RETHINKING CITIZENSHIP, IMMIGRATION AND REFUGEE ADMISSIONS FROM AN ETHICS OF IMMIGRATION PERSPECTIVE

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ABSTRACT

RETHINKING CITIZENSHIP, IMMIGRATION AND
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As the world witnesses the biggest wide scale displacement and mass immigration movement of 21st century, we need to rethink the political theory and ethics of immigration. In this context, it is important that we need to understand and explain the concept of citizenship and its evolution. The questions like How is citizenship defined in the modern state and what is the importance of social contract in this context? How is the status of the non-citizen defined and what are the criteria for new membership? would be beneficial for the related discussions and arguments. Therefore, this thesis will try to explore and identify the relations and gaps between political and legal context of citizenship, admission processes, their interpretations in practice and criticism of these practices from an ethical perspective.

Keywords: Citizenship, Immigration, Nation State

ÖZ

VATANDAŞLIK, GÖÇ VE GÖÇMEN KABULÜ KAVRAMLARININ SİYASET TEORİSİ VE GÖÇ ETİĞİ BAĞLAMINDA DEĞERLENDİRİLMESİ

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Dünya, 21.yüzyılın en büyük insani krizine ve bunun bir sonucu olan kitlesel göçe tanıklık ederken göç etiği kavramının da yeniden düşünülmesi ve ele alınması gerekiyor. Bu bağlamda, siyaset teorisinde vatandaşlık kavramının ve bu kavramın modern liberal devlette karşılığının anlaşılması ve açıklanması da bu tartışma için oldukça gerekli ve önemli olacaktır. Modern devlette vatandaş kimdir, nasıl tanımlanmıştır?, Toplum sözleşmesinin vatandaşlık ve vatandaşlığa adaylık konusundaki önemi nedir? ve Vatandaşlığın kriterleri nelerdir? gibi soruların yanıtları bu tartışmaya ışık tutacaktır. Dolayısıyla bu tez; vatandaşlık ve göç rejimindeki hukuki normlarla pratik uygulamaların arasındaki ilişkiyi ve yorumlamaları etik perspektifinden değerlendirmeyi ve eleştirmeyi amaçlamaktadır.

Anahtar Kelimeler: Göç, Ulus Devlet, Vatandaşlık

To all the people who still believe in and rely on the kindness of strangers

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LIST OF ABBREVIATIONS

DGMM	Ministry of Interior Directorate General Of Migration Management.
EU	European Union
FRONTEX	The European Border and Coast Guard Agency
IOM	International Organization for Migration
LFIP(YUKK)	Law on Foreigners and International Protection
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
YTB	Presidency for Turks Abroad and Related Communities

CHAPTER 1

INTRODUCTION

As Massey et al. (1998:1) argue “Like many birds, but unlike most other animals, humans are a migratory species,” but their migratory movements together with some other animals are restricted by states and their borders, unlike birds. Thus, the history of migration is as old as the history of humankind on earth and migration cannot be depicted as a new phenomenon. At best, it can be argued that we are living in the age of migration as Miller et al. (1998) demonstrates, due to the changing environment and conceptions around migration. Recently, public opinion on migration is trying to be framed around the rhetoric of crisis and unprecedented, but numbers and statistics prove the hypothesis that human beings have always have been migratory and we are not facing with a crisis created by an unprecedented number of migrants and refugees on the move (Haas, 2017). Although it is true that the number of international migrants has risen, so is the world population. Thus, statistical information on global migrant stock reflects that the entire portion of international migrants in the world population has only been increased by 0.44% lately.

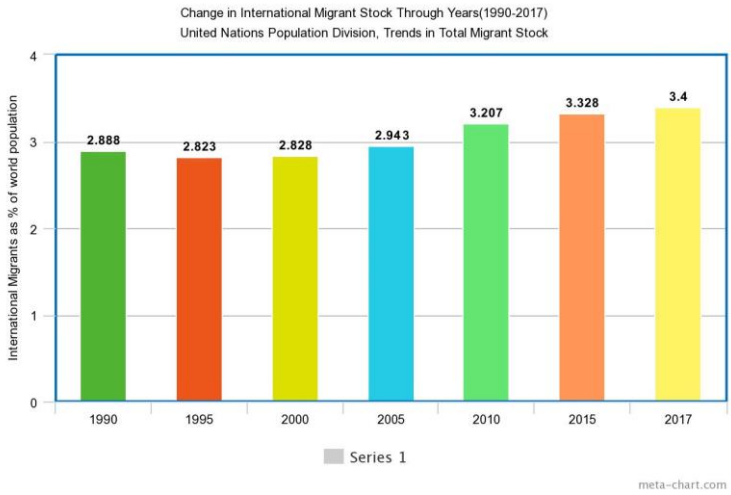


Figure 1: Change in International Migrant Stock Through Years(1990-2017)

Some scholars (Miller et al. 1998) describes the age of migration as the times during which the visibility of migration and migrants have increased rather than their number.

As the refugee question takes a special place among other categories of migrants, the tendency is to frame the refugee question as an exceptional one. However, numbers prove that the refugee question is not an exceptional one and the rhetoric claiming an unprecedented rise in the number of the refugees worldwide is a misleading one. What is intriguing and changing is that the way the question of migration has affected and been affected by politics in a way that politics of immigration has opened itself a unique and essential place in politics and political debates of everyday life. Since the politics of immigration gains more importance, the visibility and importance of the existence of citizens and noncitizens who are living together in the same political communities also increase. This situation links the migration studies with nationalism and citizenship studies by underlining the importance of citizenship regimes in immigration and emigration countries. As it is expected, these mixed political communities bring many old and new questions on living together such as:

> Does the political community have the moral right to decide who can/cannot become a citizen or mustn't we recognize the right to free movement? Much of the philosophical debate has turned around two issues: firstly, on the nature of our obligations towards people from impoverished countries who seek better lives for themselves and their families; secondly, on the moral status of political communities and their supposed right to protect their integrity by excluding nonmembers. (Dominique: 2017)

> The circumstances (if any) in which it is permissible to use guest workers, what obligations a rich country incurs when it actively recruits skilled workers from a poor state, the rights of irregular migrants, and whether there are any limitations on the selection criteria a country may use in deciding among applicants for immigration.(Wellman and Heath: 2015).

Although these are somewhat normative questions, they have been partly raised from the migration, and refugee-related practical realities of the world we live in and answers to these questions can also be found by looking into the migration experiences as well. As it can be observed, these questions are also about certain choices and preferences regarding who to let in or out and highlights a proposal made by Bauböck (2006:18) “Migration research must be combined with studies of nation-building and nationalism for explaining the persistence of such preferential treatment as well as for evaluating it.” This is one of the reasons why nation building process and national identity are two central concepts for exploring the citizenship scene in Turkey in the related chapter.

Until the 1980s, theories focusing on justice depicted closed communities that historically never existed by ruling out the questions about newcomers and outsiders and these theories mostly dealt with the matters of justice among citizens in a given territory. When it comes to the issues related to the duties and responsibilities towards refugees, many conceptions are borrowed or adapted from the existing theories of justice with few modifications until very recently. The efforts and progress on the political theory of immigration end very much indebted to the rise of the politics of immigration due to the related events. Previously, the debates on responsibilities and responsibility sharing are mostly stuck between the dichotomous ‘closed borders’(Miller 2005, Walzer 1983) and ‘open borders’ (Carens 1987, Fine 2010, Cole 2011) theorists with very few exceptions (Benhabib 2004, Bader 1997).However, today topics that have been tackling with issues including post-nationalism and transnationalism that offers discussions in between and beyond open and closed border debates. These debates that take place in the political theory of migration stems from the basic idea of what we owe and not to the migrants as individuals and states and there is a tendency to separate refugees from other different kinds of migrants as refugees’ mobility rise from pure necessity such as

wars that torn their countries apart and make conditions impossible for them to actualize a secured and dignified human life. Apart from this separation, whereas some argue that we do not have or only have minimal obligations towards migrants come to our territories, many argue that we oblige to welcome migrants come to our territories and make sure they are equipped with necessary rights and tools to go beyond survival and actualize their capacities. The reason behind this explanation is that, with all its lacks and incapacities, there are liberal democratic states that we can count on for their shared commitment to human rights principles by making these a part of democratic political processes. This study will also follow the footsteps of those claims that it is states' and citizen's responsibility to admit and include migrants into states.

The so-called Syrian refugee crisis that has been mentioned at the beginning has emerged as a practical reality, but it requires extensive theoretical analysis for shaping and directing debates on policy and the politics of immigration. This requirement would explain why this study starts with a theoretical literature review to showcase different perspectives on the political theory of migration and ends with a rather practical case study on Turkish case of migration and citizenship through the years. In this matter, Caren's thinking becomes very convincing as he claims:

> We often gain our most important moral insights, not from theory but experience. As Rawls says, we have considered convictions of justice that we should use as a way of testing and criticize our theoretical accounts.(Carens 2013:194)

Caren's approach for studying migration and citizenship showcases the necessity of adding examples from the empirical cases to this particular study and evaluating them by engaging in dialogue with the experience and theory. Therefore, descriptions and explanations that take place in this study will be followed by empirical examples from different parts of the world.

One could ask about the significance of the relationship between migration and citizenship that establish the backbone of this study as it is built on these two particular concepts. As citizenship is one of the main pillars of the nation-state system, migration and migrants could be viewed as a challenge to be welcomed and overcome again within the nation-state system.

Although traditional immigration countries like Canada and the U.S. and Western European nation-states like Germany, France, the Netherlands have been experiencing living with migration realities and migrants for a longer time, new immigration countries like Turkey and Morocco have lately started facing with the new and old dilemmas of migration. (Schmidt 1994; Reniers 1999) While the literature generally focuses on the Western experiences of receiving migration and living together with migrants and refugees, this study aims to draw attention to a non-Western immigration experience coupled with a transforming citizenship regime. This emphasis of the research makes it an important one by pointing out and identifying an essential gap in migration and citizenship studies Bauböck (ibid) also emphasizes by stating that

> The lack of comparative and normative studies on external citizenship rights is a major gap in current research. Closing it is also important from a 'receiving state' citizenship perspective since sending-state policies in this area are a major factor determining immigrants' choices between return migration, permanent settlement as a foreign resident, and naturalization. The lack of comparative and normative studies on external citizenship rights is a significant gap in current research.

In light of the research conducted in the areas of political theory, migration and citizenship studies, some gaps in the literature are identified at the intersection of these different fields. The research questions of this study are How and why migrants and refugees affect the transformation of citizenship regimes in receiving states? What are the implications of this situation for Turkey case?". The hypotheses of this study are:

- Refugees and migrants have the power of highlighting the failures, weaknesses, and transformation of the nation-state system.
- Receiving and sending migrants and refugees transform the citizenship regime
- Refugees and migrants do affect the transformation of citizenship regimes in receiving states.
- The receiving of migrants and refugees might have different implications for Turkey as a non-Western country.
- Migratory movements have affected the transformation of citizenship regime in Turkey

With these research questions and hypotheses, it is aimed to:

- identify different layers of state and citizenship in the nation-state
- identify and analyze the close relationship with migration and citizenship
- trace back to the theoretical foundations behind today's refugee regime concerning the nation-state system
- identify and explain the reasons behind the transformation of immigration and citizenship law and practices in Turkey and their linkage with migratory movements.

Turkey has been chosen as a case study since many dimensions of politics of external citizenship could be observed both from sending and receiving state perspectives. The discussions on politics of citizenship and membership remind us the necessity of decentralization of the state-centered notions of citizenship by shifting the focus of the debate from the structure of the relationship between the nation-state and its existing citizens to the universal citizenship in the global realm. This focus does not necessitate a sharp disengagement from national and supranational context; instead, it enables opportunities for multidimensionality. Away from the centrality of the nation-state and citizenship as an analytical concept,

there is transnational citizenship that has been used as an analytical concept for understanding post-national dynamics surrounding the state and citizenship such as external citizenship rights in origin and destination countries moreover, it suggests that migratory movements weaken the political importance of nation states and their borders (Bauböck 2006, Soysal 1994). Thus, it has been understood that the analyzes on state and citizenship could not be solely based on the modern nation state's citizenship norms and laws. Although nation states still have considerable authority over its citizens, the issue of migration requires a post-national approach to citizenship.

1.1 Chapters

The first chapter (The State and the Citizens: Citizenship in Nation State) will look into components of the nation-state such as sovereignty, territory, and citizenship. First, the legal dimension of the citizenship will be explained, and the political and social aspects of citizenship will be visited by imagining state as a community and citizens as members. While doing so, issues related with actors of migration and decision makers' roles in the decision-making processes of entry, exit and admittance and why specific debates and discussions on migration focus on state-centered perspectives will be tackled.

This chapter will end with debates on state's right to exclude by presenting and analyzing two opponent views on the issue: Open borders and close borders advocates. Singer's identification of the affected parties as refugees, migrants and the nationals of the receiving countries is borrowed. As the primary aim of this study is to revolve and reshape our perspective around the citizens and noncitizens, instead of the state for a change, this chapter is the next part and guide for the following sections. Citizenship and membership are viewed as analytical tools for this study since

> Citizenship is not only a device for sorting out desirable and undesirable immigrants; it also establishes a second gate that migrants have to pass to become full members of the polity. As a membership status, citizenship has certain features distinguishing it from related concepts that describe various forms of affiliation between individuals and territorially bounded societies. (Bauböck 2006: 19)

Thus, this chapter will provide an essential toolbox by visiting the central concepts of nation-state, citizenship, and membership and other related concepts such as burden, obligation, and responsibility for further explanation and analysis.

In the second chapter (States and the Refugees: Asylum and Refuge in Nation State), the issue of refugees as a distinct one among migrant-related topics will be tackled concerning the states' view on refugees This chapter will start by building on the discussions that take place in the previous chapter and look into the international law and regulations on the entrance and admission criteria for refugees by states to explain why some states are obliged to take in refugees while others are not. While doing that, it will be explained why a shift needed in theoretical discussions from one based on liberal theory to an alternative one that goes beyond liberal arguments and justifications.Therefore, refugeehood will be tackled from a rights-based perspective by invoking Arendt's conception of the right to have rights and discussing Agamben and Ranciere's supportive and complementary views on the same issue. Following these same arguments, the concept of naturalization and states' naturalization policies will be discussed from legal, political and social perspectives. The EU citizenship regime with particular attention paid to Germany will also be discussed as a case of Germany is a unique one concerning the transformation of national identity and citizenship as a response to the migratory movements. The chapter will end with a discussion on citizens and non-citizens who are living together in political communities and how they can interact with the spirit of the politics of solidarity. Up until this point, the differences among citizens, migrants,

refugees and other forms of living as noncitizens will be discussed, but in the end, the possibilities for finding common ground for the creation of political life for all will be looked for.

In the third chapter (Citizenship and Migration in Turkey), the citizenship and migration history of Turkey will be visited concerning the nation-building process and challenges to the nation-state in later periods as a case study. In this light, the legal documents on citizenship, settlement and foreigners will be analyzed, and migration, EU harmonization process and the feminist movement in Turkey will be explained as challenges to the nation-state and its citizenship regime. As the arrival of Syrian refugees has brought many substantial changes in law and politics of immigration and citizenship in Turkey, these new changes will also be described and analyzed to see the traces of transformation in citizenship regime invoked by the transition of Turkey from a country of emigration to immigration. In the same vein, it will be discussed that the source of the problem, that is the lack of politics, Arendt, Ranciere, and Agamben point out can be embodied in history of citizenship and migration in Turkey by referring to the continuities and discontinuities, if there are any, in the migration and citizenship regime of the country.

1.2 Method

The literature on the relationship between citizens, non-citizens, political membership and conditions of entry and exit will be revisited. This study is mainly built on theoretical foundations, but it will also benefit from databases of UN migrant stock, Ministry Of Interior Directorate General Of Migration Management. Analyzes on states' policies on migration and citizenship will be made by utilizing the legal documents(for the case study chapter, articles

of constitutions and Law on Citizenship of Turkey related with citizenship and migration) and policy reports.

There are some methodological challenges due to the fluxional characteristic of the migration and citizenship. It is preferably a dynamic area, and the studies are mostly designed by considering the locality and contextuality (Leong& Ward 2006: 1-3). First of all, many scholars have proven that analyses that are built on the foundations of traditional national state and citizenship structures are inadequate since today's citizenship notion has changed a lot. Today, a framework which pays attention to the recent debates regarding the cosmopolitan citizenship, transnational or post-national understanding of citizenship would be adequate as there is increasing mobility among nation-states, all over the world. These different concepts will be revisited under the section related with nation-state and challenges against a nation-state that migration arise. Thus, globalization has shaken the grounds for the state-centered understanding of citizenship. Today, there are the guest workers, refugees, migrants, people with dual and even triple citizenship, stateless people, etc. (Bloemraad&Korteweg&Yurdakul 2008: 166-169). Despite all of these changes and challenges, the legal status of migrants within a country still matters and tells a lot about the citizenship regime and nation-building processes of a state (Odmalm, 2005). This pillar also could help to identify a state's pattern of the grant of citizenship rights. In other ways, the answer to the question of how one particular country treats the citizens and non-citizens in their territory will be found through a document analysis process with an emphasis on the historical development of these legal documents.
In short, engaging a theoretical discussion based on the literature available of political theory and ethics of immigration and making a historical analysis of Turkish citizenship and immigration law comparatively, based on the overall analysis of states' immigration policies based on theoretical discussions are the methods that will be followed.

CHAPTER 2

THE STATE AND THE CITIZENS: CITIZENSHIP IN NATION STATE

2.1 Sovereignty and Territoriality: Citizenship as a legal status

> *Citizenship in the modern world is a lot like feudal status in the medieval world. It is assigned at birth; for the most part, it is not subject to change by the individual's will and efforts, and it has a major impact upon a person's life chances. (*Joseph H Carens 'Migration and Morality' in B Barry and R Goodin (eds.), *Free Movement* (Harvester Wheatsheaf, 1992: 26.)

Before starting a discussion on citizenship as a legal status, there arises the need of defining sovereignty and territoriality in relation with citizenship in the context of this work since legal status of citizenship has different forms. Citizenship is already stratified, and the various kinds of it include the hierarchical and non-hierarchical ones in the nation-state as human mobility made it more difficult to call all members of the political community simply as citizens. Beyond the more legal definitions of citizenship and related citizenship laws, formal citizenship in the nation-state is firmly attached to the national sovereignty and the nation (Arnold 2012: 27).

> Citizenship is usually defined as a form of membership in a political and geographic community. It can be disaggregated into four dimensions: legal status, rights, political and other forms of participation in society, and a sense of belonging. The concept of citizenship allows us to analyze the extent to which immigrants and

> their descendants are incorporated into receiving societies. (Bloemraad et al. 2008: 154)

As citizenship lays at the intersection of the territory, national sovereignty and the nation as a source of the sense of belonging, it requires a multidimensional understanding for analysis and Bloemraad's layered categorization of citizenship will be utilized in this study.

In its core and most straightforward meaning, sovereignty refers both to the state's freedom from external control and state's obligations to its citizens. Although the Peace of Westphalia and the Westphalian system of sovereign states are used interchangeably, they point out different elements based on contextuality and their spirit. The treaty defined three significant points about sovereignty: the principle of state sovereignty, the principle of legal equality of states, the principle of non-intervention.

As Carens(1987: 251) once depicted the quite obvious, "borders have guards and guards have guns." but why do states exactly need these borders in the first place? The conception of state sovereignty might be one of the main answers to this question as it is built on the understanding and acceptance that, all states are independent and equal at the same time.

"The state is defined as an entity that possesses the monopoly over the use of legitimate power in a defined territory" in *Politics as Vocation* as Weber(1972) considers modern state "sociologically only regarding the specific means peculiar to it, as to every political association, namely, the use of physical force." Thus, without the necessary social institutions that are provided with the knowledge and instruments of the use of violence, the concept of the state as we know it would be vanished by leaving its place to anarchy. The state and the social relations built around the concept of violence is a particular one, and state as an organized human community holds the privilege of using physical force within a given territory. The territory is only one of the necessary components of the modern state and

state delegates its right to use of violence within certain limitations, to specific institutions and individuals in today's societies. Thus, politics arises as a platform for the struggle for sharing and distribution of power among citizens, citizen groups and other states for the sake of this study focuses on migration, citizens, and non-citizens. (Weber 1972) Flint (2016: 105) explains that "States are defined by their possession of sovereignty over a territory and its people. A state is the expression of government control over a piece of territory and its people." Thus, modern state-making is a matter of constructing borders and boundaries to mark the nation-state based on a specific territory and a group of people. For this work, the term sovereignty will be used in a specific contextuality, with its close relation to the borders. It is worth noting that scholars such as Brown have further attempted to scrutinize the relationship between sovereignty and borders concerning borders' meaning and functioning for the states. This contextual meaning of sovereignty is best defined in Brown (2010: 52) as she regards sovereignty as a "peculiar border concept, not only demarking the boundaries of an entity but through this demarcation setting terms and organizing the space both inside and outside the entity." In this manner, sovereignty becomes a form of power in two different directions as it refers both to supremacy (absolute power over constituents) and autonomy (freedom from intervention among the equals, i.e., the other states. Thus, two traditionally different realms, internal and external security, come into the being as one in the form of sovereignty and borders become a tool of discipline and policing in and out of political communities (Aas et al. 2013).

The relationship between the state, territory and the people bring the legal and political issues together. The Weberian conception of "sovereign territorial state" is based on the enjoyment of governmental authority over specifically defined territories. Weberian understanding of sovereignty explains why sovereignty is coupled with the territory, beginning from the 7th century as it also refers to the regulation of the legal, political and social

matters within the defined borders and boundaries. (Moore& Buchanan 2003: 5-8) Moreover, sovereignty marks the boundaries of the inside and outside explaining why it has the power over the decisions about inclusion and exclusion. Therefore, sovereignty will be revisited as a vital conception in the following sections, specifically in the ones related with migrant and refugee admission into states as these decisions are direct results of states' sovereign discretion over borders and who can cross those borders.

