

2. THE POLITICS OF EVIDENCE
ROMA CITIZENSHIP DEFICITS IN EUROPE

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Roma integration is not only a moral duty, but in the interest of Member States, especially for those with a large Roma minority. —European Council
Recommendation for Roma Inclusion

One must deserve French nationality and be able to demonstrate one's worthiness [of being a French national].
—Nicholas Sarkozy, then French president

In principle, citizens occupy a privileged space within their state. They enjoy political, legal, and fiscal advantages denied to noncitizens, even long-standing, lawfully resident ones. In contemporary democracies, discrimination in the attribution of these advantages among members of the national citizenry is, in theory, permissible only in limited contexts and when justified by age or other legally sanctioned criteria. Citizenship, then, is intended as an inclusive membership club, one that (unlike most clubs) benefits a majority of the proximate population. Racial, religious, class, gender, and ethnic minority status, it is generally claimed, do not function as legitimate disqualifying factors. As the introduction to this volume makes clear, however, there is a yawning gap between the purported inclusiveness and uniform applicability of the citizenship construct across formally eligible populations, and the arbitrary, ad hoc, and flawed reach of citizenship taxonomies in

practice. Careful deconstruction of the mapping of citizenship onto population, such as that carried out by the authors in this volume, makes it clear this status or category is neither categorical nor easily observed. Nevertheless, the notion of an effortless mapping of citizenship onto an entitled population is pervasive and, for all practical political purposes, unchallenged. Citizens benefit from a privileged status that accords them important rights (and only a few duties).

This privileged status does not apply only to citizens of nation-states. Over the past decades, the diffusion of globalization and the growth of post-Westphalian models of political, economic, and legal governance make possible sources of citizenship beyond those of national citizenship. In this chapter, I shall refer to “regional citizenship” and what I will call “global citizenship.” Like national citizenship, both types confer a formal entitlement to particular rights and benefits to those who qualify. Regional citizenship is a relatively new phenomenon, one that postdates the establishment of global citizenship that followed the end of World War II. With the growth of regional forms of intergovernmental association in many parts of the world, from North America to Asia and Africa, new regional unions have in some instances generated a distinctive type of citizenship model, with enhanced benefits for in-group members or regional citizens.

The European Union is an important case in point. Citizens of the EU are supposed to enjoy political and legal privileges that non-EU citizens, even long-time resident third-country nationals, lack. It is claimed that EU citizenship automatically vests in each individual citizen of a member state, by virtue of his or her national state citizenship. Eligibility for this regional citizenship is determined by eligibility for individual member state citizenship (according to the criteria established by the relevant member state). The rights and benefits of EU citizenship are distinct from those that flow from citizenship of the member state (Maas 2008–9, 267). These privileges reflect the core of EU citizenship and can be reduced to two fundamental categories: mobility privileges and nondiscrimination privileges. However, a critical difficulty arises with this model as a reliable protector of citizenship rights and benefits: effective implementation of these citizenship privileges generally depends, in practice, on member state willingness to apply or enforce the relevant rights. This introduces a further layer of uncertainty into the notion of regional citizenship, over and above the arbitrariness and complexity inherent in enforcement of claims to national citizenship. Maas warns, “The most important and fundamental challenge faced by EU citizenship is the prospect of Member States or other authorities not respecting the rights it confers” (2008–9, 267).

An additional type of citizenship, global citizenship, vests in those individuals or populations who can qualify for the protective embrace and associated status

benefits of international refugee law. For these people, international law has long guaranteed protection from serious threats to life or freedom—a limited form of quasi citizenship available to eligible applicants seeking asylum from persecution outside their own country. For the many who are stateless and therefore lack their own country, international refugee law provides the same guaranteed protection from persecution within the place of their habitual residence as it does for refugees with a citizenship. But again, the realization of benefits guaranteed by global citizenship depends significantly on national state willingness to implement its legal obligations. All the types of citizenship just identified therefore are beset by categorical indeterminacies of evidentiary criteria.

Citizenship and the Politics of Evidence

Forensic evidence, both documentary and circumstantial, is central to operationalizing the exclusionary process of sifting through eligibility for protection. As with many administrative techniques, it performs in a manner that is facially “procedural”—contingent and “merely” operational—but actually deeply substantive. Where eligibility for citizenship privileges is challenged, documents are critical tools for governments and individuals alike. Evidentiary challenges highlight the tension between the supposed self-evidence of citizenship and its actual phenomenology, as the introduction to this volume rightly notes. Access to the enabling documents, which majority communities generally secure through streamlined and simple procedures enacted routinely by courteous and efficient official agencies, can present insuperable barriers for others. Complex and ill-defined laws and regulations—about nationality claims, residence rights, public security or public health threats, bilateral readmission agreements—emerge when these simple procedures fail and attempts to exclude individuals from sought-after benefits have to be challenged. Navigating and asserting the path to citizenship entitlement requires much more than personal narratives consistent with legal criteria put forward by regional or global institutions. It also requires skilled and time-consuming legal representation, an impartial and effective forum for staking claims, the political will underpinning competent public service provision, substantial financial resources, and administrative savvy to painstakingly comply with the reality of bureaucratic “decisionism” in regard to the interpretation of official rules, regulations, and procedures.

