European dream is crumbling. [Electronic] Audio-visual version of EP Assembly, 12-03-2014 session, available: https://www.youtube.com/watch?v=j4FdbIVa2j0. Accessed 02-05-2014.
[2] European Commission's website. Standard Eurobarometer 80. [Electronic] Available: http://ec.europa.eu/public_opinion/archives/eb/eb80/eb80_en.htm. Download date: 02-05-2014.
[3] Others being the European passport, anthem and flag.
[4] In practice, this rationality can be seen in the decision of Barroso II Commission to make 2013 the European Year of Citizens, dedicated to Union citizenship as an opportunity to celebrate its legal, political and symbolic power. This was part of a wider effort of this cabinet to make Union citizenship a political priority by focusing on the obstacles that citizens might confront in the enactment of their rights and proposing solutions that would remove them and thus guarantee democratic participation (cf. Shaw 2012: 13; European Commission 2013: 56).

thought (Heywood 2004: 32). Also, the conceptualisations of the 'individual' and the 'society' differ, as each theoretical tradition advanced different elements.

Therefore, an epistemological and methodological question arises: *how* can one study Union citizenship if there is no accepted version of what *is* citizenship to begin with? To perplex the discussion even more, in relation to EU in general, *how* can we study European integration if Europe is not what is supposed to be? (cf. Walters and Haahr 2005b: 2). More questions can be raised here as well. *What* would a non-essentialist perspective on European integration say for Union citizenship? And again, *how* did Europe come to need a supranational citizenship? These questions intrigued me when I first start thinking about Union citizenship. So this is what I explore in my dissertation. To rephrase the research question, I wanted to learn more on ***what Union citizenship is, how it can be understood, how it was produced as such, and the rationalities it serves***.

I aim to tackle this multifaceted question with the help of a critical standpoint relying on Michel Foucault's theoretical and methodological discussions. Conventionally speaking, the problem at hand seems very broad. Indeed, each of the sub-questions could serve as a research topic on their own. However, following a Foucauldian viewpoint, I want to explore Union citizenship as a whole by focusing on particular aspects of it. I will examine the common readings on Union citizenship and challenge them by focusing on the *how* and *why* of Union citizenship. As a status, it was never a pre-given. As I will discuss later on, in the beginning European integration rejected any need for democratic legitimacy based on citizens. Rather, Union citizenship was gradually developed as part of the (neo)liberal rationality promoted first by the European Court of Justice [hereinafter the Court], as a means for better governing Europe and European population. This government through citizenship and rights is achieved both through the normalisation of citizens based on law and other institutional practices, and through the space it creates for individuals to govern themselves. The Foucauldian perspective presents the needed critical standpoint for this exploration.

The organisation of my thesis is clear. In [Chapter 2](#), I present my reading of the political Foucault, where I discuss his ideas on knowledge, power, government and governmentality, as well as his methodological tools of archaeology and genealogy. Based on these I identify different features that an analytics of EU and Union citizenship should include. In [Chapter 3](#), I begin with my analytics with the examination of the various normative and empirical political and legal discourses developed on Union citizenship. In [Chapter 4](#), I present a history of European integration by retracing the dominant mentalities of government and the position of citizenship therein. In [Chapter 5](#), I conclude my analytics by examining the state of Union citizenship in the government of Europe and the potentials it creates. I close my discussion [[Chapter 6]](#) with some concluding thoughts. The thesis should be read as a whole as it presents different aspects of the study.

# 2     Foucault for the EU

Up until the present, a multiplicity of European integration theories has been proposed that provide with the analytical tools explaining different aspects of EU (Pollack 2010: 16). In a recent development, scholars critically challenged traditional readings of European integration, which looked "increasingly out of touch with contemporary EU politics" (Manners 2007: 77), and presented alternative approaches. One of these approaches applies discourse analysis in the study of European integration (Wæver 2004), based on the reworking of the Foucauldian concept of discourse in what is called the Critical Discourse Analysis theory and methodology (cf. Jørgensen and Phillips 2002: 12*ff*). As mentioned in the introduction, I want to tackle the problematic of Union citizenship following a critical perspective based on Foucault's work.

However, what I propose here has little to do with these discursive approaches. Rather, I want to retrace the political thoughts of Foucault and use them as a basis and guidance for my critical analytics of EU and Union citizenship. This is what I will in the rest of this chapter. First I will present Foucault as a political philosopher and briefly discuss his ideas on power/knowledge, government, and introduce the concept of governmentality [section 2.1]. Then I will present the methods he used in his work [section 2.2], and clarify some points that a Foucauldian research design should contain [section 2.3]. I will conclude the chapter with the structure of my analytics of EU and Union citizenship [section 2.4].

## 2.1     Introducing political Foucault

Foucault never saw himself as a political theorist, even though his work "contains a powerful, original, and coherent body of political ideas" (Gordon 2001: xi), which can be retraced in his monographs, lectures, courses and interviews. Certainly, the appreciation of his ideas depends on one's particular philosophical and epistemological positioning. But in any case, his engagement with central subjects of political science, such as power and government, the questions he asked and the methodological tools he provided are useful and relevant for political analysis, even in not the most obvious ways (Simons 1995: 123; Brass 2000: 305; May 2005). His thought is mainly situated in poststructuralism and/ or postmodernism (Agger 1991: 111; Manners 2007: 83), even though he personally

rejected these labels (Foucault [1983] 1998: *435ff*[5]). Most importantly, similarly to other critical theorists, his work stands as a critique to positivism and mainly the idea that it is "possible to reflect the world without presuppositions, without including philosophical and theoretical assumptions into one's work" (Agger 1991: 106). He was engaged in a critical work similar to that of Kant's examination of Enlightenment (cf. Hendricks 2008), which he understood as an analysis of both us and our present that comes in total contrast to the Cartesian question of the subject as universal and unhistorical ([1982] 2001a: 335). From this standpoint, he rejected grand theories that think in terms of the totality as they "proved a hindrance to research" ([1976] 1980: 81). Instead, he was instead interested in the particular 'knowledges of Man [*sic*],' the knowledges related to what is a human being and what are their inner motivations, needs, wants and aspirations (cf. Brass 2000: 307). In particular he wanted to examine the processes that transform human beings into subjects in several instances ([1982] 2001a: 326). It is in this exploration that he discussed the concept of power.

## 2.1.1   Rethinking power

Power is a constant theme throughout Foucault's work. However, as he explained, it was not his initial intent to work on power, but came as a necessity since the available theories/models on power could not explain power relations and *how* power is exercised ([1982] 2001a: 327). The first model, which he called 'philosophico-juridical,' can be found in the classical political theory ([1976] 2001a: 122), and links power with sovereignty. Power here is perceived as a right that "one is able to possess like a commodity," and to transfer wholly or partially through a legal act ([1976] 1980: 88). This model accounts for the ideal genesis of the state ([1975] 1997: 59), which is understood as the result of a contract between free individuals who decide to create the sovereign and give-up their power for the ultimate protection of their natural rights[6]. The second model of power, which he called 'politico-historical' can be found, for example, in classical

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[5]. Most of Michel Foucault's works have been translated and published in English in several formats long after his death. Some of the courses he gave at Collège de France remain to the time of writing unpublished. Throughout my thesis I found it convenient to refer to edited anthologies containing parts of his work translated in English. Only these publications will appear in the full list of references by the end of the thesis. However, I decided to use a certain convention when referring to Foucault in the text. First, I avoid repeating his surname in the in-text citation. Second, I give two dates: the year in brackets is when the actual texts came out first and the second is the year of the English publication I referred to. Since I am not referring to particular titles for each in-text citation, apart from few instances, I believe that this convention will help situate each text in the chronology of his works, and make them distinguishable. The chronology of his work as published first in French is: 1966 *The Order of Things* [monograph], 1969 *Archaeology of Knowledge* [monograph], 1970/1 *The Will to Know* [course], 1971/2 *Penal Theories and Institutions* [course – English publication forthcoming], 1972/3 *The Punitive Society* [course – English publication forthcoming], 1973/4 *Psychiatric Power* [course], 1974/5 *Abnormals* [course], 1975 *Discipline and Punish* [monograph], 1975/6 *Society must be Defended* [course], 1976 *The History of Sexuality vol. 1* [monograph], 1977/8 *Security, Territory, Population* [course], 1978/9 *The Birth of Biopolitics* [course], 1979/80 *On the Government of the Living* [course]. Foucault died in June 1984.
[6] This is the core idea of the Social contract theories. For an introduction see Heywood 2004.

Marxism, and explains power in terms of force relations and war. Here the state is conceived as the result of battles, and the mentality of conflict constitutes "the secret driving force of institutions, laws, and order" ([1975] 1997: 61). The relations in this model are understood as those of domination and subordination. In Marx and Engels own words, the history of all existing society until now is the history of class struggles where the oppressor and the oppressed classes stand "in constant opposition to one another," carrying on an uninterrupted fight (1978: 473-4).

Foucault challenged these models in their particularities. The 'philosophico-juridical' discourse could not explain how power is exercise, merely interested in the legitimacy of power, and it presupposes the existence of the sovereign as a pre-given entity (cf. [1976] 1980: 95; [1977] 1980: 140). Similarly, even though the 'historico-political discourse' provided a sufficient criticism of positivism, by presenting how no universal subject can exist as the entire social body is placed in the one camp or the other ([1975] 1997: 61), we can still see the idea of the sovereign present as power is conceived as dominance of one group over the other. What is more, the power here can take the form of polemics, which Foucault called 'parasitic' expression of power with sterilising effects that can make someone believe that one can gain access to the absolute truth ([1984] 1997: 112-3). Contrary to these discourses, he proposed the 'microphysics of power,' which can be better understood as a "heuristic set of methodological guidelines" than a systematised theory of power (Walters 2012: 14). These consist of several ideas on *how* power is exercised.

Contrary to the 'philosophico-juridical' model, he maintained that power is not something that can be acquired, seized, or shared ([1976] 1978: 94). Instead, he identified "manifold relations of power which permeate, characterise and constitute the social body" ([1976] 1980: 93), and argued that power exists everywhere, never localised in one place, but regularly exercised throughout a network ([1976] 1980: 98), produced "from one moment to the next, at every point […] in every relation from one point to another" ([1976] 1978: 93). For Foucault, all relationships including economy, production, kinship, family and sexuality are inherently power relations ([1982] 2001a: 337). What is more, these power relations are immediately expressed as divisions, inequalities, and disequilibria ([1976] 1978: 94), which explains why the 'historico-political' discourse understands power in terms of conflict. However, as Foucault explained, they can take a multiplicity of forms other than the prohibition, punishment, and domination ([1977] 1980: 142).

What is more, contrary to the positivist reference to a free and rational subject, individuals are understood as constantly situated in particular contexts (Bevir 2010: 432). They are not pre-given entities, but "the product of a relation of power exercised over bodies, multiplicities, movements, desires, forces" ([1976] 1980: 73-4), the vehicles and not the points of application of power ([1976] 1980: 98). So, all parts participating in a power relation are perceived as equal subjects who can act until the very end ([1982] 2001a: 340). Power not a group of institutions and mechanisms that ensure the subservience, or a general system of domination

of one individual, group or class over another and a mode of subjugation with the form of the rule ([1976] 1978: 92-3).

Foucault explained power as 'conduct,' which has to do with the way someone acts on the acts of others ([1982] 2001a: 340). As such, there are not distinctions between good, bad, moral, immoral, democratic or undemocratic exercises of power (Brass 2001a: 321). What is important in these 'microphysics of power' is to understand how power is conducted. So as Foucault explained, this is done based on the "production, accumulation, circulation and functioning of a discourse" or a particular knowledge ([1977] 1980: 142). These knowledges can be found in theoretical texts, empirical instruments and also in practices and institutions, and they contain the rules that characterise their existence, operation and history ([1969] 1997: 7). These rules can be either characteristic of a particular place or time, or more general referring to a whole period ([1969] 1997: 7). This is why Foucault made a distinction between different historical periods he named *epistemes*, which form particular discursive assemblages that divide statements and discourses between those that can be accepted as scientific and those that cannot ([1977] 1980: 197).

To conclude, power and knowledge exist in multiplicity in each *episteme*. As Foucault explained, one can identify in a society several 'subjugated' knowledges that have been buried, disguised and disqualified as inadequate, and which can be revealed by criticism ([1976] 1980: 81-2), which exist in a relationship of permanent provocation and struggle with the dominant discourses and knowledges, what he called *agonism* ([1982] 2001a: 342). Similarly, the existence of power and power relations presumes and depends on the existence of plural points of resistance and counter-conducts, which are not exterior to the system of power relations ([1976] 1978: 95; [1977] 1980: 141-2). Particularly, in his research, he was interested in the discontinuities that can be found in the formulations of power/knowledge. To discover a discontinuity is 'discovered' means "to register a problem that needs to be solved" ([1978] 2000: 226) by asking *how* come such a discontinuity exists contrary to the "continuist image that is normally accredited" ([1976] 2001: 114).


## 2.1.2   Government and governmentality

Throughout his work, Foucault applied his 'theory' on power/knowledge in order to illuminate the different discontinuities in the understanding of humans and the ways they are objectified into subjects as already mentioned. Part of this work was his studies on government he offered during his courses at Collège de France. Following his work on power, Foucault dismissed classic political theory because, as Rose and Miller explained, the language of political philosophy cannot provide the tools for the study of the problems of government (2010: 299). Rather, his analytics of government opened up new dimensions in the theory of the state, even though it is better understood as a fragmentary sketch than an elaborate theory on the state (Lemke 2007: 45).

Government here has a similar meaning to power. It is better understood with its sixteenth-century broad meaning that referred to the system by which a thing is governed, which included governing children, souls, communities, families, the sick, up to the state itself: to govern means to "structure the possible field of action of others" ([1982] 2001a: 341). In relation to the state, Foucault was especially interested in what he called the process of 'governmentalisation' of the state, which started in the sixteenth century, and relates to the ways to govern and similarly of how not to be governed (Brass 2000: 315) in the context of the nation-state. For doing that he developed the concept of 'governmentality,' which provides the semantic linking between government and modes of thought (Lemke 2001: 191).

