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Ivan Josipovic

# Walls with Doors

Struggles over Nation-State Sovereignty amid Integrated Borders

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### *Abstract (Deutsch)*

Die Masterarbeit untersucht die Bedeutung einer Grenzpolitik des Mauerns für die Souveränität von EU Mitgliedsstaaten. Als Reaktion auf die sogenannte Flüchtlingskrise 2015 wurden nationalstaatliche territoriale Grenzlinien sowohl an den EU-Außengrenzen verstärkt als auch innerhalb der Schengen Zone wieder aufgezogen, wie am Beispiel Österreichs deutlich wird. Hier widerspricht die Behauptung nationalstaatlicher Souveränität nicht nur Menschenrechten, sondern auch der faktischen Unmöglichkeit, grenzüberschreitende Bewegung vollständig zu kontrollieren. Vor allem drohen solche Verstärkungen territorialer Grenzlinien aber auch die EU-Polity, die auf geteilter Souveränität basiert, zu erodieren. Ausgehend von diesen Entwicklungen, beteiligt sich diese Masterarbeit an einer theoretischen Debatte, die durch einen erweiterten Souveränitätsbegriff informiert ist. Im Gegensatz zu traditionellen, westfälischen Konzeptionen von Souveränität, legt das europäische Konzept geteilter Souveränität erstens nahe, die genannten Limitierungen von Mauern („Türen“) im Kontext von Integration zu diskutieren. Da es sich bei der EU um keinen Territorialstaat handelt, ist es zweitens notwendig, einen erweiterten Begriff von Grenzen in einer post-westfälischen Ordnung zu erarbeiten. Dazu greife ich auf das Konzept der Gouvernamentalität zurück, das ein Regieren von Grenzen abseits territorialer Linien zu erkennen hilft. So wird deutlich, wie eine territoriale Schließung erst durch vielfältige asyl- und sicherheitspolitischer Ordnungsmechanismen erreicht wird. Diese stellen Zonen als Orte räumlicher Kalkulierbarkeit und Überwachung her, sowie ein antizipatives Management von Fluchtrouten und die Zirkulation risikoattribuierter Gruppen durch Abschiebenetzwerke. Am österreichischen Beispiel wird illustriert, dass und wie Mauern zwar Ausdruck eines wiederkehrenden Diskurses über nationalstaatliche Souveränität sind. Deren Herstellung kann aber erst durch die Einbeziehung des Zusammenwirkens der genannten Ordnungsmechanismen plausibilisiert werden.

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## 1. Introduction

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In late 2015, the Austrian grand coalition decided upon the erection of a frontier fence at Spielfeld, a major border crossing point to Slovenia, as a political response to previous months' high numbers of border crossings, mainly by refugees from the Middle East. This in turn prompted a broad public and political debate on the actual designation of this construction in the midst of the European Schengen area. Was it indeed a border fence (Grenzzaun) in a conventional sense or were these rather technical safety measures (bauliche Sicherheitsmaßnahmen) for a new type of border management (Grenzmanagement)? Others suggested calling the project 'ordered guidance system' (geordnetes Leitsystem) pointing to the installation of doors, whereas still others bemoaned the lack of initiative to create an 'actual' fence<sup>1</sup>. Public speculations on the length, the precise technological features, as well as legal limitations caused further confusion about the scope and the factual purpose of this endeavor. In fact, we were witnessing a social democratic led government with a conservative interior ministry that tried to consolidate a coherent political response amidst a moment of unprecedented migration dynamics. On the one hand, it was an attempt to find a uniform designation in the face of a political struggle for a prerogative of interpretation, and on the other hand the attempt to steer migratory movements towards the national territory, without breaching human rights obligations or impeding commerce travel.

The case that I am trying to make with the example is that, talking of walling facilities, precisely this kind of political contention on the designation and technical elaboration of border fortification systems seems to reflect the difficulty of reconciling assertions of authority over a jurisdictional space with those of liberal openness (Regout, 2010). Cross-border passageways of socio-economic mobility (Brown, 2010, p. 8), but also new, European articulations of borders, as well as human rights considerations stand in considerable conflict with assertions of national borderlines. In the 2015 European context, this collision firmly translated into a series of tensions between some national bordering measures, human rights groups and a prevailing EU border regime holding some crucial Schengen and Dublin provisions. The debate on technical features of walling facilities in member states such as Austria accordingly carried the deeper subtext of trying to assess their aim and functioning amid EU border and asylum law.

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<sup>1</sup> 'Fences have no place in Europe' (2015). Source: Politico, retrieved from: <http://www.politico.eu/article/fences-have-no-place-in-europe-austria/>, 12.9.2016.

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Following Wendy Brown (2010), there is a common dimension to the global proliferation of walls, namely the notion of a consolidation of nation-state sovereignty. The assertion of territorial borders through walling, fencing and other forms of barriers is presumed to protect a nationally imagined sovereign relation between state authority and a territorially confined society. Its integrity is held against threats that have in large parts come to be associated with a number of transnational flows (Brown, 2010, p. 22). The movement of people without a prior entitlement to entrance is thereby radically visualized through exceptional fortifications and a corresponding terminology of the *bogus asylum seeker* or the *illegal* or *economic migrant* as a danger coming from beyond (Rheindorf & Wodak, 2017, p. 7). Their transgression of a sovereign authority-society relation is tied to a series of potential conflicts. Uncategorized people, thus subjects that are initially invisible to the rule of law and its state related apparatuses, would accordingly not only pose an existential threat (in terms of terrorism for example), but also present a risk to a certain socio-economic order (Bigo, 2002, p. 79).

Yet if borders or boundaries give meaning to sovereignty (Weber, n.A.; cited in Geddes, 2005, p.789), the politics of the traditional territorial borderline express a specific conception of sovereignty, namely a “[...] conception of the state as a body or a container for the polity” (Bigo, 2002, p. 65). Arguably, these walls display a very particular, Westphalian notion of sovereignty, where a supreme authority is firmly lodged within the nation-state and its jurisdictional space (Pusterla & Piccin, 2012). Thus, it comes as no surprise that political leaders use such facilities as planes for projecting, if not notions of impenetrability, so at least those of national control (Sassen, 1996). But how might such an affirmations of the borderline be understood in the context of a deeply integrated area, where much of the formerly national competences on bordering have been compromised under the Schengen acquis?

Two conceptual problems appear to emerge, if we think about the way in which walling facilities have gravitated from the external EU borders towards the Schengen area, where traditional borderlines are assumed to have abolished. Firstly, places such as the southern Austrian border, probably more than any other, exhibit strong social, political, economic and partly cultural ties, transcending territorial borderlines. Secondly, the lack of traditional boundaries in some instances might not only be understood negatively, but also as the positive articulation of new forms of governing borders as under the Schengen and Dublin regime. The events of 2015 and 2016 left us wondering: has walling become a mere discursive strategy? Are these constructions ineffective or do they actually work as a

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nationally led strategy of restoring nation-state sovereignty? Consequently I will arrange a debate around my central research question, namely:

*What is the meaning of contemporary walling by EU member states with regard to their sovereignty?*

This is a question that inquires for the underlying principles that constitute the logics of these walls, which neither carry a fully isolationist character nor seem to belong to a European project of integration. How might we render this seemingly anachronistic technology of bordering plausible in the context of an EU border regime and most notably the Schengen area?

This work will arrange a theoretical debate around some latest developments in realm of borders politics within the EU and its member states. It will discuss the phenomenon of walling through the theoretical lens of sovereignty. Yet while a traditional understanding of sovereignty<sup>2</sup> as nation-state sovereignty confines its understanding of borders to territorial borderlines, I will analytically place these walls into the context of an EU border regime based on shared sovereignty (Parker & Adler-Nissen, 2012; Pusterla & Piccin, 2012). Arguably, while the angle of nation-state sovereignty tends to see walls as unambiguous fortifications of national borders, their consideration in the light of a multi-leveled governing of European borders under shared sovereignty forces us to explore possible tensions and intersections with ordering mechanism that result from EU integration but also the impossibility of fully excluding undesired movements. Accordingly, in order to avoid a monolithic take on this phenomenon, I suggest speaking of *walls with doors*. This juxtaposition may appear paradox but is indeed very useful as it complicates the notion of a mere wall. It acknowledges on the one hand its limitations in governing movements, while on the other hand pointing towards its intersectional working within a wide range of policies and administrative action which might not necessarily have been staged as a claim for nation-state sovereignty. Those could for example encompass transit zones, detention centers, and return- or deportation networks.

Departing from critical migration- and border studies, I will firstly try to analytically grasp the addressors of such ordering mechanisms. The discussion will be embedded in the

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<sup>2</sup> Sovereignty might for now be abstractly defined as a spatially confined supreme authority (Morgenthau 1948, p.259; cited in: Rudolph 2005, p.2-3) which is recognized by an internal population and external actors (Thompson, 1995, p.219).



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context of a changing political order in the EU and the accompanying re-conceptualization of territorial borders. Most importantly, I will highlight how a delegation of sovereignty on border politics to the EU level has been followed by a new spatio-political trajectory, namely that of the Area of Freedom Security and Justice. This framework has come to encompass an EU border regime, whose ordering mechanisms strongly follow the premise of securing freedoms associated with mobility (Walters & Haahr, 2005, p. 109). In a second step, Governmentality Studies will help us to search for expressions of borders beyond the frontier. This is not only necessary for understanding how a shared sovereignty on such a crucial feature of statehood is possible. It is also important, as borderlines are only one site of struggle over sovereignty. This has for example become evident within debates on Hotspots in Italy and Greece, the transition zone in Hungary, the cooperation along the so-called *Western Balkan Route* and the EU-Turkey Deal but also cooperation on joint return enforcement.

Such angles implicitly also find their expression within border studies with notions of vertical and horizontal bordering (for an introduction see: Andreas, 2000). Analytical views taking on nation-state sovereignty or exceptionalist means of interception often stand in line with approaches focusing on practices that take place ‘vertically’ at a territorial line. Within a scholarly debate, such a view (re-)emerged in the late 1990s. It came with the realization that the collapse of the Soviet Union and globally growing interdependence through globalization did not mean a borderless world and the obsolescence of border regime analysis. The second way of looking at borders eventually developed latest by the early to mid 2000s and pointed towards ‘horizontal’ forms bordering (Longo, 2016, p. 188), arguably ways of governing mobility in terms of border routes and zones as in terms of externalization/internalization with a multiplicity of non-state actors.

Eventually, in my approach of viewing sovereignty as not necessarily lodged within the nation-state, I will discuss what the integration of borders in the EU meant for the very notion of what the border is. Under the premise of shared sovereignty, I will argue that walls do work beyond their function as icons of separation, however not in sole terms of isolated blockage facilities, but as a technology of bordering that intersects with other ordering mechanism such as of border zones or the management of routes and circulation. In this context, assertions of nation-state sovereignty coming along with walling might be evaluated in the light of member-states’ capability of translating a bordering trajectory of national territoriality into European negotiations on new ordering mechanism but also to the implementation of prevailing provisions and associated instruments.

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Drawing from these academic fields amongst others, my paper will present a discussion on how of walling facilities within the EU might be understood as follows.

**In chapter 2,** I will firstly give an overview on some of the most recent developments in terms of walling by EU member states. I will mainly relate to events in the course of what is often referred to as the *European Refugee Crisis*. This will be followed by a reflection on epistemological questions concerning the choice of the wall-building EU member states as my subject of investigation on bordering and negotiations on sovereignty. I argue EU member state pose a good example for two major reasons. Firstly, further research is necessary with regard to how we might understand a gravitation of walling facilities from the EU's outer borders towards its geographical center, where they run in-between deeply integrated member state. Secondly, the EU has developed some considerable instruments of governing mobility within the Area of Freedom, Security and Justice (AFSJ) as conceptual framework where much of the new technologies of bordering cumulates, thus providing us with much clearer points of solidification of governmentality than some overlapping international regimes can do. In this sense, bordering might not only be understood as a search for tools of blocking and steering movement, but also as the premise for political orders that have come to be either encapsulated by between nation-state sovereignty or a shared European sovereignty.

**Chapter 3** presents an attempt to analytically localize walling practices within the institution of borders as intersectionally formalized phenomena in the realms of security, migration and asylum politics. Following Andrew Geddes' Weberian theorization of the containment of a political community as being constituted by "the confluence of territorial and functional borders" (Geddes, 2005, p. 789), I think of borders as a set of practices conducting the separation of the 'self' from the 'other' (Newman, 2003, p. 14) along the inscription of "organizational" (Geddes, 2005) categories of membership as well as their controlling and enforcement under spatio-political security considerations. This firstly implies a differentiation between those groups of people that fall into daily social, economic and political struggles with what is narrowly understood as border controls at certain geographical locations and those who smoothly cross boundaries qua their a priori entrance status. While for the latter group of third country nationals, mainly subject to migration politics (in a narrow, formally institutionalized sense), the crossing of borders is largely determined through labor market considerations (Qvist, Suter, & Ahlstedt, 2015), those others, who might realize a residence status post their entry, are subject to severe policing

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(Chetail, 2016). This is the realm of asylum law which carries considerations of security as well as human rights, rendering the transgression of undocumented people into national territory a highly contested matter. Their politicization deploys terms reaching from the ‘genuine’ asylum-seeker to those of the ‘disingenuous’ economic migrant, which is often associated with the seeking of socio-economic benefits or negatively the destruction of a socio-economic order (Bigo, 2002, p. 79). Whereas the permeability of borders might have increased in the past decades however, the ordering mechanisms of control and enforcement of borders have also multiplied. A once dominant Westphalian culture of bordering has accordingly been overlaid by the Schengen regime and consecutive EU legislation presenting a crucial reconceptualization of how policing and enforcing spatial division might be carried out (Zaiotti, 2011).