Access to critical evidence is a deeply political process. Technical flaws in documentary endowment are not randomly distributed across citizen populations, as, for instance, dates of birth. Rather, they reflect deep-seated exclusions from the presumed level playing field of a right to rights, exclusions that extend

from the moment of entry into a registrar's office, social security benefits center, or public hospital to the feeling of security and automatic access to basic sanitation and other services in one's home. Destitution, illiteracy, and pervasive stigma militate against the organizational and institutional clout needed to navigate intricate bureaucratic procedures. This is especially the case when these procedures operate in a highly racialized (or otherwise stratified) social context, where decisional arbitrariness is actually not so much a product of inconsistency as it is a consequence of systemic bias. Problems are compounded when the procedures are embedded in complex, even arcane areas of international law such as eligibility for citizenship by descent, or naturalization following conflict, statelessness, new state formation, expulsion, or eviction.

The ten to twelve million Roma community in Europe provides a compelling case study of the politics of citizenship evidence (Council of Europe 2013, 3). It is widely acknowledged that the legacy of pervasive social and political exclusion of this community in Europe over generations has manifested itself in visible markers of deprivation and rights violations—substandard and impermanent housing, poor health, low life expectancy and high morbidity, extensive exposure to social violence, and discriminatory educational access and provision (European Union Agency for Fundamental Rights, UNDP, and European Commission 2012, 8). As devastating, but less widely acknowledged, is the radical Roma citizenship deficit that presents in tandem with this pervasive exclusion. A dramatic dearth of Roma documentary evidence underpins this deficit—many Roma simply do not have birth certificates, citizenship or other identity certificates, residence certificates, bank accounts, rent books, school attendance documents, marriage certificates, death certificates, or proof of disability, to name just some of the critical elements demanded by the citizenship tool kit. This deficit justifies the routine official exercise of “legalized illegality” in the form of widespread exclusion from core benefits of national, European, or global citizenship (Çağlar and Mehling 2013, 172). This chapter explores the politics of evidence as they impinge on the European Roma community in the context of the three categories of citizenship outlined earlier, and it brings to light the paradoxical situation of this population: a people that have for centuries been *in* Europe but are still widely not considered to be *of* Europe.

A Synoptic Roma History

Though the Roma have been European residents for at least six centuries, large numbers among their community have only tortuous and unreliable access to the privileges that can flow from the citizenship categories mentioned above

(Liégeois 2008, 105). This is not a new phenomenon. Historically the Roma community has been the target of extreme discrimination and exclusion in Europe, raising recurring questions about their entitlement to the benefits of citizenship. Challenges to the Roma's legitimacy as a European population date back centuries, though experts agree that the ancestors of today's Roma population arrived in what is now the European Union as long ago as the fourteenth century. Their status as putative outsiders is one justification for discrimination, while their reputation as supposedly restless itinerants is another. This archetype prevails despite the fact that only small sections of today's Roma community consider themselves travelers or transient, with the vast majority aspiring to the sedentary, secure, and predictable lifestyle of their non-Roma counterparts (Guild and Carrera 2013, 8). Indeed, despite the Roma majority's explicit rejection of an itinerant lifestyle and persistent attempts to secure permanent housing and long-term residence rights, the whole community continues to be stereotyped as erstwhile Indian "nomads" with a transient presence and no legitimate claim to long-term European residence (Warnke 1999, 357–58). The social construction of the community as "nomadic," itinerant, or temporary is used to justify discrimination and marginalization with respect to the putatively more settled or sedentary majority. Take the case of Torino, an industrial city in northern Italy with a long-settled Roma community, many of them second and third generation born in Italy, and a progressive city administration with a commendable history of well-meaning involvement in Roma social service provision (Associazione per gli studi giuridici sull'immigrazione and Rozzi 2013).¹ Despite the Roma's generation-long history in the city, the municipal office responsible for Roma social service provision is still called Ufficio Nomadi (Nomads Office). As Jaroka Livia, a Roma elected representative from Hungary to the European Parliament, has observed: "[The Roma] don't want to be nomads. They want dignity. They want opportunity" (Cohen 2011).