Following the discussion from the previous sub-section, governmentality is the united formulation of power-government and knowledge-mentality, denoting the different mentalities or 'arts' of government, the different rationalities guiding the act of governing. All in all, we can understand governmentality in four ways: (a) as the 'conduct of conduct;' (b) as a form of political analysis; (c) as a genealogical approach to the study of the state, of public policy and its effects; and (d) as the historically specific liberal form of power (cf. Walters and Haahr 2005b; Bevir 2010: 424; Walters 2012: 11*ff*). Particularly the definition of governmentality as the 'conduct of conduct,' demonstrates how government involves attempts to shape aspects of a person's behaviour according to particular sets of norms and for different ends (Dean, 2010: 18), that is the process of objectifying one as a subject. This has a dual expression: (a) as the act of conducting, i.e. leading the conducts/ behaviours of others and thus objectifying others into subjects [subjectification]; (b) as the act of self-conducting, i.e. the way in which one conducts and leads oneself and thus objectifies themselves or permits the conduct of others on them [subjectivation] (Gordon 1991; Hamann 2009: 41; Sokhi-Bulley 2013: 232). Particularly in the case of the state, the goal is to construct the population in ways that would serve specific political purposes.

To conclude, similar to what was said on power/knowledge, one can find a multiplicity of governmentalities, i.e. counter-conducts and counter-rationalities existing in the same period, which one needs to acknowledge in an analytics of government as they are necessary parts both for the formation and development of the governmentality (Cadman 2010: 540). In his studies, Foucault covered a significant timespan of the European history, from the ancient times up to the present, with particular focus on the developments that took place from the Classical period[7] up to the twentieth century. In these analytics, he discussed a number of governmentalities, which I will discuss later [Chapter 4.1], for the purposes of my analytics of Union citizenship.

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[7] Foucault refers to the Classical period throughout his work. This designates the historical period from 1660 up until the end of the nineteenth century, during which many of the characteristic institutions and structures of the modern world have been born.

## 2.2 Foucault's methods of study

For pursuing his anti-positivist exploration of the ways power/knowledge is expressed, in general and in the case of government, for the objectification of humans as subjects, Foucault used two methods[8] in particular. Initially, he developed the method of 'archaeology,' which allowed him to deal with the practices, institutions and theories on the same level, and look for the underlying knowledges that make them possible ([1966] 1998: 262). This method is linked to Foucault's exploration of knowledges, and the material for such research include everything that one can read, that is the knowledge of all institutions and practices ([1966] 1998: 262), as a way of reconstructing the 'subsoil' of the *episteme*, of the general archive of the historical period ([1966] 1998: 263). In itself, 'archaeology' could not provide for causal explanations, and that is why Foucault later on developed Nietzsche's method of 'genealogy' (cf. Gutting 2005: 45*f*).

Genealogy is a multi-layered conceptual practice comprising many conceptual elements and theoretical and practical gestures. Saar (2002) understood genealogy (a) as a mode of writing history and historical method, (b) as a mode of evaluation and critique, and (c) as a textual practice and specific writing genre based on hyperbole and exaggeration (Saar 2002: 231*f*). Foucault defined genealogy as a "grey, meticulous, and patiently documentary" ([1971] 1998: 369), that, similarly to archaeology, requires patience and depends on a vast accumulation of source material ([1971] 1998: 370). In addition, genealogy as a way of writing history, is based on a form of radical historicism[9] that which highlights: (a) *nominalism* – that any universals or generalised ideas are merely names without any corresponding reality; (b) *contingency* – that events and circumstances are possible, but cannot be predicted with certainty; and (c) *contestability* – that everything can be contested since there is no unified portrayal of it (Bevir 2010: 426*f*).

The object of genealogy is 'events,' i.e. not the significant decisions, treaties, reigns or battles of history, but rather the particular discontinuities and reversals in a power relationship that come out of luck and not destiny[10] ([1971] 1998: 381). With a genealogy, the world is conceived as a profusion of entangled events, the "host of errors and phantasms" ([1971] 1998: 381), and the purpose of the genealogist is to "distinguish among events, to differentiate the networks and

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[8] I refer to methods here rather than methodologies because they serve more like styles and ethos of research rather than clearly defined methodologies. For a very interesting companion to Foucault's work, see Kendall and Wickham (1999). In this textbook/toolkit, the authors explore Foucault's methods and present hands-on ways of applying these methods.

[9] Historicism originally meant "an insistence on 'getting inside' a historical period in order to understand it, by learning the meaning of the language and concepts used in that period" (Allison 2009: 243). The predominant developmental/ progressive historicism of the 19th century saw a sense of grand meaning and a progression in history towards an end – see for instance Hegel and the end of history or Marxism on teleology of communism.

[10] In any case, decisions and treaties can serve as the texts containing the rationalities that indicate the discontinuities and reversals that interest genealogy.

levels to which they belong, and to reconstitute the lines along which they are connected and engender one another" ([1976] 2001a: 116). Thus, mode of writing history, genealogy is perceived as the 'genuine' history[11] ([1971] 1998: 379), which rejects the "metahistorical deployment of ideal significations and indefinite teleologies," and opposes the search of the origin of the event in favour of its descent and lineage, and its emergence, formation and development ([1971] 1998: 370). Also, genealogy serves as a mode of evaluation and critique, as it helps denaturalise beliefs, actions and practises that are taken for granted and conceived as natural (Bevir 2010: 429). Genealogy serves as a 'diagnostic' of the present, as a history of the present rules, practices and institutions that objectify humans as subjects, and also as a refusal to read the past in terms of the present (Gutting 2005: 50; Dean 2010: 3).

## 2.3    A critical research design

It would be interesting to see what a research design for the EU should include, based on Foucault's theoretical work on power and government and his methods. A disclaimer should be made from the beginning. As aforementioned many times, Foucault never provided clear-cut theories. So, a Foucauldian analytics of government cannot compete with the theories of the state given by Marxists or the liberals (Valverde 2007: 177). The same applies for the EU. A Foucauldian research design would not compete with the fully-fledged theories of European integration or negate the 'truths' they provide. Also, it has been argued that the concept 'governmentality' cannot explain events in all societies, given the fact that different social bases and levels of development exist and that the different techniques of governmentality cannot be applied uniformly (Joseph 2010: 240*f*). What is more, studies on governmentality have been mainly focused at the domestic level (Walters and Haahr 2005a), and since Foucault's analysis lacks theoretical resources, research should be enriched by complementary theories[12] (Saar 2002: 237). In contrast, Rose et al. claimed that the analytical tools in governmentality studies are flexible and open-ended, and what counts here is the *ethos* of the investigation, the way of asking questions, rather than the methodology (2006: 101). What is more, Foucault's work met a great success in the    English-speaking    world    with    the    development    of    the    so-called

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[11] Merlingen explained that a foucauldian research could be approached through a combination of discourse analysis and narrative process tracing. The latter can help understand genealogy in conventional terms. Contrary to the conventional process-tracing that is interested in tracing the links between possible causes and observed outcomes (George and Bennett 2005: 6), as a way for the researcher to detect possible explanations for the outcome variable (George and Bennett 2005: 158), narrative process-tracing is interested in elaborating stories by connecting events in a meaningful way, thus demonstrating how phenomena are linked without providing "law-type explanations" (Merlingen 2011: 154).

[12] For instance, several scholars called for an exploration of the links between Foucault's governmentality and a certain anti-essentialist Marxism (cf. Milchman and Rosenberg 2002; Olssen 2004; Joseph 2010).

governmentality studies (cf. Donzelot and Gordon 2008; Elden 2007; Dean 2010; Walters 2012). I situate my work here in this group of studies.

Taking everything into account, a research design based on Foucault's thoughts should consist of a historical inquiry interested in the emergence, formation and development of the problem of interest, and that would aim to present the multiple mentalities of government related to it, the different expressions of power/knowledge, and the different knowledges and discourses produced explaining the problem at hand. Moreover, a critical analytics would take into consideration Foucault's conceptualisation of power and his prescriptions he presented in several instances in his work on how to study power:

1. There is no place outside the techniques of knowledge and the strategies of power. Thus should focus on the local centres where power/knowledge is expressed, and particularly examine the ways knowledge is produced for the exercise of power ([1976] 1978: 98).

2. Even though the nation-state and its power are not to be negated or minimised ([1976] 1980: 72), the analytics of power should "necessarily extend beyond the limits of the state" ([1976] 2001a: 122*f*), towards other locations where power/knowledge is expressed. As he explained, never before have there existed more centres of power, more attention manifested and verbalised, more circular contacts and linkages, and more sites of expression and spread of power that in the present ([1976] 1978: 49).

3. Instead of searching for who has the power and who is deprived of it, we should examine the patterns of modifications of power/knowledge ([1976] 1978: 99), that is the various transformations of the official governmentalities. Especially here, one should remember that there are no dominant and dominated conducts and discourses, but a multiplicity of them that relate to each other in a relationship defined as *agonism*.

Moreover, a very useful and simplified framework of an analytics of government has been presented in the literature, which is concerned on explaining *how* government is done through the examination of four dimensions (cf. Haahr 2004: 213; Dean 2010: 33):

1. The *forms of visibilities*, i.e. the different ways objects are illuminated and defined through maps, charts, graphs and so on;

2. The *ways of thinking and knowledge*, i.e. the rationality of government, including different forms of thought, knowledge and expertise;

3. The *techniques of practices*, i.e. the *techne* of government that includes the means, mechanisms, procedures and instruments formulated based on the rationality of government, through which authority and rule are accomplished;

4. The *identities of the subjects*, i.e. the individual and collective identities through which government operates.

## 2.4   Concluding remarks

To conclude, a Foucauldian research design is essentially multidimensional. Dean (2004) reminds us of a particular thought-figure Foucault used in his work that could help us understand such an investigation on power and government: the ancient concept *sumbolon*, which indicated the parts of a whole platter [*holon*]. A critical analytics of power and government can be understood as an attempt to reconstruct the whole by putting the different halves back together. A practical example Foucault discussed was the case in Oedipus Rex Tragedy, where each character presented halves of the truth of the Oedipus that had to be placed together for reaching the whole 'truth.' The same applies here: the 'truth' has multiple dimensions that have to be retraced and put together. As Foucault explained, for analysing any particular event, one should retrace the multiplicity of processes consisting of this event by retracing the 'polyhedron' of intelligibility, i.e. the number of faces it consists of, which can ultimately be broken down in further parts (cf. [1978] 2001a: 227).

Going back to the research question(s) that interest me in the present thesis, what I am proposing here is a Foucauldian analytics that would expose the different aspects related to Union citizenship, and help us understand what it is, how it is understood, how it was produced and for what reasons. In the following three chapters, I will try to present my analytics of EU governmentalities and Union citizenship. I divided my work in three parts. I will start with an archaeology of the different knowledges, discourses and models developed in relation to citizenship and for explaining Union citizenship in particular [Chapter 3]. After I discuss their limitations, based on Foucault's critical exploration of the models of power discussed previously, I will move on with a genealogy of Europe, where I will try to recreate a genuine story of the European integration by examining the different mentalities developed for the government of Europe, the struggles between them and the place of Union citizenship thereof [Chapter 4]. Finally, I will conclude my analytics with and exploration of the ways that Union citizenship was developed as a mechanism that enables the 'best' government of Europe possible [Chapter 5].

# 3    An archaeology of citizenship

Following the theoretical and methodological background presented, in this chapter I will discuss the various normative and empirical discourses and models developed in relation to Union citizenship. This first part of my analytics serves as a brief archaeology of the *episteme* surrounding Union citizenship. I start with the classical political reading of citizenship [section 3.1]. Then I explore the different conventional political and legal readings on Union citizenship [section 3.2]. Next I present some critical empirical challenges of Union citizenship [section 3.3]. I conclude the chapter with some thoughts on their relevance and limitations [section 3.4]. The discussion here is made in relation to my research question: are these discourses enough to explain what Union is, how it is produced as such, and the reasons it serves?

## 3.1    Political theory of citizenship

To reiterate a point made in the introduction, citizenship is an important recurring theme in political theory. As such, it establishes the relationship of the individual with the society by defining the political actors and the rules within which they operate (Maas 2008: 587). Citizenship is directly linked to the idea of the nation-state: it is developed "through the linked processes of state-building, the emergence of commercial and industrial society, and nation-making" (Bellamy 2008: 598). The general regime regulating citizenship was first defined in the Treaty of Westphalia in 1648 that established the concept of sovereignty for European nation-states (Rebel 2012: 49), and the modern conceptualisation of citizenship dates back to the historical period initiated with the development of liberalism in the late eighteenth century (Junevicius 2010: 41). Following this, the political theory discourses developed on citizenship are highly normative and their foundations can be traced back to the 'philosophico-judicial' model of power, with Bodin being the first to define the conceptual relationship between 'sovereignty' and 'citizenship' (Rebel 2012: 49).

In general, three normative discourses were developed surrounding what is citizenship: liberalism, communitarianism and republicanism (Rebel 2012: 56), which as expected, provide the 'ideal' objectification of humans as subjects-citizens. In liberalism, citizenship status is defined in in individualistic terms (Yuval-Davis 1997: 69) as the equality of individual rights recognised and protected by the state and law (Kabeer 2012: 220). Here the main distinction made is between citizens and non-citizens, where the former gain the status and rights of citizenship by the virtue of being members of a political community. Following

the explanation the Social contract theorists on the formation of the state[13], we can see the rationality that individuals are endowed with natural rights that derive from the natural law given to humankind "either by God or by nature" (Heywood, 2004: 157), and that the sovereign nation-state has to act as "a neutral arbiter among competing groups and individuals in society" by promoting the 'common good' (Heywood 2005: 78-9) and protecting these rights (Heywood, 2004: 28).

The communitarian model takes the discussion one step further by clarifying the essence of citizenship, which includes (a) liberal civil rights [legal protections provided to individuals and the private sphere under the sovereign], (b) political rights [for citizen's participation in political life], and (c) social rights [with the development of the welfare state] (cf. Evers and Guillemard 2013: 4-5; Heywood 2004: 207-208). All three categories of rights are conceived as interdependent and reinforcing one another. Furthermore, the communitarian model focuses on the social character of citizenship that relies on a sense of solidarity among citizens, and the civic responsibility towards the welfare of the community (Evers and Guillemard 2013: 5). Thus, citizenship is conceived as the status bestowed to all full members of a political community, which implies certain responsibilities in the pursuit of the collective good (Yuval-Davis 1997: 69; Meer 2010: 10; Kabeer 2012: 220). This participatory aspect of citizenship is further promoted with the republican model, which focuses on the active involvement of citizens in the determination, practice and promotion of the common good (Yuval-Davis 1997: 71).