**Chapter 4** will inquire about the implications that the integration of border politics carries for joint images of spatial differentiation new bordering mechanisms of enforcement. Given the fact that the institution of borders has for a long time adhered to the image of national territoriality as a premise of nation-state sovereignty and relied on states’ legitimate means of violence along its borderlines, an EU governmentality of borders requires a new spatial trajectory of policing undocumented movements as well as joint ordering mechanisms that permit for a sensible coordination. The Area of Freedom, Security and Justice will be argued to nest an EU border regime which provides for tools of bordering that harden the external borders of the EU but also follow mobility from the outside and within (Walters & Haahr, 2005, p. 110). I will therefore begin with a brief discussion of Foucauldian thought on power, particularly focusing on the concept of governmentality. This is going to help us to understand how sovereignty in terms of nation-state sovereignty is not the only “game” (Parker & Adler-Nissen, 2012) being played when it comes to borders. Foucauldian considerations of *disciplinary power*, *bio-power* and Deleuzian notions of *control* will be instructive for the formulation of three technologies of bordering that might be operative as ordering mechanisms: 1. blockage and inquiry along territorial borderlines, 2. the spatial compartmentalization through zones and 3. the management of routes and circulation. They help us grasp how borders might manifest themselves beyond the premise of nation-state sovereignty.

**In Chapter 5**, the aforementioned conclusions are going to be introduced to contemporary conceptualizations of sovereignty in an attempt to get a better understanding of the conditions of the reproduction of sovereignty in the light of member states’ deepened integration. I will therefore mainly draw on Janice Thompson’s (1999) operationalization of

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sovereignty that, similarly to Pusterla & Piccin (2012), points out the pre-eminence of certain properties towards others. That is to say that sovereignty as a principle of supreme authority presents a social or political phenomenon that varies in its construction over time and space, yet there are overlapping features which can be considered more essential than others. Those are namely the features of authority, recognition and population. Other properties such as state, territory and coercion can thereby be rather understood as repositories of some essential features. While the governing of political realms delegated to a shared sovereignty might install ordering mechanisms that erode national repositories of sovereignty, namely state, territory and coercion, they still rely on them in their operation (Mezzadra & Neilson, 2013). Thus, states can still coercively intervene in the enforcement of borders amongst others through severe measures like walling and fencing – although the delegation of sovereignty on borders has seemingly vanished internal borders. In this context, the meaning of walling will be contrasted between walls as deployment of coercion, walls as symbolic constructions asserting nation-state sovereignty and walls as technologies of bordering which work along with other ordering mechanisms. The latter will lead me back to the Austrian example, where I will illustrate how walling might only be the starting point in a struggle for nation-state sovereignty.

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## 2. The EU bordering crisis of 2015/2016

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The attempt of studying walling facilities might easily be misread as a search for theoretical arguments supporting common sense notions on the cruelty of physical blockages. The particular qualities of walls and fences in the process of crossing borders are certainly not negligible and they shall also find consideration in this paper (chapter 5). Yet this work tries to go beyond inquiring for walls as such, in the sense of an isolated consideration of tactical infrastructure or a reduction to its symbolism. Rather, what I am trying to do is to use the site of walling as a methodological strategy in terms of picking this exceptional perceived form of bordering and consequently inquire for its meaning by analytically distinguishing it from other technologies of bordering. Different intersectional arrangements of ordering mechanisms, it is assumed, support different conceptions of sovereignty in the EU. Before moving on to this matter of interest however, we might look at the recent resurgence of a seemingly anachronistic idea of bordering. In the following part, I will elaborate on how the concept of walling gained political relevance within the EU during the aforementioned summer of migration – a period which brought about a bordering crisis in the sense that prevalent conceptions and manifestations of borders in the EU were met by resistance of unprecedented migratory dynamics.

### 2.1. Austria and the arrival of fencing in the Schengen area

The Austrian case that I have referred to at the beginning of this paper presents only one particular sequence in an EU-wide process of successive national border fortification in the years of 2015 and 2016. These years were marked by an unusually high number of migrants and refugees crossing into Europe either via what is understood as the *Mediterranean route* or by travelling the *Western Balkan Route*. War in Syria, political instability and ongoing violence in Afghanistan and Iraq, as well as poverty and abuses in Eritrea, Pakistan or Kosovo were some of the main triggers for fleeing towards EU member states.

Those who moved along the *Western Balkan Route* most often crossed borders of central-eastern EU member states such as Croatia, Slovenia, Hungary and Austria – some of them travelling on their own or in larger groups, others via smuggling vehicles. Thereby, a large number of people applied for asylum in Austria (85.505) and Hungary (174.435), yet

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many others were only in transit, seizing the Schengen zone to move in a rapid pace and in spite of the *Dublin III Regulation* towards states like Germany (441.800), Sweden (156.110) or France (70.570)<sup>3</sup>.

The Hungarian government, among the first in the EU, reacted to these events by imposing more restrictive measures for the access to its territory and thus to procedures regarding asylum or accommodation. The first step included the erection of a 175 kilometers long fence at the entire border to Serbia, drawing heavy criticism from human rights organizations such as UNHCR, who argued that the principle of non-refoulement could be violated<sup>4</sup>. In a second step, the four meters high barrier was equipped with concertina wire and later expanded along the border to non-Schengen but EU member state Croatia. Initial construction works and the consecutive removal of a fence at the Slovenian Schengen border as well as plans for fencing towards Romania and Austria followed. Hungary's national conservative prime minister justified these actions, arguing that "Immigration and migrants damage Europe's security, are a threat to people and bring terrorism upon us"<sup>5</sup>. In legal terms, the wall officially functions as a mechanism to prevent potentially illegal border crossings, for example refugees coming from so-called safe third countries.

This same notion led the Austrian government in late fall that year to eventually decide for a fencing project as well. It was supposed to ensure "[...] an orderly, controlled entry into our country, not about shutting down the border"<sup>6</sup>. The precise technical elaboration and official designation were, as already mentioned, heavily contested among the grand coalition partners – notwithstanding that Austria's walling drew international attention, often setting it in relation to Hungarian border policing measures. Due to that (but certainly also because of inner political reasons) the government rejected referring to it as a fence, rather identifying it as a guidance system.

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<sup>3</sup> Figures present the total number of first time asylum applicants in 2015. Source: Eurostat (2016), retrieved from: <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/>, 16.9.2016.

<sup>4</sup> Hungary builds fence, Commission watches and waits (2015). Source: Politico, retrieved from: <http://www.politico.eu/article/hungary-builds-fence-commission-watches-and-waits-serbia-borders-refugees/>, 16.9.2016.

<sup>5</sup>Quote: Viktor Orban (2015). Source: The Guardian, retrieved from: <https://www.theguardian.com/world/2016/aug/26/hungarys-pm-plans-more-massive-fence-to-keep-out-migrants>, 16.9.2016.

<sup>6</sup>Quote: Johanna Mikl-Leitner (2015). Source: Politico, retrieved from: <http://www.politico.eu/article/fences-have-no-place-in-europe-austria/>, 16.9.2016.

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Currently, this system is confined to the Spielfeld-Šentilj border crossing towards Slovenia. It consists of a wire-netting fence running 200 meters east of the main crossing point and about 3.5 kilometers west of it – barbwire and containers for a potential waiting zone are provided for periods of high frequency entrance, as well as an action plan for further stretching the construction in case of emergency.

In the course of early 2016, some members of the governing coalition urged a continuation of this project, namely at the Brenner crossing point towards South-Tyrol and later at the border to Hungary. None of these projects have yet come to realization, possibly due to the Commission's approval of an Italian complaint, arguing that such barriers stand in opposition to the idea of free movement within the Schengen area.<sup>7</sup> It has to be noted however, that in the context of the very same debate, the Austrian government decided on limiting the annual number of asylum seekers allowed to lodge an application to a maximum of 37.500 (*Obergrenze*) with a daily limit of 80 applicants per day and an annual decrease of those numbers. Against concerns over a violation of human rights, the measures were legally justified with the possibility of declaring a national state of emergency.

Those developments in late 2015 already caused concerns in Slovenia over a possible congestion of refugees and migrants on its territory. The center left government followed the Austrian example, prompting the erection of a fence at its southern border to Croatia, which presently also marks a frontier of the Schengen zone. Thus, by the end of 2015, constructions of a barbwire fence across the first 140 kilometers of the border began. Following a line of argumentation similar to the previous cases, the Slovenian prime minister justified these measures, stating that “[if] we don't act now, we could have a humanitarian catastrophe on the territory of Slovenia”<sup>8</sup>. Accordingly, refugees and migrants are only supposed to be able to enter the country at regulated checkpoints that allow for controlling the legality of the entrance as such. Croatian objections due to a possible violation of EU legislation on the conservation of the natural environment have not led to a removal of the fortification constructions yet.

However, not only central-eastern EU states initiated walling projects in 2015. That summer, the French port city of Calais turned into a construction site of a fence that is aimed

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<sup>7</sup> Commission warns Austria on plans for border fence (2015). Source: Politico, retrieved from: <http://www.politico.eu/article/commission-very-concerned-about-austrias-plans-for-border-fence-brenner-pass/16.9.2016>.

<sup>8</sup> Quote: Miro Cerar (2015). Source: New York Times, retrieved from: [http://www.nytimes.com/2015/11/12/world/europe/slovenia-border-fence-migrants-refugees.html?\\_r=0](http://www.nytimes.com/2015/11/12/world/europe/slovenia-border-fence-migrants-refugees.html?_r=0), 16.9.2016.

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at preventing refugees and migrants from travelling as stowaways through the Channel Tunnel to the UK. With British financial aid, the project of around 2 kilometers came to realization within a few weeks, yet leaving “a lot more to do”<sup>9</sup> to improve security of the UK. Consequently the British immigration minister announced one year later that the same construction would be fortified by erecting a four meter high wall of smooth concrete. This is part of a £17 million package of joint Anglo-French security measures to curtail increasing border crossing by refugees and migrants from the so-called *Calais Jungle*.<sup>10</sup>

Eventually, it seems worth highlighting a final cornerstone of walling which in fact did not arise from a single national concern but rather turned out as the result of multilateral negotiations on the so-called closing of the *Western Balkans Route*. That is the Macedonian barrier at its southern border to Greece. It stretched 30 kilometers along the Greek Idomeni Refugee Camp as of early 2016, when several clashes between refugees and national authorities occurred, leaving hundreds of people injured after the usage of teargas and stun grenades.<sup>11</sup> Bad living conditions in the fenced camp had previously amplified tensions among border police and those who wanted to travel further north. This critical construction came into place after ministers from south-eastern and central European states created an ad-hoc network to take on a new strategy of *Managing Migration Together*<sup>12</sup>. Under a strong engagement of Austrian officials, financial and administrative co-operation should ensure that migrants and refugees remain within Greece<sup>13</sup> as one of the two so-called Hotspot places besides Italy. The creation of jointly administered zones in these countries was a European decision made during council meetings in late 2015 with the aim of relocating people from these places to member states accordingly to a quota. In this context, the EU-Turkey Deal

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<sup>9</sup>Quote: David Cameron (2015). Source: BBC, retrieved from: <http://www.bbc.com/news/world-europe-33833536>, 16.9.2016.

<sup>10</sup>UK Immigration Minister confirms work to start on 1.9m Calais wall (2016). Source: The Guardian, retrieved from: <https://www.theguardian.com/world/2016/sep/06/uk-immigration-minister-confirms-work-will-begin-on-big-new-wall-in-calais>, 16.9.2016.

<sup>11</sup> Hundreds hurt in police clashes at Greece-Macedonia border (2016). Source: The Guardian, retrieved from: <https://www.theguardian.com/world/2016/apr/10/clashes-between-migrants-and-police-at-border-between-greece-and-macedonia>, 16.9.2016.

<sup>12</sup> “Managing Migration Together” (2016). Source: Federal Ministry Republic of Austria – Europe, Integration, Foreign Affairs, retrieved from: <https://www.bmeia.gv.at/das-ministerium/presse/aussendungen/2016/02/managing-migration-together/>, 1.10.2016.

<sup>13</sup> Note: Although highly affected by it, Greek politicians were not invited to the conference, leading to diplomatic tensions between Greece and Austria.



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from early 2016 appeared as logical consequence, returning refugees from Greece to Turkey in turn for the admission of Syrians that were granted asylum.

Certainly, it is not easy to draw a line between what to count into this crisis of 2015 and what to consider a previous or consecutive norm. After all, most of the factors that the EU itself describes as the root of migration or asylum-seeking existed well before and after 2015. Likewise, first time asylum applications had reached considerable numbers in 2014 already with a total of 562.680 in the EU (Eurostat, 2016). There is evidently still a lot of scholarly work to be done in order to understand or explain the particular social and political dynamics unwinding in the course of 2015 and 2016. For now, I would merely acknowledge the event character of the sum of movements and border related happenings of those years based on an even larger quantity and mediatized visibility of migrants and refugees. Compared to 2014, the mere number of first time asylum applicants had more than doubled in 2015 with a total of 1.255.640 (Eurostat, 2016).