Pervasive stigma and hostility toward the Roma community have, with some geographic variations, existed throughout European history. They peaked with the brutal and widespread persecution inflicted on large numbers during the Nazi period. A report commissioned by the Organization for Security and Cooperation in Europe (OSCE) notes that "most autochthonous Austrian, German and Czech Roma were killed in the Holocaust" (Cahn and Guild 2008, 35). According to some estimates, up to 1.5 million Roma were killed by the Nazis.² Although the Weimar Constitution provided for equal rights for all citizens, the Roma in Germany were subject to increasingly discriminatory laws and directives over time: exclusion from public places (1920), mandatory registration (1925) and identification cards (1927), restrictions on movement and required

proof of employment (1929), bans on mixed marriages (1933), revocation of naturalization (1933), forced sterilization (1933), withdrawal of civil liberties (1937), racial evaluation (1938), and internment and deportation to concentration camps (1936 onward) (Hancock 2002, 37–42). The Nuremberg Laws were amended to include the Roma and extended beyond Nazi Germany to incorporated and occupied territories of the Third Reich. Even before this extension, many European countries had already enacted discriminatory measures targeting the Roma. In 1912, France required “nomads” to register with the authorities upon entering and leaving the country. In 1927, the former Czechoslovakia’s “Law on the Wandering Gypsies” required the Roma to obtain permission to stay overnight in an area (Peschanski 2002, 50–55). In Hungary, a 1928 decree prohibited the Roma from entering cities (Lucero and Collum 2006, 98), and in 1933, Austrian government officials called for the Roma to be stripped of their civil rights (Hancock 2002, 37).

Following World War II, repressive communist policies of cultural restriction, forcible assimilation, resettlement, and coercive sterilization continued to reflect the ongoing belief throughout Europe that the Roma were not citizens of the countries in which they resided (Marushiakova and Popov 2008). As Europe moved out of the Cold War and its Communist-governed federations (in former Yugoslavia, Czechoslovakia, and the Soviet Union) to an expanded European Union of individual nation-states, citizenship was redefined. In the process, many of the traditional exclusions, papered over by Communist regimes, reappeared, including the belief that Roma minorities were foreigners. Responding to a resurgence of acute racism against them, many Roma communities from central and southeastern Europe voted with their feet, fleeing discrimination in their home countries, including the Czech Republic, Poland, Hungary, Slovakia, Serbia, Kosovo, Romania, and Slovenia. Their attempts to secure new rights in Western Europe were met with mixed reactions.

In some cases, the Roma migrants managed to secure refugee status or some form of more limited temporary or subsidiary protection under international law (Cour Nationale du Droit d’Asile 2011); this was particularly the case during the Balkan conflicts.³ New EU citizenship did not thwart discrimination against Roma migrants, whose rights were affirmed only after protracted court proceedings.⁴ Even when Roma secured entry to west European territories, Roma Europeans often encountered hostility and outbursts of hysteria and violence. The European Court of Human Rights (ECHR) has over the past decade held on several occasions that European states have violated nondiscrimination provisions in the European Convention. Their findings have included cases concerning illegal expulsion of aliens, racially biased police investigations

and abuse (*Bekos and Koutropoulos v. Greece, Cobzaru v. Romania*), and vigilante “skinhead” anti-Roma violence.⁵ Litigation brought before the ECHR by Roma who are de jure EU citizens has also addressed other human rights issues such as race discrimination in education, race discrimination in housing allocation, and forced sterilization of Roma women.⁶

Present-Day Evidentiary Barriers for Roma

Stereotypes continue to color access to citizenship and the delivery of public services to the Roma community today. During the 1990s, Roma asylum seekers fleeing persecution in the Czech Republic and Slovakia began arriving in the United Kingdom, prompting outcry in the British media that they were “gold-diggers searching for an easy life” who should be “kicked out of Britain” (Clark and Campbell 2000, 23, 27). While open borders in the East have facilitated free movement for Roma families seeking to escape endemic unemployment and poverty in post-Communist countries, populist xenophobia in the West combined with the recent economic downturn have fueled an increase in anti-Roma policies and practices. French and Italian hysteria centers on supposedly criminal activities by Roma, including baby snatching (Owen 2008) and one or two cases of murder blamed on the entire Roma community (Faiola 2010). Despite Roma migrants’ right to enjoy free movement in France as EU citizens, the country’s interior minister has claimed that the population poses “a social difficulty,” and therefore “the majority must be returned to the borders” (Rubin 2013). In 2010, then French president Sarkozy promised to investigate “the problems created by the behavior of certain travelers and Roma” living in settlements and to deport them. A government spokesman clarified Sarkozy’s remarks: “You can very well be Roma, a traveler, even, at times, French within these communities, but you’ll have to respect the law of the republic” (Crumley 2010). Though France’s current president, François Hollande, promised to “break the strict policies of his predecessor” in 2012, Roma have only experienced increased marginalization and escalated eviction rates (Sayare 2014); eviction rates in 2013 were double those of 2012 (Human Rights Watch 2014).