In sum, these three classical models on citizenship present a particular normative subjectification of individuals as 'ideal' citizens, which lies on four elements: (a) *belonging* in a community that creates a common civic consciousness and culture; (b) *equality* in front of the law; (c) collective benefits and *rights* that derive from this status; and (d) the capacity, entitlement and obligation for *participation* in the political, economic and societal processes of the community (Bellamy 2008: 598*ff*; Olsen 2011: 3; Lobeira 2012). Contrasted to these traditional discourses of citizenship as congruence between nation, state and membership rights, Union citizenship presents a theoretical challenge (Olsen 2011).

## 3.2    Politics and law of Union citizenship

First of all, questions have been raised about Union citizenship's legal status, and particularly whether it can be called citizenship in the international legal sense of the concept or not (Maas 2008: 585). As stated above, citizenship was initially linked to the system of sovereign nation-states created with Westphalia. What is more, the right of a nation-state to "determine under its own law who are its

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[13] See previously footnote 6.

nationals" in accordance with the "international conventions, international custom, and the principles of law regarding nationality and citizenship" was found with 1930 Hague Convention[14]. In this sense, since the EU is not a nation-state, it should not have the right to determine its own citizens. Actually this discourse was promoted in the aftermath of the initial Danish 'no' to the ToM referendum, which forced the European Council to underline the fact that Union citizenship was not designed to replace the national citizenship (Shaw 2010: 20; Olsen 2011: 5). This explains why the original formulation of Union citizenship is clearly dominated by the sovereignty discourse, with access to Union citizenship being linked to the 'nationality principle,' i.e. it is MS legislation that "settles whether an individual possesses the nationality of that particular state" and the conditions for acquiring and losing of this nationality (Junevicius 2010: 41), based on the principles of *jus sanguinis* [blood], *jus soli* [birth] and *jus domicili* [residence]. That is also why Union citizenship was labelled as 'derivative' in the literature (Olsen 2011: 5).

Moreover, it has been argued that Union citizenship "did not bring rights significantly different to the ones Europeans already enjoyed in their respective countries" and "did not open a window of new opportunities for civic involvement" (Lobeira 2012: 506). Thus, normatively speaking, Bellamy argued that Union citizenship should remain complementary rather than substituting for or undermining the national citizenship (2008: 598). As such, it enables cooperation between MS, "but not in ways that undermine the sense of belonging at the national level" (Bellamy 2008: 603). Similarly, in relation to the three models of citizenship discussed previously, it has been argued that the EU ensures only the liberal aspect [equality and individual rights] while the republican [participatory] and communitarian [solidarity] aspects are ignored (Schall 2012: 127).

Another point of discussion was related the issue of the *demos*, which goes beyond the existence of citizenship, as it is linked with a common identity, a feeling of belonging and democratic legitimacy. This issue was discussed in the case of the EU, and the discourses are contradictory. For instance, some argued an EU-wide *demos* is absent and that this is problematic for the democratic legitimacy and the political integration of the EU (Tatranský 2006: 489; Bellamy 2008: 608). Also, Schall based on evidence from the 2004 Eurobarometer survey maintained that "European nationals fail consistently to identify themselves as citizens of Europe" (2012: 123), while Tatranský argued that the creation of Union citizenship brought about "the enhanced feeling of belonging to Europe [which] strengthens identifications of the Europeans at a sub-national level" (2006: 491) rather than the supranational. Similarly, as for the democratic potential of Union citizenship, based on the decline of the actual feeling of belonging to Europe and of the participation of Europeans in the EP elections, Tatranský argued that "the EU citizenship policies have so far completely failed

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[14] 'Convention on Certain Questions Relating to the Conflict of Nationality Laws – The Hague Convention 12-04-1930'. [Electronic] Available http://www.refworld.org/docid/3ae6b3b00.html. Download date: 14-05-2014.

both to strengthen the legitimation of EU politics, and to create a sense of closer identification of the citizens with Europe" (2006: 502).

In contrast, some scholars warned against the direct transfer of nation-state concepts for the interpretation of EU and Union citizenship, because the classical notion of citizenship is in itself "disputed and carries heavy historical and intellectual baggage" (Wind 2008: 245), and because both the national citizenships and Union citizenship complement each other by creating a composite and multi-faceted concept which links the different levels and different spheres together, in which "individuals claim citizenship rights, carry out citizenship duties and act out citizenship practices" (Shaw 2010: 3). Moreover, as Schall explained, some scholars suggested that the formal legal status of Union citizenship combined with the supremacy of EU law should be enough to ensure a community capable of democracy, while others stated that the common project of democracy is sufficient for building a European *demos* (cf. 2012: 139).

Especially on the *demos* issue, Gabel and Andrerson (2001) demonstrated in their contribution that the EU mass public organises its attitudes in a systematic way within the EU policy space, which would demonstrate the existence of a *demos*. Similarly, Isin and Saward pointed out that "for a European citizenship to exist there does not need to be a corresponding *demos* (or even *demoi*) since it implies and presupposes sovereignty as the foundation of its constitution" (2013: 7). Finally, as for the existence of a European identity, it has been argued that Union citizenship should not be expected to follow the pattern of national identity and that there is clearly a non-emotional identity based on "the shared consciousness of belonging to an economic and political space defined by capitalism, social welfare, liberal democracy, respect for human rights, freedom and the rule of law, prosperity and progress" (Guibernau 2011: 31; 40).

In a similar stance, from a legal point of view the issue is clearer. It suffices to say that, contrary to the aforementioned political normative discourses developed, the EU here is understood as 'citizenship capable polity,' since it displays "the types of constitutional features where one might also expect to find some sort of concept of membership" (Shaw 2010: 2; Ene and Micu 2013: 57). What matters here is black letter law, which can be traced back to the establishment of Union citizenship legal status in ToM, and its subsequent development and expansion in scope and meaning both by the European Court of Justice [hereinafter the Court] case law and most recently with the Treaty of Lisbon [ToL]. As a legal status, Union citizenship forms a tripartite legal relationship between the EU, MS and the European citizens (Ene and Micu 2013: 55), and is also conceived as the driver of the European integration process (cf. Haltern 2004).

Furthermore, contrary to the aforementioned political discussions, which erroneously play out Union citizenship against national citizenship (Rebel 2012: 53), the legal relationship between the national citizenships and Union citizenship is defined as additionality (Ene and Micu 2013: 57), which means that the one

does not replace the other but they co-exist as legal statuses[15]. Also, even though Union citizenship is linked to MS citizenship/ nationality through the 'nationality principle,' by itself it confers to European citizens a bundle of new rights that can be traced in the Treaties and other legal agreements. Finally, this discourse maintains that the MS do not hold the monopoly "regarding the exchange of loyalty for rights with their own citizens" anymore (Wind 2008: 242), since citizenship establishes the direct legal relationship between the EU and MS nationals by empowering them both towards the EU and the national authorities (Ene and Micu 2013: 56).

## 3.3    Critical counter-discourses

What we see in the previous section is a struggle between two different readings of Union citizenship. To further perplex the analysis, some discourses have been presented in relation to the empirical limitations of Union citizenship. These critical counter-discourses are focused particularly on the exclusionary and limited character of citizenship. As mentioned previously, the liberal model introduced a certain difference between citizens and non-citizens. These empirical discourses, deeply related to the 'historico-political' model of power, come to discuss this difference, and especially the exclusionary character of it based on gender, sexuality, class, race, ethnicity and religion. As Meer explained, citizenship is conceived based on the "dialectical tension between notions of inclusion and exclusion," both between citizens and non-citizens and also between different distinctions between citizens (2010: 9). What is more, from this perspective we can understand that "either through sovereign decree or everyday bureaucratic practice, the rights and freedoms commensurate with citizenship can be contingently conferred or removed in different cases," a core aspect of citizenship that is constantly downplayed (Parker and Toke 2013: 361).

For example, a multiculturalist perspective would start from how Union citizenship is supposed to establish a common space with the protection of the freedom of movement and the ban of any discrimination based on nationality, while at the same time permitting MS to place conditions for the exercise of these rights (Parker and Toke 2013: 378). Third country nationals, i.e. both settled populations legally residing in EU territory and clandestine immigrants, are excluded from the benefits of Union citizenship due to the immigration and naturalisation policies and the exclusive status of Union citizenship (Maas 2008: 583), even though a list of rights and duties relevant them is provided through

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[15] Particularly in this point, the legal approach is diligent to explain that there is a terminological different among the various MS statuses and laws between citizenship and nationality (Ene and Micu 2013: 56), which clearly indicates that Union citizenship is a uniting ideal and status. See also European Union Observatory on Democracy: Citizenship or Nationality? [Electronic] available: http://eudo-citizenship.eu/databases/citizenship-glossary/terminology. Accessed 11-05-2014.

Union citizenship (Junevicius 2010: 40). The picture is further complicated, as discrepancies can be identified between third country nationals as well, since bilateral accords between third countries and the EU accords specific rights to some third country nationals [e.g. Turkish citizens], while others lack them thereof (Maas 2008: 589). Last but not least, it is not only third country nationals who are excluded. Parker and Toke, for example, explored the issue of the eviction of Romani people from France, who in any instance are considered Union citizens (2013: 377). In a similar approach, a particular gender equality perspective would focus on how men and women are constructed as differentiated citizens (cf. Meier and Lombardo 2008).

## 3.4    Concluding remarks

In this first part of my analytics on Union citizenship, I tried to explore the different contradicting discourses and models available. This was done mainly in connection to my research question. What can one learn from all these discourses on Union citizenship? Do they provide answers for my research question? As expected from the discussion in the previous chapter, these discourses and models on Union citizenship contradict and oppose each other. But each one of them serves as a *sumbolon*, bringing along one part of the 'truth,' and that is why they are important for my critical analytics. What one learns here is that the modern conceptualisation of citizenship came into existence during the developments of Westphalia and the promotion of liberalism, i.e. from the seventeenth up to the nineteenth century. This status is directly linked to the sovereignty discourse discussed in the previous chapter, and it is connected with particular rights and the ideal of equality. Other features of the 'ideal' status of citizenship include participation, activity, empowerment and identity. What is more, these different discourses can be retraced back to the two models on power Foucault discussed and challenged.

Indeed, these conventional discourses explain what Union citizenship is and ought to be. But the explanations given are limited in scope and lie on some taken-for-granted assumptions. First, citizenship as a status is approached as a pre-given entity. For instance, the political approach traces the origins of the modern citizenship back to a particular historical period without further exploring it. Also, the legal perspective discussed here traces the origins of Union citizenship in ToM, without explaining what happened before ToM and also why it took so many decades to formulate Union citizenship. What is more, all these discourses do not escape the sovereign-centric discourse of power, delimiting, therefore, the understanding of Union citizenship in relation to the nation-state. Finally, the critical counter-discourses on citizenship, even though they expose a fundamental characteristic of citizenship, their account evades the productive aspects citizenship can have. A critical analytics of Union citizenship should take them all these discourses into consideration, but needs to move beyond their limited scope. This is what I will do in the following chapters.

# 4 EU's liberal governmentalities

In the previous chapter, I presented the different contradicting discourses and knowledges surrounding Union citizenship. As discussed by the end of the chapter, these discourses indeed present an explanation of what Union citizenship and its central features are. In Foucauldian terms, these discourses should be treated as *sumbola* containing aspects of the 'truth,' which my analytics sets to recreate. In this second part, I will move on by presenting a genealogy of Europe, a history of European integration from Foucauldian standpoint. I will particularly focus on the various dominant mentalities of government expressed by different actors from the beginning up until the present, and also try to clarify the relation of these rationalities with citizenship. Following the presuppositions of a critical Foucauldian research design, power/knowledge should not be minimised only at the domestic level. As one can see in the rest of the chapter, particular individuals and institutions other than state apparatuses had an important role in the European project.

I will the start the discussion by exploring the crucial historical moment when modern citizenship was first developed, as discussed in the previous chapter, through a Foucauldian reading of the dominant governmentalities developed then [section 4.1]. Then I will present the process of the 'governmentalisation' of Europe from its initial steps [section 4.2], through the major transformations with Treaty of Rome [ToR] and ToM [section 4.3], up to the 2000s 'European governance' transformations [section 4.4].

## 4.1 'Governmentalisation' of the state

The classical political study of citizenship, as discussed previously [Chapter 3.1], explained that the modern conceptualisation of citizenship was formulated in the period following the Peace of Westphalia and the rise of liberalism. As mentioned already [Chapter 2.1.2], in his studies of the different governmentalities, Foucault was particularly interested in the developments that took place from the late seventeenth century up until the early twentieth century. During this time many of the characteristic institutions and structures of the modern world have been born, particularly through a process Foucault called the 'governmentalisation' of the state. An exploration of his thoughts on the dominant governmentalities related to the creation of citizenship would help us retrace aspects of these mentalities later on in the case of the EU.

The Peace of Westphalia in 1648, which established the modern system of European sovereign nation-states, and the process of the 'governmentalisation' of

the state in the eighteenth century marked a break with two dominant rationalities of the past: (a) the Christendom discourse expressed in the Augustinian *City of God*, and (b) the rationality of the sovereign Prince expressed in treaties such as Machiavelli's *The Prince* ([1977] 2001: 201; 204). It introduced a particular rationality of the state [*raison d'état*], a discourse surrounding the 'national interests,' concerned with the state, its nature, its rationality, its preservation, expansion and felicity ([1982] 2001a: 406*f*). In any case, the Westphalian rationality presented a reformulation of the rationality of the sovereign Prince, but now power was directed from the preservation of sovereignty *per se* to the exercise of sovereignty for the government of humans ([1977] 1997: 68). The priority was to find the ways to strengthen the state and its power as a response to the problem of the population (Rose et al. 2006: 84), which as an entity was constructed in the mid-eighteenth century based on the idea that humans form some kind of a natural collective of living beings.

Externally the Westphalian system was expressed through a diplomatico-military technology, which consisted of ensuring, securing and developing the forces of the nation-state through a system of alliances/ treaties with other nation-states and the creation of an army ([1977] 1997: 69). Internally, we can see the development of the 'police' as the set of the means necessary for making the forces of the state increase from within, which was based on certain reformulations of past expressions of power/knowledge. The first was the secularization of the Christian pastoral power, which introduced the notion of 'care' into government (cf. Dean 2010: 90*ff*). The central idea of the pastoral rationality was to watch over the 'flock' on a daily basis for ensuring its salvation ([1977] 1997: 68). As such, it was introduced in the West with Christianity, and the goal of the 'government of souls' was to reassure individual salvation in the afterlife ([1982] 2001a: 333). And this was achieved through confession and other techniques of government[16], which aimed to produce a certain knowledge/ truth of the individual, i.e. of what is inside people's minds, their souls and innermost secrets ([1982] 2001a: 333).