But this is not to say that we can automatically consider the above mentioned examples of walling as a thing of temporary nature. Be it the recent concrete fortification at the Calais fence, the Austrian purchase of its previously rented guidance system<sup>14</sup> or the Hungarian plans of extending its walling towards the west: neither of those walling projects seems to be in regression. Rather they appear to continue what has earlier been started at the outer borders of the EU in terms of fortification systems in Bulgaria, Greece and the Spanish enclaves of Ceuta and Melilla. Likewise however, member states seize different political arenas to promote border programs that might not necessarily be in name of their own mere sovereignty but that emerge within a jointly shaped problematization of certain types of movements. In this context, one-sided walling can easily turn into a site of diplomatic conflict.

## 2.2. Epistemological considerations

Drawing from the EU and its member states to discuss walling does not only appear reasonable with regard to an increasing number of border construction sites in this geopolitical area as will be shown, but also speaking from a methodological stance, there are at least two arguments supporting this choice. The first line of argumentation follows the

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<sup>14</sup> Mietvertrag ausgelaufen: Steirische Polizei kaufte Grenzzaun in Spielfeld (2016). Source: derStandard.at, retrieved from: <http://derstandard.at/2000045020145/Steiermark-kaufte-Grenzzaun-in-Spielfeld>, 1.10.2017.

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difficulty of understanding assertions of territorial borderlines along the so-called internal borders of the Schengen area, the second one focuses on the localization of sovereignty beyond its claim by nation-states.

Concerning the first point, we find that existing research often departs from the nation-state as the unit for understanding or explaining how walling or assertions of borderlines might or might not sensibly relate to the reproduction of their nation-state sovereignty. Pusterla and Piccin (2012) for example, use EU member states and Switzerland to illustrate how sovereignty can indeed not be safeguarded by building institutional or political walls, yet they underestimate the real possibility of the erection of fortifications by speaking of a mere “hypocrisy of sovereignty” (Pusterla & Piccin, 2012, p. 128). They argue how such measures would refer back to a Westphalian notion of sovereignty and how their deployment would undermine those states’ engagement within new, non-national forms of sovereignty. Since we have been witnessing the emergence of some new facilities over the past year, I think that we need to account for a better understanding on how blockages and assertions of nation-state sovereignty can even work within deeply integrated member states. That is in fact to start from the nation-state as part of larger inter- and supranational institutions, based on shared sovereignty and confining the form and extent of national maneuvers. At the same time, it means to acknowledge member states’ continuing aims and capacities of co-opting European legal provisions and administrative structures for utterances of nation-state sovereignty (Bigo, 2002, p. 82)

Peter Andreas (2000) on the other hand, speaks of wall building in the EU (referring to the projects in Ceuta and Melilla) as being “[...] embedded within a broader institutional framework and process of European integration” (Andreas, 2000, p. 3). Yet what he refers to is the external border-walls’ functional dimension of delineating geographical areas of a high socio-economic differential. According to him, barriers on the inside of the EU dissolve with growing integration, only to be reinforced at the external borders of a new institutional setting. And as he correctly notes, despite their function of bounding a territory towards the inner, walls are not necessarily aimed at a neighboring sovereign but increasingly at the “transnational movement of people” (Andreas, 2000, p. 2). Although I am in line with his arguments, I believe that they need some refinement in terms of taking the development of new centralities and peripheries within the EU into account, as well as rendering expressions of coercive border enforcement on the inside of the Schengen Area understandable.

From a historical stance, the collapse of the Soviet Union and the fall of the Berlin Wall often mark the beginning of a narrative of the erasure of boundaries, which is claimed

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as a European narrative – not only with regard to the freedom of trade, but more importantly as the possibility of mere transnational movement (Zaiotti, 2011, p. 57). In this context, the re-erection of walls and fences on its inside appears particularly odd and raises questions of where the ‘outside’ has moved and who can actually benefit from these newly won freedoms. Are these endeavors to be understood as an internalization of the outside or an externalization of the inside? Either way, thinking in terms of clear-cut inside/ outside locations appears less promising than the use of categories of movement. According to Regout (2010) a persisting divide can be well grasped with a newly emerging semantic division between *mobility* as movement belonging to the inside and *migration* as belonging to the outside. In the context of the EU, she argues that both need to be considered as “two sides of the same coin” (Regout, 2010, p. 1). Arguably, the single market project as a project of promoting mobility is to be thought of as going hand in hand with the emergence of a new border regime. The single market project as the last major driver of integration resulted in unprecedented European mobility. But it was also closely followed by the creation of the political domain of EU Justice and Home Affairs (JHA), where certain forms of movement that were jointly formulated as migration, asylum and security related matters. This second side of the coin is then concerned with the question of how to sensibly grasp a commonly defined foreigner and how to govern him or her without distorting freedoms of EU citizens (Regout, 2010, p. 1).

Thus, coming to the second argument, we might say that when it comes to border politics in the EU, their formulation and execution falls in large parts under a globally unique umbrella of shared sovereignty. Imagining and enacting borders has not been realized within scattered international regimes, but appears as relevant in multiple policy fields converging within the increasingly supranationalized JHA. As James W. Scott (2014) rightly suggests:

“European integration is an evolutionary process that has promoted perhaps the most concrete notions of post-national polities and borders proposed to date. This has taken place in concrete forms of shared sovereignty and community policies, the support of local and regional cross-border co-operation and more subtle discursive and ideational forms of Europeanization” (Scott, 2014, p. 6).

It is to say that certain institutional aspects of the EU, mainly features of supranationality suggest a new form of sovereignty beyond nation-states, which does not operate within the same repositories as the latter. In the same way as the organizational setting of the EU does

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not represent a state-like equivalent, so does national territoriality not directly translate onto a European level. Arguably, while border politics are largely viewed as a deeply integrated field, their logics do not follow those of a superstate (Walters & Haahr, 2005, p. 104). Although the EU does seem to know an outer borderline, most notably ever since the creation of FRONTEX, it neither has state-independent policing forces, nor does it deploy a centered bureaucracy to legally enforce one single European external border. Following William Walters, a European border regime rather works within networks of what he calls “transnational liberal policing” (Walters & Haahr, 2005, p. 105). That is to say, common organizational boundaries, networks of EU related agencies, data systems and best practices that connect security experts and national authorities within a specific rationalization of security and movement.

Nonetheless, as will be explicated in chapter 5, an EU border regime’s effective operating requires for nation-state sovereignty repositories such as the state’s bureaucracy, its territory, and its legitimate means of violence. Instead of essentializing nation-state sovereignty where it is claimed with walling, we might then consider shared sovereignty as a second option of order as being reproduced by coercive nation-state intervention. At the same time however, it will permit to inquire for the possibilities of member states to co-opt non-coercive expressions of shared bordering in order to actually enclose their territory with technologies of bordering beyond walling.

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### 3. Inscribing and enforcing borders within the EU

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Our common sense often relates the notion of borders to that of nation-state borders, rather than for example regional borders or those of a transnational single market. Arguably, we think of those places as particularly formal sites of transition that affect travelers in multiple ways as they inquire for their legal status, their identity and the ways in which those relate to a society or governing entity that is perceived as different from the one they are leaving (Walters, 2015 , p. 6). Yet nation-state borders neither pose the only type of borders, nor are they indifferent to the societal actors crossing them. Thus, in order to derive an analytically useful framework, it might be useful to strip off all particularities of nation-state borders.

On a higher level of abstraction, borders in terms of boundaries pose a specific epistemological premise for understanding reality and in our case notions of territoriality that bind certain groups of people to a political community. They are set ontologically prior to entities or put differently, they form the “[...] pre-conditions for the continuity of the given social particular as an integrated entity, and hence also for its identity” (Parker & Adler-Nissen, 2012, p. 778). Consequently, it comes as no surprise that territorial borders are eagerly stressed as national sites of sovereign power as they preserve the integrity of a unity presupposed by the concept of sovereignty. Vice-versa one might say, that unregulated movements and social relations pose blind spots or actively resist the border. They consequently undermine the supreme authority that is constituted by means of those very borders.

Borders are institutions that set up the rules of the game as of how to separate a “self” from an “other” in terms of people, goods or information (Newman, 2003, p. 14). Their function as a boundary is to order social, economic and political elements, thereby co-determining perceptions of difference as for example the understanding of migration vs. mobility out of mere movement. Political systems as political systems of their own cannot abandon the “business of bordering” (Parker & Adler-Nissen, 2012) as a site of segmentary differentiation permitting actorness on the level of a collective whole. In a global system of mere nation-states (even if this will always just be an analytical assumption), the border would manifest itself through the confluence of organizational boundaries (mainly in terms of citizenship) and territorial boundaries. However, their firm falling together that once permitted notions of a constituted political community more easily, has been put under pressure through “[...] technological developments in transport and communication;

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economic, especially financial integration across state borders; trans- and supra-national legal regimes; transnational cultural, intellectual and human flows; and so forth” (Parker & Adler-Nissen, 2012, p. 774). Today the separation of the “self” and the “other” (Newman, 2003, p. 14) is operative along an additional layer beyond the template of citizenship and an adhering national territoriality. The border is inscribed on mobile subjects not only as citizens but also as parts of a population, whose “[...] movement, security, wealth, and health” (Walters, 2002, p.562; cited in: Mezzadra & Neilson, 2013, p.173) is subject to regulation. In this sense, organizational categories have multiplied and the means by which border policies (in the narrow sense of policing for the enforcement of an inscribed border) are conceptualized have been partly detached from a territorial nation-state frontier. Today, if we speak of formally institutionalized borders in the narrow sense, we usually address those legal rules and underlying norms that are concerned with the policing of movement of people as carriers of harmful resources. More generally, it relates to features that are considered not to belong to a certain social and political order. In the following, we will exclusively focus on this dimension of border policies, although research might be further extended, for example to questions of cyber-security, information blockage or certain forms of trade (Newman, 2003, p. 14).

The following section will try to point out how border policies have transformed within the EU in the last decade, before offering a broader contextualization of these enforcement policies within asylum and migration politics. The consideration of the intersectional character of migration, asylum and security politics is indispensable for the understanding of borders as we will proceed to understand borders as constituted by a variety of technologies of bordering in chapter 4.

### 3.1. Re-conceptualizing the enforcement of borders since Schengen

The emergence of today’s most important piece of formally institutionalized border regimes in the EU (and beyond), namely the Schengen acquis, reaches back into the mid-1980s. At that historical stage in Europe, borders were not only a matter of systematic control at territorial frontiers and ports of entry; even more, the geographical area was shaped by one of the most restrictive borders dividing the world quite prominently along the Berlin Wall into West and East. However, the ideological divide between two major political ideologies was not the only project that formed an additional layer of complexity to nation state borders

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at that time. As calls for economic co-operation grew, western liberal democracies increasingly began negotiating on the removal of inter-state obstacles in order to end a widespread economic stagnation of the late 1970s. Germany and France set the first example in 1984 with an agreement on the successive abolishment of interstate border controls. This inspired the heads of three further states, namely Belgium, Luxemburg and the Netherlands to jointly set up a convention in the city of Schengen the following year (Fischer, 2012, p. 37).

The Schengen Convention was originally arranged outside of other European legal frameworks. Earlier working groups preparing it had already formulated its purpose and the abolition of nationally institutionalized borders along the territorial lines between the member states. In turn, police co-operation, common data systems (Schengen Information System SIS) and strengthened external borders were supposed to compensate for arising security issues (Fischer, 2012, p. 37). In fact, this seemed like an unprecedented endeavor that touched upon the sensitive issue of nationally definite territoriality. It comes as no surprise that a number of member states like the UK or Denmark have until today remained highly skeptical about this delicate subject. After all, territorial integrity in terms of an unshared control over a geographically limited space is an indispensable premise for traditional notions of sovereignty. What the earliest but also the most recent debates show, is a persisting national distrust towards a bordering paradigm that stands in potential conflict with this “Westphalian culture of border control”<sup>15</sup> (Zaiotti, 2011).

Arguably, a Westphalian culture was predominant for long time after World War Two. It understands the institution of borders as a site of separating the belonging from the non-belonging in the light of a homogenized, sovereign state-society relation and thus by means of nationalist considerations. Borders are thereby imagined as nation state frontiers, as lines of demarcation where the state’s territoriality is at stake. Accordingly, much of the 20<sup>th</sup> century was marked by states’ deployment of systematic scrutiny towards all individuals stepping into a sovereigns’ jurisdictional space along infrastructured routes. Apart from that, border patrolling and in some parts also military agents were used to ensure the continuation of the lines of these imagined “bordered power containers” (Giddens, 1976; cited in: Zaiotti, 2011, p.46) further into the periphery. By 1990, when the Schengen agreement was signed

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<sup>15</sup> The treaty of Westphalia in 1648 is considered as the symbolic starting point for a reorganized political geography in Europe, which would set an end to overlapping territorial structures and hierarchical ambiguity in favor of a sovereign territorial ideal (Rudolph, 2005, p. 4).

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as an intergovernmental treaty however, European states had already begun to embrace a new way of problematizing borders.

As internal national borders were abolished, the European Community did not provide a territorial trajectory of integration that was associated with state-like powers in a geopolitical and military sense. Sovereignty remained to be associated with nation states and projects such as the European Defense Community never came into being. Instead, security logics of bordering adjusted their form to rationalities of economics. It is no surprise that the Schengen project time-wise coincided with that of the common market formulated by the Single European Act (SEA) 1986. An area of free movement of capital, goods, services and people required a new way of thinking about borders.