These racist attitudes are also prevalent in Italy. In 2011, Italian prime minister Silvio Berlusconi warned of the alleged political threat posed by the Roma, stating, “Milan cannot turn into an Islamic city, a ‘gypsyopolis’ full of Roma camps besieged by foreigners to whom the left wants to give the right to vote” (*Telegraph* 2011). Pervasive anti-Roma rhetoric has encouraged mob violence and vigilante attacks against Roma individuals and communities (Human Rights First 2008), as well as discriminatory measures such as compulsory fingerprinting,

mass expulsions, home demolitions, and deportations (Bryant 2010; Hammarberg 2011; Kostlán 2012).

This long-standing hostility and exclusionary stance have their material correlate. The Roma population continues to experience some of the most difficult and harsh living conditions in Europe. While the situation varies by country, the general picture is bleak: between one-quarter and two-thirds of Roma live in poverty or extreme poverty, often in segregated, substandard settlements (UNICEF 2007, 20–23, 27) without access to adequate housing, water, sanitation, and public utilities (European Union Agency for Fundamental Rights Agency 2009). Life expectancy is ten years shorter for Roma individuals than for their non-Roma counterparts, and a sample of five countries has documented Roma child mortality rates two to six times higher than those of the majority population. The Roma also face disproportionately poor health outcomes due both to lack of access to preventive care and to discrimination when seeking treatment (Council of Europe 2013, 7).

Without assets or proof of formal employment, many Roma community members are unable to register their residences and access the social services to which they are entitled (European Union Agency for Fundamental Rights 2009). As a result, Roma are often forced to take jobs in the unregulated economy, where they are vulnerable to further marginalization, exploitation, and coercion. Securing the benefits of citizenship could radically improve these difficult circumstances. However, as the following sections illustrate, citizenship remains an elusive chimera for a majority of the Roma population in need.

Exclusion from National Citizenship

Though citizenship is most commonly acquired by birth on the national territory (*jus soli*) or through parentage (*jus sanguinis*), eligibility in the last analysis follows from overcoming evidentiary hurdles specific to different administrative or judicial venues. These eligibility requirements vary greatly; they typically include proof of a minimum period of continuous residence within the state and/or a certain level of national language and/or cultural proficiency. Production of a record of birth registration is also a normal precondition of citizenship acquisition. People with no claim to citizenship of a country by any of these routes are considered *de jure stateless*—defined in Article 1 of the 1954 UN Convention on the Status of Stateless Persons as someone who “is not considered as a national by any state under the operation of its law.”

Effective statelessness (see Price and Lawrance, this volume) can arise in various ways, including birth to stateless parents, regime succession, and state disso-

lution as new states define citizenship eligibility in such a way as to exclude some members—typically members of marginalized or stigmatized minorities—of the former citizenry. (For instance, in the aftermath of the dissolution of the Soviet Union, Baltic countries imposed language requirements that rendered large numbers of Russian-speaking residents stateless.) Many members of the Roma population living in the former Czechoslovakia lost their national citizenship overnight in just these circumstances. These contexts may pose insurmountable evidentiary hurdles as well. The new Czech Republic purposefully defined citizenship through eligibility requirements set out in a 1993 citizenship law: all individuals had to prove they had maintained permanent residency for five continuous years and that they were fluent in Czech. Among the 150,000 to 300,000 Roma living in the Czech Republic (European Roma Rights Center 2013a, 6), many families were forcibly moved from Slovakia to work in Czech factories during the period of state socialism, but then, denied access to permanent accommodation for decades and ghettoized in non-Czech-speaking communities, found themselves unable to fulfill either of these requirements (Warnke 1999, 357, 358). From citizens they became stateless aliens without leaving their long-term places of residence.

Praxis, a nonprofit organization of legal experts, has worked with the Roma community in Serbia for years and has documented a range of obstacles to securing Serbian citizenship. To obtain Serbian citizenship, an applicant has the burden of proving his or her birth by presentation of a birth registration document, as well as proving registration of a temporary or permanent residence (*Praxis* 2008). But both these sets of documents may be unavailable, and the result is effective statelessness (*Praxis* 2010). With an estimated 250,000 to 500,000 Roma currently living in Serbia (European Roma Rights Center 2013b, 3), a significant proportion of this population consists of erstwhile refugees who fled the country of their birth (e.g., Bosnia, Croatia, Macedonia) during the Yugoslav war. For this reason, many records are unavailable, nonexistent, missing, or destroyed. Stateless mothers giving birth in Serbia often fail to register their children because they are “legally invisible” themselves and therefore fear any contact with officialdom. This defensive strategy merely perpetuates the cycle of intergenerational statelessness, as children born in Serbia inherit the outsider status of their refugee parents. Birth registration deficits are not the only problem. Many destitute Roma families in Serbia are homeless or live in informal settlements (referred to as “illegal camps”). Though Serbian law allows such homeless residents to register with the government to prove their Serbian residency, in practice the process for doing this is unknown by most Roma and beset with administrative complexities (*Praxis* 2008). In addition to

evidentiary problems, Roma Serbs have been denied their national citizenship because they cannot afford the financial costs of compliance with cumbersome legal procedures, which may include onerous legal fees. The nuts and bolts of citizenship at work, as described in the introduction, here produce statelessness rather than citizenship.