The liberal political theory is solemnly based on the promise that all persons carry equal moral weight and this foundation manifests itself in the principles of democratic citizenship. If the discussions involve a liberal society, then individuals are both the subjects and sovereigns meaning that they are the equal subjects of the laws they make themselves. This is where the discussion around borders arise, for our discussion: While some argue that borders are essential to protect the lines between the genuine sovereigns and political subjects and outsiders. However, these efforts for the sake of the protection of the insiders hurt the essentials of the liberal polity that promise to ensure the moral equality of all persons. Here, I argue that the differences between the legal and practical experiences of migration and naturalization occur in the nation states in more vivid ways and formulations are created to justify and maintain the exclusive membership practices. This argument is shaped around the innate exclusive nature of the nation-state as national identity and claims of nationhood surpasses the equality promises of liberal polities, and there arises a clash between the principles of democratic citizenship and requirements of maintaining a homogenous national community. An example of this argument can be found in the section related to the description of citizenship in the constitutions of Turkey, and it is more than often contrasting political and social connotations. The principles of democratic citizenship may be constituted and presented as liberal and egalitarian, but in practice, sense of belonging and national identity is not stripped away of citizenship.

The conceptual descriptions of citizenship include citizenship as a political and legal status, legal rights what simultaneously come with this status and individual's experiences of belonging and identity which is linked to the citizenship status. Similarly, Stokke (1997: 61), analytically classifies three layers of membership in a nation-state with minor editions. Legal status is linked with 'individual's legal status within a polity which warrants the unqualified enjoyment of civil, political and social rights,' the political status of this individual defines political status, and membership is related to being tied to a nation state through 'a sense of shared national identity.

Citizenship is defined as "a multidimensional concept that denotes membership of a specific nation-state and the formal rights and obligations that this membership entails for an individual" (Gilbertson 2013:1-5). As far as citizenship is composed of a set of legal and formal rights and duties, it also refers to specific statuses and identities. The nation-state is capable of defining its members and their statuses through citizenship. Citizenship and nationality are two distinct conceptions despite the interchangeable use of them, especially under the nation states. Whereas members of a nation-state must be citizens, there are almost always citizens who are considered to be non-nationals as their nation differs from the dominant one in a community.

Nation states use the law and admission criterion for citizenship as an instrument while deciding whom to let in and left outside the legal realm of membership. Thus, citizenship refers to the state's capability as the sole authority over the decisions of distribution of the citizenship for the non-citizens or would be citizens. The processes that allow noncitizens to have access to citizenship in the nation-state also called as naturalization will be explained in detail in the following sections. Simultaneously, citizenship is described as the social, economic, and political rights guaranteed by the state and correlating duties of the citizens to the state, for the formal members.

A sovereign state has the authority to establish its laws regarding the nationality and citizenship as the sole authority to grant acquisition to citizenship or dismiss citizens from national citizenship. (see “Convention on Certain Questions Relating of Nationality,” the Hague, 12 April 1930) This substantial authority of the states over the citizenship has been accepted as the norm without much deliberation and questioning until the period between World War I and the end of the World War II, which caused the question of stateless people. This was the direct result of the states’ arbitrary decisions on stripping away the citizenship rights of the people. Today, clauses about deprivation of nationality/citizenship still find themselves places in the constitutions of the many nation states.

Jus sanguinis refers to the acquisition of citizenship through blood relationship, i.e., based on biological relations, as persons with a citizen parent are granted with citizenship. *Jus soli* refers to the acquisition of the citizenship through birth within a particular state’s territory. Today, most nation-states around the globe have citizenship laws that have clauses related to both the principle of *jus soli* and *jus sanguinis* (Scott, 1930).

Aside from these two ‘natural’ ways of becoming a citizen of a certain state, naturalization comes up as the third route for the acquisition of citizenship and this path is built by the policies and bureaucratic procedures defined by each country. In the history of classical and contemporary political thought and political sociology, citizenship is widely accepted as a concept that belongs to the modern nation-state, but the traces of it go back to ancient times. In the line of the rights and duties language, liberal interpretations of citizenship focus on rights associated with the individual’s status of citizenship whereas civic republican interpretations of citizenship focus on the obligations attached to the individual. Citizenship is tightly attached to a bundle of rights, composed of civil, political and social rights guaranteed by the nation states for their respective citizens (Marshall 1950). Although this perspective still holds validity and finds itself a place in the works of

contemporary scholars in the field, today citizenship is mostly being related to universal human rights (Turner 1993). This development in the perception of the concept of citizenship also challenged the once binary understanding of citizenship as either rights or duties. Today, citizenship is considered to be composed of both rights and duties resulting from the instead combination of previously contradicting liberal and civic republican conceptions (Mouffe 1992). As another result, citizenship has become an issue of performance and negotiation through which citizens demand some individual rights in exchange for the fulfillment of duties and obligations of citizenship. This can be considered as another challenge against the nation-state and its historical sovereign control on the citizenship. Moreover, with the development of the rights language based on the global human rights regime, citizenship rights are not merely depended on the fulfillment of duties and citizens cannot be stripped away from their individual rights even though they do not oblige all of the duties described by the nation-states. In relation to the welfare state regimes in some parts of the world, citizenship is also a key for the access to the social security services provided by the state. Additionally, political participation and engagement with the civil society are considered as essential components of active citizenship (Dietz 1985; Mouffe 1992).

2.2 State as Community and Citizenship as Membership

> *Citizenship is more than an individual exchange of freedoms for rights; it is also membership in a body politic, a nation, and a community. To be deemed fair, a system must offer its citizens equal opportunities for public recognition, and groups cannot systematically suffer from misrecognition in the form of stereotype and stigma.*
> — Melissa V. Harris-Perry, Sister Citizen: Shame, Stereotypes, and Black Women in America

Are all citizens in a given society equal or are all citizenships are equal? In the previous section, the legal dimension of citizenship was described,

explained and discussed. In this section, citizenship will be analytically categorized as a form of membership instead of a legal status attached to law and bureaucratic procedures. The nation-state as a unit of analysis presents a unique form of organization and distribution of social and political membership in communities as it links membership with nationhood and belonging (Brubaker 1990: 380). In this manner, Arendt also considers nation state a distributor of social membership as the sole authority and through political inclusion. Throughout the history of political science research, people are considered as the most complicated and debatable element among the three constitutive forces of the nation-state which are territory, government, and the people-all would be empty without people (Bader 1997). Citizenship in the nation-state is mostly presented and understood as a melting pot in which citizenship and nationhood are melted and firmly attached to each other and become a “two in one” concept which is used interchangeably often. From the perspective of international law, the word nationality refers to the citizenship quite often. In contrast with this universal acceptance, citizenship and nationhood are used as two distinct concepts which go hand in hand. Therefore, for this study, citizenship and nationality are not interchangeable but closely related to each other.

Although the modern nation-state system’s conception of citizenship is equated with national citizenship, this understanding has become inadequate in time due to the challenges mostly present by the ‘outsiders.’ As state’s authority and principles of sovereignty set aside, a new understanding besides the state-centered ones has become much needed for identifying and positioning the new models of citizenship and political membership across the borders. The tension between the principles of sovereignty and self-determination and liberal democratic states’ essential commitment to universal human rights principles arise as the conventional norms of national citizenship are challenged. Some thinkers go even further by building analogies by likening political communities to clubs, families or

neighborhoods and citizens as the members of those. Walzer considers club as an example because whether an insider or an outsider, everyone needs to have a legitimate reason and something to contribute to be accepted into a club and no one is entitled to more rights than others in this selection. To improve his analogy, Walzer continues with the example of the families as they have a moral obligation to take in specific people from outside,- such as their relatives. (Walzer 1983: 35-41)For states, relatives become citizens of the sending countries whom the host country has a shared national or ethnic background.

Furthermore, states become like neighborhoods as they equally grant citizenship rights to all those who are born in a particular territory. Walzer's analogy becomes inadequate for the most cases related with the refugee, but it is essential for highlighting the most basic reasoning behind the construction of state as a community and the citizen as the member of this community. From a normative standing, Walzer's analogy legitimizes the states' right to regulate immigration, but it also implies that permanent residents also have the right to citizenship. Otherwise, permanent residents become a group who are subject to many responsibilities without a place in the representative mechanism.

When membership comes together with states' arbitrary use of sovereignty claims, answer the question of 'whom do we let in?' becomes the source of extreme inequalities among and within the states. To agree or disagree with this statement, predominant conceptions that are used widely to explain and understand the nature of the state sovereignty and membership should be looked into. A brief exploration of global injustices and states' preference of protecting sovereignty principles over considering the humanitarian concerns would point out that these conceptions are far from being neutral.

> Contemporary states do not portray themselves simply as random collections of people sharing a legal status, but as communities of value, who share some common principles that provide a reason for

> them living together. The construction of the state as a community facilitates effective rule and makes the division of the world's population into states appear less arbitrary (Gibney 2014: 2).

Formation of such communities which are tied by shared values is based on mechanisms of inclusion and exclusion. For some people to be entitled to citizenship, some need to be left outside as non-citizens, i.e., aliens. These aliens are considered as outsiders and free riders in contrast with the genuine citizens who work hard for what they get from their community, i.e., who is in a mutualist relationship with their respective state/community. For instance, re-admission[1] is a tool of exclusion, used by EU for years. As far as exclusion is one of how universal values are affirmed and reaffirmed, inclusion provides another way. At the core of the EU mechanisms and structures, there lay freedom, equality, human dignity, and solidarity as inclusive and universal values but securitization of migration has replaced these values with exclusionary and unbalanced security concerns. As the securitization trend is overgrowing, it would be adequate to claim that security has become one of the core universal values that are deemed worth protection. As a result, states' act of opening their borders for asylum seekers is considered as a sign of hospitality and tolerance instead of a humanitarian necessity that is compatible with the universal values mentioned above.

As some argue state's role in controlling the borders has significantly diminished (Carens 1987), state sovereignty is here to stay for a while, but this does not require the denial of the fact that national citizenship is being challenged by newcomers, refugees, and asylum seekers.

> By offering asylum, a state can fashion a vision of its citizens as 'generous,' 'rights-respecting,' or 'sympathetic,' thereby (re)constituting the idea of a national community. Once again, asylum

[1] European Union (EU) readmission agreements function as tools for the readmission by states into their territory of both their own citizens and citizens of other countries on the move and who have been found in an irregular situation in the territory of another country (Rais, 2016).

> is less about protecting the vulnerable than bolstering a bordered world. (Gibney, 2014:1)

As Gibney suggests, both states and citizens want to keep their involvement with refugees and asylum seekers at a minimum while ensuring that they seem to do their parts. In other words, they do not wish to be perceived as non-humanitarian, but at the same time, they would like to preserve their national image and national communities composed of their citizens. The meaning of the citizenship varies from one context to another, but for the issues of immigration, it draws a bold line between the insiders and the outsiders, i.e., aliens. Free movement within the state and right to exit are considered as some aspects of modern citizenship whereas discussions start diversifying in the international realm and citizenship transforms into a political tool of control of regulation for keeping the certain individuals out. Moreover, newcomers who are accepted as foreign residents lack many political rights by being differentiated from the genuine members of the community.

The Westphalian notion of the citizenship is based on the perspective that defines sovereignty as 'territoriality and the exclusion of external actors from domestic authority structures.' The core element of this model is the state autonomy and in the 21st century many challenges such as the global human rights regime, international organizations, transnational mobility, have risen against it. Thus, even though the traces of Westphalian order can be detected in the structure of today's nation-states, an extensive ranged transformation is undeniable. As the Westphalian notion of sovereignty denies the existence of any external actor that can claim the authority over internal affairs, this is not the case in a late 21st century. This situation affected the understanding of citizenship indirect ways as well. In short, the sovereign state defined with the Treaty does not directly correspond with the Westphalian order that is being used as an instrument to describe and explain the nations states today.

From an anthropological standpoint, Anderson(1983: 49) defines the nation as an “imagined political community - and imagined as both inherently limited and sovereign.” Anderson gives three reasons why he describes the nation as imagined communities. First, it is imagined because members of these communities would never have the opportunity of meeting each other throughout their lives, no matter how small the communities they live in are. Second, “It is imagined as sovereign because the concept was born in an age in which Enlightenment and Revolution were destroying the legitimacy of the divinely ordained, hierarchical dynastic realm.”(ibid) Third, despite its inherent inequality and exploitative nature, then the nation has always been considered as a “deep, horizontal comradeship” that deemed worthy of dying for by many people throughout the centuries.

As transitioning from nation to the nation states, two main traditional approaches to citizenship are liberal and republican conceptions of citizenship. Liberal and republican traditions present different perspectives to the main dilemmas of politics such as the value systems and different paths for the actualization of these value systems. For instance, the duty part of citizenship comes from the republican tradition as Lister(1997:32) explains that “It is in the civic republican tradition that we find the source of today’s duties discourse. Originating in the classical Graeco-Roman world, it appeals to the values of civic duty, the submission of individual interest to that of the common good and the elevation of the public sphere in which the citizen is constituted as a political actor” (Lister 97:32). From a historical account, liberalism starts with the possibility of conflict that may arise from individuals’ differing interest and moral judgments. Liberal tradition’s answer to this basic problem is the establishment of political institutions that could act as a tool to realize its commitment to equality and freedom by keeping all the possible paths open for every individual to actualize their potentials in a peaceful environment. In order to ensure this environment, political institutions may have to echo authoritarian tendencies in times of conflict.

Therefore, liberalism chooses the relationship between the state and the citizens as the center of its attention and the contractual nature of this relationship that regulates what the citizen and the state can or cannot do. In short, liberal citizenship can be considered as a universal legal status that exists to guard individuals from harm (Honohan 2017). Both of these traditions have contributed to the composition of the various conceptions of citizenship that exist today. So, the point of explaining these traditions is not to decide on which one is more suitable or useful but to draw a discussion on what has left from them or what further can be drawn on them as Mouffe utilizes them to understand and explain what citizenship means in radical democracy:

> The problem, I believe, is not to replace one tradition with the other but to draw on both and to try to combine their insights in a new conception of citizenship adequate for a project of radical and plural democracy. While liberalism did certainly contribute to the formulation of the idea of universal citizenship, based on the assertion that all individuals are born free and equal, it also reduced citizenship to mere legal status, indicating the possession of rights that the individual holds against the state. (Mouffe 1991:72)

In light of this argument and in addition to these two main conceptions of citizenship, literature has offered three alternatives recently in relation with migration and changing demographic structures of societies in relation with migration. These are posted national citizenship, transnational citizenship, and multicultural citizenship. Soysal (1994) as one of the main scholars that come up with the term post-national citizenship argues that the age of national citizenship has come to an end and eventually be surpassed by a new model of citizenship that prioritize deterritorialized individual rights. According to the advocates of postnational citizenship, the notion of universal human rights has blurred the rights of the national citizens and aliens. About the rise of human mobility and globalization, individuals' rights based on residency and global human rights have become an important alternative to the rights coming from legal citizenship. Here, transnational citizenship as a conception also gains importance as human mobility also

give rise to the mobility of cultures and economies. As Bauböck suggests, transnational citizens create connections across sending and receiving countries and even beyond borders. When it comes to the multicultural citizenship, its advocates such as Parekh(2000) and Kymlicka(1995) refers to the states in which state and society structures including social and political institutions are inclusive to the minority rights and cultures in an integrating manner that includes tolerance and cultural recognition. All these three frameworks present fresh perspectives alternative to the nation state-centered models and explanations of citizenship but they are still wandering around the nation-state as demonstrated by Kostakopoulou (2008) as she states that the legal discourse on human rights is still strictly tied to the states as they remain as the ultimate legitimate body for the maintenance of the running of the human rights regime. For instance, transnational citizenship has been conceptualized around alternative networks and connections in which human beings can find new sources of belonging away from borders and states, but this does not mean that transnational citizenship disregards the importance of states and legal citizenship. It rather emphasizes that individuals can feel belongingness to the different communities and have roots in more than one territory or nation. Therefore, whether the discussion is on transnational, multicultural or postnational citizenship, “human rights are thus not disconnected from ties to the state: deterritorialized human beings may not be territorially bound citizens, but they are territorially bound residents.”(Kostakopoulou 2008: 87) One of the most intriguing common points for these three alternative approaches to citizenship remains as they are outcomes of international migration’s effect on citizenship.

2.3 State’s Right to Exclude

Liberty, that we may define it is nothing else but an absence of the lets and hindrances of motion

> *… every man hath more or less liberty, as he hath more or less space in which he employs himself … the more ways a man may move himself, the more liberty he hath. (The English Works of Thomas Hobbes, 1841)*

A discussion on the inclusion and exclusion focused on the theories and practices of membership would be incomplete without a broader conceptualization than describing the nation-state, territoriality, and physical borders as one does not necessarily lose her membership to a particular community(state, society) when she leaves the corresponding territories. The reversal of this situation also proves true as entering into a nation state's borders does not correlate with the gaining of the corresponding membership. Therefore, with a prior acknowledgment of the importance of the physical borders under the Westphalian system, the issues of membership covers beyond the territorial borders, fences, and walls.

Although we take the citizen's freedom of movement for granted, this has not always been the case throughout the history, and this right required grounding. Throughout a respectable amount of period in the history, states claimed authority over not only for the non-citizens tried to enter into their territories but also for their citizens wanted to leave. Thus, the citizen's freedom of movement was being controlled by the states to a considerable degree, and the state's authority over leave and re-entry was the norm, but the right to leave was explicitly recognized as a norm unless under exceptional situations like wars. "The philosophical underpinnings of the right to leave are grounded on natural law and classical liberalism which predated the modern formulation of human rights." (Chetail 2014:10)

Internal freedom of movement is also not an absolute right. Immigration may be restricted in specific territories, such as nature reserves or lands inhabited by indigenous peoples. Both exit and entry rights may also be

temporarily suspended in case of emergencies, such as the outbreak of a highly infectious disease. (Bauböck 2006:6)

“States' power to refuse entry and to expel aliens and their discretion to confer nationality have been treated as an integral part of this territorial sovereign power since the late nineteenth century.” (Bosniak 1991:743)Thus, in the 21st century, many scholars chose to deal with the issues of immigration as well, with some exceptions such as Dowty(1989), who chose to examine state’s jurisdiction over emigration exclusively.

The Universal Declaration of Human Rights recognizes every individual’s right to leave any country, including one’s own, and return to her country in addition to the freedom of movement and residence within the borders of each state. (1948, Article 13) while the Fourth Protocol of the European Convention reiterates that: “No-one shall be arbitrarily deprived of the right to enter his own country.” (ECHR, 1950) As the Declaration dates back to 1948, and the Convention 1950; the agreement on the acceptance of states have no authority over citizens domestic freedom of exit and re-entry but they have discretion over the exclusion of the non-citizen’s entry into their territories is a late 20th-century development. The mere fact that states claim the right to exclude would-be immigrants now is not a reason for us to assume that the existence of such a right is obvious and inevitable or that the right itself morally indisputable but the two basic standard international norms about sovereign states’ realm of jurisdiction in the matters of entry and exit can be summed up as Cole puts it:”All agents have the right to exit, and its citizens have the right to enter.” (Cole 2011: P.44)

In this respect, some political philosophers argue that the recognition of the freedom of exit, i.e., international freedom of movement is asymmetrical and not meaningful as long as there is not a respective right to enter into or/and settling in another state under current nation-state system. Cole states that people can only enjoy the right to exit unless there is no restriction on their

right to enter into ‘foreign’ territories. As our unit of analysis is limited to the nation-state for this discussion, then ‘there can be no [right to emigrate] without a corresponding right to enter another state’ (Wellman and Cole 2011:56). This deduction has become the target of criticism by those who consider freedom of exit as purely negative liberty. (Bauböck 2006: 1)

The state’s so-called right to exit in question also manifests itself in the difference and gap between physical and legal presence, as “only lawful admission amounts to entry” (Başaran 2011: 51**)**

Freedom of movement is both a right itself and a tool for one to have access to her other rights such as safety, health or education and this is why liberals value free movement insomuch as each can pursue his or her conception of good life without being interrupted by the unconstrained arbitrary power of the nation-state, in the form of immigration restrictions. (Bauböck 2006: 2) Aside from this more individualistic account, free movement is also valuable for achieving the collective good, on an instrumental ground, in political communities. Moses argues that democratic regimes can be kept under check and brought into line through free emigration as the increases in negative migration rate can increase the democratic regime’s level of responsiveness. (Moses 2006: 78-104) In relation with this, mass exit can be a tool for defeating the authoritarian regimes as witnessed in East Germany (Hirschman 1992, Bauböck 2006).

According to Fine (2010), the state’s ‘right to exclude’ usually entails three conceptually distinct rights. In this part, I will try to elaborate these three conceptually distinct rights, and their relations with each other as Fine’s classification brings the relational elements of citizenship and membership around the issue of inclusion and exclusion together, as explained in previous two sections.

a) The right to exclude outsiders from its territory: This entails preventing the border crossing actions of non-citizens into the state’s

geographical borders in its most straightforward sense. States facilitate a wide range of control and security measures for this very purpose and even build institutions with great authority such as European Border and Coast Guard Agency (FRONTEX[2]). In relation with this, I call this structure a semipermeable one as for some reasons, such as commerce and humanitarian emergencies and concerns, states would elect to waive their exclusionary rules and grant admission either temporarily or permanently to specific groups of people.