The Schengen agreement was meant to offer a solution by rationalizing borders in terms of *internal* and *external* borders. While external borders were cautiously formulated negatively as non-internal borders that required additional strengthening (leaving open clear responsibilities), internal borders were confidently declared as abolished (Zaiotti, 2011, p. 71). In spite of or precisely because of the abolition of systematic controls on the inside however, possibilities of scattered filtration points remained and were even encouraged<sup>16</sup> as the new paradigm lay in filtering and sustaining desirable transnational flows as opposed to a continuation of borderlines. The economic trajectory of integration through a common market saw the territorial integrity of each member state rather as a result of networked co-operation on a series of issues that were subjugated to security politics. In this context, bordering has become a matter of a whole range of anti-policies attached to migration such as anti-terrorism, anti-drugs, anti-smuggling, but also irregular migration per se (forming a continuum with asylum politics) (Walters, 2015, p. 5). In this approach, the de-facto permeability of a national territory through outsiders or detrimental elements is recognized and met with the idea of installing a security framework that calculates inherent risks to newly won freedoms, in order to ‘fight’ them selectively. Such internal and external risks were commonly defined matters of internal security or justice affaires.

From the mid 1990s, the domain of Justice and Home Affairs gained ever great importance as an arena of negotiations on how to address border related issues. The premises of Schengen have thereby been lifted to a high institutional level ever since the Schengen

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<sup>16</sup> Temporary internal border controls, proportionate police checks and police cooperation in the Schengen Area. Source: European Commission Press release (2017), retrieved from: [http://europa.eu/rapid/press-release\\_MEMO-17-1147\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-1147_en.htm), 5.5.2017



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acquis' transfer into EU law with the Amsterdam Treaty in 1998. The convention's character remained one of international law but with a two-fold procedure of ratification. Arguably, in a first stage of inception, that is now mandatory with accession to the EU, the liability of policy measures in accordance to the Schengen agreement is required. In a second stage, the Schengen Evaluation Working Group of the EU council controls the proper application of the implementation, evaluating whether the convention can be brought into force in a member state. Likewise, the Amsterdam Treaty formulated a new spatial figure, namely the *Area of Freedom, Security and Justice* (AFSJ) as the quasi-territorial framework that provides for "[...] flanking measures with respect to external border controls, asylum and immigration, [...]" (Treaty of Amsterdam, Article 73i, (a)) to guidelines with respect to an economic and increasingly political union in the narrow sense.

In the following years, EU secondary law replaced some of the Schengen Conventions' provisions and thereby set up a strong integrative framework in favor of a new paradigm of bordering. With the Schengen Borders Code of 2006 for example, the removal of traffic-hindering border crossing facilities as well as the stamping of travel documents and more general organizational standards of border (non-) control were reaffirmed. At the same time, member states were required to comply with provisions regarding the Schengen Information System (SIS) upon accession already. This networked database contains information on third-country nationals entering the EU and has turned into an important administrative instrument when it comes to the operative implementation of the wide range of security related policies. It comes as no surprise that few years later this technological solution was specified and translated into the EU asylum system under the name of EURODAC. (Fischer, 2012, p. 83)

Nonetheless, the notion of territorial borderlines has never been fully ditched. Quite on the contrary, the idea that single member states with an external border should control for all member states prompted calls for a reinforcement of a common external perimeter. The call was eventually replied with the creation of the EU agency FRONTEX. Established in 2004 and initially under the supervision of the Council and the Commission, FRONTEX was created with the purpose of coordinating "intelligence driven operational co-operation at EU level to strengthen security at the external borders" (FRONTEX Mission Statement (OJ), 2004; cited in: Neal, 2009, p.333). Since, it has been performing many roles. They encompass operational tasks relating to the concept of risk analysis, border management of

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capacities and operations by member states as well as the allocation of resources in cases of emergency<sup>17</sup>.

In the course of the last decade, FRONTEX has been successively deepened, for example with the amendment of its founding regulation in 2007, which introduced the Rapid Border Intervention Teams (RABIT). Those are pools of 250 to 500 border guards from all member states allowing assistance for member states that are willing to reassert the sovereignty by declaring a state of emergency, without necessarily having the legal and technological capacities in a supra- or international context (Neal, 2009, pp. 347-353). Another example is the EUROSUR Regulation of 2013, which allows for collecting and processing data on what is going on at the outside borders of the EU (OJ, 2013). Thereby, various technologies such as ship board monitoring systems, ground sensors and drones are deployed. Likewise, institutional resources have been enhanced, most notably in October 2016, when the European Border and Coast Guard Agency was launched as a renewed version of FRONTEX. The permanent staff was thereby doubled, the ability to purchase own equipment introduced and the legal scope of action widened by allowing for border stress test and co-operation with non-EU states amongst others<sup>18</sup>.

Set in the institutional context of migration and asylum politics, it presents what Elspeth Guild calls a “hardening of the tools of control” (Guild, 2006; cited in: Neal, 2009, p.345) addressing a focus on technology, data sharing and human resources to enhance national institutional capacities. FRONTEX has often been associated with the notion of a *Fortress Europe* (Bigo, 2002, p. 72) that protects an imagined European territory with walls and sea-lines of last defense. It has thereby also ‘sharpened the edges’ of the AFSJ as a political and administrative space that authorizes certain expressions of power exertion (Walters & Haahr, 2005, p. 94), while inhibiting others. Its understanding of security does not know clear-cut external and internal threats but rather sees positive and detrimental effects to different kinds of flows. With this, it is not surprising that the Schengen treaty details steps towards an integration of asylum and visa procedures itself but that it also closely coincides with the Dublin Convention that was signed only four years later (Chetail,

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<sup>17</sup> Its budget grew from a modest €12 million in its first year to €330 million in 2017 (Source: <http://diepresse.com/home/ausland/eu/5048386/Frontex-will-Stresstest-fuer-die-EUAussengrenze>, 5.5.2017).

<sup>18</sup> European Border and Coast Guard Agency launches today (2016). Source: FRONTEX European Border and Coast Guard Agency, retrieved from: <http://frontex.europa.eu/news/european-border-and-coast-guard-agency-launches-today-CHIYAp>, 5.5.2017.

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2016, p. 6). Considerations of migration, asylum and security as common issues went hand in hand with a market-based integration trajectory.

From a political science perspective it then appears interesting to ask how borders are inscribed beyond the legislature that is designated as such. Migration and asylum politics are not only drivers of institutional change for bordering but are constitutive of spatial division themselves. Arguably, those divisions are ultimately linked to people's related statuses in terms of third country citizens, workers or carriers of humanitarian titles. Depending on the moving statuses in question, border politics in the narrow sense of policing can become more or less salient and by times even visible. The former is most notably the case with people whose (organizational) border is inscribed in a way which neither allows them to engage within a politically demarcated space as citizens of a third country, nor as carriers of labor. The talk is mainly of asylum seekers and refugees, but also people fleeing poverty, who are often referred to as economic migrants and who are unlike political refugees, not recognized by the UN Convention. Either way, bordering does only address the confinement or steering of movement as such but it is a societal, political process that is concerned with producing differential possibilities of engaging within certain socio-economic and political relations and fields of action that are attached to certain spaces (Tietze, 2015, p. 71).

Consequently, the following chapter will address how bordering in a narrow sense might find its continuation within the realms of migration and asylum politics.

### 3.2. The inscription of borders through organizational categorizations

I have already discussed how bordering presents a way of determining an other as in opposition to a self (Newman, 2003), thus inquiring for one's membership that is effectuated through the crossing of a territorial borderline and allows any notion of sovereignty. Following Andrew Geddes (2005) however, this claim does not depart from the territorial borderline but precisely with the formulation of membership conditions for newcomers to a community. Following Max Weber, he argues that the containment of a political community constitutes itself by "the confluence of territorial and functional borders" (Weber, n.A.; cited in: Geddes, 2005, p.789). Functional borders, which Geddes (2015) refers to as "organizational borders", thereby address the construction of legal migratory or asylum statuses, often holding provisions with regard to rights and duties for non-citizens. It is in large parts what Rosenberger and Ataç (2013, p. 40) call "Politik der Kategorisierung",

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namely the state's attribution of entrance categories that pose the preconditions for a number of stratified rights and obligations within a given territory. Even if those may be shaped on the EU-level, their attribution still resides within the state's bureaucratic apparatus and can by times be further elaborated with regard to access to social services, the labor market or national citizenship for example.

Speaking of EU member states, we can most notably distinguish between EU-citizens and third country nationals accordingly to legal codifications. Those are majorly classified in terms of work migration (high skilled/ low skilled), family reunion, asylum and irregular migration (Ataç & Rosenberger, 2013, p. 41). Within related categorizations, the border inscribes itself not only by the fact that it canalizes the entrance to a member states' national territory or the Schengen area as whole. It also articulates the degree to which a non-citizen may penetrate differentiated fields of social, economic and political action inherent to these spaces. Provisions inherent to organizational boundary-making as such, as well as their function as conditional rights for further rights towards a potential "immigrant integration" into a national society (Joppke 2007; cited in: Ataç & Rosenberger, 2013, p. 47) particularly raise the question as of how far one can identify him- or herself as having arrived within a place by the mere crossing of territorial boundaries.

Therefore, we might take a look at the realms of migration and asylum politics in the EU in order to illustrate how considerations of labor and security structure the inscription of borders.

### *3.2.1. Migration politics and the consideration of labor*

While much of the organizational obstacles for EU citizens have been dissolved and the principle of non-discrimination continually limits attempts to nationally exclude or disadvantage Union citizens, member states try to preserve national sovereignty when it comes to the treatment of third country nationals<sup>19</sup>. Nonetheless, the institutionalization of the border within national migration policies targeting third countries appears to show some common patterns that are strongly driven by a nexus with labor market considerations. Hence, while cross-border mobility and possibilities of organizational belonging seem to increase in most European states, Qvist et al. (2015) argue that they do not so in general

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<sup>19</sup> In fact, when it comes to hard law the EU mainly holds provisions for students and most notably tourists. With regard to those, there are two legislative cornerstones, namely the Visa List Regulation in 2001 setting up a common framework of third countries that are subject to visa criteria, and the Visa Code Regulation of 2009 creating a common code of application and issuance for visits up to three months.

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terms. Rather they are bent to a neoliberal, “*economic* understanding of development” (Qvist, Suter, & Ahlstedt, 2015, p. 46) and an according restructuring of the states’ membership categories.

The intertwining of migration policies and a particular understanding of socio-economic development within the global north becomes most clearly visible if one deploys the analytical lens of *circular migration*, suggested by the authors. Arguably, this perspective takes a theoretical focus on the temporality of migration, looking at categories of migrants who are permitted to enter a country and reside there for certain period of time, only “[...] to carry out a certain of employment or study” (Qvist, Suter, & Ahlstedt, 2015, p. 44). It mainly addresses those high and low skilled (seasonal) workers mentioned before, who both enter via labor market requirements, but whose possibilities of acquiring social, political and residential rights are highly asymmetrical. States are argued to thereby create ever larger pools of workers for jobs that require little additional training and few concessions from employers and state actors. Critical voices refer to this process as “labor without people” (Wickramasekara, 2011; cited in: Qvist, Suter, Ahlstedt, 2015, p.48), notwithstanding that there are at least some forms of occupations that can present a conditional basis for the acquisition of permanent residency.

In this context, the EU’s *Global Approach to Migration* takes an affirmative position towards circular migration (Qvist, Suter, & Ahlstedt, 2015, p. 47). It provides a framework that promotes ideas and best practices that particularly aim at fostering high skilled migration while impeding other, unwanted forms of migration through financial aid abroad. Yet while the latter tend to be associated with so-called economic migrants as potential intruders to an EU asylum system (thus requiring coercive enforcement of the border through border policy action in terms of security related measures), migration politics in the narrow sense are more strongly dominated by presumptions of an effective self-governing of migrants. Herein, subjects are as parts of a population for whom the idea of a borderless world seems to become manifest (Kalm 2010; cited in: Qvist et al. 2015, p.46). Under the paradigm of *migration management*, member states negotiate bi- or multilateral agreements based on the assumption that migration is an unavoidable phenomenon that can and must at best be steered in a productive way. Rather than inclusion or exclusion, the idea of circulation structures those migration politics. While certain flows are defined as wanted in terms of labor market

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needs and demographic gaps<sup>20</sup>, others are illegalized thus requiring mechanisms of impediment or consequent return.

What we can see here is a debate that is less focused on reproducing clear cut territorialities of inclusion and exclusion. Arguably, the site of the territorial borderline fades in the eye of a flexibilization of organizational boundaries along parameters of temporality and labor qualification, resulting in different people having different degrees of socio-economic and political fillings for specific jurisdictionally confined territories. Borders have thereby become less monolithic and therefore more permeable but also highly differentiating when it comes to access towards social, political and residential rights allowing for notions of arrival. The paradigm of mobility as opposed to territorial fixation opens up uneven chances for further national integration of labor migrants, depending on their working sector and the permanence of its needs.