Approximately 110,000 to 180,000 Roma currently live in Italy (European Roma Rights Center 2013b, 6), distributed largely among three main cities—Rome, Naples, and Torino. Italian citizenship is transmitted by descent, so children born in Italy to nonnational parents do not generally acquire Italian citizenship at birth (Rozzi 2013). There is, however, an important qualification to this rule: where a child is born to parents who are recognized as stateless, by virtue of the 1961 UN Convention on the Reduction of Statelessness (UN General Assembly 1961, 175), the child can legally acquire Italian citizenship at birth. In practice, however, restrictive interpretations of citizenship and immigration laws render such registration as a stateless person elusive. The Associazione per gli studi giuridici sull'immigrazione (ASGI), a nongovernmental organization with a robust staff of highly qualified lawyers that has worked with the Roma community in Italy for years, notes: “Restrictive legislation, policies and practices, concerning citizenship, statelessness and immigration, by both Italy and the States stemming from the breakup of Yugoslavia, . . . produce particularly harsh consequences on the most marginalized and discriminated groups such as Roma people” (Associazione per gli studi giuridici sull'immigrazione 2013, 14). Thus, second- and third-generation Roma born in Italy lack citizenship because they cannot prove their residence or that of their parents. They are trapped in a vicious “catch-22” of decisionism manifested as bureaucratic intransigence. Without citizenship proof, they are ineligible for residence permits, and therefore ineligible for access to state housing and a range of other benefits. Without access to residence permits, they cannot claim citizenship and, with it, the benefits of EU nationality, including freedom of movement, educational subsidies, and access to work training and scholarship schemes. The European Commission against Racism and Intolerance noted in a report on Italy filed in 2005 that “decisions on applications for naturalization, notably on the basis of residence, are excessively restrictive and discretionary, and often characterized by a lack of transparency as to the reasons for rejection.” The commission also noted the protracted process for decision making and expressed particular concern that “applications concerning minors over 14 years of age, who have reached adulthood before their application has been processed,” have “been required to re-apply according to more stringent naturalisation procedures” (Cahn and

Guild 2010, 37). Indeed adolescents encounter multiple difficulties in establishing effective citizenship and the benefits that flow from it.

As a result of these varied practices, Roma populations in Europe have been excluded from the benefits of their national citizenship. Despite valid claims to that citizenship, state authorities persist in not crediting their documents or narratives as bona fide evidence of citizenship entitlement. A range of evidentiary obstacles can lead to this situation (UNHCR 2010). They include the situation (common among severely marginalized and disadvantaged groups) in which an individual has never been registered in the civil registration system of the country where he or she is born (either because of birth through home delivery or because of fear or ignorance about the necessary procedures). Even where registration in the country's civil registration system has taken place, the registry may be missing, or it may have been destroyed as a result of conflict, or the administrative authority may be unwilling to cooperate with the identification of particular individuals or groups. As the introduction notes, the fact of birth itself does not create automatic allocation of citizenship; it requires "ascription" in the sense of enrollment, a process of writing oneself into the community. Moreover, despite possessing civil registration information, some individuals have had difficulty proving their identity (e.g., that they are indeed the person indicated in the civil registry) due to the fact that data are vague or inaccurate (names misspelled, parents' identifying details missing), the individual in question is separated from family support or networks (because he or she is an unaccompanied child or a survivor of trafficking), or the relevant official entities are unwilling to cooperate by authenticating the civil registry documents or responding to requests for supplementary documents. Long-resident populations, generation by generation, may thus be excluded from access to the citizenship of their country of birth.

Exclusion from Regional Citizenship

European Union citizenship poses a second set of evidentiary problems for the Roma community's access to rights of free movement and nondiscrimination. It confers upon individuals the "right to move and reside freely within the territory of the Member States" (Guild and Carrera 2013, 8) and the right to equal treatment. The EU established the right to free movement of workers as one of the founding principles of the EU, a right enshrined in EU citizenship in 1993 (Atger 2013, 181). Directive 2004/38 describes the right of EU citizens to move freely between states. This freedom of movement facilitates open border crossing;

it also permits an EU citizen to live in a member state other than his or her own for three months without proof of means of support. After three months, the state of residence can require the nonnational EU citizen to provide proof of adequate health insurance and means of support. After five years of residence, the EU citizen may apply for permanent residence. Free movement rights of EU nationals can be restricted only on grounds of public policy, public security, and public health. An EU member state cannot expel an individual because he or she is unemployed or claiming benefits. The EU Charter of Fundamental Rights prohibits collective expulsions from a country (Atger 2013, 181).