The right to determine whom to let in or out and grant or deny permission, based on the validity of claims have been in the area of jurisdiction of the states for a very long time and these rights are inherent the conception of sovereignty as explained under the section on sovereignty and territoriality. Although the walls and borders are concrete elements of territorial exclusion,

this conceptualization is also entirely subjective and not entirely spatially distinct in the sense that it is the sovereign again that decides who the outsider is. (Epstein 2017: 93) As stated by Epstein, “There are two dominant legal conceptions of what makes one an insider: *ius soli* and *ius sanguinis.* These conceptions are directly linked to the citizenship and are explained in the related section.

b) The right to exclude non citizens from settling within the territory: States enjoy this right by not allowing the settling of the non citizens through laws, policies, and actions such as denying asylum applications made in their territories, prompting confinement and a state of temporariness through the establishment of refugee camps and restricting freedom of movement of the non citizens. The source of the legitimacy of this kind of exclusion comes

[2] [2] “Frontex, the European Border and Coast Guard Agency, promotes, coordinates and develops European border management in line with the EU fundamental rights charter and the concept of Integrated Border Management.” ("Origin & Tasks," Migratory Map, , accessed August 26, 2018, https://frontex.europa.eu/about-frontex/origin-tasks/.)world

from the idea and theory of membership as to grant someone refuge means that the needs of these people surpass the criteria and boundaries established by a particular political community's membership rules.

c) The right to exclude noncitizens from membership of the political community, i.e., from acquiring citizenship status: As the distinction and relation between the citizenship and membership have been explained in previous sections, the foundational discussions behind this right to exclusion have been understood so far. In order to exclude the noncitizens from "full" membership, states tend to formulate and facilitate temporary and in between solutions, also referred as forms of quasi-citizenship and create hierarchical orders among the people who live together on certain territories as parts of a community. Although full citizenship is related with political participation rights more than often, it refers to a broader range of rights and membership related issues.

In the literature on the state's right to exclude, there is a central debate between Wellman and Cole as they represent two opposing perspectives on the issue. In this debate and the discussions on it, immigration refers to the entry into a state's territory and at the same time residence and acceptance to the political community as a member. Also, control on borders refers to the state's legitimate authority over decisions on whom to let in or out through its law and policy-making capacities such as establishing programs for admitting a specific group of skilled migrants or deciding on geographical limitations for the would-be refugees or asylum seekers.

According to Wellmann, only legitimate states should be able to create and enforce their immigration policies, and he defines the legitimate state by following his three criterion:

(1) Legitimate states are entitled to political self-determination, (2) freedom of association is an integral component of self-determination, and (3)

freedom of association entitles one to not associate with others(Wellman and Cole 2011:13–56) By following these premises, he brings up the argument that states that respect and protect human rights have the right to enforce border control and close their borders when they deem necessary against the potential unwelcome migrants in line with the principle of self-determination. One of his main aims is to illustrate that there is an absolute right to exclude and this right cannot be ruled out by libertarian and egalitarian arguments. Here, these possible challenges he presumes together with two other ones, democratic and utilitarian needs a closer investigation.

Egalitarian perspective makes the proposition that there should be open borders because at the root of human mobility there lies an unequal distribution of resources that results with underdevelopment and poverty that can be interpreted as the driving forces for migration. Wellmann partly opposes this argument and suggests that Western states need to compensate for what they have done for their part during Colonization period and contribute to the prospering of the poor at where they are but does not give any concrete method for the realization of this suggestion.

Democratic perspective argues that at the very core of democracy lies echoing the people's voice in the making of the laws which themselves are subjected to follow. Thus, foreigners who wish to cross a border and enter into another state should be able to participate in the law-making process, specifically the immigration law as these laws are individual of their concern. Wellman tries to refute not the logic but the practicality of democratic argument by merely stating that citizens of underdeveloped countries would vote for their right to migrate to the most developed countries and there would be nothing to prevent them from doing so, even if their number continually increases. This argument of Wellman also clearly opposes an ideal of open borders.

The utilitarian model argues that open borders make the calculation that open borders cost developed countries less when we compare it to the gains of the prospective migrants coming from less wealthy countries. Also, open borders also mean greater mobility for the workers that paves the way for more efficiency in production and service. A cost-benefit analysis suggests that opening the borders would cost prosperous nations less than it would help poor would-be immigrants. Moreover, the free movement would allow for greater labor efficiencies. As the last point in this issue, open borders allow refugees to have an option outside the tyrannical regimes and oppression. On this issue, Wellman criticizes that legitimate states can do a lot for these refugees without admitting them into their territories, but he does not give precise details about the states' alternatives.

Like the last one, the libertarian case is heavily based on the property right of the citizens, and it favors the business owners' right to employ cheap foreign labor. Wellman states that the nation's right to "stability and prosperity" comes first as cheap foreign labor might come to the expense of other costs to provide these migrants with their rights and basic needs. It is worth noting that the libertarian case is closely linked with the democratic one as in both of them a balance is reached through democratic processes.

After methodically reviewing Wellman's arguments favoring legitimate states' right to exclude outsiders from their territories, we can look into Cole's arguments for open borders. Cole discusses that legitimates states should be normally committed to the moral equality of all human beings and this paves the way for one of the justifications for the open borders as independent from the status of citizenship, all human beings should have equal access on the issues of borders and migration. Cole builds his arguments on open borders as an ethical defense and highlights the existing asymmetry between right to entry and right to exit. As it has been mentioned, right to exit from a state is a universally more broadly recognized right than the right to entry but under modern state system what the concrete meaning

of the right to exit from a state's borders without being admitted into another one is? As a result of this asymmetry, emigration has been recognized as a universal human right whereas immigration has been framed as a matter falls within the scope of state sovereignty.

It is also worth noting that scholars such as Brown have further attempted to disentangle the relationship between sovereignty and borders concerning borders' meaning and functioning for the states. As Brown(2010:52) states, sovereignty is 'a peculiar border concept' that gives the states the capability of announcing themselves 'a decisive power of rule and as freedom from occupation by another.' Thus, two traditionally different realms, internal and external security, come into the being as one in the form of sovereignty and borders become a tool of discipline and policing in and out of political communities (Aas 2013:1).

The framing of the position of the open borders advocates as radicals stems from their position against the centuries-long laws, policies, and practices but as Cole suggests, what is and can be legal is not intrinsically ethical, specifically on the matters of inclusion and exclusion. Stumpf (2006) also suggests that law is not neutral and coins the term *crimmigration* to define the historical acts of criminal and immigration law as the watchmen of membership through their utilization to define the criteria and policies for social and political inclusion and exclusion. The legal mechanisms and regulations also go hand in hand with new and sophisticated forms of securitization such as policing and illegalization which are increasingly institutionalized and transnational. This new order is quite dominant concerning the decisions on who can enter into which territories, who belongs to which political community or what kind of rights should be entitled to those people. The questions of borders such as expels, denials of entry and returns are also shaped within this order in increasingly transnational settings.

> In recent years, one of the fastest growing activities of the European external border control agency, Frontex, has been the organization of chartered return flights to countries such as Serbia, Nigeria, Kosovo, The Democratic Republic of the Congo, Iraq, etc. These flights pool resources of Schengen states and offer assistance in returning to the global South various types of unwanted mobility, including irregular migrants, foreign citizens who have committed criminal offenses, and rejected asylum seekers (Aas 2013:26).

> The application of membership theory places the law on the edge of a crimmigration crisis. This convergence of immigration and criminal law brings to bear only the harshest elements of each area of law, and the apparatus of the state is used to expel from society those deemed criminally alien. The undesirable result is an ever-expanding population of the excluded and alienated (Stumpf 2006: 378).

As it has been highlighted through this study and stated by Brown borders are created by some to keep the desired ones in and undesired ones. In the following chapters, it will be further explained how legal tools can be used to exclude outsiders with an example of readmission agreements that are being used by states to return migrants to their countries of origin or third countries on their route which are deemed safe again by the very same state authorities who want to return migrants in their territories at any cost. Moreover, Wellman uses analogies to strengthen his case for strict controlling of borders, but one may doubt that these analogies can apply to the cases on borders and migration.

Just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community. Moreover, just as an individual's freedom of association entitles one to remain single, a state's freedom of association entitles it to exclude all foreigners from its political community (Wellman 2008,110-11)

This analogy would be deemed applicable and justifiable only if a human being can survive without residency or citizenship outside the modern state system. The equivalent of being single can be being stateless for the case

of exclusion and in the relevant section, the state of being stateless will be discussed at length.

In the end, having their points of differences, Wellman and Walzer meet at the closed borders camp by advocating for legitimate states' right to control immigration and Cole and Carens meet at the open borders camp by advocating for ethical and moral considerations for freedom of movement. In previous sections, it has been explained how citizenship in nation-state has become the equivalent of membership within the borders of one political community, i.e., one nation-state and as a result, one citizenship for one individual has become the norm. As it has been argued from the very beginning of this study, we live in a world of constant movement and mobility, and this paves the way for a rise in the number of people who go beyond the nation state's ordinary of one citizenship. Transnationalism and post-national citizenship explain that there are now people with dual and even triple citizenships and new forms of belonging in multiple political communities. These new forms of belongings are perceived as pathologies and challenges to the norms of nation-state and as a consequence state tries to eliminate these deviations as much as possible through migration and citizenship laws where it is applicable and through somewhat indirect policies to exclude specific groups from the more significant polities that are deemed desirable on the basis of nativity.

If we go back to the starting question of the discussion on the inequality among human beings on earth in general and among citizens within same communities, not all citizens are equal, let alone the non- citizens living on the same territories under a nation-state as nationality and nationality laws function beyond creating and maintaining the legal relations between the state and the individuals. Nationality laws along with the schemes and senses of national belonging also produce and reproduce the essential elements and layers regularly. Thus, processes of national reproduction strategically exclude the citizens as well, mostly on gender-based

discriminatory ways. For instance, women are accepted and presented as the bearers and mothers of the nation, and at the same time, "different" women are also targeted for carrying the very same qualities as Yuval Davis (1998:28) recalls.[3]

Therefore, when we add the hierarchical and unequal status and treatment of noncitizens to this equation, we also observe overlapping and intertwining inequalities in societies as examples of it can be observed through the cases of minority immigrant women as another challenge to the nation-state but this study does mainly focus on the gendered dimension of the issue.

[3] "As we have seen, women play crucial roles in biological, cultural and political reproductions of national and other collectivities. But more than that, gender relations have proved to be significant in all dimensions of national projects—whether it is the dimension of Staatnation, i.e. the gender dimensions of the construction of citizenship; Kulturnation, i.e. the gender dimension of the cultural construction of collectivities and their boundaries; or Volknation, in which the control of women as biological reproducers has been aimed at controlling the actual size of various majority and minority collectivities."(Yuval Davis, 1998:28)[3]

CHAPTER 3

STATES AND THE REFUGEES: ASYLUM AND REFUGE IN NATION STATE

3.1 Providing Refuge: Entry and Admission

In the previous section, the state's right to exclude and the possible justifications for this right and its implementations have been discussed. It has been emphasized that states follow exclusionary and selective policies and procedures mimicking the exclusive clubs that let certain individuals out and some in as members by taking old members' needs and wishes into account. All of these discussions and debates that have been mentioned originate and also take place in liberal tradition. The open and closed borders debate mostly identified with Wellman and Cole debate in the literature is quite substantial concerning its wide content and offering of two contrasting views in a holistic manner. By recognizing these qualities of this long on-going debate, the lacks and limitations of it should also be noted. This is why a very different perspective that chooses to focus the other directions that can be taken on the same issue as offered by Arendt in the literature. Therefore, how this selective process becomes interrupted and states decide on providing refuge to the people in dire need will be discussed in this section from a different perspective This section is mainly about ways of providing refuge to the refugees and the ways of states' responses in admission processes but it should be noted that migratory

groups are mostly mixed with migrants and refugees and for this study, a clear-cut distinction between migrants and refugees is not made as even the so-called genuine refugees are mostly labeled as economic migrants by states and societies whereas only people fleeing from war and violence under particular conditions are considered as “genuine” refugees only with the liability of proof. International Organization for Migration(IOM) also recognizes the existence of mixed migration by stating that

> The principal characteristics of mixed migration flows include the irregular nature of and the multiplicity of factors driving such movements and the differentiated needs and profiles of the persons involved. Mixed flows have been defined as ‘complex population movements including refugees, asylum seekers, economic migrants and other migrants.’ Unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants, among others, may also form part of a mixed flow. (IOM’s Ninety-Sixth Session, Discussion Note: International Dialogue on Migration).

Therefore, violence and conflict are not independent of deprivation, and economic insecurity and political conditions in a country can produce an environment in which economic conditions can also lead to migration. Therefore, the old dichotomous categorization between political migrants and economic migrants seem no longer valid in an increasingly interdependent world. Although the state of refugeehood mostly falls under categories vaguely drawn, in its most straightforward meaning,” a refugee is a person fleeing life-threatening conditions.”(Shacknove 1985: 274) In regard with the definition of the refugee, Hein (1993:44) suggests that “For social scientists, the significant fact about refugees is that they break ties with their home state and seek protection from a host state through migration.”

Although these definitions present a framework for the definition of the refugee in line with the social sciences and the preferred use of it for this specific study, the most commonly accepted definition is made by the 1951

Convention relating to the Status of Refugees and its 1967 Protocol by stating that

> As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNHCR 1951).

According to this description in Geneva Convention, if a person flees from her country of nationality and cross an international border, she becomes a refugee, but if a person does not cross any international borders, then she becomes a displaced person. Even the word status explains a lot about the necessity and rationale behind providing refuge as it tells that the Convention is not about refugees themselves, preferably it is about their status because the aberration for the modern state system is about unclear or undefined statuses of individuals in the case of refugees. Thus, Convention aims to identify and categorize the refugees under the state system so that their statuses can be recognized and located by the states. Even though the Convention entails the most widely accepted definition of who is a refugee, it is quite problematic in itself because of the stripping the moral, ethical, social and political positions that refugeehood contains and makes the issue about states' refugee problem instead of refugees' problems. This discussion on the description of the refugee in a proper way is important as it is only one form of unprotected statelessness and they are carefully distinguished among other migrants, yet the modern state system and international protection regime still work in ways to legitimize individual states' willingness to admit the least number of refugees possible by only working as a tool for fixing broken statuses. Thus, refugees mirror the state of failing international protection and assistance regime and modern nation-state that fall short of answering to the needs of those who fall out of the

lines of a state's jurisdiction and protection due to home state's failures in the different forms of war, violence, famine, and recently, climate change.

According to Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR 1979), refugees stand at the intersection of

a)persons with no recourse to home government

b)persons deprived of fundamental rights

c)persons with limited or any access to international assistance

In the handbook, it could be observed that there are many preconditions to be accepted as a refugee through the international refugee regime. For example, the applicants for the refugee status are obliged to:

> (i) Tell the truth and assist the examiner to the full in establishing the facts of his case. (ii) Make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary, he must make an effort to procure additional evidence. (iii) Supply all pertinent information concerning himself and his experience in as much detail as is necessary to enable the examiner to establish the relevant facts. He should be asked to give a coherent explanation of all the reasons invoked in support of his application for refugee status, and he should answer any questions put to him (ibid, 1979).

When we add these preconditions to the necessity of conducting individual interviews for the decisions on refugee status, these become meaningful and useful explanatory tools to understand why refugees compose only a small portion of the internationally mobile population and how only a small number of people who are in fact genuine refugees cannot access to the refugee status. In international protection and assistance regime, seeking international protection through refuge is the last resort for many individuals fleeing from war or persecution. Under these same circumstances, war or a well-founded fear of persecution, there are also internally displaced

populations whose number are much higher than the number of refugees as an outcome of that specific conflict.

Until now, the most widely accepted conditions for the recognition of the refugee status have been discussed but which states admit refugees based on what grounds? According to Carens (2013:195-196), there are three rationales behind states' decision of taking in refugees. In a case, all three of the rationales might be observed at the same time, but only one of them is enough for to justify the state's duty to admit refugees. The first one is called causal connection, and it refers to the situations in which the conditions in a home country become unsafe and insecure for the refugees due to the direct or indirect actions and involvement of another country. One of the most recent examples of causal connection can be observed by looking into the United State's involvement in Afghanistan and Iraq that caused many people to flee their hometowns and even the country.

The second source of duty for admitting refugees arise from humanitarian concern. Humanitarian concern may depend on many types of moral perspectives including the secular and religious one as it suggests that refugees are in need of safety and security and many countries on earth can provide these for them due to their resourceful and influential positions.

The third source of duty to admit refugees is entirely in line with one of the primary arguments of this study as it proposes that normative presuppositions of the modern state system require that all of the lands on earth be divided and shared among sovereign states and these states have a right to control the individuals' entries and exits into and from their borders. Moreover, as it has been previously discussed, modern state system considers birthright citizenship at one state as the normal and accepts all other forms of citizenship such as dual citizenship as undesirable and deviations from the normal. Therefore, as long as the modern state system is defended as the most viable option, these states then must admit

refugees whose respective states fail to secure their basic rights in a safe environment since the system requires every individual to live under the roof of a state. Hein (1993:48-49) also adds that “foreign policy, domestic pressure groups, and fiscal concerns shape the state's selection of displaced populations for admission as refugees.” According to him, especially the US refugee admissions are profoundly affected by US foreign policy maneuvers. States decide who is a refugee and who is not according to their political interests whereas regular migrant admissions are based on labor supply needs, demands and economic interests.

When we look into the terms and rhetoric used for the issues regarding the admission of refugees by states, burden and in some rare cases responsibility sharing is the most commonly used terms. The drafters of the 1951 Convention approached the scope of the term burden with a slightly narrow perspective. “They thought primarily of the direct costs of protecting and assisting refugees in emergency situations, thus neglecting possible indirect effects on the political, economic, security, and social fabric of both receiving and non-receiving countries.” (Gottwald 2014:3)

As discussed in the previous sections, sovereign states claim the control over their borders and they also utilize this claim through discretionary admission decisions. In the following sections which are on a case study, these rationales will be revisited and applied to the Syrian refugee situation and discussed at lengths concerning Turkey’s position.

As states do admit refugees mostly due to the drivers and ambitions in the foreign policy realm, the scene for migrants differs as states can control their admission more closely by applying selective criteria mostly according to their economic needs and interests. For instance, the United States applies an H1B visa scheme with precise admission criteria is generated explicitly for academics, scientists, and other highly skilled individuals. Canada also applies similar schemes for attracting highly talented and skilled individuals.

In 2000, Germany introduced a similar scheme to recruit 20000 Information Technologies workers, and they managed to recruit 10000 workers by the end of the following year. (Cervantes and Guellec 2002: 40) The European Union(EU) has also introduced the EU Blue Card with the similar intentions.

> An EU Blue Card gives highly-qualified workers from outside the EU the right to live and work in an EU country, provided they have higher professional qualifications, such as a university degree, and an employment contract or a binding job offer with a high salary compared to the average in the EU country where the job is. (https://ec.europa.eu/immigration/bluecard/essential-information_en)

Thus, these examples showcase that the state borders are not closed at all or states did not and did not have an intention to close them as they can be opened to some and even nation-states like France and Germany try to attract migrants as long as it suits their economic and sectoral needs. The reluctance of states' about refugee admissions also comes from the states' relatively low levels of inability to choose among refugees according to their needs and interests.

> A theory of global social conflict in the nation-state system supports a modified realist perspective. Refugee crises are a consequence of the political dynamics of state formation and transformation, and of increasing global interdependence, which erodes the stability of national states. Nonetheless, analysis of western refugee policy supports the nominalist perspective because who is or is not admitted as a refugee remains closely tied to foreign policy interests. The simultaneous rise of supranational state groupings and subnational ethnic mobilization requires a rethinking of citizenship, sovereignty, and the nation-state" (Hein 1993: 55).

In the end, states' utilization of refugees according to their political agendas is one of the main reasons behind the creation of refugee crises, not the numbers of the refugees or simply refugees themselves. Moreover, as it has been mentioned, these so-called crises are utilized by states to follow their opportunistic agendas in international scenes as Shackar (2014:121) also warns that

> The latest United Nations High Commission for Refugees data show that approximately 80% of the world's refugees are now hosted by developing, not developed, countries. This abandonment of responsibility in the name of responding to domestic pressures or preventing the creation of incentives to 'draw in' opportunistic or unworthy protection seekers is the latest manifestation of how a legitimate power to draw boundaries can go terribly wrong.

Another main reason is that nation-states, by nature, as explained in the previous sections, are prone to the instability, and there is not a strong enough safety network in the modern state system that can protect and instigate the states who fail to secure their citizens' fundamental rights in safe and secure environments.

3.2 Refugees and Right to Have Rights

In the introduction section, it has been claimed that there is a close relationship between the citizenship and migration. Arendt is the first one to point out to the fact that nation-state system is flawed by pointing out to its inability on solving the problems related with the de jure and de facto statelessness. Also, Arendt is among the first thinkers to take the issue of refugees from a human rights account, and her work on this issue has been responded and followed by Agamben and Ranciere at different time periods. Moreover, these thinkers are the ones claiming that offering refugees the bare minimum for survival is not an act of kindness and not enough as the necessities of bare life are not enough for a meaningful life.

Arendt wrote on refugeehood in the aftermath of World War II and saw a dilemma that Shachar explains. "How to address the potential contradiction between the sovereign power to exclude and the human need for inclusion in a political community that treats us as equal and worthy of respect and dignity is a perennial dilemma." (Shachar 2014: 114)

Refugeehood is considered as an essential and unique tell-tale of what is wrong with universal human rights rhetoric and international protection

system that is composed of individual nation states by some of the prominent thinkers of the 21st century. In this context, Arendtian notion of a right to have rights both as the right to asylum and a safe and clear path to citizenship is considered as a theoretical guideline for this study. It is the place where the citizenship, the nation-state, and their tools intersect in a way to pave the way for refugee's loss of power and put her into a somewhat desperate position against the hosting state and the society. The refugee figure has been made unable to participate in the decision and lawmaking processes that affect her directly in the hosting society. Therefore, asymmetrical relations are observed which are almost impossible to overcome between powers and devices which the refugee has in possession of the state accepting him and the power to imagine his state and future. Arendt makes a clear distinction between refugees and stateless persons with her critique of universal human rights but these two also meet on the common ground of "having lost a place of their own" and the question of "where do they have the right to live?" (Arendt 1951: 1).