With the gradual decline of the ecclesiastical power, after the Reformation and Counter-reformation movements, this pastoral rationality was secularised, spreading and multiplying outside the Church both as an institution and as a function ([1977] 1997: 68; [1982] 2001a: 333). The pastoral power of the nation-state continued to aim for the salvation of the population, but now this was defined in 'worldly' terms as health, welfare, standard of living, security, and protection against accidents ([1982] 2001a: 334). Furthermore, a sort of 'social'

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[16] Foucault identified in his work on governmentalities various 'technologies of power', which have their own history, transformation and transpositions, their functions and effects, and their own archaeology and genealogy ([1977] 1980: 135). As a reminder, this is one of the four dimensions presented in the framework for an analytics of power and government [Chapter 2.3]. As Dean explained, these techniques and technologies of power and government include the diverse and heterogeneous means, mechanisms and instruments that emphasise the practical features of government, including forms of notation, ways of collecting information, forms of architecture and division of space, calculation, training and so on (2010: 269). They are precisely to be found in the various formulations of power/knowledge, and demonstrate how power is to be exercised through and with the aid of knowledge.

was formulated, since the exercise of pastoral power was achieved not only by state apparatuses but also through private ventures, welfare societies, benefactors and philanthropists, and the family ([1982] 2001a: 334).

The second reformulation was that of biopower, i.e. the power of the Prince over the life and death of their subject, which can be traced back to the Roman *patria potestas* concept of the father having power over the life and death of his children and slaves ([1976] 1984: 258). With the secularization of pastoral power and the introduction of the need to 'care' for the population, this right was transformed as a power to foster life or disallow it to the point of death ([1976] 1984: 261). This biopower is expressed through biopolitics that are focused on the mechanics of life, i.e. the propagation of life, births and mortality, the level of health, life expectancy and longevity, and all the conditions that can cause these to vary ([1976] 1984: 262). This was achieved through a system of administration, control and direction of humans developed, that would enable the nation-state to deal with problems such as demography, public health, hygiene, housing conditions, and so on ([1976] 2001a: 125).

These transformations in power/knowledge found expression in the apparatus[17] of the 'police.' One should not confuse 'police' with the modern use of the term. As a scientific discourse and practice, the 'police' was developed as a 'theory and analysis of everything' that had to do with increasing the power of the state to perform its new pastoral and biopolitical roles, to obtain the welfare of its subjects, maintain order and discipline, and govern people as individuals ([1977] 1997: 70; [1982] 2001a: 410). The welfare of the population was perceived in the Westphalian system as an element of the strength of the nation-state, an internal requirement for its survival and development ([1982] 2001a: 414).

Liberalism was developed in the eighteenth and nineteenth century along with this gradual 'governmentalisation' as a counter-rationality that sought to challenge the 'reason of the state' and the 'police' rationality, and to establish the norms of the 'good' government (Dean 2010: 133; 144). Foucault approached liberalism, not as an ideology, but as an alternative governmentality that which obeys to the "internal rule of maximum economy" ([1978] 1997: 73-74). Contrary to the 'police' rationality that "one is not paying enough attention, too many things escape one's control, too many areas lack regulation and supervision" ([1978] 1997: 74), liberalism reasons that "one always governs too much" and that there are other better/less costly means of achieving the same effects ([1978] 1997: 74).

Most importantly, liberalism has internal varieties, ranging from the more classical liberalist practices, the Keynesian welfarism, and the neoliberal varieties. Foucault in his courses at Collège de France, was particularly interested in two forms of neoliberalism, the German post-war ordoliberalism and the American liberalism of the Chicago School that built on ordoliberalism while taking a more

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[17] Foucault in his governmentality studies discussed also particular figures of political technologies, which he called *dispositifs* or apparatuses. An apparatus is a "heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements" ([1977] 1980: 194).

radical form (Lemke 2001: 192). A central issue for both of them is the problem of welfarism, which was presented in the Keynesian rationality, as an expression of pastoralism, sustaining the idea of a big state providing goods and services to the population as a way of ensuring social well-being (cf. Larner 2000: 5). Both formulations of neoliberalism rejected the rationality of such 'excessive' government as irrational, and saw social/ welfare governments as generating government overload, fiscal crisis, dependency and rigidity (Rose et al. 2009: 91). Also, both assumed and essentialised the importance of the market, even though they have foundational differences on how market's operation is to be secured and realised (Dean 2010: 187), and also on how they conceptualise the market and society and the political solutions they provide (Lemke 2001: 197).

Ordoliberalism promotes an organisation of the market economy within an institutional and juridical framework that offers the guarantees and limitations of the law and ensures that the freedom of economy will not create any social distortions ([1978] 1997: 78). They support the idea of 'social market economy' based on a clear distinction between the economic and the social domains, and the constant support of the market through political regulations and social interventions for housing, unemployment, healthcare and so on (Lemke 2001: 197). This approach lies on ordoliberalism's conceptualisation of the market as a constructed game of competitive freedom, which is kept alive precisely through the active interventions of the liberal state and the organisation of a coherent public institutional and legal framework (Lemke 2001: 193; Dean 2010: 184). A self-regulating market is seen as a deeply flawed and dangerous idea (Biebricher 2011: 173). Finally, this rationality presumes the necessity for social policy, which instead of being exercised in a negative compensatory function, that is to lessen the anti-social consequences of the free market competition, it has to block the anti-competitive mechanisms which society generates, through the universalization of the entrepreneurial form and the redefinition of law (Lemke 2001: 195).

American neoliberalism is a more radical version of neoliberalism. In cites the dangers of economic interventionism, but rejects the social market economy of ordoliberalism by extending the market rationality to areas that are not primarily economic, such as family, birth control, delinquency, penal policy and so on ([1978] 1997: 79). This extension cancels the distinctions developed with the 'governmentalisation' of the state between the economy and the social sphere as the latter is now redefined as a form of the former (Lemke 2001: 197). Also, American neoliberalism opposed any kind of state interventionism and criticised in the name of economic liberty "the uncontrolled growth of bureaucratic apparatuses and the threat to individual rights" (Lemke 2001: 197). The desirable kind of freedom now is represented with the absence of state interference (Hindess 2001: 97); put differently, American neoliberalism initiated a process of 'destatification' (Joseph 2009: 417).

In any case, these neoliberal variants of governmentality operated for the objectification of the population as 'ideal' subjects. Extending the classical individualist conceptualisation of citizenship based on individual rights, as discussed previously [Chapter 3.1], these neoliberal rationalities promoted the

importance of personal conduct in the act of government, i.e. the active and participatory aspect of citizenship. The population is now subjectificated as naturally endowed with the capacity of autonomous action and as rational decision-makers (Hindess 2001: 100; Rose et al. 2006: 84; Cadman 2010: 546). What distinguishes (neo)liberalism from other formulations of power/knowledge is that government here is precisely achieved through the idea of free conduct, self-awareness and self-limitation (Joseph 2009: 416), as individuals are encouraged to take charge of their own well-being, to make rational decisions, to avoid social problems such as unemployment and poverty, and to become more active and responsible (Joseph 2010: 227*f*).

As Foucault explained, this perception is established by law, an important aspect for liberalism, as it appeared that "regulation through the juridical form constituted a far more effective tool than the wisdom or moderation of the governors" ([1978] 1997: 76). Two features are identified in particular: the development of the rule of law and the discourse of civil and human rights, i.e. the 'rights of the governed' (Dean 2010: 143), and the organisation of a 'representative' parliamentary system, considered to be the most effective system of government since they achieve the limitation and control of the participation of the governed in the operation of the government through keeping the governed divided and away from their governors (Dean 2010: 144). The 'best' government possible is the one that achieves compatibility between citizens' rights and liberties and the representative institutions allowing the aggregation of the citizens' diverse interests (Dean 2010: 144*f*). All in all, this reference to democracy and rule of law must not be taken as an absolute. As Foucault explained, "the democracies of the state of right were not necessarily liberal, nor was liberalism necessarily democratic or devoted to the forms of law" ([1978] 1997: 77). The liberal government of the population, as will be exemplified later on in the case of the EU lies on several authoritarian features as well.

To conclude, the neoliberal point of reference is now *homo œconomicus*. In this formulation, the state has to step back and encourage its citizens to become more actively involved in their government and more responsible for their own decisions. This is done through the employment of particular 'technologies of government' that seek to improve or deploy the possibilities of the agency of the subjects of government, as a means for their government. Dean identifies two broad types, the technologies of agency and performance (2010: 196). The first seek to enhance and improve the subjects' capacities for participation, agreement and action while the second seek to make these capacities calculable and comparable so that they might be optimised[18] (Dean 2010: 202). As will be

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[18] In order to explain how these technologies are applied in practice, Dean presents the example of how the unemployed individual is governed upon their entrance into contract with the government agency – the state or otherwise – which promises access to benefits and services. The government agency applies the technologies of performance as they demand from the unemployed individual to 'perform' their conduct on the freedom given to them in a certain way, as active job seekers. As Dean puts it, "the state is constituted by a promise: 'we will assist you to practise your freedom, as long as you practise it our way'" (2010: 188). In the same example, the technologies of agency – also called technologies of citizenship – comprise of a multiplicity of techniques of

demonstrated in the following sections, these rationalities surrounding government and citizenship can be retraced in the EU governmental systems as well.

## 4.2  Monnet and high modernism

The expectation would be that the aforementioned governmentalities find expression in the case of Europe as well. The idea of the 'governmentalisation' of Europe was developed at the same historical time of the 'governmentalisation' of the state, as independent proposals for a 'united Europe' first emerged by the end of the seventeenth century (Chalmers et al. 2010: 7). But this rationality would take concrete formulation only in the early twentieth century. The end of First World War came with Coudenhove-Kalergi establishing the pan-European movement, which enjoyed considerable support amongst European intellectuals and politicians (Chalmers et al. 2010: 7). In 1929, the French foreign minister Briand submitted a memorandum for the establishment of a European Federal Union that would better govern Europe by promoting the security and by protecting sovereignty of the nation-states (Chalmers et al. 2010: 8). The catastrophic aftermath of the Second World War aroused greater governmental interest in the idea of a united Europe. Following the rationality of Westphalia, which was expressed also by Briand, the idea of the united Europe took the character of security enforcement, with the establishment of the Western European Union in 1948 and the European Coal and Steel Community [ECSC] in 1950.

Internally this rationality took a particular high modernist character, under the influence of the French diplomat Jean Monnet who is regarded as the chief architect of the modern united Europe. His rationality though did not 'win' the argument without challenge. As stated, there was "no sudden conversion of European elites to Jean Monnet's plans," since European leaders were torn between "competing visions of Europe's future, each reflecting a particular institutional model" (Dehousse and Magnette 2012: 22). But in any case, Schuman Declaration of May 1950 and the subsequent signing of the Treaty of Paris forming ECSC marked a particular victory of Monnet's rationality. Monnet's plan for European integration was clearly connected with the ideals of the modern and modernisation, something that the early neofunctionalist theories of European integration tried to demonstrate (Walters and Haahr 2005b: 21*f*).

As an art of government, liberal high modernism came with a particular mentality that promoted the faith in scientific and technical progress, associated with ambitious large-scale projects and the idea that "the state [is] responsible for nothing less than the modernization of society" (Walters and Haahr 2005b: 22).

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self-esteem, empowerment, consultation and negotiation used for the enhancement of the unemployed subject's labour market skills.

The central idea of high modernism is the confidence that scientific and technical knowledge can be applied through a central authority on every field of human activity, with the expansion of production, the rational design of social order and the control over the nature (Walters and Haahr 2005b: 24). Contrary to the previous mentalities proposed for the government of Europe as a geopolitical power system, this approach sought to create Europe as "a space of industrial and social forces that can be calculated, reformed, and modernized" (Walters and Haahr 2005b: 23).

In itself, high modernism brings in mind the eighteenth-century governmentality of the 'police' as described previously: the rationality that one can never govern enough, and thus the government should cover all aspects of life, from the management of buildings to the management of human health and hygiene. Similar to the police, the main carriers of high modernism are the engineers, planners, technocrats, administrators and scientists (Walters and Haahr 2005b: 26). What is more, the architectural design of ECSC resembles the Panopticon apparatus, which as Foucault explained, was first developed by Bentham in the eighteenth century as a response to the problem of the economic and political costs that came along with the exercise of power and surveillance[19] ([1977] 1980: 148; 154). Since the nineteenth century, this governmental apparatus became generalised, with the state resting on "small-scale, regional, dispersed Panoptisisms" ([1976] 1980: 71*f*), which had more to do with the government of the general population and territory, than of criminals and vagabonds.

In Monnet's plan, this Panopticon is formulated as following: the High Authority of ECSC sits at the centre tower overseeing, controlling and regulating integration, and those working in the central tower are as few as possible, according to Monnet's idea of government through teams that are small, flexible and creative organisations (Walters and Haahr 2005b: 30). Moreover, as a response to the problem *how* should the High Authority govern without intervening in the decision-making process (Walters and Haahr 2005b: 30-1), the classical Community method of policy-making was developed, defined roughly in the late 1960s as a strong role delegated to the European Commission for policy design, policy-brokering, policy execution, and managing the interface from 'abroad,' while the Council of Ministers would do the bargaining and package deals based on Commission's plans (Wallace 2012: 91).

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[19] The architecture of the Panopticon lies essentially on a centre and a perimeter ([1977] 1980: 147). At the periphery one can find the cells containing those who are governed, and at the centre one finds a tower with large windows opened towards the perimeter, where the supervisor or overseer stands, with a clear vision of the cells, which are perfectly individualised and constantly visible ([1975] 1995: 200). The Panopticon perfects the exercise of power in several ways. It reduces the number of those who exercise it, while increasing the number of those on whom it is exercised, it can intervene at any moment, which does not happen every time ([1975] 1995: 206). Furthermore, for control and surveillance, it only involves the inspecting gaze, which each individual ends up interiorising to the point that they become their own overseers, exercising surveillance and controlling over and against themselves ([1977] 1980: 155) and others, as a state of conscious and permanent visibility. This assures the automatic functioning of the controlling and normalising power, even when the actual overseer might not be present, at all ([1975] 1995: 201).