Despite this robust edifice of free movement and residence rights for EU citizens, Roma European citizens are routinely disadvantaged. For example, in 2010, the French government ordered a targeted campaign to dismantle Roma settlements and deport EU Roma citizens back to their countries of nationality. Within months, France, with little or no due process, had deported more than a thousand persons and demolished more than a hundred camps. France declared that the removals were “voluntary,” but the actions were coercive. Targeted Roma families were told that “individuals who did not accept the offer would have risked losing the ‘stipends’ and having forcible deportation actions filed against them.” In practice, many of the concerned Roma residents “expressed openly their intention to accept ‘voluntary deportation’ and then come back.” Çağlar and Mehling write that “the authorities in France . . . knew very well that they could not legally deport EU Roma citizens . . . [so they developed] a series of laws . . . such that the ‘illegality’ of state acts was in a way ‘legalised’” (2013, 160). No international or European court has punished the French government for this en masse, forced removal. These policies have had serious implications for school-age children, including dwindling school attendance caused by the widespread use of such evictions. In the Lyon metropolitan school area, sixty-four Roma children from informal settlements attending school in “mobile classrooms” had their education interrupted during the 2012–13 school year (Amnesty International 2013). Eviction has a recursive effect and can interfere with access to documentation required for school registration. A teacher in Lille confirmed that lack of documents had led to “a six- to nine-month gap between requesting enrolment and actually going to school” (Amnesty International 2013).

A recent European Agenda for the Integration of Third-Country Nationals defines third-country nationals as including “persons born in the EU but not holding the citizenship of a Member State” (European Commission 2011, 3). Many Roma fall into this category, for reasons that are either *de jure* or *de facto*. Unable to establish citizenship in EU member states, the Roma are considered as

third-country nationals, thus subject to the integration plan. Carrera argues that “(re)integration has been presented and framed as the solution to prevent mobile Roma from exercising their European citizenship mobility freedoms and being treated as foreigners subject to eviction and return to their home country.” He suggests: “Integration has been designed as a policy mechanism for passing the buck over to the Roma themselves as regards the reasons for and consequences stemming from their discrimination, exclusion and negation of EU citizenship rights and freedoms” (Carrera 2013, 6). This analysis is particularly relevant in light of the recent deportations of Roma from EU member states.

Exclusion from Global Citizenship

Refugee status is a powerful form of surrogate global citizenship established and widely recognized after the devastating infliction of persecution by European states on their own citizens during the 1930s and 1940s. Few if any human rights protections have been as effective in protecting populations from harm and redistributing access to the benefits of national membership as this form of global citizenship. Yet here too Roma populations in Europe have found themselves excluded from protection, unable to take advantage of benefits that other populations fleeing persecution have availed themselves of. A case in point are Kosovar Roma, an embattled population that has witnessed multiple persecutions over the last century and that is still struggling to establish a secure and rights-respecting life in Europe.

In October 2013, a fifteen-year-old girl of Roma descent, Leonarda Dibrani, was forced off a school bus by French police officers and deported, with her family, to Kosovo. While Dibrani’s father is Kosovar, Dibrani and her siblings were born in Italy. Prior to being deported, the family had spent four years in France applying for asylum because of persecution they had faced in Kosovo. The family alleged a well-founded fear of persecution in Kosovo and a risk of serious social isolation if returned. Despite these claims, Dibrani and her family were deported to Kosovo; as expected, they were attacked a few days after arriving in Kosovo, prompting one police official to state, “[The beating] shows that the Dibranis are not safe here” (*Al Jazeera* 2013). Unfamiliar with the local language and without any social connections, the family found itself isolated, and the children were unable to attend school.

Roma populations fleeing persecution in the former Yugoslavia and now in Kosovo have faced exclusion from the protection of asylum in EU member states because they are considered ineligible to file such claims. There is a paradoxical aspect to such exclusion. Whereas, as the previous section notes,

Roma frequently encounter difficulties in asserting their EU citizenship when it comes to exercising their free movement rights as EU citizens, they have nevertheless found their connection to the EU may be invoked to justify exclusion from international protection as refugees. Romanian, Hungarian, and Czech Roma are often the target of severe discrimination in access to state services (such as the notorious placement of Roma children in schools for the disabled and learning-impaired irrespective of their own abilities) and state protection. (Romanian politicians have repeatedly sought to distance their national identity from that of the Roma, urging that the latter be known as “Gypsies” rather than Roma and that they be considered the responsibility of the EU rather than of the national state.) But as EU citizens they are ineligible to file an asylum claim within the EU.