### *3.2.2. Asylum politics and the consideration of security*

Turning to the political field of asylum, the territorial borderline does seem to become relevant. Even more so, a broad public debate saw the emergence of the aforementioned walling facilities as the result of a failing EU asylum system in the course of the summer of migration 2015. It seemed as though considerations of security that had been inherent to this system from the early stages, now reached a new quality. Asylum politics' proneness to matters of border or security politics thereby strongly derives from the fact that they deal with types of movements that have been organizationally categorized beforehand, but whose potential legal realization is subject to a post-entry attribution of primarily residential rights. Consequently, the figure of the asylum seeker has in recent years even more turned into a contested subject whose attribution to human rights considerations easily slips into suspicions on potential intruders to this category – in most cases people fleeing poverty, who are not recognized by the Geneva Convention or the ECHR. Such distinctions between the 'genuine' and 'bogus' asylum seeker result in debates on (non-)deservingness (Vollmer, 2016; cited in: Rheindorf & Wodak, 2017, p.6) that become salient once states are involved in questions of border procedures, the distribution of asylum-seekers on the European and national level or the creation of minimum standards for their accommodation. Accordingly,

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<sup>20</sup> This can for example be well observed with the EU-Blue Card or member state equivalents such as the Austrian *Rot-Weiß-Rot Karte* both in terms of a human-capital based points-system regulating its attribution but also with regard to consecutive stratified residential, social and political rights.

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when asylum-related matters increasingly came to be grasped as common European issues, it was not only human rights considerations that drove further integration but also, and possibly more prominently, the idea of inner security (Chetail, 2016).

Thus, on the one hand we find that the Common European Asylum System (CEAS), today provides an important legal framework that holds provisions for identifying categories of protection-needing persons and providing minimum reception standards across all member states. The European Charter of Fundamental Rights serves as one legal basis of the Treaty on the European Union and the Treaty on the Functioning of the European Union reaffirms the principle of non-refoulement by obliging the EU to work in accordance with the Geneva Convention and the European Convention on Human Rights.

On the other hand however, the development of EU asylum politics shows a nexus with a series of risk related matters in the context of the creation of “[...] an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (TEU Article 3(2), cited in: Chetail, 2016, p.4). Evaluating the state of the CEAS some 30 years later, International Law scholars like Vincent Chetail (2016) see a clear bias to the benefit of considerations on security matters within this system. Despite its broad objectives, he argues, it has in large parts not been “[...] adopted for the purpose of detailing and supplementing the Geneva Convention [...]” like instruments from other global regions, but “[...] it has rather been conceived as a flanking measure of European Union (EU) integration to compensate for the abolition of internal borders” (Chetail, 2016, p. 4). How can this be argued?

Looking back at the early stages of an emerging asylum system, namely one year before the adoption of the SEA, we find that EU member states slowly began a gradual process of intergovernmental and often informal co-operation on immigration and asylum issues, after the Commission had pointed out the problem of free movement for third country nationals. The Schengen Implementing Convention and most notably the Dublin Convention signed in 1990 marked two cornerstones in the dealing with this jointly perceived problem. The latter contained provisions on the member states’ responsibilities for examining asylum applications, thereby effectively allowing asylum-seekers to have the chance of submitting their claim on the entire EU territory only once. This hesitant and partial approach was further complemented by two resolutions in 1992, namely the *Resolution on a Harmonized Approach to Questions Concerning Host Third Countries* conceptualizing safe third

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countries and the *Conclusion on Countries in Which There is Generally no Serious Risk of Persecution*. (Chetail, 2016, pp. 5-8)

These measures may refer to what is classically understood as the externalization of border control, namely a shifting of responsibilities concerning the political and practical regulation of movement to geographical spaces that are constructed as a periphery beyond ones' legal borders. However, what becomes most notably evident with the Dublin convention and its consecutive amendments is that this periphery is not only imagined beyond a European space but also within. The invention of a notion of *Dublin states*, namely safe member states that are crossed in the process of seeking asylum, points towards an attempt to create a spatial differentiation even on the European level. Although there are considerations of thinking beyond national territory, they have not led to the conceptualization of a homogenous space that is congruent with the ASFJ. Arguably, the first steps towards an integration of asylum politics were marked by considerations of delegating responsibilities and competences towards a stratified periphery, which we might as well understand with Matthew Longo's terminology of a "thickening" (Longo, 2016, p. 188) of borders.

With the Maastricht Treaty asylum and immigration matters were incorporated in the Third Pillar of the newly created institutional architecture, only to move to the Community Pillar some years later with the Treaty of Amsterdam in 1997. Therein the formulations were primarily focusing on "[...] the allocation of asylum-seekers, their reception and qualification as refugees, as well as asylum procedure, whereas other related measures such as burden-sharing are worded in more general terms" (Chetail, 2016, p. 10). The question of distribution remained at that point, as it does until today, a very delicate subject within the EU.

In the summer of 2015, the first EU response to a highly critical asylum situation involved an *Emergency Relocation Mechanism* that aimed at depressurizing the European periphery. So-called Hotspots were created in Greece and Italy with the aim of relocating refugees to other member states accordingly to a quota that had not been decided unanimously but with a two-third majority. In such political acts, the border seems to transgress national boundaries accordingly to a European spatial trajectory, yet the attribution of relocated people occurs in a network of nation states rather than regions for example. Many member states however, have (as of today) not complied with this decision. Notions of nation-state sovereignty seem to trump the willingness of actualizing human rights standards.



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The reassertion of national borders arrives at a time and political context that knows a great variety of different ways in which to produce a spatial differential beyond the cognitive template of nation-state sovereignty. Most notably, the Schengen and Dublin regime, their administrative network, as well as FRONTEX set up an institutional framework that permits for new technologies of bordering standing in potential conflict with some member state's assertion of nation state sovereignty. And although political actors concerned with borders might not all have the same agenda, they all need to provide an answer as to "[...] what kind of security is at stake here and through what technologies is it to be produced?" (Walters & Haahr, 2005, p. 92).

This paper cannot offer an exhaustive theorization as of which political actors deploy what kind of combination of bordering technologies following which intersecting trajectories. Yet in the search for a better understanding of the paradox of walls within the EU, I want to take this as a technology of bordering which is tightly associated with nation-state sovereignty and contextualize it within an EU border regime that problematizes the border under an epistemic template that is not necessarily that of sovereignty but could rather be framed as risk- or migration management. It is then going to be a matter of providing analytically useful tools for consecutive empirical research, which can help us to understand the working of technologies of walling and blocking along borderlines in between a number of other technologies of bordering made comprehensible by Governmentality Studies. This is going to be the subject of the following chapter.

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#### 4. Border regimes: governing beyond the premise of nation-state sovereignty

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Bordering in the 21<sup>st</sup> century is by no means a mere matter of protecting national borderlines. As new border regimes have emerged, so have the practices associated with bordering multiplied. Guiraudon and Lahav (1999) argue that migration control has moved “[...] ‘up’, ‘down’ and ‘out’ with a greater role played by international and private actors” (Guiraudon & Lahav, 1999; cited in: Geddes, 2005, p.789). That is to say that borders are no longer institutionally confined to nation state’s systematic control and blockages at their territorial edges, but that they have become subject to supranational actors, intergovernmental negotiations with third states and even private actors. Although this has already been implicitly inherent to my argumentation of the previous chapter, we might want to approach this question in an analytically concise way.

Arguably, speaking of borders, literature often refers to regimes in terms of “[...] principles, norms, rules as well as behavioral and decision-making routines with regard to a ‘given area of international relations’” (Krasner, 1982, p.186; cited in: Kohler-Koch, 1989, p.18, translated from German). They are usually a matter of permanence as they institutionalize collective behavior (Ruggie, 1975; cited in: Kohler-Koch, 1989, p.19) and thus set up a framework that “facilitates” (Krasner, 1982, p.186) agreements on political issues. Border regimes might then be understood as:

“[...] agreements with neighboring states, either bilateral or multilateral, and the practices which have grown up around them, administration and management of frontier controls and related systems of police and customs co-operation, and institutions and arrangements for transfrontier co-operation.” (Anderson, 2000, p.2)

The European border regime however needs to be contextualized within a globally unique form of multi-leveled governance that operates with a supranational level and has the possibility of jointly shaping organizational inscriptions of the border. And while the regime’s early beginnings in terms of the Schengen agreement are to be found outside of the framework of the European Community, it experienced a considerable career by the mid-1990s. A sensitive policy area such as borders migrated within several years from being a subject of international law and intergovernmental negotiations to supranational law and

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common decision-making in terms of Commission initiative and qualified majority in the Council. Not only that, but narrowly security related issues were intersectionally shaped with asylum law or provision on criminal justice and supported by border related agencies. How can such substantial transformations from formally national borders be understood – both in terms of polity and in terms of how the policy field of borders is discursively structured?

Evidently, the creation of a single market by the formulation of the SEA, posed not only a problem to tariff-boundaries but also to non-tariff-boundaries such as systematic border controls. Given the premise of integration through market building, European states had to gradually abandon their former way of bordering, while not being an answer-provider to this arising problem themselves. This firstly implies that new formulations of bordering were gradually conducted within intergovernmental and later supranational arenas of negotiation, permitting besides national actors, sub-national actors and non-state actors to engage in a coordination process for the creation and implementation of collectively binding rules with regard to new conceptions on a good governing of borders.

Thus, we had secondly a situation, wherein an early thesis of Luhmann (1971) seemed to become further manifest. It formulates the erosion of states' territorial lines as differentiation-sites of global law, given a transition of the state as a 'place' of normative expectations towards new arenas of cognitive (thus altering) expectations. (Luhmann, 1971; cited in: Mezzadra & Neilson, 2013, p.201). That is to say that borders were increasingly articulated beyond the discursive premises of nation-state sovereignty and thus national territoriality. The conceptualization of borders, the setting of one agenda and not another, its formulation in one way and not another was consequently strongly driven by expert, administrative and scientific knowledge, which generates new, common understandings of problems beyond the epistemological lens of nation-states (even if the implementation might refer back to them). According to Peter Haas (2002) we might understand this creation of "consensual knowledge" as a result of "[...] networks of knowledge based communities with authoritative claim to policy-relevant knowledge with domain of expertise" (p.179). Those are usually referred to as "epistemic communities" (Haas, 2002; Mezzadra & Neilson, 2013) which provide for institutional learning in a sense that political programs are informed by their way of problematizing certain issues and setting them into relation with others. That is to say that once the epistemological lens of nation-state sovereignty faded into the background, the understanding of borders at the EU level required a new common ground. A new "territorial ideology" (Anderson, 2000, p.2) embodied by the AFSJ is, according to Walters/ Haahr (2005) and Zaoitti (2011), discursively structured by the trajectory of

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economic integration. This comes of course with a transformation of the justification order standing behind certain programs of bordering. Instead of national territoriality and systematic state border, the question of borders in the EU has in large parts become one of how to securitize threats emerging out of vulnerable freedoms that derived from the abolishment of classical state boundaries (Walters & Haahr, 2005, p. 103), as for example Schengen internal mobility.

Thus, thirdly, a multi-leveled governing not only inquires for the arenas of negotiation of borders, but also for the type of ordering mechanisms that permit for a joint supranational creation of social and political order. Given a shared sovereignty's lack of Westphalian ordering properties (state, territory, coercion), the theoretical lens of governmentality offers help. Governmentality suggests that a multi-leveled governing in terms of a search for solutions to commonly defined problems is discursively structured, offering common ground through a unifying 'mentalité', arguably a political rationality characteristic to liberalism (or neoliberalism) (Sack, 2014, p. 126). According to such a perspective, a European governmentality of borders under the umbrella of the AFSJ operates under the prerogative of the common market and its associated freedoms in its search for ordering mechanisms (Walters & Haahr, 2005, p. 103). So while 'traditional' technologies of systematic control and blocking continually find use along the 'external borders' under the EU regime, policing also follows mobility within and beyond the Schengen area.

More importantly, a European governmentality of borders elaborates "a set of institutions, procedures, analysis and reflections, calculation [...]" (Foucault, 2004, p.162; cited in: Bublitz, 2014, p.85, translated from German) that permit for a 'smooth', arguably a non-coercive processing of the spatial separation that is based on steering the conduct of migrants and refugees. Before I illustrate how such technologies of bordering are expressed, I would like to introduce the Foucauldian concept of governmentality to which different expressions of power exertion are inherent more elaborately.

#### 4.1. Governmentality – steering conduct

In order to derive a contextualized understanding of the concept of governmentality, it appears sensible to juxtapose it to the idea of sovereign governing. Arguably, Foucault's thinking of sovereignty primarily in terms of sovereign power *or* discourse of sovereignty already indicates a rejection of sovereignty as such, namely an often made equivalent of the

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state. He is highly critical of a jurisdictional model of sovereignty and its assertion of exclusivity to power. Accordingly, a central question within his political theory becomes “[...] how the theory of sovereignty came to be our way of defining and delimiting power, and how that power came to be and be seen as the power of the state”(Constable, 1991, p.275).

Following Foucault, much of contemporary state theory reflects anachronistic notions of sovereignty that relate back to monarchs prior to European modern ages. It is a representative model of power that is exemplified in the king, who executes the punishment of those who have violated his own symbolic representations (Kurz, 2012, p.39). Commanding and enforcing obedience or deciding upon life or death as acts of power thus interrelates with a performative or discursive dimension (Kurz, 2012, p. 39) of sovereignty that enables this mechanism of power to transcend the particular body of the ruler.