Arendt's works on statelessness have been revisited numerous times since 20th century to analyze mass statelessness, conditions of the refugees and what it means to have a home in political and philosophical senses. How Arendt's work on statelessness and perplexities of the human rights is still relevant today and how other critical political philosophers responded to her thinking? Arendt connects citizenship to the human rights and even the right to have rights. As an expected result, the non-existence of the citizenship causes many problems in the way of one is claiming even the fundamental human rights. The right to have rights has come up as the Arendt's answer to the inadequacy of existing human rights regime is about the protection of refugees after two wars that torn Europe apart. In her writings, she was concerned about the protection gap that international law manifests as once an individual leaves her territory for another, it was only her citizenship status via the tie with a home state. Thus, while the citizens enjoy some certain rights when they are in foreign lands, concerning their national rights;

refugees lose these rights and end up alone in the international arena without being subject to a friendly foreign nation state's supporting mechanism of international legal protection in other's lands. As the refugee loses all her protection of the home government, it is only the protection of international law and community that she can rely on. In this respect, Arendt argued that that the"rights of man (...) proved to be unenforceable (...) whenever people appeared who were no longer citizens of any state."(ibid, 292). The situation of the refugees that two wars left behind showcased that they had been left with the "abstract nakedness of being human and nothing but human." (ibid, 296)

This empirical case also proves that relying on the kindness of strangers, i.e., moral universalism might be dangerously naive. The right to have rights refers to 'a right to belong to some organized community.' as human beings have the need "to live in a framework where one's actions and opinions judge one." "The Perplexities of the Rights of Man" is based on the Universal Declaration of Human Rights through which a tautological linkage was established between the universal man and the citizen of the nation-state. The 1789 Declaration was supposed to be emancipatory in the sense that it allowed legitimacy for sovereign states and its citizens. The Declaration is considered as a turning point in the history, as it marks the end of the age of the more privileged individuals, especially before the law. However, at that point another problem arises: The so-called Rights of Man have become the rights of the citizen, and citizens' rights were attached to the national state from the very beginning. In the *Origins of Totalitarianism*, Arendt chooses to prove her point, based upon her observations in Europe, during the interwar era because at that time the European states were trying to figure out the problem of the refugees who had to leave their home countries.

Although the idea of human rights was shaped around an idea of the adequacy of existing on earth as a human being for being the subject of

human rights, the status of refugees proved the other way around because these were the people who lost all of their ‘citizenship’ qualities and relations other than their quality of only being human. Then Arendt states that the condition of stateless people in Europe showed that the new conception of human rights had failed after the Declaration. She claims that when human beings find themselves left without their governments, they have to settle for their minimum rights without no authority to protect or guarantee them. (Arendt 1951: 292) The people who are forced to live outside of their political community find themselves at ground zero, and this was when stateless people appeared to be barely recognizable as dignified human beings. Then Arendt presents a right which human beings must have before having human rights in general: A right to have rights, in other words, the right to be attached to a political community in which the individual has the right to get involved with the political life.

Then, human rights became the language of the victims as a kind of extra legal protection. (ibid, 293) Since it was declared that Right of Man would apply to all human beings independent from their different qualities and all people were expected to be attached to a national community by citizenship, people would suppose to force their states to change the laws if they did not respect the Declaration through popular channels or revolution. In the meantime, it was understood that citizens' rights neither inalienable nor forcible even though one’s state’s constitution is built based on them. The stateless people lose their human rights through two steps: Firstly, they lost their physical attachments, their homes and all the social space and relationships which they were born into were gone.

The loss of the de facto stateless was different from the previous cases of the losses of homes for some reasons. Now, the problem was not something due to the demographics such as overpopulation. Instead, the reasons were political, and this time there was nowhere left to go or call home. The status of the stateless had no place in any of the existing forms

or categories of the nation states'. Thus, no one exactly knew how to deal with this problematic situation. In the nation-state system, one solution would be the strategy of inclusion through naturalization, but the conditions of the citizenship which are mostly based on birth on an exact territory of a state blocked this way. Also, now the territories of the world were shared among nation-states, and there was no new territory left for stateless people to build a political community for their own, and they become homeless.

Secondly, the stateless people lost the protection of their governments, and this situation paved the way for a scene in which they were no longer entitled to a legal status all around the world. Since their condition of the statelessness was a result of their ethnic or racial origin in most cases, they were not qualified for asylum as well. (ibid, 294)

As Arendt discusses, the actual disaster of being a stateless individual comes from the fact that they lose their human rights but most importantly their political rights and place in the political communities are ripped off. (ibid, p.295) What matters to them is not the equality before the law or the oppression they face with because nobody seems to bother with his or her existence to care about them anymore, their fundamental struggle is for regaining their voice and visibility first. She stresses that a situation in which they become rightless was created before their right to live was threatened. Due to the refugees' lack of voice and visibility in public, Arendt mocks that the stateless people enjoy such degrees of freedom that no other ordinary citizen ever could. For instance, they have considerable freedom of opinion because no one even hears their voice in public. Even for the involvement in the crime was instead a good thing for the rightless because if she or he gets punished, equality with the citizens in punishment would be achieved. (ibid, 296)

Thus, they have no right to shape public opinion either through speech or action which is the most exceptional qualities of the life of human beings.

According to Arendt, two Greek words are essential for Arendt's understanding of politics: *Zoe* which refers to bare physical life and bios which means a form of life. In the same light, *bios politikos* reflects the life of action and noble words. (Ranciere 2004: 299) The use of these terms shows us the primary foundation of Arendt's theory on citizens' rights is based on an Aristotelian understanding of politics, which require active political participation in the form of action and speech in public realm to appreciate the possibility of living a fully human life. For Arendt, politics is the space of appearances, and this space is where we appear to others, as others appear to us. (Arendt, Human Condition 1958: 199-207) In this sense, refugee becomes an invisible entity without any links to the political community. The non-existence of any political connection makes refugees vulnerable before state and non-state powers. When refugees become visible in public, it is just because of their portrayal as vulnerable and desperate victims due to lack of humanitarian response and aid of the world. (Barnard&Shoumali 2015) Human dignity and self-realization require more than being fed and kept alive. Again, this demonstration shows that human rights principles were founded on the notion of citizenship and they are firmly connected with the nation state's will to protect and execute them.

When it comes to Ranciere and his the relation of his work to this study, it is important to note that he criticizes the depoliticizing manner of Arendt when she links human with bare life, and citizen with the good life as Ranciere believes social struggles of everyday life stand at the center of what is called political life. Ranciere believes that a new way of thinking is needed for the true meaning of politics. Ranciere argues that the subject of citizens' rights is not the stateless people or the well-defined citizen of the nation-state. Each one of these definitions creates problems in the sense that the relationship between the subject and the rights are not always clear-cut as Arendt presupposes. Thus, reduction of the subject of the rights to a predetermined man would be wrong and inhibitive. We instead need an area

of unlimited possibilities and plurality for the subject of citizens' rights to reformulate the politics. For Ranciere, politics is a space for the questioning of the existing rules, norms, and definitions. For instance, we need to rethink the meaning of freedom, equality, and citizenship. By declaration, born as equals, women and men were supposed to have equal rights, but in reality, women were not entitled to any political rights including electing and get elected. Thus, a line was drawn between private and public lives of women, but historical circumstances proved that this was not what happened in real life. This example shows that it is not very easy to make distinctions between private and political realms as Arendt argues. In contrast with what Arendt stands for, even the bare life of human beings has a political stance and meaning in the sense that women were sentenced to death when they were acclaimed to be the enemies of the revolution.

Ranciere argues those women's bare lives' political meaning proved that they had every right to participate political life and the true meaning of politics can be found in actions detaching from the depoliticizing factors surround the repetitions of everyday life. Thus, for Ranciere, the politics begins at the point where it departs from consensus. Dissensus is not simply a conflictual situation; rather it is the division and plurality of ideas and values beyond common sense. Since consensus blocks the ways for challenging and questioning, it is antipolitical, and it cannot create change. Thus, we cannot assign a specific realm or subject to politics. The subject of the Rights of the Man is the subject who is capable of becoming a part of the dissensus. The true political subjects build scenes for dissensus in political life. Thus, Ranciere's proposed solution lays in the refugee's potential of casting plurality and creating change by challenging the existing structures. However, there are many obstacles in this way as Oudejans explains by quoting Améry: "The refugee who flees his own country not only forfeits state protection but 'also he loses the only space in which he can be free' as 'he loses his society of equals.' Having lost his community of equals,

the refugee, even if he comes in large numbers, is precisely the one who, according to the desperate phrase of Jean Améry, can no longer say 'We'"(Oudejans 2014: 13). For Ranciere,"deprived life meant 'private life,' a life entrapped in its idiocy, as opposed to the public life of public action, speech and appearance."(Ranciere 2004: 298). The production and protection of rights come from the dissensus language rather than consensus. Ranciere, by quoting Agamben argues for democracy to be the weapon of the poor or the lower classes or who do not have any other qualification to participate in political life. By doing so, we can hear the voice of the previously unheard in the political scene. We should deal with the issue of the Rights of the Man as a matter of subjectivization. Human rights language enables us to see ourselves as subjects in the collectivity as right claimers.

Previously, refugees were the people who had to left their country because of their opposition to the people in power or their radical political ideas. In time, this has changed, and greater masses found themselves as displaced or stateless. "Now refugees are those of us who have been so unfortunate as to arrive in a new country without means and have to be helped by Refugee Committees."(Arendt, We Refugees: p.1) As refugees leave many parts of their identity behind –their language, country, occupation, larger family, they also start becoming familiarized with a new country, language, and culture. If one wants to be considered as a normal citizen sooner than later, then s/he better adapts the laws and customs of their new country. In We Refugees, Arendt explains why adaptation and perhaps assimilation did not work at that time. According to Arendt, it is European modern nation-state system itself which inherently creates displaced people on a constant basis. So, as long we live under nation states, stateless people and refugees will be parts of our lives, and they will suffer most the injustices and hardships of the world as they are seen as "the vanguard of their peoples." As human beings, we are political animals by nature, and nation-

state borders make it harder for people to realize their capabilities and the idea of living together.

When it comes to the relation of Agamben to this study, he picks up from when Arendt leaves by stating that “her striking formulation seems to imply the idea of an intimate and necessary connection between the two, though the author herself leaves the question open” (Agamben 1998:126) He also highlights the flaws of the nation-state system by examining the modern form of biopolitics. As previously discussed, one of the main and antique ways of acquiring citizenship is through birth. Thus Agamben argues that man citizen and the birth nation is linked in inseparable ways. As man is inseparable from a citizen, birth automatically becomes a nation in a way where no separation can exist within the political realm of the nation-state. Agamben concludes that this separation is the reason why birth has become the immediate bearer of sovereignty. Agamben agrees with Arendt by reaffirming that, the effects of the decline of the nation-state and the decay of traditional political structures can be observed through the statue and condition of the refugees. Their situation reflects both the current limitations and future possibilities of the political communities and requires a reevaluation of the fundamental conceptions of the political –the man, the citizen and the human rights. According to Agamben, “If we want to be equal to the new tasks ahead, we will have to abandon decidedly, without reservation, the fundamental concepts through which we have so far represented the subjects of the political and build our political philosophy anew starting from the only figure of the refugee.” (Agamben 1983: 90).

Agamben continues to discuss the relationship between migranthood and the absence of migrant’s political agency where Arendt concedes by pointing out that under the possibility of state of exception, every citizen of the nation-state can be considered as a potential refugee to be stripped away their fundamental rights and political say in the community, under the name of an undefined and unlimited time of security threat. Thus, homo

sacer lived on the thin boundaries of going from being a citizen to refugee by the suspension of law and redefined according to the sovereign's position. " Agamben argues that the citizenry's ambiguous position requires, on the one hand, their presence as atomized, abstract bodies on whom national sovereignty is imposed and from whom labor power is extracted; that is, as generic national citizens and exchangeable abstract laborers."(Feldman 2015: 20-21)

After the World War I ended, the age of the great empires (Russian, Austro-Hungarian and Ottoman) also came to an end by leaving their places to newly founded territorial nation-states as the result of the peace treaties. "1.5 million White Russians, seven hundred thousand 7 Armenians, five hundred thousand Bulgarians, a million Greeks, and hundreds of thousands of Germans, Hungarians, and Romanians left their countries."(ibid) Furthermore, some European states like France, Italy, and Germany issued laws which enabled the denationalization of their citizens, mostly due to anti-national tendencies and activities. These laws, combined with the mass flow of refugees and the stateless, showcased that there was something problematic with the modern nation-state structure and its definition of the citizen and the persons.

Instead of rethinking the modern nation-state system and its fallacies, international organizations emerged as a remedy to solve the so-called refugee problem. The efforts for establishing an international organization to deal with the issues regarding refugees started with "the League of Nations, and later, the United Nations have tried to face the refugee problem, from the Nansen Bureau for the Russian and Armenian refugees (1921) to the High Commission for Refugees from Germany (1936) to the Intergovernmental Committee for Refugees (1938) to the UN's International Refugee Organization (1946) to the present Office of the High Commissioner for Refugees (1951), whose activity, according to its statute, does not have a political character but rather only a 'social and

humanitarian' one". (Agamben, 2000). As refugees become an important matter of national and international political agenda once they step outside the international borders, definition regarding the foundation of UNHCR rather stays as a bleak and problematic one. It has been witnessed that, efforts to isolate this issue within the boundaries of the social and humanitarian realms would not go beyond offering temporary solutions to the deeply rooted problems. These institutions functioned relatively well to some degree when they were dealing with the individual cases.

In contrast, every time they had to deal with the massive numbers-like today's mass flow of Syrian refugees, they failed to function properly. What is more worrying and alerting about these institutions that, they cannot even guarantee the supposedly inalienable and basic rights of the people, especially in the time of need an emergency. (Amnesty International 2014)

States use these international institutions, humanitarian organizations and policing in all its forms, as a substitute for their direct involvement. The conception of migration management and burden sharing mechanisms are also direct consequences of this approach. Today, the discussions move towards the 'securitization of migration' by increasing the capacity and power of the mechanisms of policing through border police, walls and fences, and institutions like FRONTEX. "The third pillar on Justice and Home Affairs, the Schengen Agreements, and the Dublin Convention most visibly indicate that the European integration process is implicated in the restrictive migration policy and the social construction of migration into a security question"(Huysmans 2000: 1). These efforts have been furthered by the establishment of The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX). (Frontex | Origin)

Why do refugees have such power to reveal the tautologies and malfunctioning in the modern nation-state system about the human rights?

“If the refugee represents such a disquieting element in the order of the nation-state, this is so primarily because, by breaking the identity between the human and the citizen and that between nativity and nationality, it brings the original fiction of sovereignty to the crisis.”(Agamben, Beyond Human Rights) This answer manifests that, naked human and the citizen are fused in such ways which we cannot separate many dualisms that find themselves a place in the body of the citizen of the nation-state. Only in the bare humanness of the refugee, we can see what is left after the entitlements of nationality and citizenship, and this is why we need to revolve our understandings around the refugees. In time, the modern nation-state has become incapable of representing some groups or individuals live within its territory. Arendt’s categorization of four types of national elements in The Origins of Totalitarianism, Chapter 9: state peoples, unequal partners, minorities (only nationals are considered as full citizens), stateless peoples (displaced persons) illuminates how there are some groups that are not being represented under the nation-state system. As Borren puts it, “The contradiction of the nation-state consists of its constitutive principle of legal equality and its factual inability and unwillingness to treat stateless people (and aliens in general) as legal persons because of its equally constitutive principle of sovereignty” (Borren, 2008:215).

Where all these three thinkers meet is the point that liberal theory’s search for answers and solutions within itself without recognizing the reservations and limitations liberal theory raises as barriers. This persistency is like chasing their tails for a very long period. In relation, what all these thinkers agree on is that plurality and visibility stand at the core of human dignity and good publicity require recognition, participation, and publicity in the first place As it has been analyzed concerning the nation-state and its citizens, citizens are expected to fit into the certain value systems and norms of the society. Although the new mediums of the 21st century, such as social media present both many challenges and opportunities for increasing the

public visibility of the unheard and the unseen but not precisely in the 'proper' way Arendt or Agamben discusses. Political subjects should exist in the public spaces that they can shape and direct through deliberation and on-going negations as equals. Otherwise, "...sovereignty is either constituted upon us (as abstract representatives of a nation) or against us (as migrants who do not belong "here")." As a result of these alternative constitutions of sovereignty, citizens and migrants categorize each other in quite stereotypical ways and end up being marginalized under similar conditions, in contrast to the homogenous and rather grateful citizens of the nation-state. (Feldman,2015, p.21) For instance, as refugees are being framed as a heavy burden on state's and therefore taxpayers' shoulders, relying on the welfare system; unemployed citizens relying on unemployment benefits and assistance are also called upon among the unwanted ones. Therefore, it can be argued that refugees still suffer from lack of good public visibility and inadequate visibility through their "nakedness of being human." as Arendt describes but is the figure of the refugee or migrant always so different from the citizen in contemporary societies? (Arendt, 1985, p.299) Secure legal access to the basic life requirements, mostly regarding the welfare provisions like education and health, housing, extended political and social rights guaranteed by laws are what differentiate the citizen from the noncitizen for most of the time. However, it should be noted that socio-economic status of the migrant can also determine the level of well being and possible capabilities as liberal societies are organized around the private gains, interests, and each's capacity of adding value to the society. Thus, in the end, the category of citizenship does not automatically correlate with better life opportunities without the necessary economic means and success, but extended social and political rights are not also the sole outcomes of economic well being of the noncitizens.

In recent times, the ‘humanitarian’ focus has been on the principle of non-refoulement, and limited protection against refoulement and other achievements gained through Refugee conventions have been neglected to a great deal. The narrower the scope of the protection is, the greater the separation of refugee’s life from ‘human possibilities.’ Perhaps, this is why the modern nation-state needs a rethinking through the lens of the stateless people and refugees.

3.3 Right to Citizenship: Naturalization

As it has been explained in previous sections, the nation-state system requires that every human being on earth must live under the jurisdiction of a nation-state in a designated territory and within a respective political community. Thus, this requirement foresees that being entitled to citizenship is firmly attached to the main principles of justice among human beings, and it has been discussing how statelessness causes many injustices by stripping one’s fundamental human rights away from her. In this section, it is argued that the right to have rights should come with the corresponding right to citizenship. In the section on migrant and refugee admissions and criteria for entry, the first step towards naturalization has been discussed as the natural path towards citizenship contains admission into a state and after that staying there for a specified period by maintaining the residency criteria and the resident status. One might ask the importance of claiming and gaining citizenship rights in a country of residence. Naturalization is mainly crucial due to its close relations with integration within a political community as integration is described as “a two-way process based on reciprocal rights and concomitant obligations of legally resident third-country nationals and the host society. Integration means that the longer a third country national is resident in a Member State, the more rights and obligations he should acquire.” (Communication from the Commission to the Council, the European Parliament, the European Economic and Social

Committee and the Committee of the Regions on immigration, integration, and employment [COM(2003) 336 final)

Citizenship law and legislation are affected by some factors such as the existence of minorities in a country and migratory movements. Weil(2001) based on his comparative study on 25 nationality laws(Australia, the Baltic States (Estonia, Latvia and Lithuania), Canada, the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom), Israel, Mexico, the Federation of Russia, South Africa and the United States) has come to the conclusion that immigration experience, consolidated borders and the completion of the nation-building process are three common characteristics of countries with more liberalized and non exclusionary citizenship laws. These three characteristics point out to the countries that have high numbers of foreign residents and a lack of need for the fortification of the sense of loyalty and belonging to the nation through the utilization of national or ethnic origins and values.

> To understand differences and similarities between different legislation, one must take into account two main factors: legal tradition and the disconnection between territory and constituted population (e.g., the phenomena of emigration and immigration). We will show that starting with different legal traditions and different historical patterns of immigration, emigration, and minorities, convergence occurs, they converge through different paths and national political agendas because, in the context of the stabilization of borders and incorporation of democratic values, many of these countries faced problems of immigration. Thus *jus soli* states became slightly more restrictive, and *jus sanguinis* ones moved towards *jus soli* (Weil 2001:2).

Under the section regarding citizenship as legal status two ‘natural’ sources of citizenship, *jus soli* and *jus sanguinis* have been described and it has been explained that naturalization is the only third option for all other cases that do not fall below these natural claims of citizenship. Naturalization is widely acknowledged as “the obtaining of citizenship in a state by a non-national. Persons to whom the citizenship of a state is not ascribed at birth

may be able to acquire it later in life through naturalization. Rules governing the acquisition of citizenship, like those governing its ascription, differ from state to state and can be more or less restrictive (UNESCO Knowledge Portal, 2018).

As a legal status, this third category is described as *jus domicili* that refers to citizenship by residence and *jus matrimony* is also considered as a legal way of becoming a citizen through marriage. " *Jus domicili* recognizes the bond that a person develops with a state following a period of habitual or permanent residence, which is the most common ground for naturalization."(Bianchini 2018: p.50)

> For any person to have an authentic right to citizenship there must be a state with a reciprocal obligation to supply it. For most of the time, the stateless are not free-floating, deracinated people, moving heedlessly around the globe. They are more often than not individuals settled specific political and social communities, yet missing lawful acknowledgment of and fitting security for their status as inhabitants. The essential injustice that states have the most responsibility, at that point, isn't that they cannot discover a state to allow them citizenship but that the state which should allow them to get citizenship would not do so for many different reasons (Gibney 2009:1).