Roma asylum applicants from Kosovo are disqualified from access to asylum in the EU because Kosovo is seeking EU membership. Rather than the evidentiary challenge to legal sanctuary being documents, the changing status of Kosovo itself interpellates the Roma into a new legal identity they are powerless to mobilize in their quest for legal status. Thus, Roma citizens facing deportation from EU member states to countries of origin where they also lack legal status and access to basic minimum social and economic rights (education, housing, emergency health care, protection from violence) have attempted to secure protection as refugees, on the basis of persecution faced because of their nationality or membership of a particular social group. But they have been unsuccessful, a different aspect of the politics of evidence. To illustrate this aspect of the Roma citizenship deficit, consider the circumstances of Kosovar asylum-seeking families long settled and integrated in Germany or France, who find themselves destitute and disoriented once deported from those countries and forced into informal camps in Kosovo. The exclusion from access to asylum in these cases stems from bilateral agreements signed between states such as Kosovo seeking entry to the EU and EU member states themselves. In return for EU reform packages and a gradual path to EU accession, associated states promise to receive and reintegrate those of their nationals whom EU member states decide to deport. The readmission promise operates as a deportation facilitation tool rather than a reintegration support. For the families returned to Serbia and Kosovo, conditions are extremely bleak. Finally, there are Roma individuals residing in EU member states who are denied asylum claims but do not have a nationality, because they are either *de jure* or *de facto* stateless refugees (UNHCR 2010).

In 2010, Germany began to deport Kosovar Roma who had sought refuge in Germany from the Kosovo War in 1999 (Çağlar and Mehling 2013, 169).

When Kosovar Roma fled to Germany during the 1999 war, they were granted “tolerated status,” which is a temporary right of residence that is provided for short periods but can be extended (UNICEF 2007, 164). Many refugees from the Kosovo War were given this status in the absence of asylum (UNICEF 2007, 164). However, in preparation for EU membership, Kosovo had agreed to implement a program for reintegration of ethnic minorities (European Union Agency for Fundamental Rights 2009, 158, 165) and subsequently signed a bilateral agreement with Germany in April 2010. This macro-level agreement provided the legal structure permitting Germany to deport Kosovar Roma back to Kosovo (UNICEF 2007, 158). Çağlar and Mehling write that many of the Romanian Roma in Germany who were “voluntarily deported” in 2010 met the refugee convention criteria for asylum but were considered ineligible nonetheless because they were members of the EU (2013, 169). Of course, asylum would have been a more valuable status for them than EU citizenship was, given that their freedom of movement as EU citizens was denied (UNICEF 2007, 164). Çağlar and Mehling conclude: “EU space, no matter how differentiated and stratified . . . , had to be free from the conditions that would necessitate asylum from within” (2013, 170).

According to UNICEF, an estimated 38 percent of Roma returned from Germany to Kosovo were considered *de facto* stateless (2007, 166). But Kosovo did not have the capacity to provide adequate reception conditions for the Kosovar Roma who were deported from Germany to Kosovo (after living in Germany for eleven years) (UNICEF 2007, 165). Many of them immediately left Kosovo.

Roma: In Europe, Not of Europe

All three categories of citizenship exclusion (national, regional, and global)⁷ highlight the paradoxical situation of the Roma community—what Sardelic usefully refers to as the “nested model of citizenship constellations” that concretizes a sharp hierarchy of rights among nationalities (2015, 165–67). The Roma are *in* Europe but not *of* Europe. More than sixty years after Europe committed itself to establishing a continent free of discrimination, and of inhuman or degrading treatment, many Roma experience life as outsiders and outliers to the increasingly integrated and prosperous European population. One is forced to ask, from this vantage point, does citizenship in Europe really exist when all else fails?

What solutions are available, and what strategies are indicated in the face of these inherited and persistent rights deficits? Legal strategies including litigation and law reform have long played a part in the process of securing protection, and

in some limited cases they have produced positive results. However, one of the distinctive aspects about Roma exclusion in Europe today is the plethora of legal provisions, recommendations, resolutions, and regulations that have been enacted and promulgated to outlaw discrimination and encourage integration and assimilation, while the problems remain intransigent, and the affected populations experience their exclusion and marginalization as acutely as ever.⁸

Top-down strategies of litigation and law reform seem to have reached their reformative limit. New approaches are essential to break the current logjam to allow the Roma to develop their own voices. Participation of members of the Roma community themselves—in crafting policies and strategies that generate a voice, a sense of agency and inclusion—seems to be a necessary condition of progress. Supporting a stigmatized and multiply disadvantaged community to take steps that reflect their interests, their priorities, and their strategies for securing change is a complicated and challenging process that displaces the leadership and directive role of traditional reforming organizations in favor of a more democratic, collaborative, and decentralized organizational structure. Yet this seems the most hopeful strategy and one that has the best chance of securing enduring reforms and change. Only in this way are citizens likely to become real citizens, securing a status they have claimed for themselves in the face of exclusion and rejection.