In contemporary politics of course, the recognition of a highest of authority is firstly no longer tied to God of course, but derives from a population (and other sovereign entities). Secondly, the deployment of coercion in terms of power on a subject as such has become an exception, given a variety of ordering mechanisms that are aimed at steering the conduct of subjects. According to Foucault, sovereign power was subject to a deep transformation in the course of the 16<sup>th</sup> and 17<sup>th</sup> century, reaching the peak of its first stage in the European revolutions of the 19<sup>th</sup> century (Kurz, 2012, pp. 40-41). The driving force behind this transformation is argued to be the political project of liberalism, which Foucault debates most notably along the conceptions of social order inherent to the writings of Adam Smith. Liberal ideas on the nature of human beings carry implications for the conceptualization of the subject of government, confining the realm of the sovereign and its positive law. The mere legal subject is successively superposed by layers of the liberal subject of interests, which according to Smith, contributes to the common weal by acting within the market (Biebricher, 2014, p. 34). Hence, those who deploy sovereign power need to adapt and take into account certain notions of individual freedom. This particularly relates to the question of the means of power exertion and the type of thinking that is required to keep a population governable because of its and through its specific nature (Foucault, 2004, p.114; cited in: Biebricher, 2014, p.33). The notion of population as opposed to a political community of citizens understands the mass body of society in bio-political terms as a carrier of productive powers or labor.

At this point we find the roots of Foucault’s thinking with regard to governmentality. This term addresses a notion, whereby mentalities or ways of thinking are immediately

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intertwined with governing or exerting power, although Foucault mainly refers to political rationalities of liberalism when speaking of mentalities involved in European governing. The impossibility of continually acting upon mere top down sovereign power (by decisions and the use of coercion) accordingly leads to the emergence of a notion of governmentality. It is inherent to Foucault's discussion of biopower as "[...] a set of institutions, procedures, analysis and reflections, calculations and tactics that allow for this very specific, yet complex form of power, which has the population as its main target, political economy as its main form of knowledge and a dispositive of security as its major technical instrument" (Foucault, 2004, p.162; cited in: Bubnitz, 2014, p.85, translated from German).

In this formulation, governmentality presents this governing-set that is concerned with the "conduct of conduct" (Foucault n.A.; cited in: Lemke, 2011, p.2). That is to relativize or to complicate notions of sovereign acting by pointing out how, by means of liberal freedom, every ruling entity is part of society itself and thus engages within discursively structured knowledge from 'below'. The governing of the nation-state for example, relies on a number of initially informal institutional sites in order to enclose all members of society and produce governable subjects. These "moulds" (Walters, 2006, p.190) firstly socialize their subjects accordingly to an inner expert knowledge. Grouping around "an episteme" they develop their own "[...] 'proper' construction of social reality" (Ruggie, 1998, p.55; cited in: Mezzadra & Neilson, 2013, p.178). So when the government on the other hand imposes its pre-eminence over these institutional sights by formalizing them into legal codes, its way of problematizing this realm of power exertion and its way of setting up of an appropriate governmental apparatus is not detached from society. On the contrary – it will necessarily reflect this 'mentalité' or knowledge from 'below'. Thus, relations of power within these institutions "[...] are not purely and simply a projection of the sovereign's great power over the individual [...]" (Constable, 1991, p.277). They provide for the conditions under which sovereign power can persist under the paradigm of liberalism.

According to a general perception within the broader academic field of Foucauldian Political Sociology a range of new technologies of power (that is to say ordering mechanisms beyond the coercion on subject) developed at certain historical periods within the global north-west and have over time not so much superseded each other, as they have rather formed additional, complementary layers. They are analytically distinct, because in spite of altering goals, each of them has some general properties and characteristics. Thinking in terms of technologies of power provides an analytical tool that does not inquire into power as such,

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but rather asks for “[...] the shifting terrain of power and the techniques and mechanisms through which it operates at specific historical junctures” (Kurz, 2012, p.39).

Arguably, we first of all have the emergence of the so-called *disciplinary power* which unfolds within enclosed institutions such as schools, hospitals or prisons. It is most notably associated with the 18<sup>th</sup> and 19<sup>th</sup> centuries. William Walters (2006) describes discipline as “[...] operat[ing] a regime of confinement, segmentation and utilization” (Walters, 2006, p.190) that is probably most famously epitomized by the architectural figure of the panopticon. It has diffused sources and opens up “[...] a field of power, whose forces shape our possibilities of acting and being” (Constable, 1991, p.277). The sovereign’s “gaze” (Kurz, 2012, p.3) on the singular or on the few that stand for all is now supplemented by a diffused gaze that forms subjects within institutions that aim to actually capture everyone within a territory at different points of their lives.

Closely tied to this, Kurz (2012) argues, is the emergence of a second mode of power, namely that of *bio-power*. It distinguishes itself from discipline by “[...] the shift in the logic from a concern with individual bodies to a concern with the population as a population, as a mass body” (Kurz, 2010, p.41). While disciplinary techniques work with prescriptive normalization in terms of an adjustment of individuals to an optimal model, bio-power relies on descriptive normalization. That is the statistical apprehension of what is empirically average or normal. It then relies on a dispositive of security that understands threats as divergence from an average – both in terms of vulnerability of a population and a given socio-economic order (Haahr & Walters, 2005, p.91).

In his lectures of 1977-1978, Foucault draws the diagnosis of a crisis of the disciplinary society in the context of a rising neo-liberal ideology (Walters, 2006, p. 190). His elaborations have carried implications with regard to conceptualizing modes of power towards the 21<sup>st</sup> century and they have amongst others been picked by scholars such as Gilles Deleuze. In “Postscript on Control Societies” (1992) Deleuze argues that since the 1980s we are witnessing the emergence of a new paradigmatic mode of power that he calls *control*<sup>21</sup>. Control is considered to be an expression of the switch from moulds in terms of institutional sites of confinement that reform or integrate their subjects to an attributed position or belonging, towards the abandonment of life (the entire living subject) and what Walters (2006) calls “modulation” (p.190). This term addresses the reduction or fragmentation of a hence divisible and computable subject into some particular features that allow for directing

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<sup>21</sup> Due to this easily misleading terminology I will consequently avoid using the term “control” in its more general sense of “checking”, “domination” or “surveillance” and instead only refer to it in its specifically analytical, Deleuzian sense.

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or modulating flows of certain attributes in one direction or another. The turn from the individual to the dividual is thereby argued to go along with techniques to which the concept of precarization applies rather than that of full inclusion or exclusion (Kurz, 2012, p.45).

#### 4.2. Walls, zones and routes: ordering mechanism and images of spatial differentiation

The conceptual cornerstones of Foucault's thinking have incited some interesting work at the intersection of Border Regime Studies and Governmentality Studies. This might be related to the late 1990s, when the persistence of borders in a growingly interdependent world required analytical instruments that were complex enough to grasp some of the transformations following the Cold War. In my elaborations of Foucault's theories I have already quoted some scholars in his tradition and I would like to continue some of my theoretical propositions by referring to them.

Arguably, authors working with this analytical lens often speak of an "assemblage" of different technologies of power (Bigo, 2014; Walters, 2006; Mezzadra & Neilson, 2013; Kurz, 2012) which are in place if we look at contemporary layers of bordering. That is to say that we find a variety of different bordering actors (e.g. national governments, regional governments EU-agencies, private firms or international organizations such as the IOM) engaging within the deployment of different order mechanisms that work intersectionally together although they can be analytically distinguished by the fact that certain technologies of power are paradigmatic within. Thus, it appears sensible to use the terminology of everyday border politics and to try to make sense of it through the lens of Foucauldian thought. Accordingly, I will take on William Walters' epistemological advice of deploying "mid-range concepts" (2015, p.5) that do not over generalize 'large' concepts such as disciplinary or control power but still allow for systemizing different programs of bordering. Consequently, I will try to firstly elaborate on the persistence of a technology of bordering that is strongly associated with 'classical', Westphalian conceptualizations of border enforcement – namely that of the territorial line as a site of blockage to which walling endeavors adhere. This is the set-off for a discussion of its limitations and dependency on border zones or the management of migratory routes.



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#### *4.2.1. The persistence of blocking and walling along territorial lines*

The understanding of borderlines as sites of a systematic reproduction of territorial integrity and thus as expressions of sovereign states remains an important, if not resurging trajectory. Arguably, this does not only relate to systematic individual checking at infrastructured ports of entry, but as practices of walling show, it is also a matter of physically demarcating the closure of a jurisdictional space in-between no-man's-land. Herein, the separation of the 'self' from the 'other' (Newman, 2003, p. 14) is conceptualized along the assumption of a homogenous inside-territory with those belonging to a sovereign relation and a clear cut outside with those that do not belong – be this justified juristically by the lack of a permitting entrance status or politically in terms of a threat to life or to domestic socio-economic structures. The border might in this case operate most bluntly as a mere exclusion mechanism, namely through coercive action of interdiction but also performatively in terms of a demonstration of state authority along the territorial line nesting nation-state sovereignty.

In the EU, the external member states' engagement in proliferating restrictive measures at their borders has been prominently expressed by early walling endeavors of Spain, Greece or Bulgaria, as well as the work of national guards with permanent patrolling tasks or naval operations carried out under bilateral agreements and/or the support of FRONTEX. These practices are referred to as bordering "vertically" from the territorial line of a territorial entity (Longo, 2016, p. 188). In his 2014 study, Didier Bigo (2014) offers empirical evidence on how actors working in the realm of military and police action at EU external borders in fact partly structure their professional justification along a narrative of 'us versus them', in which migrants are perceived as a form of enemy. That is to say that they conceive the deployed technologies of bordering as means of producing a line of defense epitomized by the "wall" (Bigo, 2014, p. 212). In fact, this might be strategic action that is concerned with the defense of a territorial borderline against sea or land traffic associated with 'illegal migration' or the erection of an actual walling construction. And as Andrew Neal (2009) has shown, national executives of external member states have in the past often turned towards EU institutions in a call for extraordinary means in order to seal off their territories from uncategorized migrants. This has of course called the role of supranational institution but particularly that of the agency FRONTEX into question.

Yet while later legislation on the capacities of FRONTEX has tried to do justice to national securitization calls as for example with the RABIT program of 2007, this has not

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led to the creation of “[...] EU institutions [that] have the constitutional, institutional, political or legal capacity to ‘use extraordinary means’ [...]” (Neal, 2009, p. 337). Neal, who tries to understand what form of securitization underlies to creation and working of the EU-agency, argues that the policy outcome of FRONTEX does not necessarily correspond to Weaver’s conceptualization of a process, whereby threats are constructed in order to legitimize extraordinary state measures, placing considerations of sovereignty above all others (Weaver 1995, cited in: Neal 2009, p.335). Arguably, FRONTEX’ engagement at the EU’s external borders is less to be understood in terms of a perception of securitization where political matters are placed in the context of existential threats in order to have the right to use extraordinary means but rather corresponds to Didier Bigo’s (2002) notion of a “governmentality of unease”. That is to say that European administrative staff as such rather provides instruments that work ‘silently’ under the paradigm of ‘risk-management’, meaning that they consist of unspectacular practices that place technological solutions at the center of their action. They do not even necessarily do it in the name of security of EU-citizens (but rather in the name of the security of migrants against smugglers) (Bigo, 2014, p. 213). Also, while FRONTEX erects a network to connect national resources of bordering with those of other member states and connects them with technological facilities from a supranational level, it cannot be simply equated with the national executives.

Likewise, we might point out how national executives themselves are not always in a “war on migrants” (Bigo, 2014, p.212) but how a large part of border guards and navy actors view themselves as protectors of legal rules:

“They see their mission as protecting international order, disciplining chaotic flows of people, avoiding the ‘catastrophic consequences of inaction’ and of ‘free travel between these countries in turmoil and the countries that enjoy peace and development’. In their ‘strategic’ vision, border control is an imperative but it is rarely about coercive action. They speak of ‘containment’ and ‘actions of deterrence’ that would in fact benefit migrants who, in this view, do not understand the risks they face by travelling in small boats.” (Bigo, 2014, p. 212)

In spite of the prevalent political narrative of the *Fortress Europe*, even the most restrictive border policies in a traditional sense do not automatically translate into unambiguous coercive exclusion. They rather suggest a factual maneuvering through considerations of human rights but also structural opportunities in the eye of technological possibilities. In some previous years, this has lead to controversial high sea operations by member states’ military (sometimes in cooperation with the external border agency FRONTEX), especially

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with regard to push-back practices on the Mediterranean (Bialasiewicz, 2012), some operations' in compliance with fundamental rights in general (Chetail, 2016) or the legal stance of collecting particular types of data via surveillance technology (Marin & Krajčiková, 2015).

However, whereas at the external borders mainly human rights considerations contradict practices of systematic blockage and exclusion, internal borders are in addition to that also restricted by means of the Schengen acquis. This has not only shown in recent tensions between the EU Commission and certain member states' walling endeavors in the course of 2015 but could be reversely observed with some member state's resistance towards the Schengen Borders Code (SBC) of 2006<sup>22</sup>. As secondary law in the form of a regulation, the SBC had the purpose of simplifying and detailing legal provisions concerning common standards of border procedures. Although it mainly replaced older provisions without greater changes in content, this meant further scrutiny from supranational institutions with regard to the administrative implementation of EU law. In Germany, where regional authorities had happened to detect more of so-called illegal migrants coming from Schengen states such as Austria rather than from the formerly external Czech Republic or Poland, some Bavarian governmental actors accordingly tried to lobby in the European Parliament in favor of larger possibilities for checking internal borderlines. The debate, which also showed in-between the very liberal proposal of the Commission and the Schengen Executive Committee on the one hand and that of the Council and Parliament on the other, was structured by the question of how far "alternative", non-systematic inner border controls could go (Fischer, 2012, pp. 50-62). From the Schengen Executive Committee's notion according to which:

"Alternative border checks are incompatible with the provisions of the Schengen Convention on the abolition of controls. [...]"<sup>23</sup>

we eventually went to a final legal provision according to which internal checks

"do not have border control as an objective, are based on general police information and experience, regarding possible threats to public security and aim, in particular, to combat cross-border crime, are

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<sup>22</sup> Back to Schengen: Commission recommends phasing out of temporary border controls over next six months. Source: European Commission Press Release Database (2017), retrieved from: [http://europa.eu/rapid/press-release\\_IP-17-1146\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1146_en.htm), 1.7.2017.