As the question of who should be entitled to citizenship has considerable effects on both *de facto* and *de jure* stateless people, this affects might as well be implacable for the individuals called 'precarious residents.' Today, there are millions of non-citizens, such as undocumented migrants, who live under the roofs of the states in which they have no legal right to stay. Although there is a drawing line of citizenship between of these people and stateless people, these individuals also live lives characterized by rightlessness and accompanying insecurity on a daily basis. The not so far away possibility of deportation and lack of any legal status shape the precarious residents' social and not so existent political lives in most inconceivable ways as they produce social and economic value for the societies in which they are forced to stand invisible for most of the time.

Their in/visibility is determined by the citizens of the societies they live in. For instance, good examples of undocumented migrants who become successful in business or sports are deemed visible instantly whereas the 'ordinary' undocumented migrants are swept away to the margins of the society by constant silencing.

The issue of dual citizenship enables many states to acquire different legislations based on the combination of *jus sanguinis, jus soli, jus domicili* and/or *jus matrimony*. For instance, someone born in Turkey might move to Canada and settle and naturalize there while holding Turkish citizenship and thus combining *jus soli* and *jus domicili.* Another example is someone born in Turkey to Nigerian and Turkish parents can hold dual citizenship based on *jus sanguinis* and *jus soli*. Likely, a citizen of the United States might become a citizen of the United Kingdom through marriage and still holds his or her United States citizenship through legislation based on jus matrimony and jus sanguinis or *jus soli*. These examples manifest that citizens based on the principles of *jus sanguinis*(right of blood*), jus soli*(right of soil), *jus domicili*(right of residence) and *jus matrimony* can be found within the same state's territories at a given time due to the ordinary citizenship legislation and policies (Erdal& Sagmo 2017).

Moreover, states may choose to establish and to apply different citizenship policies for immigrant and emigrant populations. For illustration, when targeting emigrant populaces, *jus sanguinis* is drawn on, when targeting migrant populaces, *jus domicili* is drawn on, and when focusing on the children of migrants born in the nation, *jus soli* is drawn on (Erdal 2016). Although there are varying degrees of legislative understandings, the most common perspective has been of convergence between countries with *jus soli* and *jus sanguinis* traditions. "The relevant and important factor for citizenship acquisition is not a place per se, but the connections and bonds of association that one establishes by living and participating in the life and work of the community" (Kostakopoulou (2008: 115). Moreover, liberal

democracy assumes that democratic decision-making processes include all segments of the society without excluding any and jus domicile principle becomes an essential part of the democracy as it ensures both legal and de facto members of a political community have the right to political participation.

Jus sanguinis and *jus soli* principles also create many problems of inequality and injustice as people contributing together equally to the political community they live in but become subject to the discrimination regarding their status and rights. In relation with this discrimination and distinction against people who do not hold permanent residence, citizenship or equal statuses need to make more effort to earn their livelihoods and more often in worse conditions.

> Irregular, unauthorized, or undocumented workers are persons who are employed without legal authorization to work. No one knows exactly how many irregular foreigners and workers are in the European Union (EU) the Member States. In the United States (US), two-thirds of the estimated 11 million irregular foreigners (or some eight million) are employed. That makes irregular workers 5 percent of the 160 million strong US labor force. Irregular workers and irregular work take on many forms, as workers slip in and out of legal status, and work can become irregular if employers fail to enroll workers in social security systems. Governments often have difficulty detecting irregular workers and irregular work, since employers and workers may lack incentives to report it. (https://migrationdataportal.org/blog/irregular-migrant-workers-eu-and-us)

Naturalization is not a neutral process, instead of states' put their discretionary sovereign power to good use when it comes to excluding certain groups of individuals. Currently, the issues regarding the admission to the citizenship also maintain its place within the sovereign jurisdiction of the states as after decisions are made on who can enter and who can not, newcomers' duration of stay and decisions on who has the right to stay temporarily or permanently and who may be forced to return.

> In this new mobility era, some newcomers, especially the highly skilled, remain wanted and welcome, and are offered a permanent settlement and eventually citizenship; for many other entrants, however, ranging from temporary to irregular migrants, from extended family members to asylum seekers, such opportunities are rare. The desire to 'manage' migration in the face of globalization, coupled with a preference for flexible migration programs, erodes the immigrant-to-citizen narrative, leading instead to the creation of many in-between categories, the members of which face risks to their human security and dignity (Shachar 2014: 121).

In the previous section, it has been discussed that states may favor the entry and stay of certain groups of individuals with required skills, according to the state's own economic and sectoral needs when it comes to the selective migration policies. The same states still have the power to decide on when it is time to leave for these once desirable migrants, especially if they are deemed "inassimilable" in the long term. As it has been discussed above, migration and integration are about making connections, settling in and giving and receiving in social, political and economic spheres and these increase as the duration of stay is prolonged. Thus, the example of a guest workers program in Europe illustrates the consequences of both the inclusive and exclusive citizenship laws in most direct ways as these countries have experienced them both. The result of selective immigration and citizenship policies according to prospective migrants' level of usefulness to the nation paved the way for the loss of importance of other very legitimate reasons for migration, requests for permanent residency and in the eyes of the states, such as family reunification. Most importantly as Shachar explains above, selective immigration policies create many in between statuses and identities within same political communities in which migrants without secure positions are thrown at risk and forced to struggle to achieve a life befit to human dignity.

Why is Germany significant concerning changing immigration, acquisition of citizenship and citizenship regimes? According to Weil (2001: 17-31), there are four categories of countries based on migration Dynamics: The first one

is “countries of immigrants” which are composed of and built by immigrants. These countries also are known as traditional immigration countries include The United States, Canada, and Australia. The second category is, “countries of immigration” which have the high number of foreign permanent residents. In these types of countries, immigrants are considered as groups that are incorporated into the native populations that have resided in those territories for a very long time. World War II has changed the Western European countries’ status from being countries of emigration to immigration. The third category is composed of “countries of the emigrant,” and this refers to the states with higher numbers of citizens living outside the borders of respective states. The last category is “countries of emigration,” and this refers to the countries where groups of citizens leave to reside and settled in other countries permanently. The historical example comes from many European countries until the beginning of World War II. Therefore, Germany makes a good example of a country built on the grounds of an ethnic nation first but transformed because of guest worker program and has become one of the countries with the highest number of immigrants.

As the World War II has come to an end, Germany was ended up with a decreased population at working age, and a solution to this problem was formulated as initiating a guest worker program that attracted workers from Italy, Yugoslavia, and Turkey in the 1950s. The guest program got successful at attracting low skilled foreign workers for less demanding and repetitive jobs in the manufacturing industry. In 1973, the guest program was terminated. At first, the guest worker program was designed as a short, at best medium-term solution and German state planned that the workers would go back to their home countries after this period. As it has been highlighted from the very beginning, human beings are migratory with their wills and motivations and states cannot always control their movements as they wish. The guest workers did not go back to their home countries. Instead they brought their families to Germany and settled down. Also, the

1980s were marked with the end of the separation created by the Berlin Wall and new waves of migration as a direct result of the fall of the Soviet Union. Although all signs showcased that the guest workers were there to stay and new migrants were on the way, German citizenship law based on jus sanguinis did not reflect the changes in the dynamics of demographics until 1991. It was in 1991 the German state worked on the issue and announced the criteria for the acquisition of the citizenship and included it in the Citizenship Law for the first time. In 2000, Germany changed its citizenship law that regulates the rules of naturalization towards a more inclusive path. As of 2000, immigrants have the right to acquire citizenship after they complete eight years of residency in Germany. In the same light, children born to the foreign parents in Germany were entitled to the birthright citizenship. Today, Germany maintains its status of being a country of immigration following classic immigration countries like the United States, Germany and Canada and receiving migrants has a significant impact on Germany's ever-changing migration and citizenship policies in last two decades. Since the 1990s, social and political integration of migrants have become a focal point for the state, together with the reforms on naturalization. All these changes reflect that Germany has transitioned from being a country whose citizenship law was strictly tied to the jus sanguinis principles to a more liberal one whose citizenship law allowed naturalization of individuals through various stages, most importantly based on the duration of stay and residency and social, economic and political ties one built in the country (Gathmann et.al. 2016).

Table 1: States with the highest number of immigrants.

Source: © 2018 | Global Migration Data Analysis Centre, International Organization for Migration

Rank	Country	Number of Immigrants
1	United States	46.6 million
2	Germany	12 million
3	The Russian Federation	11.9 million
4	Saudi Arabia	10.2 million
5	The United Kingdom	8.5 million
6	The United Arab Emirates	8.1 million
7	Canada and France	7.8 million each
8	Australia	6.7 million

This table illustrates how Germany has established its place among classic countries of immigration and even surpassed some of them such as Canada and Australia. These numbers are also significant as they reflect the interest in settling down at destination countries as the acquisition of citizenship is the highest ranked status one can have concerning equal rights and treatment, access to resources and guarantee against deportation. Although there are some countries such as European Union member states that enable immigrants to be entitled to relatively broad social and economic rights it is only after one acquires citizenship to be an active participant in politics and take part in public and political institutions and affairs and shape the policy agenda. Another important implication of naturalization is its power of making immigrants equal with the natives in the eyes of the public. Naturalization is not only beneficial for the naturalized immigrants but it also positively affects the situation and capabilities of the foreign individuals residing in a county. As naturalized citizens become more and more involved in the politics, governmental affairs, and the civil society, they also work more towards securing the rights of noncitizens. Naturalization should not be considered as the ultimate goal or destination for integration; preferably it is an accelerating tool against different kinds of inequality based on discrimination and exclusion. In that vein, naturalization is not the only

option for all towards a society composed of equal members as the implementation of more inclusive naturalization policies resulted in an increase in the rights, including participation in local elections, enjoyed by the foreigners who are not naturalized. Inclusive naturalization policies act as incentives for migrants to integrate more by increasing their likelihood of building a future in communities they settle in. Likewise, these policies can be considered as concrete steps towards making new kinds of sense of belonging and membership (Wink 2013: 3-23).

The question of who wants to be naturalized more is also important to understand the naturalization policy needs of a given state. The motivation or need behind the immigration decision has a substantial effect on immigrants' desire and motivation to be naturalized. As expected, subjects of forced migration and individuals who would like to migrate for family unification are more willing to be naturalized than any other groups of migrants. For these individuals, admittance into a new state or residence permits merely is are not enough as they mostly fall under more vulnerable and ambiguous statuses by being subjected to international protection or refugee regimes. These statuses always fall short of many social, economic and political rights that citizenship can offer. Thus, if a given state has a large population composed of refugees and groups under international protection regime, then this state needs a more detailed and clear vision for paths finally leading to citizenship. The definition of standardized rules, criteria and paths on citizenship based on individual rights also accelerates the process of detachment of nationality from the citizenship and redefine the meanings of belonging and nationhood as Joppke suggests:

> Overall, in the past half-century, the access to citizenship for non-citizens and their descendants has been transformed from discretionary anomaly to rule-based routine. As a result, citizenship has become de-sacralized and less nationalistic. The logic of individual rights has entered a domain that, according to international law, is still at the discretion of the sovereign state (Joppke 2007: 39).

So far, naturalization has been discussed mostly from legal and policy-oriented perspectives but naturalization also has a membership dimension as Kostakopoulou (2008: 88) defines naturalization as a "process whereby a person is transformed from an alien guest to a citizen invested with the rights and privileges about indigenous subjects." Thus, naturalization can be imagined as a ceremony through which strangers who are tied to unknown ancestors and their values have become one of our kind of new members by declaring their loyalty to their new states and communities. It is worth noting that, this hypothetical ceremony has reflections in reality as the United States requires would be citizens to attend a ceremony after passing an actual citizenship test. All these tests and ceremonies do not only have symbolic meanings but also encapsulates how nation-state expects newcomers to be become nationalized by agreeing on the national norms, values and joining the shared destination of the nation.

Is naturalization the only way of becoming a member of a political community or is the acquisition of the citizenship still necessary in an increasingly transnational environment in which national citizenship started to decline? Although challenges and alternatives to the formal modern state citizenship has been discussed in this study, the conditions of refugees and stateless people and their struggle for regaining a place on earth to access their fundamental rights illustrates that universal human rights proves to be nearly useless without the guarantee of a state and under the current state system we live in, full citizenship is the best one can get in terms of the guarantee of social, political, economic rights needed for the actualization of one's capabilities as Shackar(2014: 123) also argues:

> Gaining provisional membership is certainly better than no membership at all, but it falls short of equal membership. For these reasons, it is too early to bid citizenship farewell as a foundational category of political organization in our globalizing world.

Therefore, the transformation of the meaning of the citizenship in European nation-states is also unique in the sense that they started managing the decoupling of the nationhood from the citizenship by ensuring the core values of liberal democracy as Joppke (2007:40) observes:

> The state has been transformed from an ethnic nation-state, owned by "it is" people who could reject or accept newcomers as they saw fit, into the post-national state, in which the principle of liberal democracy requires congruence between the subjects and objects of the rule. This liberal-democratic principle, which is at the same time threatened and activated by the inter- and trans-nationalization of society that is the inevitable result of international migration, has been the true engine of the liberalization of access to citizenship.

Joppke's arguments have been supported by EU acquisition of citizenship data as nearly 1 million individuals have been granted citizenship only in 2016 and a third of these new citizens are migrants originate from Turkey, Morocco, India, Albania, India and Pakistan and these numbers does not include the number of citizenships acquired by the stateless individuals.

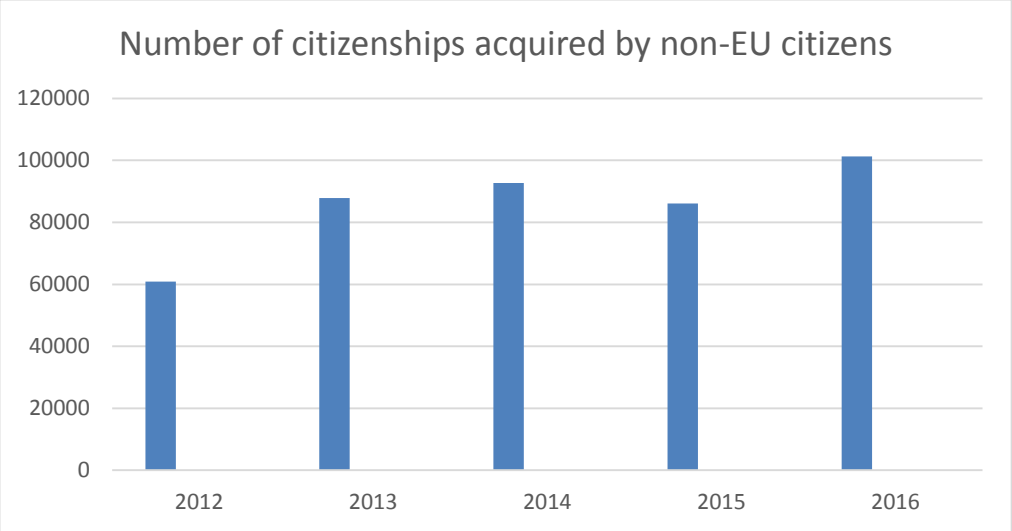


Figure 2: Number of citizenships acquired by non-EU citizens in EU in 2012-2016

Source: Eurostat, Acquisition of citizenship statistics.

In conclusion, naturalization is an issue that has come up and maintained its existence and importance in nation states and coupled with migratory movements; it has a direct effect on the transformation of nationhood, national identity, countries' citizenship laws and liberalization of these laws and policies. Citizenship maintains its importance despite the challenges and alternatives to the formal citizenship, and this points out to the necessity of having the right to naturalization. Moreover, the law and practices on naturalization tell a lot about the degree of inclusiveness and a country's commitment to the core values and principles of liberal democracy and human rights. Therefore, the key arguments of this section will be revisited for understanding and explaining the characteristics of Turkish citizenship and migration laws.

CHAPTER 4

CITIZENSHIP AND MIGRATION IN TURKEY

4.1 Brief History of Establishment of Turkish Republic and Citizenship Law

It has been discussed that nation-building processes have substantial effects on the formation of citizenship law of countries. Thus, in this section, the formation of the Turkish Republic and the development of its citizenship law throughout the history will be discussed concerning the legal and political dimensions of citizenship that have been mentioned in the section on different dimensions of citizenship. In the Ottoman Empire, the relationship between the state and the society was framed within the ruler, and the subject dynamics and citizenship was not considered as a conception that belongs to the Ottoman state and the society. “The political structure that denied citizenship was reinforced by an economic structure that increased state power.” (Arat 2000: 276). The Ottoman state was considered as a multi-ethnic, multinational and multi-religious Islamic state and Turkish nation-building process required an effort for creating discontinuation and a sense of distance with itself and old Ottoman legacy (Öktem 2017).

The envisioned modern Turkish state has gotten help from the emigration and migration to build the imagined nation and national identity. As a part of this perception, people who have descended from Turkish origin and whose

religious views and lives shaped with Islamic religion were welcomed to migrate whereas even non-Turkish and non-Muslims who were present at that time were discouraged to stay. As İçduygu and Kaygusuz explain below, national identity and national unity were among the vital determinant characteristics of Turkish foreign policy as well.

> The period between 1919–1923 witnessed the first formulations of definitive, boundary producing (both physical and ethical) discourses of Turkish political life, such as the supreme political objective of political unity based on territorial integrity, the Muslim majority as an organic totality, terms of ethnic and religious differentiation, the unity disruptive minority rights, threats to national security and the cultural and political meanings of Turkishness in mainly the foreign policy texts of the nationalist government. These discourses shaped the formation of the domestic public sphere and featured a new citizenship identity, which was completely different from the Ottoman imperial model of membership and political community (İçduygu and Kaygusuz 2004: 27-28).

Moreover, the vision of Westernization was coupled with the aim of urbanization. As a result of this situation, many citizens left the rural areas of Turkey for the cities at first, and later for abroad. In a nutshell, it can be argued that Turkish citizenship was designed based on territorial-civic understanding and reflected French model of national citizenship by highlighting the aim to create a familiar social, political and cultural environment in which citizens can live together in unity and harmony. Throughout the years, the discussions on citizenship and national identity have continued, and in literature, something close to a dialogue among the legal and political dimensions on citizenship can be found as these have become inseparable and remained intact due to the nation-building process that took place primarily in the early periods of Turkish Republic. Therefore, in the following section, the legal developments in citizenship regime in Turkey will be looked into concerning the reciprocal relationship between law and politics.

4.2 Legal Dimension of Citizenship in the Turkish Republic

In this section, the key legal documents on citizenship in Turkey will be reviewed and analyzed regarding their political connotations and outcomes. As Weil also suggests, nationality law and its development are very complex that include many dynamics and "Each state's law is simultaneously based on juridical traditions, nation-state building, international influence and the role played by migration (emigration & immigration) or the presence of minorities." (Weil 2001:17) Therefore, all of these different dynamics Weil mentions will be discussed except the role of emigration and immigration. The role of migratory movements on Turkey's migration and citizenship law will mostly be discussed under the title related with migration history of Turkish Republic.

1924 Constitution is the first legal document of the Turkish Republic in which who is a "Turk" is described. "The name Turk, as a political term, shall be understood to include all citizens of the Turkish Republic, without distinction of, or reference to race or religion. Every child born in Turkey, or in a foreign land, of a Turkish father; any person whose father is a foreigner established in Turkey, who resides in Turkey." (Article 88, 1924 Constitution) In 1924 constitution, it is observed that the term citizen was not used specifically or widely except in Article 88. The word "Turks" was used instead of citizens. "In the 1961 Constitution, 'citizens' also appeared as right-bearers of enumerated subjects for the first time in a Republican constitution. 'Turkish citizens' was added in the 1982 Constitution. "(Bayır 2013: 147) It could be deducted from the overall legislature that the concept of Turk has been favored for two main reasons. The first reason for the use of Turks instead of Turkish citizens is the concern for protection and promotion of nationalist values. The second reason is to make a subtle or not so subtle distinction between who is Turk and who is a Turkish citizen. In the legal documents, the concept of Turk is used as a neutral one with the claim of not making

any distinction among different ethnic groups but the interchangeable use of Turk and Turkish citizen also shut down the doors against diversity claims and creates a ground for state to push the Turkishness and as a result of Turkish ethnic identity as the mainstream and dominant one against all others sharing the same territory.

Citizenship Law of 1928 is another important legal document in the history of Turkish Republic for the purposes of regulating citizenship related affairs. This law is essential for being one of the first significant legal regulation on citizenship by defining who a Turk is. The founding fathers of the nation wanted Turkish citizenship to be based on *ius sanguinis,* but they added a territory dimension as well for rather practical and unifying reasons in the nation-building process. In the first years of the Republic, it was aimed to increase the number of the nation's citizens and utilize the new nation as a melting pot for different ethnic groups living on the territory. Thus, regardless of ethnic origin(Azeri, Tatars, Turks, Kurds, Circassians), every individual born on Turkish soil accepted as a Turkish citizen. Another critical issue raised by this law concerns the granting of Turkish citizenship to foreign women who get married to Turkish men. According to this law, foreign women married with Turkish men are automatically granted citizenship whereas it was a whole different and complicated process for men married with Turkish women. (Kadirbeyoglu 2009: 1-3)

Settlement Law of 1934, also known as Law 2510 is another important legal document for the regulation of immigration and citizenship-related affairs in Turkey. This law has laid the fundamentals of Turkish immigration policy, and described the right to enter, settle permanently and work for the individuals of 'Turkish descent and culture.' Through the Settlement Law, the term "migrant" was described as the people from Turkish descent and culture with an intention to entry and settle in Turkey. Thus, any other people including emigrants were not perceived and accepted as migrants, and these people's right of immigration and asylum have been seriously

restricted. People other than from Turkish descent and entered Turkey were described as "foreigners" instead of migrants. As it will be argued, Law on Settlement has shaped and affected the migration policy in Turkey so much that even the current immigration policy in Turkey still bears the stamps of the considerations and perceptions as described in the 1930s. In short, cultural and national unity and special attention to the people and nations that have historically been close to the Turkish state are continuing elements of Turkish state's immigration policy. In 2006, a new Law on Settlement was established and adopted but the importance and focus on the national background, i.e., "Turkish descent and culture" remained intact. Therefore, it should be noted that this unique group of individuals had a privileged status when it comes to the issues of settlement and eased and shortened processes of citizenship (İçduygu et al. 2009).