The Spanish Center for Research in Theories and Practices that Overcome Inequality (CREA) has been successful in using a “communicative methodology” that emphasizes collaboration and dialogue with various Roma and non-Roma stakeholders to develop a form of inclusive citizenship. Decades of anti-discrimination legislation and pronouncement have not succeeded in creating a form of inclusive citizenship at the national, regional, or global level. Breaking the cycle of exclusion is a pressing, challenging, and unfinished obligation for the multiple constituencies concerned to reverse the divisive impact of citizenship and transform it into a source of rights and benefits, especially for those minorities who stand to gain most.

NOTES

Epigraph: Sarkozy quoted in *Cames* 2013, 18.

1. This observation is based on the author’s experience over the past five years. The Harvard FXB Center is engaged in an action-research project with Roma adolescents and other local partners in Torino.

2. Exact figures are unavailable, but estimates range from 200,000 to 1.5 million killed, which the Roma call the *Samudaripen* or *Porajmos* (Barany 1998, 11).

3. Some favorable decisions have quashed deportation orders. See, e.g., *D [a minor] v. Refugee Appeals Tribunal Anor* [2011] IEHC 431, and *K.H. v. Office of Immigration and Nationality* (OIN) 6.K. 34.440/2010/20. Note that the Irish case is an exception to the general policy that EU citizens may not be granted asylum in other member states on the grounds that they are all “safe countries of origin.” Other favorable decisions have reviewed rejection of refugee status by immigration boards or held that deportation would be violative of international law. See, e.g., *Bors v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1004; *Mohacsi v. Canada (Minister of Citizenship and Immigration) (T.D.)*, 2003 FCT 429; *Balogh v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 809; *Case of N.A. v. United Kingdom*, no. 25904/07, ECHR August 6, 2008.

4. See *Regina v. Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants)*, UKHL 56, December 9, 2004.

5. Illegal expulsion of aliens: *Conka v. Belgium*, no. 51564/99, ECHR February 5, 2002; *Connors v. UK* (2005) 40 EHRR 9; and *Hamidovic v. Italy*, no. 31956/05 (pending). Racially biased police investigations and abuse: *Bekos and Koutropoulos v. Greece*, no. 15250/02, ECHR December 13, 2005, and *Cobzaru v. Romania*, no. 48254/99, ECHR July 26, 2007, cited in Cahn and Guild 2008, 31. See also *Angelova and Iliev v. Bulgarian*, no. 55523/00, ECHR July 26, 2007; *Nachova and Others v. Bulgaria*, no. 43577/98, ECHR July 6, 2005; *Stoica v. Romania*, no. 42722/02, ECHR March 4, 2008; *Beganović v. Croatia*, no. 46423/06, ECHR 2009; *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, ECHR June 10, 2010; *Stefanou v. Greece*, no. 2954/07, ECHR October 4, 2010; *Carabulea v. Romania*, no. 45661/99, ECHR October 13, 2010; and *Dimitrova and Others v. Bulgaria*, no. 44862/04, ECHR April 27, 2011. Vigilante “skinhead” anti-Roma violence: *Šečić v. Croatia*, no. 40116/02, ECHR May 31, 2007, cited in Cahn and Guild, 2008, 31. See also *Case of Moldovan and Others v. Romania* (no. 2), nos. 41138/98 and 64320/01, ECHR November 30, 2005.

6. Race discrimination in education: *D.H. and Others v. The Czech Republic*, no. 57325/00, ECHR November 13, 2005; *Sampanis and Others v. Greece*, no. 32526/05, ECHR June 5, 2008; and *Oršuš and Others v. Croatia*, no. 15766/03, ECHR R March 16, 2010. Race discrimination in housing allocation: *Bagdonavichus v. Russia*, no. 19841/06, ECHR (pending). Forced sterilization of Roma women: *I.G., M.K. and R.H. v. Slovakia*, no. 15966/04, ECHR September 22, 2009 (admissibility), and *V.C. v. Slovakia*, no. 18968/07, ECHR February 8, 2012.

7. This exclusion arises where asylum applicants are disqualified as nationals of states seeking EU membership. Roma citizens deported from EU member states to countries of origin where they lack legal status and access to basic minimum social and economic rights (education, housing, emergency health care, protection from violence) might qualify for protection as refugees, proving their well-founded fear to persecution because of their nationality or membership of a particular social group. But their claims for protection are ineffective, a different aspect of the politics of evidence.

8. EU laws relevant to Roma integration and participation include the Racial Equality Directive (2000/43/EC); the Employment Equality Directive (2000/78/EC); the Integrated European Platform for Roma Inclusion (2008); the EU Strategy on Roma Inclusion (March 2011); and the EU Framework for National Roma Integration Strategies up to 2020 (April 2011).