To conclude, Monnet's high modernistic plan for Europe did not provide for citizens. There is a particular elitist aspect in such projects, non-excluding the case of Europe. As stated above, the centre of the modernisation universe is a group of people distinguished by its technocratic character, and without any need for democratic legitimacy. Monnet assumed that a 'permissive consensus' existed among the citizens of the nation-states for the European project, and maintained that European integration was not to be achieved through explicitly political approaches, but behind the people's back, as a gradual result of elite negotiations, interest group pressures, far away from the population (Walters and Haahr 2005b: 27). Therefore, this first instance of European government was interested in imagining and governing Europe, not of the European populations. This came with the developments that followed.

## 4.3   Governing through freedom and citizenship

Following Monnet's high modernist aspirations, Europe was initially engineered in a top-down fashion. Liberalism was an important aspect of this governmentality, expressed particularly through the panoptical apparatus. This European government was transformed in several instances through the decades, which can be read as a contingent succession of events. The first came with the foundation of the European Economic Community [EEC] with ToR in 1958, which initiated the common market project. This expanded on the high modernistic aspiration of the past, as ToR can be read as a programmatic reflection of the possibility for a governmentable European market space (Walters and Haahr 2005b: 42). The ordoliberal rationality, as described previously, was an important aspect in the development of the internal market (Chalmers et al. 2010: 677), and particularly the idea that the market as a space can be constructed with the correct regulations from a central authority. Ordoliberalism, of course, should not be confused with the essence or the logic of the European Community, but it can help understand the form of liberalism underlying the ToR development (Walters and Haahr 2005b: 53).

Following this neoliberal rationality, ToR invoked 'freedom' as the means for completing the common market. Freedom here was expressed in negative neoliberal terms as the abolition of any obstacles to the free movement of goods, persons, services and capital. Building on these precepts, even though there is no special provision for citizens in the ToR system, we can now see the first instance of subjectification of the European population as *homines œconomici*, with the establishment of certain rights for the workers, the producers, the farmers and so on. The freedoms provided in ToR are not a universal or abstract right, but "a technology for the achievement of specific governmental objectives, such as stability, development, and rising standards of living" (Walters and Haahr 2005b: 45). All rights given are market-related, including, for example, the right of movement, establishment, equal wage for equal job, and so on. Therefore, the

well-being of people combined with the liberal 'freedom' was formulated based on a certain pastoralism that aims at the achievement of the common market.

To reiterate, no centralised citizenship status or a system of fundamental rights and protection of them were initially established. The dominant governmentality was that expressed through the nation-states, regulating their populations, in a fashion described already in the previous section. For the European level, if any concerns did arise, the MS where required to guarantee the protection of these rights through their national constitutions, and the early case law of the Court reflects exactly this mentality (Chalmers et al. 2010: 232). But a crisis in this model of government came along with the developments of the Community law in the 1960s and the Court's activism. First in *Van Gend en Loos*[20], the Court proposed a certain supranational view of Community law, claiming the legal power and authority in Europe based on the Treaty towards which MS have to adapt as sub-units, and also that the developments with European integration created a political community in Europe for the benefit of its subjects, be they MS, citizens, and so on (Chalmers et al. 2010: 15). This new rationality was reinforced in the consequent *Costa*[21] ruling, in which the Court acting really radically reclaimed Community law's sovereignty[22] and autonomy (Chalmers et al. 2010: 187).

Thus, two conflicting mentalities can be identified here, expressed in the form of a struggle for sovereignty: (a) the classical form of sovereignty of nation-states and (c) the new supremacy rationality of Community law[23]. More importantly, this new rationality created a certain lacuna of protection, and towards the end of the 1960s, the Court acted proactively with *Van Eick*[24] and *Stauder*[25], by recognising a particular obligation on behalf of the Community institutions' staff to observe fundamental principles of law. However, national courts were left with

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[20] Case 26/62 *Van Gend en Loos* v *Nederlandse Administratie der Belastingdienst* [1963] ECR 1.

[21] Case 6/64 *Costa* v *Enel* [1964] ECR 585.

[22] The particular rationality promoted by the Court here can be understood as the adaptation of a certain 'philosophico-juridical' discourse on power-sovereignty. Though, I am not interested in exploring this point any further.

[23] In foucauldian terms, the relation between these two counter rationalities was expressed as a continuous struggles and provocation. This can be demonstrated with the case of Italy. Initially the Italian courts denied the rationality, with the Italian Constitutional Court holding that in the case of a clash between two norms, the one which is later in time should take precedence, which prompted the Court to give its *Costa* ruling. In the 1970s the Italian Constitutional Court modified its position, accepting the primacy of Community law none withstanding the cases of protection of the inalienable human rights promoted and protected by the Italian constitution (Chalmers et al. 2010: 234). See *Frontini* v *Ministero delle Finanze* [1974] 2 CMLR 372. The struggle between the Italian courts and the Court continued until recently. See for instance C-106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* [1978] ECR 629; *SpA Granital v Amministrazione delle Finanze*, Dec 170 of 8 June 1984 (1984); *Spa Fragd v Amministrazione delle Finanze*, Dec 232 of 21 Apr 1989 (1989); *Admenta et alia v Federfarma et alia* [2006] 2 CMLR 47. A similar reaction was made by the German Constitutional Court, which rejected the Court's claim of sovereignty up until 1986, when with *Solange* II case [*Wünsche Handelsgesellschaft*, BVerfG decision of 22 October 1986 [1987] 225], claimed that the protection of fundamental rights granted at the European level reached a similar level to the protection granted by the German Basic Law, and thus *as long as* that was the case, the German Constitutional Court would have no restrictions to accept Community law primacy (cf. Chalmers et al. 2010: 235).

[24] Case 35/67 *Van Eick* v *Commission* [1968] ECR 329.

[25] Case 29/69 *Stauder* v *City of Ulm* [1969] ECR 419.

the choice of refusing to apply Community law and to neglect fundamental liberties enshrined in their national constitutions (Chalmers et al. 2010: 233). *Internationale Handelsgesellschaft*[26] was the first time when fundamental rights became an integral part of the Community law to be enforced (Chalmers et al. 2010: 234). This was a turning point that led to the expansion of the 'rights of the governed' from market-related to more universal.

From 1970s onwards, following the *Nold*[27] ruling, we see the Court starting to recognise human rights for the European subjects based on international human rights treaties[28]. Partly the result of a particular need developed in the aftermath of ToR, this new rationality came to challenge completely the elitist nature of high modernism, and reinforce the liberal mentality established with ToR on governing through freedom. The next crucial event took place with 1992 ToM, which created the EU, promoted the completion of the common market, and established the present European governmental regime[29]. Above I referred to ordoliberalism as the rationality behind ToR and the common market project. Nevertheless, other rationalities and identities are at word as well (Walters and Haahr 2005b: 63), thus it is more efficient to refer to the European governmentality as 'advanced liberalism'[30]. For instance, the 1980s saw a general reintroduction of the American neoliberal rationality, which found expression in the European governmental regime as well, and as it has been argued, the adoption of the neoliberal agenda in the 1980s was what gave the opportunity for the Community to formulate and envision a certain citizenship idea for the EU, based in the neoliberal ideals of the individualised market and consumer citizenship (Hansen 2000: 141)

Of course, as an idea, Union citizenship existed in the official discourse since the early 1970s (Hansen 2000: 142; Tatranský 2006: 502), apparently developed in parallel with the Court's new rationality of sovereignty and rights. So, one question begging is why this was achieved now? Various aspects can be highlighted. Up until the end of the 1980s, the European integration project was immobilized by an economic crisis, and the previous set of rules made decision-making almost impossible, a time remembered as Eurosclerosis (Peterson and Shackleton 2012: 2). Also, the lack of democratic legitimacy imposed a heavy burden on the common market project. ToM with the establishment of EU in general, and the development of a fuller conception of Union citizenship, in

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[26] Case 11/70 *Internationale Handelsgesellschaft* v *Einfuhr- und Vorratstelle für Getreide und Futtermittel* [1970] ECR 112.

[27] Case 4/73 *Nold* v *Commission* [1974] ECR 491.

[28] For a list of cases in which the Court identified international treaties as sources of fundamental rights see Chalmers et al. 2010: 235*f*, footnotes 15-44.

[29] As we will see later on, this governmentality was reformed in the 2000s. However, I make a totalising claim here, since officially up until now the EU system is based on the reforms of the Treaty of the EU [hereinafter TEU] first established with ToM.

[30] This distinction was made, among others, by Dean who understands 'advanced liberalism' as "the broader realm of the various assemblages of rationalities, technologies and agencies that constitute the characteristic ways of governing in contemporary liberal democracies" (2010: 176), which indicates the coexistence of a multiplicity of governmentalities and a variety of liberalisms.

particular, came as a solution to this crisis[31]. Furthermore, this development can be understood as a means towards the norm of 'good' government, since Union citizenship could help better govern Europe, through various technologies of government Here we can identify one particular technology of government, that of differentiation (Walters and Haahr 2005b: 73).

This technology of differentiation is a central aspect of liberal rationality of government and the liberal conceptualisation of citizenship. As Hindess (2000; 2001) explained, citizenship is used for the management of the global population by dividing it into subpopulations consisting of citizens. This is based on (a) the individual freedom of some parts of the population and (b) the individual unfreedom of others that should be restrained and excluded as an important step for the maintenance and defence of individual liberties (Hindess 2001: 94). The same applies for Union citizenship as well. ToM established the EU above all as a political project, and Union citizenship as a category was needed first and foremost for the differentiation between the Union citizens that are to be governed through freedom, and those to be governed by unfreedom. Based on this, it is made possible to differentiate between three categories of individuals: (a) the citizens holding full formal citizenship, (b) the denizens residing in one country, but holding a bounded citizenship, (c) the aliens who hold full citizenship in other nation-states, and (d) the illegals[32] (cf. van Houdt 2008: 8).

Another liberal principle of government developed parallel to citizenship was that of the fundamental rights promoted by the Court. Two attempts made for the development of this principle, first in 1979 with Commission's proposal for accession to the European Convention of Human Rights [hereinafter ECHR] and second in 1989 with a comprehensive catalogue of fundamental rights formulated by the European Parliament, failed (Krüger 2004: xvii), because, as I would personally argue, an important vehicle for these rights, i.e. Union citizenship, was missing. Nonetheless, after its introduction with ToM, we see a very hesitant and gradual development towards this direction. In several cases, the Court had a chance to reclaim the identity of Union citizenship as such a vehicle of fundamental rights, but they initially avoided it[33]. It was not until the end of the 1990s when the Court indicated in *Martínez Sala*[34] how powerful Union citizenship might be, as it can provide for a basis for bringing a person within the

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[31] One should keep in mind how classical political theory connects citizenship with democratic legitimacy.

[32] The category of denizens could include Roma people in the EU, and the category of aliens includes the non-European citizens migrating to Europe. This technology of differentiation brings also in mind the critical discourses developed challenging Union citizens as exclusionary category [see Chapter 3.3].

[33] See for instance Case C-168/91 *Konstantinidis* v *Stadt Altensteig, Standesamt und Landratsamt Calw – Ordnungsamt* [1993] ECR I-1191. This case serves as a paradigmatic case because, even though the Advocate-General to the case saw a perfect opportunity for Konstantinidis to reclaim his status as Union citizens, and thus invoke the protection against the violation of his fundamental rights, the Court decided to rule not on the basis of Union citizenship and human rights, but based on the economic freedom of establishment and non-discrimination (Haltern 2004: 190*f*).

[34] Case C-85/96 *Martínez Sala* v *Freistaat Bayern* [1998] ECR I-2691. The fundamental position of Union citizenship was expanded fully with Case C-184/99 *Rudy Grzelczyk* v *Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193.

material scope of the Treaties, and entitles them to equality of treatment (White 2004: 313-4). This liberal mentality of government through freedom and rights took a complete expression in the 'European governance' developed in the 2000s.

## 4.4    'European governance'

The European governmental regime took another turn in the early 2000s, as the result of a crisis of legitimacy initiated with the negative referenda in Denmark, Ireland and Sweden, and the resignation of Santer's Commission in 1999 following an intense criticism from the EP. The Prodi Commission took up the task to reform the European governmental system. Three developments can be identified in particular: (a) the introduction of 'European governance' regime, (b) the adoption of the Open Method of Coordination [OMC] as a break from the past high modernist Community method, and (c) the expansion of Union citizenship with the development of the fundamental rights concept.

The 2000 Green Paper for the future of parliamentary democracy and the 2001 White Paper on Governance were the expression of a new rationality well prepared in the previous decade, which proclaimed the reform of European governmentality based on the concept of 'governance.' As a term, 'governance' was predominantly used up until the seventeenth century, when it was replaced by 'government.' It reappeared in the 1990s among international organisations and social scientists, as a particular form of coordination between organisations based on networks and partnerships rather than hierarchies (Shore 2011: 294). In the case of the EU, the concept 'government' was used in a period of general optimism about the European integration project, with the European Commission being understood as the kernel of a 'European government' (Shore 2011: 290). With the crisis of the late 1990s, this new discourse of 'governance' focusing on decentralisation, subsidiarity and voluntary action, appealed to EU policy makers, with many believing that it offers a better paradigm for understanding how the EU works (Shore 2011: 295).

The new governmentality of 'European governance' aimed at making the decision-making processes more transparent and less top-down, more inclusive and accountable, and also the EU policies more effective (Shore 2011: 291). An important aspect of the success of 'European governance' mentality is that served as a self-fulfilling prophesy. What I mean is that, on the one hand, the Commission came to define it and gradually established it through techniques and practices needed for its exercise, and, on the other hand, it achieved making it the acceptable explanation of how the EU works. The latter can be found in the growing literature on 'multi-level governance,' which theorises EU governance as non-hierarchical, both formal and informal, based on deliberation, dialogue and

problems solving, with policy-making through networks and coalitions, and proves through research that this is 'truly' how the EU functions[35].