In the 1961 Constitution, the articles related to citizenship can be found under Section 4: Political rights and duties. Citizenship was simply described as "Every individual who is bounded to the Turkish state by ties of citizenship is a Turk." (Balkan et al.). Thus, the 1961 Constitution follows the provisions of 1924 Constitutions with minor alterations in wording, but 1961 Constitutions makes the ties between Turkishness, Turkish citizenship, and acquisition of Turkish citizenship stronger. Here, we can observe that there is a two-way relationship between legal wording and interpretation of citizenship and politics of citizenship as Öktem also argues that

> Law on nationality is usually researched and taught in Turkish universities by private international law scholars. These scholars consider nationality as a merely 'legal relationship' or 'legal status.' Accordingly, they interpret the concept of the Turkish nation in the way it designates the community constituted by Turkish nationals (Öktem 2017:3).

Citizenship Law of 1964, also known as the Nationality Law Nr. 403 of 11 February 1964 is another important legal document for presenting the

conditions or the acquisition of Turkish citizenship and related matters. The second citizenship law from 1964 maintained the *ius sanguinis* principle and allowed for *ius soli* to prevent statelessness. It is with this law, it was suggested that Turkish citizenship can be obtained through three ways: Children of Turkish mothers or fathers automatically acquire Turkish citizenship, no matter where they are born; children born in Turkey of foreign parents and who cannot access the nationality of their parents automatically get Turkish citizenship; naturalizations can be granted according to administrative judgment, but foreign spouses of Turkish men automatically acquire the right to Turkish citizenship.

1982 Constitution and its related articles on citizenship present a continuity as it reiterates the statement “Everyone bound to the Turkish State through the bond of citizenship is a Turk.” (Article 66, 1982 Constitution) On paper and in theory, this law does not make any suggestions or give references to any kind of blood relations including ethnicity and kinship. This completely legal definition refers to a territorial nationalism, and the term Turk is used to point out to a national identity independent of ethnic origin. However, as it has been discussed since the beginning of this chapter, law, and politics of citizenship are inseparable, and their relationship can give rise to different intended and unintended consequences as two are in constant dialogue in practice. As it has been discussed, Turkish national identity comes with its luggage throughout the history due to the nation-building process, and despite the term, Turk might be read as a neutral one, at first sight, it is not. Therefore the statement mentioned above of Article 66 has opened up a platform for many debates on the inclusivity of the Constitution with regards to its emphasis and references on race and ethnicity. In 2011-2012 when a process for a new constitution was initiated together with many scholars, governmental and non-governmental organizations, the possibility of the alteration of Article 66 was also discussed.

> Deeming the term 'Turk' an ethnic reference, the AKP (Adalet ve Kalkınma Partisi), the ruling party, and the BDP (Barıs¸ ve Demokrasi Partisi, the pro-Kurdish party) suggested eliminating this word from Article 66, whereas the extreme nationalist party, the MHP (Milliyetci Hareket Partisi), insisted on keeping ing the wording of the provision as such. The CHP (Cumhuriyet Halk Partisi) proposed an intermediate formula according to which 'Turkish citizenship means that each person is a Turkish citizen by the equality principle, regardless of language, religion, gender, ethnic origin, philosophical belief, denomination or other reasons.' The unspoken stake in this debate was obviously to find a non-ethnical and neutral term covering all Turkish citizens and addressing Kurdish political claims. A century ago, the term 'Ottoman' assumed this role. In the 2012 constitutional proceedings, a reference was made to the concept of 'Turkiyelilik' which is a term that was resuscitated in the 2010s. (Öktem 2017:7)

As Öktem reminds, *Türkiyelilik*(refers to a formulation of a new concept for a new form of national identity which is inclusive of all ethnic and religious minorities without making any reference to them) and *Türkiyeli*(refers to the citizens of Turkey without any reference to ethnic background) were considered as terms based on a more civic identity that could include all citizens living in the territories of Turkey independent of their ethnicity and religion. This formula was also considered as a solution to one of the problems came up with the Kurdish question. [4]

The interchangeable use of nation with race continues to dominate the legal and political realm despite the efforts made to achieve more egalitarian and liberal regulations in different branches of law.

> However, the law on nationality is studded with references to race (soy). There is no criterion to distinguish 'ırk' from 'soy': public authorities investigating a foreigner's claim to acquire Turkish nationality can ironically breach article 216 of the Criminal code while trying to ascertain whether he or she is of Turkish 'soy.' The lack of multidisciplinary studies on nationality seems to echo this legal schizophrenia: legal studies on nationality are often confined to a commentary of the law on nationality currently in force and to a

[4] It should be noted that Kurdish Question occupies a larger place in the history of Turkish Republic and related literature in the discipline but in this study, the main aim is not to engage with a deep discussion on the issue with recognizing the limitations of this particular study.

> preliminary survey of previous legislation without questioning how these rules materialized politically (Öktem 2017:14).

As Öktem also suggests, there is a critical need for a rethinking on how law and political events, for this specific case, migratory movements, affect or could affect each other for better or worse.

When it comes to an overall evaluation of legal and political dimension of citizenship in Turkey, at the state level, states have not been neutral towards promoting specific ethnic or religious values and Turkey is not an exception to this general argument. On the grounds of citizenship as membership, the conception of membership in a nation-state is never neutral regarding ethnicity and religion as these are utilized as glue, specifically in nation-building processes. The majority's ethnicity, language, and culture are favored as a way to make them the dominant ones that shape the acceptable citizen's identity. "Hence, the concept of citizenship in most modem civic states, in return for their providing legal status and political and civic rights, obliges assimilation into the majority's cultural community and identity."(Bayır 2013:143)

According to these definitions in Article 66, Turkey could be considered as a neutral civic state, but as Bayır notes, legal, political and social discourse opens a discussion on whether Turkey has ever been a neutral civic state.
In Turkey, citizenship has been strongly associated with nationality and Turkish ethnic origin. To explain this link further, the rooms left for diversity, minorities, and naturalization could be examined. As it has been argued throughout this study, the figure of the refugee has the power to shed a light on the citizenship policies of receiving countries, especially to the nation states as they bring discussions on citizenship and nationalism to the surface as citizens and non-citizens start living on shared physical spaces under the roof of nation states. Turkish Constitutional law finds itself trapped in a contradiction between the claimed universality of its citizenship concept and the ethnicized and racialized manner of its actual conceptualization and

realization and new minorities in the form of immigrants will highlight the importance of this issues in a new light.

4.3 International Migration History of Turkey

İçduygu& Aksel (2013: 168) describes and analyzes the migration patterns in Turkey by dividing it into four key periods, and for a precise organization of this part of the study, the same four-period division will be utilized in this study. In order to identify the patterns of continuity and discontinuity, the examination of these four periods is vital.

The first period signifies the “two-way immigration and emigration circulation in 1923-1950s. This period has been historically identified with emigration in Turkey. The other key events that take place in this period in relation with migration are listed in Table 2.

Table 2: Events in 1923-1950

Source: İçduygu&Aksel 2013:169

Event	Year
The Treaty of Constantinople between the Ottoman Empire and the Kingdom of Bulgaria, facilitating the optional reciprocal change of populations	1913
Armenian deportation	1915
Treaty of Lausanne	1923
Foundation of Turkish Republic	1923
Convention concerning the Exchange of Greek and Turkish Populations	1923
Law 2510/1934 Settlement Act	1934

The second period that takes place after the 1950s is described as “migration boom.” This period has witnessed these crucial events as listed in Table 3.

Table 3: Events in the 1950s

Source: İçduygu&Aksel 2013:169

Event	Year
Law 5683/1950 related to Residence and Travels of Foreign Subjects	1950
United Nations Convention relating to the Status of Refugees	1951
Greek emigration from Turkey	1955
Early suitcase traders from USSR	The late 1950s
Turkey-West Germany labor recruitment agreement	1961
United Nations Protocol relating to the Status of Refugees	1967
Oil crisis and the halt of labor emigration to Europe	1973-1974

The third period contains “the emergence of new migration patterns” in the 1980 and events listed in Table 4 shaped this period.

Table 4: Events in 1980-1999

Source: İçduygu&Aksel 2013:170

Event	Year
1982 Constitution	1982
Soviet Union’s invasion of Afghanistan and Afghan immigration	The 1980s
The First Persian Gulf War between Iran and Iraq	1980-1988
The End of the Cold War and immigration from post-Soviet territories	1991
1989 expulsion of Turks from Bulgaria	1989
Gulf War and mass immigration of Kurdish populations	1991
Permission in order to Seek Asylum From Another Country	1994
Law 4112/1995 Act on Amendments to Citizenship Law	1995
Helsinki European Council	1999

New modes of migration transition and its governance since the 2000s have shaped and updated the Turkish law as well, and the changes in Table 5 have taken place in 2000s.

Table 5: Events in the 2000s

Source: İçduygu&Aksel 2013:170

Event	Year
Law on the Work Permit for Foreigners No. 4817	2003
Turkish National Action Plan for Asylum and Migration	2005
Law 5543/2006 on Settlement	2006
Law 5901/2009 Turkish Citizenship Law	2009
The Presidency for Turks Abroad and Related Communities	2010
Syrian refugees migration	2012
Law 6458/2013 on Foreigners and International Protection	2013

The primary focus of this section and whole study is to showcase how recent migration-related events have affected the transformation of citizenship structures in Turkey. Therefore, these last two periods are specially crucial for this case but all of the significant events are listed to highlight that Turkey has a long history of migration but does not have a standardized or unified policy response pattern as all of this event have been responded quite differently from each other as Sert (2014) points outs:

> The first wave of refugees was from Iran, following the 1979 Revolution. Other major refugee flows were Kurds escaping from Iraq in 1988, numbered at almost 60,000; and in 1991, when half a million people found haven in Turkey. In 1989, Bulgaria's "Revival Process" –an assimilation campaign against the minorities– almost 310,000 ethnic Turks sought refuge in Turkey. In the following years, during the wars in Bosnia and Herzegovina, and Kosovo, Turkey granted

> asylum to 25,000 Bosnians and 18,000 Kosovars. The reactions of the Turkish state towards these crises were quite different from each other (Sert 2014:160-161).

The arrival of 1989 Bulgarian migrants and 2011 Syrian refugees are among the most crucial mass migration movements in Turkey, but the handling of these two events Show many differences. It cannot be argued that Turkey has had a continuous and comprehensive asylum or migration policy, especially until the efforts have started to be made to meet European Union acquisition criteria. 1934 Law on Settlement proves not to be ineffective and adequate any longer as incoming migrants are not from Turkish descent and culture anymore as this was the case for many of the migratory movements into Turkey previously, as shown in Table 6.

> 1989 emigres were considered and called as “kindreds.” Both the 1934 Law on Settlement and its revised form in 2006 recognized their entry and settlement in Turkey. The kindred discourse has been adopted to make Turkish people accept and embrace 1989 emigres (Öner and Genç 2015:36).

In the sections related with Turkish citizenship and national identity, the focus of ethnicity and Turkishness have been discussed at length. Therefore, a link between this kindred discourse Öner and Genç mention and focus on national identity can be quickly built. As it has been argued, states’ citizenship laws carry many telltale signs about the policies and discourse on migration and migrants as well. This is why with the arrival of each group of migrants, new rhetoric and discourse are adapted concerning the ethnic and/or religious origins of the group in question in Turkey.

As early as the beginning of the 21st century, Turkey has transitioned from being one of the major countries that send migrants to a net immigration country that receives more immigrants than it sends.

> Turkey hosts significant communities of German, Russian, Ukrainian, Azerbaijani, Iranian, Iraqi, Afghani, Armenian, Georgian, and smaller communities of Moldovan and Senegalese immigrants. Most prominently, Turkey also receives large numbers of refugees, more than any other European country. They come from Iran, Iraq,

Afghanistan, and Somalia, but most recently and noticeable from Syria (Düvell 2014: p.37).

International travel to Turkey has been increased rapidly in the last decade as well.

Table 6: Mass Migratory Movements to Turkey in the Republican Period

Source: DGMM

YEAR	NUMBER OF PEOPLE CAME TO TURKEY	ORIGIN COUNTRY
1922-1938	384.000	Greece
1923-1945	800.000	Balkans
1933-1945	800	Germany
1988	51.542	Iraq
1989	345.000	Bulgaria
1991	467.489	Iraq
1992-1998	20.000	Bosnia
1999	17.746	Kosovo
2001	10.500	Macedonia
2011-2017	3.000.000	Syria

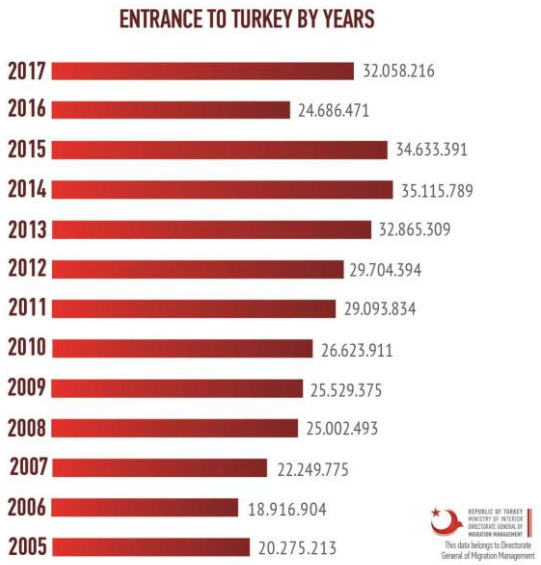


Figure 3: Entrance to Turkey by years

Source and Figure: DGMM

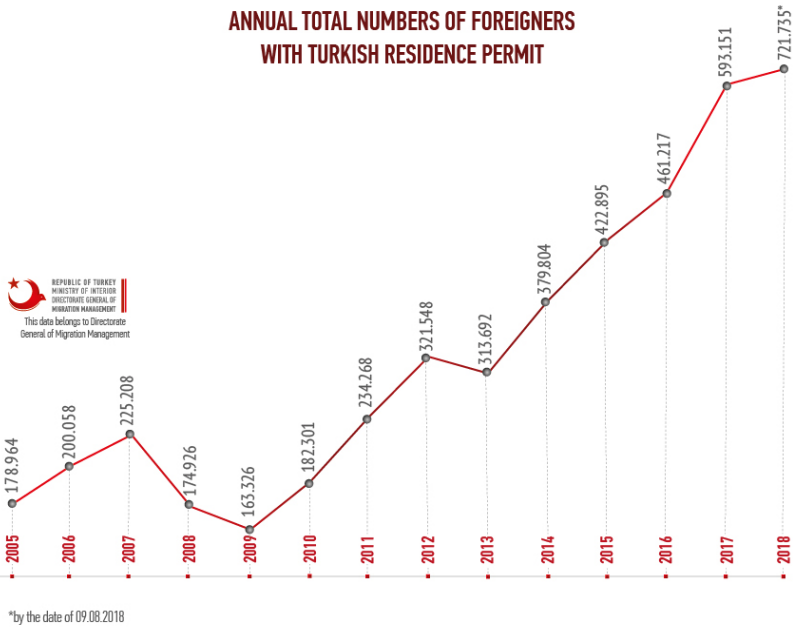


Figure 4: Total Annual Numbers of Foreigners with Turkish Residence Permit(2005-2018)

Source and Figure: DGMM

This new status required new measurements regarding migration policy and management as the existent structures started running behind of the necessities that have come up with new developments. Also, Turkey has built a new institution to ensure that Turkish population living abroad remain their ties with Turkey as well as to ensure that "Turkish descents from related communities" (*akraba toplulukları*) can benefit from special schemes, especially in the areas of education and culture. Thus, this rationale in mind, the Presidency for Turks Abroad and Related Communities (YTB) had been established in 2010. In their website, the institution is described as follow:

> Presidency for Turks Abroad and Related Communities (YTB) established on 6 April 2010, has the task to coordinate the activities for Turks living abroad, related (sister) communities and Türkiye Scholarship Program, and develop the services and activities carried out in these fields. With the efforts of our Presidency, the relations with our citizens living abroad and also with the sister communities are strengthened, and closer economic, social and cultural relations are established. Also, Türkiye Scholarship holders and alumni became our volunteer ambassadors all over the world.

Pusch and Splitt describes YTB's four working areas as "to improve the situation of Turkish citizens abroad as well as to coordinate their activities; to strengthen and coordinate the "historically determined" social, cultural and economic ties with Turkic societies; (iii) to coordinate and develop the higher education of foreign students in Turkey apart from projects related to the EU, the Council of Higher Education and universities; and (iv) to support nongovernmental organisations by Turkish citizens in Turkey and abroad."

> The current political elite is inclined to position Turkey as a hegemonic power among its regional neighbours (the Middle East, the Balkans, North Africa and the Caucasus as well as the Central Asian Turkic republics) using a neoOttoman and Turco-Islamist discourse, while tending to instrumentalize migrants of Turkish origin and their descendants to promote Turkey in European countries (Kaya 2013:56).
>
> There is a politics of citizenship and with it the possibility of other than liberal outcomes. In an earlier paper, I argued that contemporary

> reforms of citizenship could be de-ethnicizing, easing access for immigrants inside the state, or re-ethnicizing, strengthening ties with emigrants abroad. Which trend prevails often depends on the ideological orientation of the government, liberal-leftists favoring de-ethnicization, conservatives favoring re-ethnicization (Joppke 2003: 40).

It is still quite early to make assumptions or suggestions based on the data and policies but YTD, at least on paper and theory favors re-ethnicization coupled with an Islamist discourse. At the same time, there will be a time to draw specific paths to citizenship for Syrians and others who are living under Temporary Protection Status for a very prolonged period. It seems that the very much required and needed reforms in citizenship will be in the same vein of re-ethnicizing and following a *muhacir ensa*r discourse without liberal outcomes for minorities and other excluded citizens.

When it comes to the dealing the changing dynamics of immigration, and related institutional changes, the adaption of Law on Foreigners and the establishment of Directorate General for Migration Management(DGMM) under Ministry of Interior come up as the most critical developments in this area.

As it has been explained in previous sections, Law on Settlement that was adopted in 1934 remained as the only legal document produced on migration management, up until the 1950s when Turkey has become one of the signatories to UN Convention Relating to the Status of Refugees and relatedly Convention's 1967 Protocol. In 1999, dialogues for Turkey's accession to the European Union gained a vital momentum, and among other many new policies, regulations and laws, the areas of asylum and migration also had their fair amount of change. 2005 National Action Plan for Adoption of Acquis on Asylum and Migration can be considered as one of the cornerstone documents prepared for the aim of updating Turkey's legal structure according to the new and changing necessities of the time. This document and its followers during the accession processes were

mostly on “Turkey’s integrated border management strategy in the course of its EU accession process.”(Sert 2013:1) Thus, they mostly focused on the issues of border management and security.

The Law on Foreigners and International Protection (LFIP) was adopted in April 2013 and became active in April 2014 as the most inclusive and up to date legal document on migration-related matters. LFIP laid the main principles and process details of arrival, entry, stay and exit-related issues of foreigners in relation with Turkey together with new policies made for the execution of protection regime within the scope of foreigners seeking protection from Turkey. Moreover, DGMM was established by Law of 04/04/2013 No. 6458 on Foreigners, and International Protection and its establishment were specified by Article 103 of Law no 6458. The mentioned Article of Law on Foreigners and International Protection provides the mandate and duties of DGMM as well.

> ''Article 103 – (1) The Directorate General for Migration Management has been established under the Ministry of Interior with a view to implementing policies and strategies related to migration; ensure coordination between the related agencies and organizations in these matters; carry out the tasks and procedures related to foreigners’ entry into, stay in, exit and removal from Turkey, international protection, temporary protection and protection of victims of human trafficking.''

The establishment, institutionalization processes and progress of DGMM are also significant for showcasing a change in vision for migration policy and management as it is intended to move from ad hoc or patchwork policies to institutionalization and mid and long-term learning, teaching and planning. (*Law 6458 on Foreigners and International Protection (YUKK)*

When Syrians first started entering Turkey as large groups in 2012, they have been welcomed as “guests.” This guest rhetoric is essential to have a grasp of not only the public perception of Syrians at the beginning but also the state response and policy-making understanding.

The acceptance of Syrians as guests is very compatible with previous admission policies as it also falls in line with selective admission policies of Turkey. One of the main differences at this time around is the number of refugees who have been arrived in Turkey. As a solution to this perceived problem, Temporary Protections Regulation (TPR) has been issued in October 2014 in a way to cover only Syrians as it has been stated that temporary protected status can be provided to foreigners who had to leave their countries as subjects of forced migration and seek urgent protection by arriving at Turkish borders and whose international protection requests cannot be reviewed on a case by case basis.

If it is kept in mind that Syrians started arriving Turkey in late 2011 and early 2012, TPS regime no longer seems adequate to response new needs and issues that arise with prolonged stay and settlement of the Syrians. Although Temporary Protection Status and policies offer the right to unlimited stay and protection against forced return and deportation, it lacks any provisions for permanent residency or designed paths to citizenship. Thus, the state has favored a policy for ensuring the safe and secure stay of Syrians in Turkey on a temporary basis, but they choose to ignore their possible needs about the permanency and very much needed integration policies.