<sup>23</sup> OJ L 239 of 22.09.200, p.15, DEC of the Executive Committee of 26 April 1994 on adjustment measures aiming to remove the obstacles to and restrictions on traffic at road crossing points at internal borders (SCH/Com-ex (94) 1, rev.3); cited in: Fischer, 2012, p.60)

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devised and executed in a manner clearly distinct from systematic checks on persons at the external borders, are carried out on the basis of spot-checks.” (Schengen Borders Code 2006, Art 21; cited in: Fischer, 2012, p.61)

With this example, we might see first evidence for the struggle for a paradigmatic prerogative of bordering that will be further focused as this paper proceeds. It is the question of where the border starts and where non-border related policing ends. Arguably, we find some national or regional governmental actors defying the erosion of the national territorial line as the site of blockage, checking and interdiction. This shows within policy-making of the SBC<sup>24</sup> as well as the administrative implementation of some member states such as Germany. Accordingly, the possibility of “tracing and profiling due to experiences and findings of analysis reports” (Fischer, 2012, p. 61), lead the German authorities in 2008 to spin a tight web of checking spots in area of 30km around the former border check point towards the Czech Republic. The removal of the borderline in a conventional sense did not keep authorities from translating its principle into an interpretational range of EU provisions.

However, even if the sustainment of a borderline might appear desirable for some political authorities, administrative knowledge contradicts the idea of rendering a national territory impenetrable. As Didier Bigo’s (2014) study suggests, the “social universe” of police staff working at infrastructured border checkpoints does not act upon notions of blockage but mainly thinks in terms of “managing human mobility” (Bigo, 2014, p. 213). The logics structuring this institutional realm thus subordinate the notion of closure and impermeability to that of passage and mobility. Same time opening for some travelers and closure for others means that police officers and border guards use infrastructured checkpoints for quick interrogation to filter out those who lack an organizational fit and are consequently ‘irregular’. Accordingly, the actors in this realm of bordering individualize control in that they selectively pick out people who do not appear to be genuine with regard to their identity or who appear be hiding or masking other individuals. Contrary to professional politicians’ claims about interdiction or deterrence, the actors of policing at the line “[...]insist that more than 90% of those who travel to join the EU enter into it, among those who are stopped, a majority of them are finally accepted” (Bigo, 2014, pp. 213-214).

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<sup>24</sup> The Schengen Borders Code in 2013 for example, holds provisions for the temporary reintroduction of controls at the internal borders in cases other than those of a “serious threat to public policy or internal security”. The first one relates to “foreseeable events” such as political meetings or sporting events, the second one to “urgent cases” such as terrorist attacks (EU-Consilium, 2013)

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Therefore they emphasize the necessity of collaboration between member states in order to protect, as they claim, migrants of illegal exploitation (Bigo, 2014, p.213).

#### 4.2.2. *Acknowledging the limitations of the borderline*

Arguably, the border politics of the territorial line might all be set under the ideological umbrella of ‘hardening’ a political ‘container’ or rendering it impenetrable beyond regularized ports of entry. Yet as administrative knowledge shows, although considerations of nation-state sovereignty might be relevant, the institutional capacities of national frontiers are limited both normatively and structurally. The materialization of territorial integrity as a premise for nation-state sovereignty is not that easy, given the complexity of a reality that does not allow for arbitrary blocking within contemporary liberal democratic states. Rather, coercion is expressed as the “last line of defense” (Longo, 2016, p.197) in a struggle to uphold legal rule (Bigo, 2014, p. 212) in the face of uncategorized flows of people and goods. In the eye of human rights obligations (primarily the principle of non-refoulement), mobility incited provisions on the interdiction of systematic control, but also socio-economic conditions, the understanding and functioning of borders as territorial lines is not homogenous and by far not only a matter of nation-state sovereignty.

This becomes even more evident if we complement our view from a walled periphery with that of the commodified ports of entry. Such a holistic perspective avoids falling into the epistemological trap of merely focusing on the discourse of the EU’s external borders – that means neither with regard to claims of an omnipotence of the *Fortress Europe*, nor with regard to claims of a worn out *Sieve Europe* that requires ever more restrictive tools. Although the external bordering practices deserve much scrutiny from NGOs, civil society and scholars concerning their particular qualities in blocking movements, they are only ‘the tip of the iceberg’ and should not leave other, possibly less visible, areas of bordering and their intersectional working unquestioned. Quite on the contrary, the logics of those other realms of bordering carry strong implications for “[the] dogma of sovereignty, which underpins our image of absolute control of the territory by the State [...]” (Bigo, 2005, p.68).

Have we accordingly arrived at the point of arguing that bordering by means of territorial lines is merely a discursive reproduction of a notion of member states’ sovereignty that does not correspond to institutional capacities? I would be cautious about too strongly deemphasizing the relevance of the borderline. In this context it seems worth highlighting the reappearing visibility of the national territorial line by means of walling facilities that

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emerged after 2015 but also their joint working with other political measures. They confuse the conceptualizations of academics like Didier Bigo and Matthew Longo who generally consider tactical bordering facilities such as walls and fences as overestimated instruments of power. Longo (2016) for example argues in his 2016 article that “Europe” has realized how “walls don’t work” (p. 197). The period after 9/11 accordingly presented the apex of a global strategy of the territorial line that has most prominently been pursued by the US and its wall towards Mexico. Likewise, EU member states like Spain had long before FRONTEX taken a national path to deal with migration from North-Africa by constructing walls around the enclaves of Ceuta (started in 1993) and Melilla (1996). Only the failure of the “classic arsenal of state power – walls, armaments, etc.” (Longo, 2016, p.199) in the early 2000s, it is argued, has created greater awareness of the limits to nation-states’ sole assertions of sovereignty.

Yet the walling endeavors following the 2015 summer of migration within the EU point towards the contrary. They do only represent the resurgence of a discourse of nation state sovereignty, but also come with new institutional capacities carrying some particular qualities. This becomes clear if we look at the Hungarian wall towards Serbia, where people trying to lodge an application for asylum might be confronted with a factual *refoulement*, which is made possible by legal constructions of transitional zones<sup>25</sup>. Likewise, the Austrian fencing project went hand in hand with organizational boundary-making in terms of a so-called *Obergrenze*. This annual upper limit for asylum-applications, decided by the grand coalition in 2016, raises many questions of about a potential “return” of nation state’s sovereign power and its capacities in the context of an integrated European space and an international asylum regime. The political limit has yet to be reached and it is going to be a matter of its concise practical elaboration in terms of handling the  $n+1^{st}$  person that will tell us more about a possible resurgence of nation-state sovereignty.

A possible preview might not only be given by a recent political debate on the high numbers of border crossings. Arguably, the ideas presented illustrate the creation of international waiting zones (or a contraction of the common jurisdictional space), where asylum-seekers are required to stay until they can lodge an application for asylum<sup>26</sup>. It indicates what might be interpreted as the deployment of disciplinary techniques in order to

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<sup>25</sup> The End of the Right to Asylum in Hungary? Source: European Database of Asylum Law (2017), retrieved from: <http://www.asylumlawdatabase.eu/en/journal/end-right-asylum-hungary>, 1.10.2017.

<sup>26</sup> Selbstbehalte und Obergrenze: Hickhack nach dem Neustart. Source: derStandard.at (2016), retrieved from: <http://derstandard.at/2000050877946/Selbstbehalte-und-Obergrenze-Hickhack-nach-dem-Neustart>, 1.10.2017.

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sustain coercive powers within national territorial boundaries. The question that political actors have to deal with, is how to react given the fact that the ‘other’ as a subject coming from outside is already within the state’s jurisdictional space. In the following section, I will argue that they reply to it by using disciplinary and bio-technologies of power in what can be called bordering through zones.

#### 4.2.3. *Bordering by means of zones*

Given a de facto permeability of territorial borderlines, states might operate with technologies of bordering that spatially compartmentalize those groups of people upon which a border couldn’t be enforced prior to their arrival at a jurisdictional territorial. Examples are international zones or transit zones in which considerations of human rights and associated procedures clash with consideration on security.

In this context, Tugba Basaran (2008) inquires for the conditions of the creation of “[...] spaces that are under sovereign power but devoid of rights [...]” (p.339). She argues on the case of international, transitional or waiting zones in France, as well as offshore processing centers on Nauru before Australia how states can by legal means produce a disintegration between territorial and legal places of entry. That is to say, places where the right to even lodge an application for asylum is hollowed out. Arguably, in the name of security, border zones are either being extended or multiplied in order to place borders of policing in front of borders of rights. Such approaches involve a state’s sovereign act of delineating a bordering zone from the legal territory while preserving policing powers within these confined places. People, who do not have an a priori categorization that permits for travelling through or entering France for example, are placed within these zones until the time of return or entry permission. Those who want to apply for asylum are subject to a police interrogation that is evaluated in the ministries for inner and foreign affairs. Only if the person’s claim is not evidently unjustified he or she is allowed to enter and commence a formal process on asylum. Even more, such zones can be extended as Basaran illustrates with the French Code *de l’Entrée du Séjour des Etrangers et du Droit d’Asile*. This legal act refined the construction of zones with so-called waiting zones which were hence detached from the international zone and reached into places where “[...] the foreigner needed to be for administrative or medical reasons – anywhere on the French territory [...]. Wherever a person went, he/she could not enter the French territory” (Basaran, 2008, p. 346).

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Bordering by means of zones is then not only about interdiction and blockage but rather about creating spatial sub-units that “[...] establish[es] calculated distributions” (Foucault, 1977, p.218-19; cited in: Walters, 2006, p.190) of previously unregulated movements. Such institutional sites represent the restrictive side of discipline in that they appear to resemble Goffman’s (1961) “total institutions” by keeping refugees or migrants away from society (as opposed to ‘normalizing’ them in terms of integrative measures for a ‘successful’ self-governing in a given society). Prescriptive normalization takes the form of immobilizing or fixing migrants and refugees to a location, where descriptive normalization renders them apprehensible. The attribution of one legal category or another might be evaluated in the light of both considerations of deservingness (in terms of human rights) as well as those of security (as for example with Dublin cases).

Transit zones or international zones add another layer of complexity to the process of asylum-seeking that reinforces a prerogative of security considerations above all others. In the context of this paper it appears particularly instructive to consider Basaran’s (2008) conclusion as to how zones devoid of legal rights do not have to be created by exceptional means but that they can emerge out of ordinary politics of the liberal state. This certainly is the case with the French example, and it might be further questioned if we return to the Hungarian walling endeavors of 2015 and 2016, where a transit-zone surrounded with walls and internment facilities serves as a high security complex. Refugees can therein lodge their application for asylum, wait for a fast administrative processing of their case and eventually be expelled to Croatia or Serbia<sup>27</sup>. The identification of a subject through the generation and evaluation of data justifies a post-entry fixation of migrants and refugees but also their interlinking into data circuits of interstate policing for eventual expulsion.

Further research might also want to consider how places beyond the designation of zones such as Hotspots or refugee camps are engaged in the compartmentalization and disciplining of migrants and refugees and how such zones might serve as a justification for their externalization. Likewise, one might ask for the way in which knowledge deployed within border related zones (coming from governmental actors, NGOs, private firms or professionals from different fields) is discursively embedded with regard to an understanding of what has to be done with these people. By their production of capacities and knowledge, diverse societal groups are involved in structuring the problematization of the figure of the

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<sup>27</sup> Border Procedure (Border and Transit Zones) Hungary. Source: Asylum Information Database (2017), retrieved from: <http://www.asylumineurope.org/reports/country/hungary/asylum-procedure/procedures/border-procedure-border-and-transit-zones>, 1.10.2017.



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refugee, the migrant or the asylum seeker. This might be the case with calls for early integrative measures to actualize an available labor potential or by means of suggesting methods such as the bone age to allow for the attribution of legal sub-categories. They provide for the knowledge frame within which the state comprehends what needs to be governed in which way by means of which organizational boundaries.

Eventually however, it seems worth highlighting another type of spatial compartmentalization associated with post-entry bordering, namely detention centers as places where illegalized migrants and rejected asylum-seekers can be gathered in order to implement deportations. In recent years, criminologists and social scientist in the realm of prison studies (for example Bosworth, 2014; Kaufman, 2015; Silverman, 2014) have pointed out the methodological necessity of investigating the purpose and functioning of detention accommodations in the light of a post-Westphalian state order. The erosion of traditional territorial exclusion mechanisms for non-citizens requires spotlights on new sites of bordering. The analytical consideration of detention centers as sites of technologies of bordering might appear more plausible considering its intersectional working with a third type of ordering mechanisms – one that is concerned with the establishment of circulation frameworks for the return of those upon whom the border has been enforced post their entry.

#### *4.2.4. Bordering as management of routes and circulation*

As already mentioned in sub-chapter 4.2.1, territorial borderlines are never fully continuous speaking in a metaphorical sense. Ports of entry are thereby not only exceptions but they are a fundamental basis for modern liberal democracies. Even more so, their career has experienced a boost that went hand in hand with globally growing international markets and more importantly: economic and political integration within the EU. However, whereas negative integration in terms of the removal of tariff boundaries and non-tariff boundaries (often associated with the integration of economic policies and liberalization as a retreat of the state from a political domain) suggests a power vacuum, a technology of bordering under the paradigm of control underlines how the removal of ‘internal’ borders is replaced by new (positive) articulations of power.