In any case, 'European governance' is the expansion of the advanced liberal government of Europe established first with ToR and promoted with ToM. What changed now is that the EU breaks with the particular pastoral and police rationalities of high modernism, and enhances fully the liberal rationality of 'good government' discussed previously, summarised as "govern as less as possible and let the subjects govern themselves." The agent of government now is predominantly the EU level, and particularly the Commission, the Court and the different agencies established under the Commission, while the subjects of government are both the MS and the Union citizens. The new rationality comprises an assemblage "of norms guiding the exercise of Union power," including openness, participation, accountability, effectiveness, coherence, subsidiarity and proportionality (Chalmers et al. 2010: 350). Boiling them down, we can identify three technologies of government: transparison, performance and agency. Each of them is distinct but deeply related to the rest. As Walters and Haahr explained, the EU looked to such technologies as a means for enhancing its democratic profile (2005b: 77).

The technology of transparison has to do with the mode EU should govern. This relates mainly on three principles promoted in the 2001 White Paper on Governance: subsidiarity, proportionality and transparency. The first two are important general principles for EU law, as they find expression in the Treaties and clarify when and how the EU can intervene. Subsidiarity promotes the rationality of self-government, where decisions should be made as local as possible, while proportionality exemplifies the quality of the EU intervention that is how intrusive EU should be in its interventions (Chalmers et al. 2010: 362). The third, the transparency principle, was first discussed in ToM (Walters and Haahr 2005b: 74), and found expression in the 'European governance' regime. Officially, it is centred in the need for accountability (Chalmers et al. 2010: 384), but from a governmentality point of view, it serves to construct a space in Europe where the subjects of government are well-informed, well-established and can participate in the consultation that takes place before any legislative action (cf. Chalmers et al. 2010: 373). Last but not least, the White Paper on European governance calls for a strengthening of involvement, facilitation of the participation of local and regional governments, the civil society and citizens in the decision-making process (Walters and Haahr 2005b: 76). This relates to the other two technologies of government, performance and agency. This is deeply related to Union citizenship and the fundamental rights principle, which were further developed in this particular advanced liberal governmentality.

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[35] See for instance, Jachtenfuchs and Kohler-Kock 2004, Peterson 2004, Jönsson and Strömvik 2005. From a foucauldian perspective, several scholars examined the similarities between governance approach and governmentality, and emphasised the fact that governance is indeed a governmentality, and that Foucauldian analytics of government can clarify how it is used for the government of Europe (cf. Lemke 2007; Merlingen 2011).

## 4.5   Concluding remarks

For clarity, I decided to stop the discussion of how the new 'European governance' mentality is expressed in practice through Union citizenship. I will focus particularly on this point in the next and final part of my analytics. All in all, what I tried to do in this chapter was to take what we learn from the discourses on Union citizenship [Chapter 3] one step further. I first discussed the dominant mentalities of government available in the process related to the 'governmentalisation' of the state, as they are directly linked to the modern formulation of citizenship. Then I moved on with a genealogy of the different liberal governmentalities related to the 'governmentalisation' of Europe, and tried tracing the emergence, formation, and lineage of Union citizenship, and the rationalities it served.

   We learn several things from this genealogy of EU governmentalities. Initially, the elitist mentality of liberal high modernism guiding ECSC excluded citizens from the picture. This rationality was gradually dismissed with the development of EEC and the construction of subjects in market-related terms. At this moment, the national sovereign intergovernmental discourse persisted as the protection of European population was left to MS. However, through the Court's activist reclamation of sovereignty, a new rationality was gradually formulated that had to do with the liberal mentality of governing through freedom and rights. This found clear expression in ToM with the establishment of Union citizenship, a move much needed among others to reverse the period of Eurosclerosis. But still, it took up to the late 1990s and early 2000s, and the formulation of a new governmentality of 'European governance,' for this liberal mentality of governing through freedom and rights to get clear expression.

# 5    Union Citizenship and Rights

In the previous chapter I explored the genealogy of the various governmentalities forming Europe, and their relation with citizenship. I reached the point of the late 1990s and early 2000s with the introduction of 'European governance,' best understood as an attempt to perfect the advanced liberal government of EU. This governmentality finds clear expression in Union citizenship, and the latter becomes a mechanism for governing EU through the subjectification of its subjects. As mentioned already, the new governmentality of 'European governance' precludes a reach out and democratic engagement with the public. This is done through the enhancement of the 'practices of liberty' that both depend on and shape the subjects. For the system to function accordingly, it needs the reconstruction of Union citizens in a suitable way, i.e. a certain subjectification that would help them respond as participators in their government. This was made possible with the development of the fundamental rights discourse and of the EU law defining the citizenship and fundamental rights of the Union subjects, and also through regulatory agencies.

What I expect to find are individuals to be constructed/ normalised, through various technologies of citizenship[36] and performance, as active and conscious citizens able to self-manage themselves and control their own risk (Haahr 2004: 218; Walters and Haahr 2005b: 123; Dean 2010: 196). This is what I will try to demonstrate in this third part of my analytics. Following the Foucauldian assumptions presented in Chapter 2 on the subjectification and subjectivation of individuals, the discussion will be done in two parts. First, I will explore how the EU constructs the identity of 'idea' Union citizenship through law [section 5.2] and how this identity is enacted in practice through the different agencies developed under the Commission [section 5.3]. Then I will examine the potentialities available for individuals to subjectivate themselves differently and even express political dissent towards the way they are governed [section 5.4]. The chapter will conclude with recent developments that potentially could serve as a transformation in European governmentality in the future [section 5.5].

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[36] Cruikshank used this particular formulation to describe technologies of agency in the case of citizens. These consist of multiple techniques "employed for the purpose of empowerment and involvement of specific groups or individuals in consultation and negotiation" (Haahr 2004: 217).

# 5.1 Foucauldian perspectives on law

In this point, before moving on with the actual discussion, I need to make some clarifications on the position of law in an analytics of power and government. As stated above, I want to explore how Union citizens are defined through law, as part of the ways the EU subjectificates/ normalises them. Since several misunderstandings can be found in the literature concerning Foucault's position towards law (cf. Rose and Valverde 1998: 542), the question begging is methodological at its core: can I use the law in order to see how the different technologies of government apply in reality? Or as Rose and Valverde asked, have the instruments of law become integrated into technologies for the government of life (1998: 541)? The answer comes with an explanation of *how* to approach law.

Previously [Chapter 3.2], when I discussed the different discourses of Union citizenship, I challenged the legal discourses on Union citizenship because they are referring to a philosophico-juridical discourse of power, which limits the analysis *per se*. Most particularly, such perspectives see law as black letters, as a given fact. From a Foucauldian standpoint, though, law is best understood as the result of the struggle between 'subjugated knowledges.' Rules, norms and laws developed are not the outcome of a well-calculated process, but the reflection of a victorious discourse over others. As Foucault put it, the successes of history belong to those who are capable of bending these rules, norms and laws, invert their meaning and redirect them against those who had initially imposed them ([1971] 1998: 378). The same applies in EU. As discussed in the previous chapter, the Court came to develop contrary to the initial intergovernmental and high modernist rationalities, a mentality of EU law sovereignty and a liberal rationality of governing the population through rights, which initially found reactions among MS, and had to win the 'struggle' and become an acceptable rationality.

What is more, under liberalism law finds a new expression, no longer as an instrument of sovereignty but as a component of the liberal technology of government (Dean 2010: 133). I have already discussed the core essence of liberalism that governs through 'freedom,' and this freedom is established through law. However, as mentioned earlier, the rule of law and representative democracy were never liberal neither by virtue nor by nature (Dean 2010: 142*f*), even though they have been used serving the rationality of liberalism. After all, with the technology of differentiation in liberalism the government of the population as citizens lies on the authoritative government of the non-citizens as unfree. Law in liberalism becomes an instrument for the exercise of power, linked to a complex assemblage of disciplinary and governmental apparatuses (Dean 2010: 140).

Also, contrary to the conventional classical philosophical understanding of law and rights deriving from human nature or God – see, for example, the social contract conceptualisations, law now derives from "the characteristics or attributes of the things, activities, facts or populations to which it is to be applied" (Dean 2010: 142). Following Foucault, rights are models proposed, suggested and imposed on an individual by their culture, society and social group (Sokhi-Bulley

2013: 233), as a means of subjectification. Most importantly, law is understood as a complex and partial instrument of power, which can be found in a number of non-juridical mechanisms as well ([1977] 1980: 141). This complexity refers particularly to "the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms and forms of judgement" (Rose and Valverde 1998: 542).

To sum, a genealogical approach to law should not seek to unify it. The fiction for a 'Law' as a unified phenomenon is the creation of legal textbooks that bring together and rationalise the diversity of legal sites, concepts, criteria of judgment, discourses, objects and objectives (Rose and Valverde 1998: 545). What is needed for an analytics of government based on law is to take an alternative route by examining what law governs, that is how law emerges parallel and as a response to problems/ crisis of government. In particular we should focus on how law is used for subjectifications, normalisations, spatialisations and authorisations (Rose and Valverde 1998: 547). Such an analysis will be attempted in the following section.

## 5.2   Subjectification through freedom/ agency

So how is the government of the population managed through law? As discussed already [Chapter 4.4], the 'European governance' governmentality presupposes a reach out and engagement of the public as active and free participators. The rationality of advanced liberalism is to govern through ways which seek to "elicit agency, enhance performance, celebrate excellence, promote enterprise, foster competition and harness its energies" (Walters and Haahr 2005b: 119), that is through the employment of the technologies of citizenship/ agency and performance. This is done through the mobilisation of the freedoms of its subjects. Thus, what is needed is an advanced formulation of citizenship rights. The past decades served as the basis of this rationality, which could only be fully employed with the 'European governance' regime. The law[37] formed the basis of this rationality.

Starting from the general, in a formulation introduced with the current ToL, Article 2 TEU presents the general values of the EU: respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights, pluralism, non-discrimination, tolerance, justice, solidarity and equality of sexes. This reflects the 'ideal' construction of Europe, as imagined with 'European

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[37] The legal discussion here will be based on the consolidated versions of the Treaties, resulting from the most recent reforms with the Treaty of Lisbon. This should not be considered as an attempt to produce a unified version of law. As will be demonstrated the developments presented here are far from continuous. My argument would be that what is contained in the Treaties now reflects the discourses developed within the 'European governance' governmentality up until the present, but this is not the end product in any way. Whenever an article in the Treaties replaced a previous article, or whenever the reference is made to a previous formulation of the Treaties, this is clarified in the text.

governance.' The Treaties provide for these advanced liberal values. In particular, Article 6 TEU introduced before ToL, sets out the rules governing the Charter of Fundamental Rights developed back in 2000. What is more, Article 9 TEU establishes Union citizenship after repealing Article 8 introduced first with ToM, and Articles 18-25 TEU reiterate the previous formulations on Union citizenship, and the rights to be given as such. Mainly these two references demonstrate how Union citizens are imagined, even though reference to particular rights can be found in other legislative acts and the Court's case law[38].

In any case, by examining what rights are provided for Union citizens in the Treaties and the Charter, we can understand *how* Union citizens are imagined to fit the 'ideal' imaginary of Europe. What we can identify in general are civil rights, rights of defence, economic rights and also the general principles of non-discrimination, legal certainty and proportionality (Chalmers et al. 2010: 229), and also particular exceptions which pose limits to the 'ideal' category of Union citizens. As for the particular rights of Union citizens, these include the right to move and reside throughout the EU [Article 21 TEU] and the right of non-discrimination [Article 18 TEU], rights to engage fully and equally in the common affairs of the political community, expressed through the right to vote, to hold office and to hold office holders accountable [Articles 20, 22, 24 TEU], the right for consular protection [Article 23], and even the right of initiative for inviting the Commission to submit a legislative proposal [Article 11 TEU]. It has been argued that at the heart of Union citizenship is migration, which means that the rights provided to Union citizens are acquired only outside the citizen's state of origin (Guild 2004: 232). Here an important aspect of Union citizenship is brought in the picture: the cross-boundary element. These elements demonstrated, for example, in the free movement of people within the EU[39] and the right to vote and stand as a candidate for the EP and municipal election, the right to consular protection[40] and the right to complaint (cf. Guild 2004: 245). The precondition is for the population is to be economically active or independent (Chalmers et al. 2010: 440) in order to fall into the 'ideal' category of Union citizens and thus

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[38] For instance, Article 19 TEU [ex 13 TEC] allows the Council to regulate unanimously and in special legislative procedure discriminations on grounds of sex, gender, race, ethnic origin, religion or belief, sexual orientation, age and disability – notwithstanding several limitations (cf. Chalmers et al. 2010: 536). Based on this legal basis the EU was able to expand Union citizenship rights with the development of EU opportunities law and the provisions of a certain number of Directives. See for example Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22; Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16; and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L204/23.

[39] The right/ freedom of movement is established further with Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77.

[40] Particularly here, the Decision 95/553/EC on the practical arrangements for implementing Article 23 TEU, thus regulating when assistance, relief, repatriation or financial aid is provided, further limits the scope of the right, as it makes it applicable only in the case when there is no consular representation of a MS. For instance, a citizen in trouble has no right for consular protection from another MS if their state has even one diplomat somewhere in the same country, even kilometres away from them (Chalmers et al. 2010: 483).

reclaim the rights deriving from this status. We can, thus, conclude that the liberal rationality connecting citizenship with the creation of the common market, initiated in the previous periods, is still present within the new governmentality of 'European governance.'

In the case of the Charter, the rights contained are mainly those that the Court recognised in the previous decades based on all various sources (Chalmers et al. 2010: 236). Thus, this document can be read as the victory of the governmentality developed by the Court. Officially the Charter emerged based on two impulses by the end of the 1990s and early 2000s: (a) the desire to give social rights the same status as other rights such as civil liberties – after all the 'European governance' mentality was expressed also through the Lisbon Strategy for social Europe, and (b) the consensus that fundamental rights in EU law should be more visible – part of the technology of transparison discussed previously (cf. Chalmers et al. 2010: 237). It has been argued that the ECHR is already "a Bill of Rights for the whole of Europe," which the Court has already used as a source of law (Krüger 2004: xxi). So the question begging is *what* reasons does a unified Charter serve? The 1999 Cologne European Council decided to elaborate a Charter of fundamental rights that would be "an amalgam of rights," including civil and political rights contained in the ECHR, the constitutional traditions common to the MS, the Union citizenship provisions, the social, economic and cultural rights similar to the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers, and also Union citizens' particular rights (Krüger 2004: xviii; Chalmers et al. 2010: 237). Put simply, the European Council wanted to institutionalise the practice of the Court of the previous decades.