At first, the arrival of Syrian refugees to Turkey has been framed as a crisis and appropriately, the rhetoric of crisis was matched with a related institution that is Disaster and Emergency Management Presidency (AFAD). Through official channels including the President of Turkey himself, it has been emphasized that the arrival of Syrians is a result of the outbreak of the civil war in Syria because of the Assad regime and after a short period and when the war is over, Syrian “brothers and sisters” would go back to their home countries.

Although Turkey is one of the parties to the 1951 Refugee Convention, it retains a geographical limitation by providing only the individuals originating from European countries with the refugee status. Considering this limitation that remains, Turkey has adopted some other mechanisms for the non-European people who are deemed suitable for asylum application and internationally refugee status in the forms of temporary asylum and protection. Most of the people who otherwise could be considered as refugees fall under this temporary protection category in Turkey. For Turkish case, UNHCR is the primary institution that is responsible for dealing with the large volumes of application cases and finds and match them with countries of settlement. This is a long process that usually leads these refugees to precarious situations as during the settlement processes refugees are expected not to leave their temporary residences, and they lack many fundamental rights including the right to work legally. (Korkut 2016)

The Law on Work Permits of Foreigners is adapted to facilitate foreigners' applications for work permits to the Ministry of Labour and Social Security. It foresees that when a foreigner applies for a work permit, the Ministry of Labour and Social Security must decide on the case within thirty days of application. If the decision on the application is contrary, then the applicant has the right to appeal the decision within thirty days of the announcement of the decision. These decisions are made based on some specific criteria such as for a workplace to be eligible for hiring a foreign national, at least five Turkish citizens must be employed at the same workplace, and for each additional foreigner to be hired, the workplace is obliged to employ another 5 Turkish nationals."(Turkish Labor Law, Law No. 4817) Under the temporary protection regime, individuals must apply for the work permits together with their prospective employers.

All of these points out to the critical changes, developments and transformations in Turkish citizenship and immigration law and these come

to the existence as results of legal and policy responses to the migratory movements of yesterday and today.

CHAPTER 5

CONCLUSION

In the previous section, the state's perspectives and fundamental role in migration have been discussed. What about the migrants' and refugees' stake at this issue in which they are supposed to be one of the principal actors? What kind of relations do they develop in societies they leave behind and settle into? This final part belongs to the visibility, voices, and experiences of migrants themselves and the possibilities of finding common grounds for citizens and noncitizens living within same communities for more just and egalitarian societies built and function in line with universal human rights principles. In this part, denizenship will be introduced as an analytical concept to showcase changing degrees of inclusion and exclusion.

In legal and political contexts, migrants are carefully distinguished from each other and categorized under as neat and sterile as possible titles and definitions such as regular, irregular, circular, refugee, etc. This approach undermines the historical connotations of the denizen who was considered an alien in the Middle Ages in European countries and England.

> Thus, in return for payment, an alien would be granted 'letters patent,' enabling him to buy land or practice a trade. In common law, a denizen was not a full citizen but had a status similar to that of a 'resident alien' today; the law followed the ancient Roman idea of granting someone a right to live in a place but not to participate in its political life (Standing 2011: 93).

The category of denizen contains all international migrants, but it could be imagined as a broad spectrum through which the asylum seekers and undocumented migrants as being the least secure are located at one end and long-term residents as being the most secure but still lacks full citizenship rights at the other end. Through this spectrum, there is a wide range of variability through states and even within supranational organizations like the European Union as states have an arbitrary authority over granting different rights to different groups of denizens. Moreover, there is an increasing gap between legal regulations and institutional and societal practices of those (Feldman 2015; Zolberg 1995; Standing 2011). Denizenship can get even more complicated with dual and multiple citizenships or resident statuses as these are considered as aberrations under the modern state system as it has been discussed widely in previous related sections.

Before moving on to the issue of a possibility of a politics of solidarity, the possibility of politics in Aristotelian understanding also acknowledged by Arendt, Ranciere and Agamben should be discussed. The arguments of these three thinkers prove that beyond the categorizations of nation-state, liberal democratic state, Western or non-Western state, the fundamental problem that causes unethical, illiberal or inegalitarian practices can be found in the lack of space for taking part for the invisible members of political communities, “those who have no part” for Ranciere, including migrants and refugees. In short, what is lacking is the lack of politics in respective political communities. This theoretical perspective and inferences are embodied in Turkish experience on immigration and citizenship through decades as the source of the problem, the so-called crises as some refer to them is beyond nation-state and its shortcomings in immigration and refugeehood related issues. This lack of politics and deliberation also manifests itself in the nonexistence of debates on the ethics of immigration in Turkey and limited debate and discussions on the same issue all around the world. It has been

six years since Syrians started settling into Turkey in large groups and these individuals maintain their lives in-limbo due to the Temporary Protection regime and ad-hoc policy making processes that have been discussed in previous sections. In the section that takes up the issue of naturalization as a right to citizenship, it has been highlighted that human beings take roots in places they settle in by making connections and planning their futures in their new homes. Thus, acquisition of citizenship has also this moral and ethical dimensions as the ties migrants establish very important regarding membership in political communities and their capabilities to achieve their versions of good lives.

As Arendt reminds, the promise of universal human rights could easily be an empty one as if there is not a state to claim authority and offer protection over them. In the same vein, solidarity arises as a possibility that Arendt and Agamben do not deliberate on it but Ranciere does, and this possibility stems from encounters of citizens and non-citizens during daily struggles during which they may opt to clash or stand together. Membership comes with rights as well as duties and citizenship could be considered as a shield many lacks in the modern world as Standing also discusses below. Therefore, citizens' role is vital for making demands and claims for fulfilling the promise of universal human rights and ensure that noncitizens are part of the societies in which we live together as active agents.

> What we can say is that in a flexible open system, two meta-securities are needed for the realization of rights – basic income security and Voice security. Denizens lack Voice. Except when desperate, they keep their heads down, hoping not to be noticed as they go about their daily business of survival. Citizens have the priceless security of not being subject to deportation or exile, although there have been worrying slips even there. They may enter and leave their country; denizens are never sure (Standing 2011:113).

As it has been analyzed concerning the nation-state and its citizens, citizens are expected to fit into the certain value systems and norms of the society.

Although new mediums of the 21st century, such as social media, present both many challenges and opportunities for increasing the public visibility of the unheard and the unseen it is not exactly in the 'proper' way as Arendt or Agamben discusses. Political subjects should exist in the public spaces that they can shape and direct through deliberation and on-going negations as equals. Otherwise, "...sovereignty is either constituted upon us (as abstract representatives of a nation) or against us (as migrants who do not belong "here")." (Feldman 2015:21) As a result of these alternative constitutions of sovereignty, citizens and migrants categorize each other in quite stereotypical ways and end up being marginalized under similar conditions by the homogenous and somewhat grateful citizens of the nation-state

> The danger here is not simply that we might befriend a particular migrant rather than a particular citizen. Rather, it is the refusal to premise our ethics on the abstract categories of "citizen" and "migrant" in favor of assessing particular situations and persons. The primary political act within the confines of the nation-state system is to see the world in its particularity and then move to general, but fluid, ethical guidelines, rather than rely on abstract principles to instruct us in dealing with people in particular. In contrast, the citizen-migrant dichotomy reduces complexity, diversity, and particularity to trite differences of "culture" stereotypically understood (Feldman 2015:32).

In this light, a well-resourced migrant with a considerable amount of wealth can have access to many resources in society even to the degrees that not so wealthy citizens cannot. This is how employment and right to work become vital for the migrants and make them vulnerable in receiving societies at the same time, due to the coupling of precarious situations with the threat of de-qualification described by Sert (2016:114)

> For many migrants, the phrase labor ergo sum ("I work, therefore I am") explains their means of survival. The equation is simple: only if one has a job can he/she afford to live, and in many cases, migrants have to take on jobs that do not match their skills, which has been defined here as de-qualification.

In the end, the category of citizenship does not automatically correlate with better life opportunities without the necessary economic means and success, but extended social and political rights are not also the sole outcomes of economic well being of the noncitizens. This might give rise to the necessity of building relations among citizens and noncitizens based on solidarity and commons under the order of neoliberal capitalism. This kind of relations based on solidarity and solidarity networks can be considered as a form of just integration as they prompt interactions, mutuality and reciprocal action.

After this overall view on the lives of citizens' and noncitizen' in post-migration communities, the Turkish case draws shows both similarities and dissimilarities to these perspectives. One of the major differences can be found in Turkey's reception of Syrian refugees by referring them as guests by emphasizing a neo-Ottoman attitude of hospitality to the religious brothers and sisters by focusing on a muhacir-ensar discourse (Korkut 2016; Göksel 2017). Soon, it is understood that this discourse does not increase the level of tolerance of the public anymore and it would be inadequate for building a long-term vision for integration. This example also manifests the importance of taking a right based approaches to the refugee-related issues. Religious-based or nationalistic discourses might become practical and manageable especially if the situation is being handled in a crisis management manner and persuade public to share and allocate some resources in the short term but these cannot prevent polarization, opposition, and xenophobia in the long term.

> As these people became more visible, so did a previously hidden problem: the intolerance of Turkish citizens toward immigrants. Syrian immigrants have become frequent targets of physical violence, especially in the southeastern regions of country and suburbs of larger cities. They have replaced Africans and Eastern Europeans as targets of "hate speech" in written and social media from almost every segment of society (Erdoğan 2014:1).

On this issue, public discourse on migrants and refugees in Turkey is framed and shaped mostly by the representatives of the dominant ideology of the time and not by all parties that are involved. In light of this reminder, the extensive review of the literature has also revealed that there is no study in Turkey or on Turkey that directly deals with the questions posed by ethics of immigration literature. This situation can also be interpreted as the works on ethics of immigration is fueled by the public debates on the issue and the lack of above-mentioned studies is also an outcome of the lack of space for politics and deliberation in Turkey As an overall problem, this lack affects of members of the political community regardless of their citizenship status and without the inclusion of the parts that have no parts, a troubled continuity can be observed for Turkey through changing regimes and dominant political ideologies. This trouble continuity owes to the reproduction of problems, and respective solutions that yield to undesirable outcomes in the end and this continuity is not mainly originated from the characteristics of neither nation-state nor liberal state systems. Moreover, the term harmonization is favored by government institutions over integration, and the voluntary and reciprocal qualities of harmonization process between the host society and migrants themselves have been emphasized, but the implementation of these policies have become very limited due to the limited public space reserved for the active participation of migrants. In the same vein, designed or not designed, Syrians have naturally become a part of the public life, precisely through their labor. Work is an essential platform that brings citizens and noncitizens together in Turkey as well, and it carries the possibility of acting as a space for solidarity considering the development that takes place in the last five years. Although Syrian immigrants have become the objects of hate and violence in the eyes of the public, in many regions of Turkey, Syrian and Turkish workers started uniting to ask for better work conditions and pay raises. For instance, in İzmir, Torbali there have been clashes between Turkish and Syrian agricultural workers for the last 3-4 years that mostly end up with employers'

hiring of Syrian workers by paying much less to them and Turkish workers attacking the Syrians. This year in June, both Syrian and Turkish workers decided on a strike, and they managed to raise their daily wages from 55 Turkish liras to 66 liras.[5] This micro act of solidarity stands as a great example for all the discussions that have been made above on the precarious lives of both citizens and noncitizens and how new ways of living together can be figured out in political communities regardless of nation state's categorizations and dichotomies on citizenship statuses. This study aims to make some connections in the existing literature on migration that take place under different disciplines and rethink and evaluate them together with a recent phenomenon that takes place in Turkey.

In the section that takes the state as community and citizenship as membership, it has been discussed that no political community would like to distort their image of good humanitarian by rejecting asylum seekers in desperate need single-handedly. These political communities present and frame their humanitarian obligation of taking in refugees as acts of kindness, compassion, and tolerance sometimes coupled with nationalistic or religious motivations as illustrated in the case of Turkey with Syrians. Although nation-state remains as the source of the problem of creation of refugees in the first place, it cannot be relied on for the solution as a foundation. One of the starting points of creating a more safe, secure and egalitarian space out of the scope of the nation-state is to undermine the importance of its categorizations on citizenship as these are more exclusive than being inclusive. In the case of European countries and Turkey, it can be observed that even the citizenship and immigration laws cannot resist the changing dynamics of migratory movements and find themselves in constant transformation in a responsive manner, but changes at law and institutions

[5] "Torbalı'da Tarım Işçilerinin Birliği Ve Iş Bırakma, Kısmi Zam Getirdi," Evrensel.net, June 30, 2018, , accessed August 26, 2018, https://www.evrensel.net/haber/355998/torbalida-tarim-iscilerinin-birligi-ve-is-birakma-kismi-zam-getirdi.

are happening at a somewhat slower pace than the movements themselves as the voice of the some of the main actors, i.e., migrants are unheard, and their participation is not ensured.

Moreover, the implementation part becomes more problematic than the lawmaking and gaps between legal regulations and practices are increasing as it can be observed in Turkish case with Syrians, especially in areas that are difficult to regulate such as labor. In line with all these, focusing on the perspective of the movement itself, in other words, migrants and refugees, gain more importance as states willingly or unwillingly consider them as passive subjects through their discourses and policies in most pragmatic ways by distancing themselves from right based migration policies, as again observed in Turkish case. The perspective of the movement itself would also help to highlight the tautologies, and inherent defects and inequalities within nation-states as each inclusion process of a new group open discussions on the compositional structure, homogeneity or heterogeneity of the already existing community. For instance, as Erdoğan and many other scholars point out that the intolerance towards Syrians is not a specific outcome of their arrival but rather a hidden symptom that comes to light once again. Therefore, in the end, the task ahead should be aiming the overall transformation of the existing understanding and functioning of politics as “There is politics when there is a part of those who have no part.” (Ranciere 1999:11).

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APPENDICES

A. TÜRKÇE ÖZET / TURKISH SUMMARY

Bu çalışmanın ilk bölümünde, egemenlik, sınırlar ve vatandaşlık gibi ulus-devletin bileşenlerine bakacaktır. İlk olarak, vatandaşlığın yasal boyutu açıklanacak, ve vatandaşlık kavramının siyasi ve sosyal yönleri devleti bir topluluk, ve vatandaları da bu topluluğun üyeleri olarak ele alan teoriler doğrultusunda incelenmiştir. Bunu yaparken, göç ve karar verici aktörlerle ilgili sorunlar, ülkeye giriş, ülkeden çıkış ve göçle ilgili başvuru süreçleri devlet perspektifinde ele alınarak literatürde yine bu perspektif üzerine kurulan kuramsal tartışmalara yer verilmiştir. Bu bölümde ayrıca, açık sınırların veya kapalı sınırların gerekliliğini ve meşruiyetini tartışan iki zıt görüşe, Wellman ve Cole(2011) tartışması üzerinden yer verilmiştir ve bu tartışmanın bir analizi ve eleştirisi yapılmıştır. durumun iki rakip görüşlerini sunarak ve analiz ederek devlet hakkı hakkındaki tartışmalara son verecektir: açık sınırlar ve yakın sınırlar savunucuları.Si Singer 'ın etkilenen tarafların mülteciler, göçmenler ve alan ülkelerin vatandaşları tarafından tanımlanması ödünç verilir. Bu çalışmanın birincil amacı, bir değişiklik için devlet yerine, vatandaşlar ve vatandaşlara karşı perspektifimizi yeniden şekillendirmektir, bu bölüm aşağıdaki bölümlerin sonraki bölümü ve kılavuzudur. Bu çalışmada, vatandaşlık ve üyelik analitik olarak önemli ve farklı kavramlar olarak çalışmanın genelinde kullanılan kavram setinde yerini almıştır. Dolayısıyla çalışmanın bu bölümü, ileriki bölümlerde kullanılacak ulus devlet, vatandaşlık, sorumluluk ve haklar gibi kavramların tanıtılması açısından oldukça önemlidir.

Bir kavram olarak vatandaşlık, hukuki bir statü olarak varolmanın ötesinde siyasi ve sosyal boyutlara da sahiptir. Devlet, bölge ve insanlar arasındaki ilişki yasal ve siyasi sorunları bir araya getirmektedir. Egemen devletin

Weberci anlamdaki tanımı anlayışı, özellikle tanımlanmış ve sınırlandırılmış bölgeler üzerinde takdir edilen devlet otoritesine dayanır. Weberci egemenlik anlayışı, sınırları belli olan toprak parçaları ile birleştiğinde, aynı zamanda tanımlanan sınırlar ve sınırlar içinde yasal, siyasi ve sosyal konuların düzenlenmesi anlamına gelir.(Moore & Buchanan 2003:5-8) Dahası, egemenlik, iç ve dış sınırların, neden dahil etme ve dışlama konusundaki kararlar üzerinde bu denli büyük bir güce sahip olduğunu anlamak ve açıklamak için de bu kavramsallaştırma önemlidir. Bu nedenle, egemenlik ilerleyen bölümlerde temel bir kavram olarak defalarca zikredilmiştir, özellikle devletlerin göçmen ve mülteci kabulü ile ilgili uygulamaları egemenlik ilkesiyle oldukça yakından ilgilidir.

Liberal siyaset teorisi, tüm insanların eşit ahlaki önem taşıdığını savunur ve bu varsayımın üzerine demokratik vatandaşlık ilkelerini inşa eder. Ancak konu, dışarıdan gelen ya da gelecek olanlar eksenine çekildiğinde aynı ilke ve yasaların sınırları ve sınırların içerisindekileri dışarıdan ve dışarıdakilerden korumak için de kullanıldığı anlaşılır. Burada, göç ve vatandaşlık konusundaki yasal düzenlemeler ve pratik deneyimler arasındaki farklar daha açık bir şekilde ortaya çıkar. Bu durumu takiben, ulusal kimlik ve ulusun iddiaları liberal vatandaşığın eşitlik vaatlerini aşan ulus-devletin içkin doğası etrafında şekillenir ve demokratik vatandaşlık ilkeleriyle arasında bir çatışma doğar. Bu çatışma temel olarak ulus devlette toplumun homojen yapısının korunması ve temel liberal devletler arasındadır. Bu argümanın bir örneği, Türkiye'nin değişen anayasalarında vatandaşlığın tanımına ilişkin bölümlerde de bulunabilir. Demokratik vatandaşlık ilkeleri, liberal ve eşitlikçi olarak oluşturulup sunulabilir, ancak uygulamada, aidiyet duygusu ve ulusal kimlik vatandaşlıktan bu denli bir kolaylıkla ayrıştırılamaz. Ulus devletler, sınırları içerisine kimin alınıp kimin alınmayacağı konusunda egemenlik iddialarını ortaya koyarken hukuki düzenlemeleri ayrımcılık için bir araç olarak kullanırlar. Böylece, vatandaş olmayan bireylerin hayatlarını etkileyen kararların verilişinde devlet en

önemli ve zaman zaman da tek otorite sahibi olarak karşımıza çıkar. Göçmenlerin, ulus-devlette vatandaşlığa erişimlerini sağlayan süreçler de, bu bölümde ayrıntılı olarak açıklanmıştır. Aynı zamanda, vatandaşlık, devlet tarafından korunan sosyal, ekonomik ve siyasi haklar bütünü olarak tanımlanır ve vatandaşların devlete yönelik olan görev ve sorumluluklarının da belirlendiği çerçeve olarak karşımıza çıkar.

İkinci bölümde, mülteci kavramı göçmen kavramının altında bir alt statü olarak ele alınmış ancak hem devlet hem de insan hakları perspektifinde özel bir yere sahip olduğu için mülteciler konusuna odaklanılmıştır. Dolayısıyla bu bölümde, devletler tarafından mültecilerin giriş ve kabul edilme kriterlerine ilişkin uluslararası hukuk ve yönetmeliklere bakılarak, devletlerin neden mülteci kabulü konusunda farklı motivasyonlarla hareket ettiğini ve hangi devletlerin hangi sebeplerle mülteci kabul etmekle yükümlü olduğu açıklanmıştır. Daha sonra, bu noktaya kadar hem tartışmalarda hakim olan hem de tartışmaların üzerinde inşa edildiği zemin olan liberal kuramın sınırlarının dışına çıkılarak liberal teoriyi eleştirerek hak temelli ve mültecileri tartışmanın odağına alan bir perspektifle konuya yaklaşan Arendt' in konu üzerindeki tartışmaları sunulmuştur. Arendt' in tartışmalarını, çalışmaları Arendt' in tartışmalarına cevap niteliğinde olan Ranciere ve Agamben'in yine aynı konu üzerindeki argümanları takip etmiştir. Aynı argümanları takiben, vatandaşlığa kabul edilme ve devletlerin vatandaşlık hukuki, siyasal ve sosyal perspektiflerden tartışılmıştır. Bu bölüm, siyasi topluluklarda birlikte yaşayan vatandaşların ve vatandaş olmayanların karşılaşma ve etkileşime girmelerinin sonucunda ortaya çıkabilecek olası dayanışma pratiklerinin kurulum imkanlarının tartışılmasıyla sonlanmıştır. Bu noktaya kadar, vatandaşlar, göçmenler, mülteciler ve diğer vatandaşlık formları arasındaki farklar tartışılmıştır, ancak bu noktadan sonra meseleye ters taraftan yaklaşılarak alternatif bir siyasi yaşamın oluşturulması için ortak zemin bulma olanakları araştırılacaktır.