Most importantly, the Charter "considers humans need for a good life" (Chalmers et al. 2010: 239). What we can find in the Charter is *how* the 'ideal' life of the Union citizens should look like. This re-establishes a sort of pastoralism on behalf of the EU, as if they are saying: "we want to take care for your well-being, we are providing you 'good life,' and this is how we define it." Following this thought, it is important to see what is included and what is excluded from the Charter. The Charter contains 54 Articles divided into chapters. The first chapter on 'Dignity' serves as the raison d' être for all human and fundamental rights (cf. Krüger 2004: xvii). The rest of the chapters include provisions on Freedom, Equality, Solidarity, Citizens' Rights, Justice, and also the General Provisions regulating the application of the Charter. The Charter is deeply connected to Union citizenship. As Krüger explains, the protection extends only to those who are Union citizens, which are referred to as 'every person' in general and particular groups in particular (2004: xix). Some of these rights are absolute, but many fall under the exceptions provided in Articles 52-54 of the Charter. Furthermore, the Charter comes with an interpretation clause – the mentality explaining the rights.

As Chalmers et al. explain, the "EU fundamental rights law is to be interpreted according to an autonomous reasoning with the meaning of particular rights determined in the light of broader Union objectives (2010: 241) focused mainly on non-violation of the protection provided by other treaties or national constitutions, on the restriction of judicial creativity, and on the harmonious

interpretation of the rights provided in alignment with other sources of rights (Chalmers et al. 2010: 242-6), and in particular with potential limitations of specific substantive rights[41]. And here lies an important challenge: the Court should be referring to the national constitutional traditions for the interpretation of the rights, but the national constitutional traditions are not codified into a single legal instrument, while the difference that exists in terminology, interpretation and hierarchy of rights and values in particular countries makes the issue even more difficult. Therefore, with the Charter as it is right now, one cannot talk of a baseline of protection (Chalmers et al. 2010: 246). In several cases, the Court surrendered to national principles and rules of law, which subsequently overruled freedoms provided by EU law[42].

Following the advanced liberal mentality of openness and freedom, the Charter was decided to be developed in the method of Convention with the participation of all interested parts, including representatives of MS, the European and the national parliaments, the Commission, the Court, the Council of Europe, and so on. This was called "wise decision" as it ensured constructive collaboration (Krüger 2004: xvii). The text of the Charter was officially proclaimed in the 2000 European Council Nice summit, which served as a "political commitment to a deeper and wider debate on future development of the EU" (de Búrca and Aschenbrenner 2004: 4f). This period saw, also, the initiation of a wider public debate for the Constitutional Treaty for Europe. So, we can understand the development of the Charter as one step towards the constitutionalisation of Europe, the other being the introduction of the 'European governance' governmentality with Commission's White Paper in 2001. However, the openness rationality kept the legal status of the Charter not clearly defined in the beginning, something which also meant that a wider array of rights could have been included as well (Chalmers et al. 2010: 238).

Also, the Charter can be seen as is part of a greater legal pluralism of rights (cf. Chalmers et al. 2010: 228-9). For example, as McGoldrick mentions, up to 1994 only, the UN compilation of International Human Rights Instruments contained 95 instruments, and ever since a great number of instruments have been adopted (McGoldrick 2004: 83). So how is the Charter positioned in relation to the UN context of fundamental rights? In his contribution, McGoldrick examined a series of issues in respect to this relation (cf. 2004: 121). What would be of interest here is to see examples of what rights are included and excluded from the Charter in relation to the once provided from the UN (McGoldrick 2004: 109-119). In several cases rights are provided with no equivalent in the UN context[43],

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[41] For the list of the specific rights to be limited see Peers 2004, pp. 152-4.

[42] See for instance Case C-36/02 *Omega Spielhallen- und Automatensaufstellungs* v *Oberbürgermeinsterin der Bundesstadt Bonn* [2004] ECR I-9609. In this case the Court voidly referred to the right to human dignity preserved by the German Basic Law and ruled against the freedom of the firm *Omega* to sell a laser-gun game. As Chalmers et al. argue, in the Court's ruling, "the substance of its vision on human dignity is completely empty" (2010: 247).

[43] See for instance, Article 3 on the integrity of the person, Article 8 on protection of personal date and Article 25 on the rights of the elderly.

while in others there are no particular articles, for example on the right to democracy and the guarantee of the rights of a minority[44]. Moreover, many key rights in the field of social rights are missing, either not included or linked to the rules laid down by national or EU legislation (Chalmers et al. 2010: 239*f*). In the same respect, there is a peculiar relation of the EU with ECHR. Even though the Charter and the Treaties hold a provision for the former to accede the latter, this did not happen, at least up to the time of writing this sentence. This means that Union citizens have no opportunity of bringing complaints against the EU institutions directly before the European Court of Human Rights (Krüger 2004: xxiii). Thus, the current level of protection demanded of EU actions is lower than that for the MS and that only where the actions are 'manifestly deficient' will a breach be found (Chalmers et al. 2010: 229).

This new governmentality of human rights did not come along without struggles as it faced and faces several problems in its enactment. The initial rationality was to fully enact and make the Charter legally binding with the Constitutional Treaty. But since the latter failed in the 2004, the whole 'European governance' regime had to find other ways to reinforce its mentalities. The Charter was later incorporated in ToL and its equal legal standing with the Treaties was established in Article 6.1 TEU; however there is still national contestation on its applicability. For instance, in the Protocol no. 30 annexed to the Treaties on the application of the Charter to Poland and the UK, it is clearly stated that the Charter does not extend the ability of the Court or any Polish or British court or tribunal to "find that the laws, regulations or administrative provisions, practices or action […] are inconsistent with the fundamental rights, freedoms and principles that [the Charter] reaffirms" [Article 1.1].

To conclude, up until the rejection of the Constitutional Treaty, and mainly after 2004, the Advocate Generals, the General Court and the Court themselves referred to the Charter as an alternative – and not exclusive – source of fundamental rights for Union citizens (Chalmers et al. 2010: 238). In any case, it has been argued that the level of protection offered to the Union citizens-holders of these rights has been unclear (Chalmers et al. 2010: 229), with the rights provided in the Charter becoming more or less just paper rights with no substance (Chalmers et al. 2010: 241). However, as we can see the Charter provides for specific remedies in Articles 8, 17 and 41 in relation to the Union's position towards its citizens, even though the nature of remedies in general is not indicated in the Charter apart from that they have to be 'effective'. But, as Shelton explains, the Court when seeking to repair a damaged cause by the EU, it applies the general principles common to the laws of the MS related to state liability[45] and so on (2004: 360).

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[44] Notwithstanding the provisions of Article 21 protecting membership of a national minority from discrimination and of Article 22 for respect of cultural, religious and linguistic diversity.

[45] For instance, see Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur* v *Germany* and *R* v *Secretary of State for Transport, ex part Factortame (No. 3)* [1996] ECR I-1029, where the Court indicated its approach to remedies due to applicants whose rights have been violated. Particularly one can find the three criteria that must be met for state liability to apply.

## 5.3    Subjectification through performance/ control

Again, the above legal analysis on what is citizenship and rights in the EU, does not present in itself the full picture. The legal subjectification of Union citizens by itself would not have any particular meaning without actual implementation. One such venue of implementation was the European Ombudsman established in 1995. This institution was expected to improve transparency as it "embodies the idea that governmental apparatuses should be subject to a continuous monitoring [and] that administrative practices must be scrutinized by the critical gaze of the public eye so that instances of maladministration can be reproached" (Walters and Haahr 2005b: 76). It also serves as a venue for Union citizens to register and address their complaints can be registered and addressed. What is more, it serves as a mechanism that assists individuals in becoming involved in their government, as conscientious citizens are insisting on their right to be treated correctly by European institutions, rationality which objectifies Union citizens as active and self-conscious, who are to be accorded a certain respect (Walters and Haahr 2005b: 76).

Nonetheless, the best example of how the subjectification works in practice is through the agencies developed under the Commission. The formulation of agencies can be understood as part of the re-establishment of the European space of government promoted with the 'European governance.' Over the past two decades more than thirty agencies have been established in a wide variety of policy areas, and through them the EU "quietly managed to expand its regulatory capacity without directly increasing the size or capacity of the […] European Commission" (Kelemen and Majone 2012: 220). The official rationality behind this move is to "enhance the credibility of long-term policy commitments" by delegating the implementation of policy objectives to politically independent institutions" (Kelemen and Majone 2012: 225). The underlying discourse is to govern from far way, as less as possible and as efficient as possible. These agencies work through the technologies of agency and performance by controlling, regulating, and also 'letting' the government subjects free to govern themselves as well. Again here the government subjects are both MS and individuals.

One agency is worth mentioning in particular. The European Monitoring Centre on Racism and Xenophobia established first in 1997 and then succeeded a decade later by the Fundamental Rights Agency [hereinafter FRA], with the mission "to provide EU and member state institutions with assistance and expertise on fundamental rights when implementing Community law, and to support them in formulating and taking measures" (Kelemen and Majone 2012: 221). The establishment of FRA came as a necessity because it was considered insufficient of not only violating fundamental rights. Following from the mission of FRA, we can understand how it functions through power/knowledge. It brings along all different aspects of the 'European governance' governmentality: collective learning and guidance, flexible and informal modes of governing, power sharing, networks of experts, reliance upon statistics which are the form of

making information and data on rights intelligible (Sokhi-Bulley 2013: 230). It has the power to publish reports, collect data on fundamental rights and to issue opinions for the EU legislature (Chalmers et al. 2010: 229; 264*f*).

The Panopticon discussed previously is present here as well. As Sokhi-Bulley argued, FRA's type of government is best understood as surveillance (2011: 684), even though it conceals its panoptic function under its self-representation as a model of apolitical progress (Sokhi-Bulley 2011: 685). Through this panoptic surveillance, the 'observatory monitoring' according as the Commission calls it (Sokhi-Bulley 2011: 693), the FRA gathers data and information, produces knowledge about the governmentable subjects of EU, which then releases through its annual reports, thematic reports and surveys (Sokhi-Bulley 2011: 693). These knowledges define the subjects to be governed, both the MS and the Union citizens. The underlying discourse promotes the trinity victim – savage – saviour (cf. Sokhi-Bulley 2013: 239). The savage of course is the 'bad' MS, the victim is the Union citizen whose rights are undermined, and the saviour is the EU through the FRA in this case.

Let us take them one by one. As part of what the rationality promoted with OMC, the MS are governed based on their 'freedom' to use the knowledge developed by FRA [technology of agency and involvement] in order to apply fundamental rights 'correctly', and also based on their actions [technology of performance] which are compared with the 'good practice' indicators provided by the FRA (Sokhi-Bulley 2011: 696), and also through the responses of Union citizens to the FRA surveys. Two subjectifications of the MS are provided: the 'idea states' protecting human rights and the 'bad states' whose actions must be corrected. The same happens with Union citizens. Firstly, the FRA observes the Union citizens through socio-legal methods such as interviews and surveys and gathers knowledges based on a dual subjectification of the citizen: the 'ideal citizen' suffering no discrimination and the 'victim' suffering discrimination (Sokhi-Bulley 2011: 700). When participating in these surveys, citizens give part of their freedom, become cases that have to act within a framework of pre-given questions and answers, and thus allow themselves to be pinpointed, defined and classified (Brass 2000: 308). This is connected with the rationality of the Christian pastoralism discussed previously, which provided salvation of the souls only if a certain truth of the individuals was produced through confessions. FRA's surveys have this confessional element, aiming at producing a given 'truth' for the well-being of Union citizens. And the questions refer to every aspect of the interviewee's existence and the space of interaction is managed through a list of already constructed scenarios for all the possible answers that can be given (Sokhi-Bulley 2013: 237-8).

This category is contrasted to the 'ideal citizen' defined by law as described in the previous section. The 'victim' is the category that must be 'rescued' – and here comes the third person of the trinity, the *deus ex machina* incarnated in the EU. In any case, the constructed category of the 'victim' is actually a very useful political category (Sokhi-Bulley 2013: 238). The existence of the ideal, safe and secure Europe as defined in Article 2 TEU mentioned previously relies on the production of the 'abjects,' the 'victims' that are 'undesirable'. Of course, it is not

'always' their fault, since the savage MS are to be blamed. But only partly, as the 'victims' also share the responsibility to perform in a certain way, discipline themselves just as the MS do, by accepting human rights as "the code of correct moral conduct" (Sokhi-Bulley 2011: 702), what they ought to aspire to. Remember the example of the unemployed person Dean presented in explaining how the technologies of government work in practice[46]? In this case, the EU would be like saying: 'we are giving you everything possible to be as free citizens as possible, as long as you do it the way we are here to show you.' And this achieved in three parts: (a) through the interaction of the individuals as Union citizens with the agency, (b) with the acquirement of knowledge not only about FRA's work and on the EU fundamental rights but also of the type of 'ideal citizen', and (c) with the engagement of the individual responsibility for the enactment of this type (Sokhi-Bulley 2013: 234). This is how FRA imagines and aims to produce the active, well-educated, informed and responsible subject, completing thus the subjectification of Union citizens needed in the context of the advanced liberal 'European governance' regime.

## 5.4    Potentials for subjectivation

As mentioned multiple times, already, governing works in two levels. Up until now I discussed how the EU conducts, shapes and governs the area and the populations of Europe through the advanced liberal mentality of governance and fundamental rights, all reflected in Union citizenship. In this section I will discuss the potential that Union citizenship presents for individuals to subjectivate themselves, govern their conducts as citizens in a particular way. This demonstrates the reciprocal nature of power relations, already expected based on Foucault's reconceptualizations of power. I will try to retrace these potentials based on Foucault's ideas, and also present some hypotheses on the limitations within which the Union citizen can act in this respect[47]. This discussion can be found in Foucault's work on ethics. He approached ethics, not as a moralistic metaphysical philosophy, but as a practice, an embodiment, a style of life, an ethos, a relation of one with oneself (cf. Rabinow 1997). More particularly, he promoted an ethic of permanent resistance.

It was implied already that power and resistance are conditions of possibility for each other (Simons 1995: 81). History, after all, is understood from the Foucauldian standpoint as the outcome of the struggles between different 'regimes of truth', between official and subjugated knowledges, between discourses and counter-discourses that eventually produce new 'arts of government', new

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[46] See footnote 18.