Literatürde Wellman ve Cole arasındaki tartışmalar ile belirlenen açık ve kapalı sınırlar tartışması, zengin içeriği ve bütüncül bir şekilde iki zıt görüşü sunması gibi özellikleriyle oldukça önemli bir yere sahiptir. Bahsedilen bu uzun soluklu tartışmanın yine yukarıda bahsedilen nitelikleri tanınarak, eksiklikleri ve sınırlamaları da belirtilmelidir. Bu doğrultuda, literatürde Arendt tarafından sunulan perspektif, aynı konuya çok farklı noktalardan yaklaşmamızı sağlamaktadır. Bu nedenle, sınırların seçici geçirgenlik olarak adlandırabileceğimiz bir biçimde işleyerek mültecilikle ilgili hayati öneme sahip süreçleri nasıl kesintiye uğrattığı ve evrensel insan hakları söyleminin bu noktada ne şekilde işlevsiz kılındığı tartışmaları oldukça önemlidir. Devletler, göçmen ve mülteciler arasında mümkün olan en ayrıntılı gruplandırmaları yaparak, savaş ve şiddet sonucu yerinden edilmiş ve tüm evrensel tanımlara göre mülteci olarak kabul edilebilecek pek çok insanı dahi çeşitli filtreler ve gruplandırmalar sonucunda dışlamayı tercih etmektedirler.

Cenevre Konvansiyonu çerçevesindeki tanım ve açıklamalara göre, eğer bir kişi savaş ve güvenliği tehdit eden diğer durumlar neticesinde ülkesinden kaçarak uluslararası bir sınır geçiyorsa, o kişi bir mülteci olarak kabul edilir, ama bir kişi herhangi bir uluslararası sınırı geçmeden aynı tehditlerle yüzleşme durumunda kalıyorsa, o zaman bu kişi zorla yerinden edilmiş sıfatıyla tanımlanır. Anlaşılacağı üzerine Konvansiyon, hukuki statülerin düzenlenmesi ve ulus devlet kategorizasyonlarına uygun hale getirilmesiyle ilgilidir. Dolayısıyla, mültecilerin hak ve içinde bulundukları durumların düzeltilmesinden ziyade statülerinin düzeltilmesiyle ilgili olduğu kolaylıkla iddia edilebilir. Bu perspektif, mültecilerin sistemsel sorunları sebebiyle oluşan mağduriyetlerini de gözardı ederek mültecilerin sorunları yerine mülteci sorunu olarak adlandırdıkları soruna odaklanmayı beraberinde getirir. Bu tartışmada dikkat edilmesi gereken en önemli husulardan biri de, mülteci statüsünün göç hareketleri sonucunda oluşan güvencesiz

statülerden sadece biri olduğu ve oldukça seçici bir şekilde mümkün olduğunca en az sayıda bireye verildiği olmalıdır.

Giriş bölümünde, vatandaşlık ve göç arasında yakın bir ilişki olduğunu iddia edilmiştir. Arendt, ulus-devlet sisteminin içkin sorunlarının çözülmesinde ulus devlet ve liberal devlet argümanlarının ve çözüm önerilerinin yetersiz olduğunu savunan ilk düşünürlerden biridir. Ayrıca, Arendt, mültecilerin sorununlarını insan hakları çerçevesinde temellendirmiş ve bu konudaki çalışmalarıyla farklı dönemlerde Agamben ve Ranciere' in yaptığı çalışmalar için öncü niteliğinde olmuştur. Dahası, bu düşünürler, mültecilerin hayatta kalabilmesi için asgari miktarda sunula kaynakların ve yaşam fırsatlarının bu bireylerin anlamlı ve insan onuruna yaraşır bir hayat sürdürmek için oldukça yetersiz olduğuna işaret etmişlerdir. Arendt, kuramsal çerçevesini, İkinci Dünya Savaşı sonrasında yaşanan ve kendisinin de bir parçası olduğu kitlesel yerinden edilme ve mültecilik vakalarının üzerine kurmuş ve bu durumla ilgili pek çok çatışma ve ikilem tespit etmiştir. Bu çatışma ve ikilemlerden en önemlisi de devletlerin egemenlik iddiası ile evrensel insan hakları ilkelerinin işleyişi arasında durmaktadır.

Mültecilik, 21. yüzyılın önemli düşünürlerinden bazıları tarafından tekill ulus devletlerden tarafından kabul görmüş olan evrensel insan hakları söylemleri ve uluslararası koruma sistemi ile ilgili yanlışlıkları, çarpıklıkları ve çelişkileri açığa çıkarma gücüne sahip olan temel ve benzersiz bir gösterge olarak kabul edilebilir. Bu bağlamda, Arendt 'in hem sığınma hakkı hem de vatandaşlığa güvenli ve açık bir yol üzerinden ulaşma hakkı kavramları, bu çalışmada teorik bir kılavuz olarak kabul edilmiştir. Mülteci figürü, barınma ve kabul görme aşamasında kendisini bizzat etkileyen karar alma ve kanun yapma süreçlerinin dışında tutulmaktadır. Bu nedenle oluşan asimetrik ilişkilerde, mültecinin kendini gerçekleştirme ve geleceği tahayyüll etme gücü, sahip olduğu güçler ve araçlarla muktedir konumunda olan devletin karşısında oldukça düşüktür. Arendt, evrensel insan haklarının eleştirisi ile

mülteciler ve devletsiz kişiler arasında net bir ayrım yapar ama bu ikisini ortak noktada buluşturan soru şudur: “Dünya üzerinde kendilerine ait yerlerini kaybeden bu insanların fiziksel olarak nerede yaşama hakları vardır?” (Arendt 1951:1).

Beklenen bir sonuç olarak, vatandaşlığın varlığı analitik bir kategori olarak bile temel insan haklarının işlevselliği sorununun işaret ettiği şekilde bir şekilde birçok yeni ve farklı soruna neden olur. Arendt 'in mevcut insan hakları rejiminin yetersizlikleri yönündeki cevabı, Avrupa 'yı parçalayan iki savaştan sonra mültecilerin korunması konusunda oluşan tüm yetersizlik ve olumsuzluklarla somutlaşmıştır. Arendt’ in çalışmalarında, bu koruma boşluğu vatandaşların yabancı topraklarda dahil vatandaışı oldukları devletin korumasında olmasına rağmen mültecilerin bu hakları kaybederek ve uluslararası arenada herhangi bir yasal koruma destek mekanizması olmaksızın tek başına kalmaları üzerinden anlatılmıştır. Dolayısıyla, mülteciler evrensel insan hakları rejimin koruma sınırlarının dışına düşerek kendilerini insan olmanın soyut çıplaklığında bir başlarına bulmuşlardır.

İnsan hakları fikri, insan haklarının temel öznesi olan insanın dünyadaki fiziksel mevcudiyetinin, insan hakları rejimine dahil sayılmak için yeterli olduğu varsayımı etrafında şekillendirilmesine karşın, mültecilerin durumu bu varsayımın geçersiz olduğunu kanıtladı çünkü vatandaşlık ve vatandaşlık bağı insan hakları rejimine dahil olmak için bir yeter koşul olarak karşımıza çıkmaktadır. Ardından Arendt, Avrupa 'daki vatansız insanların durumunu tartışarak bu durumun 1789’da ortaya konulan yeni insan hakları anlayışının ve rejiminin başarısız olduğunu gösterdiğini belirtiyor. Bu durumda, doğdukları ve ait oldukları siyasi toplumunun dışında yaşamak zorunda kalan veya bırakılan insanlar kendilerini başlangıç noktasında bulurlar, ve bu da vatansız insanların, insanlık onuruna yakışır bir biçimde yaşamlarını sürdürmelerini neredeyse imkansız kıldı. Tam bu noktada Arendt, insanların genel olarak insan haklarının bir öznesi olabilmeleri için gereken temel hakkı sunar: Bu hak, başka bir deyişle, bireyin siyasi hayata

dahil olma ve siyasi bir topluma bağlı olma hakkının ön koşulu olan haklara sahip olma hakkıdır.

Daha sonra insan hakları,güvencesizlerin haklarını bir ihtimalle koruyabilecek ekstra nitelikte bir yasal koruma olarak gündeme gelmiştir. (ibid, 293) Çünkü insan hakları, farklı niteliklerinden bağımsız olarak tüm insan için geçerli olacak şekilde inşa edilmiştir ancak tüm insanların da vatandaşlık bağıyla ulusal bir topluluğa bağlı olması beklenmiştir. Vatansız insanlar insan haklarını iki temel adımda kaybederler: Öncelikle, fiziksel olarak vatan topraklarını kaybederleri, sonrasında da içlerine doğdukları tüm sosyal ve siyasi ilişkileri ve alanlarını kaybederler. Modern devlet sistemi içerisinde, tüm insanların vatandaşlık bağıyla bir ulus devlete ait olması beklendiği için vatansızlık başlı başına sistemden bir sapma ve sorun haline gelmiştir ve vatansız insanlar kendilerini yerleşecek yeni bir yer bulma konusunda hak iddiasında bulunamayacak bir konumda bulmuşlardır.

Arendt'in tartıştığı gibi, vatansız bir birey konumuna düşmenin getirdiği gerçek felaket, insan haklarını kaybetmenin ötesinde siyasete dahil olma olasılıklarının da tükenmesidir. Bu insanlar için önemli olan yasaların ve eşitliğin önünde görünürlüklerini ve seslerini yeniden kazanmak için verdikleri mücadeledir. Arendt, vatansız insanların içinde bulunduğu bu durumu alaycı bir şekilde ele alarak, vatansızların içinde bulundukları toplumun en özgür grubunu oluşturduğunu belirtir. Çünkü, bu insanları kimse görmek istememektedir ve ne yaptıklarıyla ilgilenmemektedir. Vatansızlar işledikleri bir suç sonucunda yargılanıp ceza bile alamazlar çünkü bu süreç bile onların varolduklarını ve eylemlerinin önem taşıdığını kanıtlayarak yargılamada da olsa onlara vatandaşlarla eşitlik sağlayacaktır.

Böylece, insanların hayatının en istisnai nitelikleri olan konuşma ya da eylem yoluyla kamuoyu tartışmalarına şekil verme haklarından mülteciler ve vatansızlar muaf konumuna düşmüşlerdir.. Arendt 'e göre, Arendt 'in siyaset

anlayışı için iki Yunanca kavram oldukça gerekli ve önemlidir: Zoe, yaşam biçimi anlamına gelen çıplak fiziksel yaşama ve bios ise anlamlı ve siyaset içerisindeki yaşamı tanımlamak için ortaya koyulmuştur. (Ranciere 2004:299) Bu terimlerin kullanımı bize insan haklarına ilişkin Arendt' in kurduğu kavramsal çerçevenin temelini de göstermektedir. Kamuoyunda eylem ve konuşma şeklinde somutlaşan ve aktif siyasi katılım gerektiren siyaset tahayyülü, Aristotelesçi anlayışa dayanmaktadır ve tam anlamıyla insan onuruna yakışan bir hayat yaşama olasılıklarına işaret etmektedir. Arendt için, siyaset görünüş ve ortaya çıkışların alanıdır, ve bu alan diğerlerinin bize göründüğü gibi, başkalarının da bizi gördüğü yerdir. (Arendt 1958:199-207) Bu anlamda mülteci, siyasi toplumda herhangi bir bağı olmayan görünmez bir varlık haline gelir. Bu siyasi bağın yokluğuı, mültecilerin devlet ve devlet dışı güçlerden önce savunmasız kalmasına neden olur. Mülteciler toplum içinde görünür hale geldiğinde de, insani tepkilerin ve yardımların eksikliği nedeniyle savunmasız ve umutsuz kurbanlar olarak haline gelmiş bireyler olarak sunulur. Bu durumun örnekleri medyada sıklıkla bulunabilir, en çok ilgi çekmiş ve tepki toplamış örneklerse Aylan Kürdi adlı Suriyeli mülteci çocuğun kıyıya vurmuş cansız bedeni hakkında yapılan yorumlar ve haberlerde bulunabilir(Barnard & shoumali 2015) Bu haberlerde, mülteciler kendilerini göstermek istedikleri şekilde değil, kamuouyunun onları görmek ve göstermek istediği şekillerde anlatılmışlardır. Bu durum da, mültecilerin siyasette yer edinerek kendilerini gerçekleştirmelerinin önünde en büyük engellerden biri olarak karşımıza çıkmaktadır.

Ranciere'in argümanlarına baktığımızdaysa, onun Arendt'i de eleştirerek siyasetin gündelik yaşamda ve gündelik yaşamın sosyal mücadeleleinder her gün bulunabileceğini savunduğunu görürüz. Ranciere, yeni bir perspektifin, siyasetin gerçek anlamı ve yerinin yeniden keşfi için gerekli olduğunu da eklemektedir.. Ranciere, insan hakları konusundaki sorunların temelinin, vatansızlar veya ulus-devletin iyi tanımlanmış vatandaş ve

vatandaş olmayan kategorilerinin dışında ve ötesinde aranması gerektiğini belirtmektedir. Bu tanımların her biri, liberal teori sınırlarında hapsolarak sorunlu bir teori içerisinde sorun çözme yollarını aramamıza sebep olarak bizi bir kısırdöngüye itecektir.

Daha önce tartışıldığı gibi, vatandaşlık edinmenin temel yollarından biri doğum yoluyla kazanılan vatandaşlık hakkıdır. Böylece Agamben, doğum, ulus, devlet ve vatandaşlık kavramlarının bir karmaşa oluşturacak ve ayrılmaz şekilde birbirine bağlandığını savunmaktadır. Doğum yoluyla kazanılan vatandaşlık hakkı, otomatik olarak sınırları belli olan toprakları, ulus devlet kavramını ve siyasi topluluğa üyeliği birbirine bağlamıştır. Agamben, Arendt ile birlikte, ulus-devletin çelişkilerinin ve sorunlarının mülteci figürü üzerinden gözlemlenebileceği ve anlaşılabileceği fikrine katılır. Mültecilerin durumu hem ulus devletin ve göç ve vatandalığa dair kategorilerinin mevcut sınırlamalarını hem de siyasi toplulukların gelecekteki siyaset alanları ve dayanışma olanakları hakkında önemli ipuçları verir. Dolayısıyla tüm bu kategorilerin ötesinde ve mülteci figürünün çevresinde insan hakları ve siyaset konusunda yeni anlayışlar geliştirmek gereklidir. (Agamben 1983:90).

Örneğin, devletler pek çok uluslararası kurumu, insani örgütleri ve benzer oluşumları katılımcı siyaseti pas geçip tüm kontrolü ve kontrol araçlarını bünyelerinde barındırmak üzerine araç olarak kullanmaktadırlar. Göç yönetimi ve sorumluluktan ziyade yük paylaşımını öngören mekanizmalar da bu yaklaşımın doğrudan sonuçlarıdır. Bugün, tartışmalar, sınır polisleri, duvarlar ve çitler aracılığıyla ortaya çıkan güvenlikleştirme söylemleri üzerine kurularak bu amaçlar için kullanılan araçların ve mekanizmaların kapasitesi ve gücü sürekli arttırılmaktadır.

Üçüncü bölümde, uygulamalı bir çalışma olarak Türkiye 'nin vatandaşlık ve göç tarihi, hem ulus devleti temel alan hem de ulus devletin ötesine geçen kuramlar çerçevesinde ele alınmıştır. Bu doğrultuda, vatandaşlık, yerleşim,

göç ve yabancılarla ilgili anayasa maddeleri ve diğer hukuki belgelerin bir analizi yapılacaktır ve göç ulus devleti değişim ve dönüşüme zorlayan bir kavram olarak ele alınmıştır. Bu değişim ve dönüşüm, dört temel dönem altında incelenmiş ve Tablo 2, Tablo 3, Tablo 4 ve Tablo 5'te bu durumun oluşmasına zemin hazırlayan temel olaylar ve olaylar sonucu ortaya çıkan değişiklikler listelenmiştir. Suriyeli mültecilerin gelişi, Türkiye 'de göçmenlik ve vatandaşlık yasaları ve siyasetinde birçok önemli değişikliğe de rastladığı için, bu yeni değişiklikler de ilişkisel bir zeminde açıklanmış ve vatandaşlık rejiminde dönüşüm izlerini görmek için analiz edilmiş ve Türkiye 'nin göç veren ülke konumundan göç alan ülke konumuna geçiş sürecindeki olaylar bir zaman çizelgesine oturtulmuştur. Çalışma süresince takip edilen yöntemler şu şekilde özetlenebilir: Siyaset teorisi ve göç etiği ile ilgili literatür taranmış, bu literatüre dayanarak teorik bir tartışmaya dahil olunmuştur. Bundan sonraki kısımdaysa dünyadan örneklerle vatandaşlık ve göç yasalarının tarihsel bir analizi yapılmış ve Türkiye örneği karşılaştırmalı tarihsel bir zeminde incelenmiştir.

Tüm bu süreç ve analizler, sonuç bölümündeki tartışmanın zeminini oluşturmuştur. Bu son kısım, göçmenlerin görünürlüğünün sağlanması ve artması, deneyimlerine kulak verilmesi ve vatandaşlarla beraber yaşayarak paylaştıkları toplumların daha adil ve eşitlikçi toplumlar olarak yeniden inşasında ne tür ortak platformlarda katılımda bulunabileceklerine dair tartışmalarla ilgilidir. Dayanışma siyasetinin olanakları tartışmasına geçmeden önce, Aristotelesçi anlayışın ortaya koyduğu çerçevede siyaset yapma olasılık ve olanaklarının Arendt, Ranciere ve Agamben tarafından ne şekilde ortaya koyulduğu tartışılmıştır.. Bu üç düşünürün argümanları, ulus-devlet, liberal demokratik devlet, Batılı veya Batılı olmayan devlet kategorilerinin ötesinde, etik olmayan, illiberal veya eşitsizlikçi uygulamalara neden olan temel sorunun görünmez ve paydaş olması gerekirken dışlanmış olanların da içerisinde yer alabileceği bir siyaset alanı eksikliği olduğunu destekler niteliktedir. Bu kuramsal bakış açısı, Türkiye'nin göç ve

vatandaşlıkla ilgili deneyimlerinin izinde somutlaşmaktadır ve sorunun kaynağının ulus devletin içkin sorunlarının ötesinde olduğunu işaret etmektedir. Bahsedilen siyaset yapma olanaklarının ve müzakere eksikliğinin sonuçları, değişen ideolojiler ve rejimlerin yanında gelen bir devamlılık çizgisi olarak ele alınabilecek, sorun çözme kapasitesi açısından büyük değişim gösteremeyen göç politikasında ortaya çıkmıştır. Bu siyaset ve müzakere eksikliği, Türkiye 'de göç etiği konusunda tartışmaların ortaya çıkmamasına da sebep olmuştur çünkü tüm dünyada aynı sorunla ilgili tartışmalar kaynağını kamuouyunun sorularından ve tartışmalarından almaktadır. Suriyeliler'in gruplar halinde Türkiye 'ye yerleşmeye başlamasının üzerinden en az altı yıl geçti ve bu bireyler, geçici koruma rejimi ve önceki bölümlerde tartışılan yamalı yasa ve politika yapma süreçleri nedeniyle yaşamlarını belirsizlik içerisinde ara formlarda sürdürmektedirler. Vatandaşlık kazanımının bir hak olarak ele alındığı bölümde, insanların yerleştikleri yerlerde duygusal, sosyal ve ekonomik bağlantılar kurararak kök salma eğiliminde olduklarının, vatandaş olamamanın bireylerin kendilerini gerçekleştirmelerinin önünde önemli bir engel olabileceği ve bu durumun önemli bir etik boyutunun oluşuna vurgu yapılmıştır. Buna rağmen Türkiye'de vatandaşlık meselesi henüz bu boyutuyla ele alınmamıştır, çünkü bu tartışmaların gerçekleşebileceği gerekli alan bulunamamıştır.

Arendt'in hatırlattığı gibi, evrensel insan haklarının vaatleri, eğer bunu sağlayacak bir devlet yoksa kolaylıkla boş vaatlere dönüşebilir. Aynı zamanda devlet ile vatandaş arasındaki vatandaşlık bağı oldukça kırılgandır ve vatandaşlıktan çıkarma pratikleriyle kolayca kırılabilir. Dolayısıyla hak temelli bir yaklaşımla mücadele vermek aynı toplulukta yaşayan üyelerin de sorumluluğudur. Vatandaş olanlar ve olmayanlar birbirleriyle mücadele halinde olmayı seçebileceği gibi daha adil ve eşitlikçi yaşam pratikleri için beraber de mücadele verebilir. Bu noktada vatandaşlara daha büyük sorumluluk düşmektedir çünkü vatandaşlık vatandaş olmayanlar için

ayrıcalık niteliğinde olan temel haklarla beraber gelir. Örneğin vatandaşların en azından sınırdışı edilmeme güvencesi vardır.

Sonuçta, vatandaşlık kategorisi otomatik olarak daha iyi yaşam fırsatlarını getiren gerekli ekonomik araçlar ve diğer kaynaklar olmadan daha iyi yaşam fırsatları ile ilişkilendirilemez, ancak aynı şekilde genişletilmiş sosyal ve siyasi haklar da otomatik olarak bireylere ekonomik güvence olarak yansımayabilir. Bu durum, neoliberal kapitalizm düzeni altında dayanışma ve ortakilişkiler kurma gerekliliğini doğurur. Gündelik karşılaşmalarla başlayabilen bu ilişkiler ve dayanışma ağları, karşılıklılık içeren eylem pratiklerine dayandığı için adil entegrasyon için de önemli platformlar olarak kabul edilebilir.

Dolayısıyla, Türkiye örneğinde de karşımıza çıkan temel sorun ve eksiklik ulus devlet ve liberal devlet kategorilerinin ve kavramsallaştırmalarının ötesinde bir siyaset ve siyaset yapma alanı eksikliği olarak tespit edilmiştir. Bu çalışma, literatürde hukuk ve sosyal bilimler ilişkiselliği içerisinde yapılan interdisipliner çalışmaların eksikliğine dikkat çekme amacı da taşımıştır ve gelecekte bu konuda daha fazla çalışma yapılması gerekliliğini öngörmüştür.

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