[47] Here I will try to be as less normative as possible; however since Foucault was an engaged philosopher in Sartrean terms, this distancing might be almost impossible. In any case, this discussion only demonstrates the different potentials and limitations available, not what is to be done.

mentalities, discontinuities with the previous systems, and so on. For Foucault, the political problem at hand is 'truth' itself, i.e. not about changing people's consciousness but about changing "the political, economic, institutional regime of the production of truth" ([1976] 2001a: 132*f*). And permanent resistance is what enables the agonistic relations in which new subjectivities, new modes of government, and new practices are developed[48] (Simons 1995: 6).

Most importantly, though, resistance as political dissent, as refusal to obey exposes the limits of power *per se*. To some extent, all political power is conditional upon cooperation and obedience (Simons 1995: 85). As discussed previously, the 'right to question' is a given in the liberal political government as the conduct of the population is achieved through rights and freedoms, as described before. Thus, the space for individuals to subjectivate themselves is already constructed through their subjectification through law and others. The important point is the certain agency individuals have to subjectivate themselves 'differently,' not in the expected way. System's presupposition is that the individual can be indignant and talk against the government in a 'lyrical' way and that the government will reflect and act upon the citizens' reactions, as a theatrical division of labour, which Foucault said it can/must be rejected ([1981] 2001a: 475).

Following the Foucauldian discussion, we can call this 'ideal' subjectification/subjectivation of the individual as 'docility.' In his study of the Classical period, Foucault discussed the discovery of the 'docile' body as an object and target of power, a body that can be manipulated, shaped, trained, which obeys, responds, becomes skilful and increases forces ([1975] 1984: 180). This body was the *locus* of governmental conduct as, through different governmentalities, knowledges and *dispositifs*, individuals were shaped into subjects. The 'docility' was an important element of this body, as it was constructed in a way that would make it possible to subject, use, transform and improve it for the purposes of government ([1975] 1984: 181). *Mutatis mutandis*, I would argue that Union citizens are normalised/ constructed as 'docile' categories, and the whole power/knowledge system lies on the control of these docile subjects while they exercise their freedom/rights.

But here lies the potentiality of challenging the system of powers. If one develops a critical attitude, understood as a movement through which the subject gives itself the right to question truth and power (Cadman 2010: 547), one might be able to reject these theatrical roles of docility. This could happen exactly when citizens rise with indignation and speak up simply by exercising their rights of representation. I will connect the above discussion of 'docile' body with Foucault's example of the 'dangerous' individual, a criminal standing in a tribunal

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[48] For instance, one can see the active and performative 'right to question' developed with the struggle between the pastoral power and the pastoral counter-conducts developed with the Reformation and the Counter-Reformation movements, the active movements which pursued different kinds and agents of conduct in the sixteenth century (Cadman 2010: 543). The gradual transition from pastoralism to political government, then, can be seen as emerging through the general crisis of the former and successful conduct of the latter (Cadman 2010: 544).

of the Classical period. As in the present case with the EU, the judicial system then expected the criminal to act in docility. The criminal had the right/obligation to state and defend their case. In order for the judges to condemn them, they needed specific answers from the criminal in the question "who are you?" which meant that the criminal had to do self-examination, confess, explain of and reveal everything about oneself ([1978] 2001a: 177). The judicial system and penal machine needed this knowledge in order to function. In Foucault's example, the penal system is challenged when the 'dangerous' individual decides to keep silent. The "presiding judge is relentless, the jury is upset," they "urge, they push the accused," who in turn "does not play the game" ([1978] 2001a: 177). When the accused decides not to participate, "the judicial machine ceases to function" ([1978] 2001: 200).

Likewise in the case of EU, I would argue that the governmental system lies on the perfect enactment of Union citizenship as docile category. This unobstructed and active exercise of citizenship, the 'correct' enactment of citizenship through the continuous exercise of the rights given to Union citizens, is the cornerstone of the existence of EU governance system to begin with. So, I would suppose that if Union citizens decide to terminate all enactments of their Union rights and refuse to participate in the present game of government this could function as an important counter-conduct. This counter-conduct could mean a 'revolt' towards the system at hand. Foucault clarified that the right of an individual, a group, a minority or an entire people to say on their impulse "I will no longer obey", and thus throw "the risk of their life in the face of an authority they consider unjust" is irreducible, especially since no authority is capable of making it impossible ([1979] 2001a: 449).

A less extreme potential for citizens to react can be found in the ancient Greek notion of *parrhesia*, or the act of speaking with frankness and fearlessness, which could serve as an ideal counter-conduct of citizens challenging the conducts applied on them. *Parrhesia*, first, presupposes that one says everything that one has in mind, without withholding anything, but giving a complete and exact account of their opinion with frankness ([1983] 2001b: 12). This does not mean that *parrhesia* is 'chattering' about everything without qualification ([1983] 2001b: 13). Instead, *parrhesia* entails the telling of the 'truth,' which is in the eye of the beholder – the speaker says what they believe to be true ([1983] 2001b: 14). Moreover, the fact that "a speaker says something dangerous – different from what the majority believes," that is the courage that the speaker shows, is an indication that what they say is true ([1983] 2001b: 15). The aspect of danger is important in the act of *parrhesia*. This act presupposes that one risking even their life by telling their truth without restrains. One risks oneself, when one critically stands before the interlocutor as the latter might become angry with the 'truth' ([1983] 2001b: 17). Also, one risks oneself in one's own present, which means that when one is challenging the governmental truth and the conduct of their conduct, they are also problematising their own subjective identities as actors (Cadman 2010: 547).

Most importantly, no one is obliged to enter the '*parrhesiastic* game.' As Foucault explained, a person choosing to act with *parrhesia* also chooses a

specific relationship to oneself, by preferring to speak out the truth rather than living a life of being false to oneself ([1983] 2001b: 17). There is also a precondition for someone to use *parrhesia*: that one knows one's own genealogy and status ([1983] 2001b: 18). In the ancient Athenian democracy, *parrhesia* was related to the freedom and the duty of the citizen ([1983] 2001b: 19), essential both as a guideline for democracy and an ethical-personal attitude characteristic of the 'good' citizen (Foucault [1983] 2001b: 22). The same goes with the citizens in the liberal context. They have the right to talk, but they can use this right in a docile manner, reproducing the theatrical division of labour aforementioned, or they can use if for challenging the system. This would be done, for instance, when one asks certain truths about the governors' ultimate aims, actions and decisions (Cadman 2010: 551).

Foucault saw a certain international citizenship that "obliges one to speak out against every abuse of power," since all are "members of the community of the governed, and thereby obliged to show mutual solidarity" ([1981] 2001a: 474). Here, questioning also means to publicise the situation of those who are not governed fairly, those who are exempted from what Arendt called the 'rights to have rights' (Cadman 2010: 552). For Foucault, it is the duty of citizens to bring "the testimony of people's suffering to the eyes and ears of governments" as the "suffering of men [*sic*] must never be a silent residue of policy", and this grounds "an absolute right to stand up and speak to those who hold power" ([1981] 2001a: 474). Also, individuals through NGOs and so on, should intervene effectively in the sphere of international policy and strategy, and the monopoly of government should be taken little by little from the governments themselves ([1981] 2001a: 475).

But in any case, the 'correct' enactment of citizenship serves as a strategy of survival, since, as aforementioned, the system relies on this in order to be reproduced. Thus, a 'wrong' enactment of Union citizenship could initiate a set of punishments. Since the 'normal' enactment of Union citizenship in docility, as demonstrated again above, sustains the 'correct' reproduction of the system, a 'wrong' conduct of citizenship, the act of *parrhesia*, revolt, dissent, any action away from the needed 'docility' could initiate a set of counter-conducts and punishments[49]. Or the danger might be more substantial as the possibility of the counter-conduct of Union citizens not being clearly understood by the governmentality system as important, and thus being dismissed as the outcome of mere fear and ignorance[50]. In any way, this aspect of danger should be taken into

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[49] For instance, the negative result in the referendum that took place in Ireland in June 2008 for the Treaty of Lisbon was not acceptable, and thus the Irish people had to redo the referendum in October 2008, now with a positive result. The point I make here could serve as a hypothesis for a more detailed research.

[50] This was the case, for instance, with the Dutch and French negative votes in the 2004 referenda for the Constitutional Treaty that were dismissed as "the result of an 'explanation deficit,' such as the failure of national politicians to explain the Treaty" or as "Europe becoming a 'scapegoat' for unpopular domestic reforms": in short, voters who rejected the Treaty had not voted against the Treaty at all; theirs was simply a 'second-order referendum' or protest vote fuelled by ignorance, prejudice or some other irrational motive (Shore 2011: 292). Also, based on the knowledge developed with Eurobarometer statistics, EU officials confirmed that

consideration as well, not as something negative, but again as a condition of possibility (cf. Simons 1995: 3).

## 5.5    Concluding Remarks

All in all, following the above discussion, one should refrain from understanding the subjectification of Union citizens presented in the previous sections as something bad. As Sokhi-Bulley explains, there are several advantages of the conceptualisation presented by advanced liberalism is that the 'right to question,' the right and ability to resist the regimes of government applied on us is already pre-given in our subjectification as active, educated and responsible partners or empowered citizens-consumers (2013: 241). An important issue that must be clarified is the limits of such counter-conducts. The above discussion destabilises the category of Union citizenship. However, as already mentioned various instances in the text, the liberal governmentalities come along with such counter-conducts presupposed. Thus, the above described potentialities for counter-conducts lie in the centre of the present system of relations, not somewhere outside the system. This by itself is neither good nor bad; rather presents the potentiality of actually being legitimised in challenging the system.

As a concluding point, I want to refer to the present times. In connection to what was discussed above, even though respect for human rights gets a foundational status in the Treaties, the references to fundamental rights are "scarce and oblique," as no catalogue of rights or any direct statement of how actors are bound by them exists (Chalmers et al. 2010: 230). I can understand that as part of the failure of the 'European governance' governmentality to achieve the constitutional expression it aimed for with the Constitutional Treaty. The regime reformed with ToL is a rather limited version of what was imagined/ intended. Thus, the analytics of government presented thus far should not be approached as an end product. For instance, the Court recently[51] started challenging the cross-boundary element which as discussed above serves as a precondition for Union citizenship and the rights deriving from this position (cf. Hinarejos 2011; 2012; Lenaerts 2013).

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Euroscepicism is highest among-less educated people, and this problem can be solved through better and more targeted information (Shore 2011: 293).

[51] See Case C-34/09 *Ruiz Zambrano* [2011] ECR I-1177; Case C-434/09 *McCarthy* [2011] ECR I-3375; Case C-256/11 *Dereci and* others, judgment of 15 November 2011 (not yet reported).

# 6    Conclusion

*"[…] Would it
not be easier, the government
to dissolve the people and
to elect another?"*
**'The Solution', Bertolt Brecht**

In this thesis, I wanted to present a critical analytics of the EU and Union citizenship, building on Michel Foucault's work, in order to understand what Union citizenship is, how it was developed to the formation it has today, the reasons behind this development, and its potentials *per se*. My aim was to explore and build on the conventional readings on Union citizenship, and move beyond them. I first explored the main political ideas of Foucault and identified the different parts of a foucauldian research. Then I divided my analytics into three parts/chapters. First in Chapter 3 I explored the predominant discourses on Union citizenship, clarified what we can learn from them and exposed their limitations in answering my question of interest. Second in Chapter 4 I presented a genealogy of the different mentalities related to the government of Europe from the initial steps taken in the post-war period up to the recent developments with 'European governance.' In this genealogy, I tried to identify the position of citizenship and the role it played. As presented, Union citizenship was never a given at any time. In the beginning, the European integration following Monnet's rationality did not provide for European citizens. Rather this status came as a result of the Court's activism and the problems of legitimacy that the European project was facing. This status was coupled with the concept of fundamental rights, which found its best expression in the 'European governance' mentality. Finally, in Chapter 5 I explored more in detail the ways Union citizens are subjectificated through law and in practice, and also the potentials that Union citizenship as status presents to individuals for subjectivating themselves differently.

To reiterate something mentioned in Chapter 2, Foucault's perspective is not interested in a normative appreciation of government. We are not exploring good or bad instances of government, but rather government as it is. This is the same in the present study. For instance, the critical discussion I presented in Chapter 5 on EU law and the FRA should not be understood as a cynical and nihilistic criticism. As mentioned in the literature, the EU through law reached an unprecedented level of protection of fundamental rights, and the FRA is seen as an emancipatory institution that makes human rights more effective (Sokhi-Bulley 2011: 705). Furthermore, the Charter is an important step, as it secured greater visibility and accessibility to human rights, is an invaluable reference point in interpreting the content of those rights, and "encapsulates a broad range of principles, including key economic, social and cultural rights that remain

unprotected by any other pan-European judicial body" (Ward 2004: 140). As discussed above, the issue here is to explore the limitations and the potentialities. And indeed, as the previous chapter concluded, these are present throughout.

At this moment, I bring in mind Foucault's words: "[W]hat I am proposing is at once too much and too little. There are too many diverse kinds of relations, too many lines of analysis, yet at the same time these is too little necessary unity" ([1978] 2001a: 228). The present thesis is packed with information. I tried to explore the multiplicity of understandings, which are all *sumbola*, parts of the bigger picture. Each of these parts can be broken down to smaller parts and have a genealogy of their own. Thus, what I presented here is not the ultimate 'truth', but one representation of the truth. In any case, the analytics of Union citizenship could have explored several other aspects as well. For example, what is the position of the different European institutions in the government through citizenship and rights? How is the 'truth' defined from their point of view? How is the Commission governing through freedom and control for the promotion of the 'ideal' Europe? Also, how are MS incorporated in this governmental system through OMC? How is OMC working in practice as a mechanism of governing MS through freedom and control? Last but not least, how are other categories governed, for instance the non-Union citizens or other particular categories of Union citizens, be they women, LGBT individuals, Roma persons, and so on? And, how can we read the specific cases of indignation, revolt and talking-back, for instance in the case of the crisis movements in Spain, Greece and elsewhere?

To end with Farage's scaremongering that the European dream is crumbling, and the fact that the European population is feeling alienated from the European project, it is true that this was a constant characteristic of European integration, and all different mentalities of government proposed wanted to address it. These mentalities came to provide for the status of citizenship, as a way of including European population in their government and thus enhance EU's legitimacy. This is the 'solution,' as Brecht would call it. In any case, one should avoid referring to a 'European dream' or project as a closed system. Entropy comes from within. What we are facing now could be better understood as an interregnum, a crisis expressed by the fact that "the old is dying and the new cannot be born" (Gramsci 1976: 276). The future is open. And a Foucauldian analytics could help approach and address these possibilities and limitations in a critical light.

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