The political re-conceptualization of borders is not only associated with technological progress increasing trans-border mobility over the past decades, but also with the rise of neoliberalism as a dominant socio-economic and political project. Beyond its economic program in terms of fiscal and monetary policies and on a more general level,

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neoliberal thought discursively restructures the relation of state and market as societal ordering principles. Accordingly, the domain of state intervention as in terms of market confining measures (as opposed to market-building measures) is reformulated around the market as a system carrying vulnerabilities and risks. “The main governmental task is to produce and secure free market exchange without distorting it.” (Horvath, 2014, p. 115)

How do technologies of bordering associated with control overcome the paradox of same time circulation and boundary-making? Put simply, they do so by the management of routes of unwanted flows. In this sense, Matthew Longo (2016) speaks of “a horizontal logic of security” (p.188), referring to borders of the 21<sup>st</sup> century as being conceived as bi-nationally managed institutions that are jointly governed in a common fight against certain transnational flows such as smugglers, terrorists and specific types of migrants. ‘Co-bordering’ then consists of the creation of political, administrative and infrastructural webs that extend far beyond the territorial borderline (Longo, 2016, p. 188). This resonates with two analytical terms that further elaborate the notion of horizontal bordering, namely those of internalization and externalization. They reflect the implications that the paradigm of transmigration carries for the process of boundary-making, namely a trend away from a clear cutting of lines of inclusion/exclusion towards a continuum of precarization. Unlike disciplinary power, which works within moulds or institutionally confined places, control rather operates within networks, whose nodes represent formulations of conditions for spatial access or status. It abandons the concern with the whole individual as a carrier of labor (as this realm is covered by narrowly migration politics and becomes salient with approved asylum-seekers) but rather operates with dividable data of related undocumented travelers for the calculation of risk. The collection of data permits the modeling of routes allowing for anticipative and proactive border politics that follow mobility in that they transversally reach beyond national borderlines far inside of the AFSJ as well as far outside into an EU neighborhood.

Such technologies of bordering might be anticipative, forcing us to first of all place an analytical look at selective inner-state interception as well as supranational tools of networked governing such as SIS or EURODAC (Bigo, 2005, p. 77). The argument is that occasional, “de-localized” (Bigo, 2005, p.77) interceptions based on founded suspicion or risk in the course of vehicle control or other policing activities ultimately inquire for an individuals’ entrance status to a territory, thereby “[...] permit[ting] to have a “low” cost of control (if compared to a systematic one) and the emergence of a general norm which is the freedom to travel for individuals (the controls are exceptions)” (Bigo, 2005, p.77). While

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borderlines between member states of the Schengen area might have in large parts disappeared, it is not to say that bordering ‘on the inside’ has been fully abandoned. It has merely been bent to the paradigm of keeping up circulation and calculating routes of unwanted flows.

Bigo (2014) offers valuable empirical evidence for the way in which ‘inner’ borderlines have been re-conceptualized under a new paradigm of governing. Interviews with employees of the EU-Agency LISA (European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice)<sup>28</sup> accordingly show how IT-experts and administration on the EU level consider their work of creating systems for data gathering and processing as ways of constructing what they call “smart borders” (Bigo, 2014, p. 219). This means that the executive branch of border enforcement (SIS, VIS, EURODAC, etc.) is conceptualized as a multitude of geographical and operational points that are all connected through networks of computerized databases. The logic behind them is the exchange of information gathered at borders, at consulates, by intelligence services or by private companies, all running at faster pace than the migrants moving across the Schengen zone. Their “politics of numbers” (Bigo, 2014, p. 216) are conceived as a technological solution to tensions emerging between liberal economics and the securitization of certain mobile groups in that it provides the police on the ground with risk models of legitimate suspicion towards certain groups, routes or time periods. Based on processed data, they aim at prevention and risk avoidance by geographically, temporally and operationally allocating policing resources to install mechanism of selective surveillance.

The anticipation of risk-related groups however, starts already before the external borders of the AFSJ. This phenomenon is mostly addressed to as externalization. In administrative and operational terms externalization may refer to the work of FRONTEX by means of ‘pre-border-analysis’. This occupational field addresses the agency’s processing of data for a consecutive creation of risk assessment along certain routes. According to Bigo (2014), the actors in this field “[...] compare themselves to banking analysts or intelligence services [...]” (Bigo, 2014, p.215), while at the same time deploring some member states’ nationalistic rhetoric about going alone in questions of border politics. Such claims would firstly reflect a lack of understanding towards the ways in which effective differentiation under conditions of increasing globalization works and secondly, they would often go hand in hand with inhumane practices of deterrence. On the contrary, the EU officials “[...] see

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<sup>28</sup> Founded in 2012, the agency is commissioned with the administration of EU information systems, primarily the Visa Information System, the Schengen Information System and EURODAC.

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themselves as a skilful minority capable of treating with detachment, the human beings who arrive at the borders, without becoming embroiled in each individual case, and keeping the figures and percentages correct” (Bigo, 2014, p. 216).

Externalization can also be understood by means of outsourcing policing tasks or a shift ‘downwards’. That is to say that we find a legal delegation of bordering tasks to private sector actors. Arguably, this is the case with the EU’s *Carriers Sanctions Directive* of 2001 providing for sanctions against companies who transport undocumented migrants into the EU (FRA, 2014, p. 30). Similarly, the *Facilitation Directive* of 2002 interdicts the “facilitation of illegal immigration” in terms of intentional assistance of non-EU-nationals in entering or transiting through the EU territory. This provision addresses non-commercial travel as well as transportation companies and declares helping practices and the assistance for financial gain of a non-EU-national for the purpose of illegal residence an infringement (OJ, 2002). These two measures shifted parts of national responsibility of cross-border procedures to private sector actors, reinforcing the control mechanisms along fully or partially commodified infrastructure<sup>29</sup>.

More narrowly externalization addresses the placement of practices of border enforcement before the jurisdictional space of related actors. Placing our focus beyond the EU we might highlight the *European Neighborhood Policy*, which presents an attempt to harmonize the relations of EU member states with neighboring states and most notably to commonly governing different types of mobilities (Casas, Cobarrubias, & Pickles, 2010, p. 77). Bi- or multilateral agreements, often led under the umbrella of supranational EU actors aim at channeling certain types of migration flows while shutting down prominent routes of ‘illegal migration’. Those agreements often encompass the facilitation of third countries’ high skilled workers in the EU labor market or simply financial aid in exchange for more severe control measures “illegal” migrants (Casas, Cobarrubias, & Pickles, 2010, p. 78). The implementation of such agreements can lead to a mere delegation of tasks as in the case of the EU-Turkey Refugee Deal, but also to practices such as the stationing of immigration liaison officers at strategic points of transition within those third countries.

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<sup>29</sup> In this context, William Walters illustrates how such a delegation of bordering tasks can present a valuable source of business for companies. Quoting Verstraete (2001) he points out the story of the Belgian harbor of Zeebrugge. The private company started an unlikely joint venture with the US-company DKL that produces sensing devices for the detection of heartbeat frequency signals, often used for detecting bodies in regions affected by war and catastrophes. This seemingly odd collaboration brought benefits for both as Zeebrugge’s clients had been fined for hiding migrants and thus demanded a higher degree of security, while DKL, initially producing for military and emergency operations, had now found an emerging market to invest in (Verstraete, 2001; cited in: Walters, 2006, p.196).

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With this, we might also consider the proactive dimension of technologies of bordering associated with the management of routes and circulation: namely the establishment of networks for the dispersal of risk-groups within the AFSJ and their circulation beyond. The consideration of deportations as “extended border control” (Kanstroom, 2007) is met under this paradigm with the elaboration of corresponding administrative infrastructures, as well as international agreements on the return of corresponding. This is not to say that these two dimensions fully cover the phenomenon of deportations as such, but they have formed an indispensable layer of the systematic character of deportations by EU member states.

For Horvath (2014), the structure of a contemporary model of policing borders displays a specifically neoliberal character in that it detaches deportations from national labor considerations (characteristic to a Fordism) as a direct interference into the market. Instead, it is occupied with the policing of mobility as a condition of integrated markets (Horvath, 2014, p. 117). Thus, although tightly associated with assertions of nation-state sovereignty, EU member states, rather than deploying deportations one-sidedly out of nationalist or national labor market considerations, adhere to an integrated border regime that understands deportations as a matter of inter-and transnational management of ‘the other side of the coin’ of mobility (Regout, 2010). That is to say that prior to human rights considerations and after negative decisions on asylum or other humanitarian titles, the anticipative and proactive policing of movements is legitimized as a matter of supra- and international coordination for the “social distribution of bad” (Erickson, n.A.; cited in: Bigo, 2002, p.71). This in turn allows for mechanisms of dispersal such as in the Dublin regulation or those of return as under the elaboration of return agreements with third states.

Eventually, given this range of technologies of bordering that can intersectionally work together in the enforcement of a certain order, we might eventually ask what kind of order is at stake. That means that we might inquire for tensions and negotiations that accompany practices of walling as assertions of nation-state sovereignty in the context of an EU border regime that adheres to a shared sovereignty. Arguably, while EU migration-, asylum- and border law confines the forms in which the enforcement of borders might be conducted, a Westphalian culture of borders seems to prevail, leading member-states to negotiated arrangements of technologies of bordering in favor of nation-state sovereignty.

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## 5. Locating sovereignty in the *Area of Freedom, Security and Justice*

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In the previous chapters I have already stated how boundaries enable us to think of one thing as being a particular and accordingly not another. In terms of international relations I have pointed out the relevance of an organizational and territorial border for notions of nation state sovereignty. Speaking in terms of systems theory it “[...] reduces the points with the environment, thus allowing the internal conditioning of various relations with the environment” (Kratochwil, 1986; cited in: Parker & Adler-Nissen, 2012, p.777). That is to say how borders, in a traditional sense, permitted the idea of a political system or a society of its own. It has also become evident however, how European integration has partly re-conceptualized the national frontier as an institutional site of segmentary differentiation into a security function of an economic integration trajectory. Speaking with the words of Parker and Adler-Nissen (2016), we might argue how the conditions of sustaining national sovereignty through bordering have changed as “planes of inscription” (Parker & Adler-Nissen, 2012, p. 773) gradually shifted to a supranational level. Yet, as shall be discussed in the following, the concept of sovereignty is not a historically invariant one, leading us to inquire for whether nation-state sovereignty or European shared sovereignty is at stake if we speak of certain forms of bordering. This carries implications as to how member states negotiate and implement certain arrangements of technologies of bordering between the paradigms of national territoriality and AFSJ.

### 5.1. Sovereignty and the condition of territoriality

“If sovereignty means supreme authority, it stands to reason that no two or more entities – persons, groups of persons, agencies – can be sovereign within the same time and space.”  
(Morgenthau, 1948, p.259; cited in: Rudolph, 2005, p.2-3)

Sovereignty, it seems, is a historically salient framing within the social world, subordinating functional systems of any kind to a centralized power that has for a long time been assumed to be located in the overlapping of state, territory and population. According to this definition by Morgenthau, sovereignty addresses the fact that in spite of a variety of social, political, economic forces, there is a principle “[...] that transcends the modalities of their

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operations” (Mezzadra & Neilson, 2013, p. 202), permitting for segments that retain supremacy over these functional systems. It eventually allows an actorness of a collective with regard to other collectives but also to itself. It does thereby not tell us anything about the kind of political system we are dealing with. Instead it addresses the fact that the political system as such is not only ‘horizontally’ differentiable from the economic system and so on, but that it has ‘vertical’ boundaries, demarcating global entities that nest these systems.

In International Relations, such entities are assumed to require the recognition from other entities, but also that of other social, political, economic forces. According to Janice Thomson’s empirically more practical definition, sovereignty can be described as “[...] the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory” (Thomson, 1995, p. 219). She thereby classically defines it along the following dimensions:

- Recognition: this means that a state’s power capabilities for sovereignty require internal recognition in opposition to domestically challenging groups, as well as recognition by external actors, namely other states or hegemonic states (Thompson, 1995, p.219).
- State: a bureaucratic apparatus differentiable from society and “[...] claiming a monopoly on organized coercive forces.” (Thompson, 1995, p.221). It can use internal resources for interstate war or cooperate with other states on controlling societal actors.
- Authority: in terms of a “meta-political” authority, it addresses a state’s capability of defining what falls into its realm of political activity. With regard to a “constitutional” dimension it means the degree to which realms are subjugated to a state’s actions. (Thompson, 1995, p.222)
- Coercion: the execution of authority through the major means of violence. (Thompson, 1995, p.225)
- Territoriality: the attachment of a state’s authority to a geographically delineated space. The spatial demarcations are not of mere topographical nature and not only in defense against other sovereign states, but rather identify a spatially confined social collective as one. (Thompson, 1995, p.227)

Yet, as Pusterla and Piccin (2012) rightly argue, sovereignty is not a historically invariant phenomenon and does not necessarily have to find its repository within the (nation-) state.

Accordingly, an essentialist definition would point out the pre-eminence of certain properties towards others. That is to say that sovereignty presents a social or political phenomenon that varies in its construction over time and space, yet there are overlapping features that can be considered more essential than others – namely *recognition* and *authority* (as well as a corresponding *population*) (Pusterla & Piccin, 2012) (Figure 2).

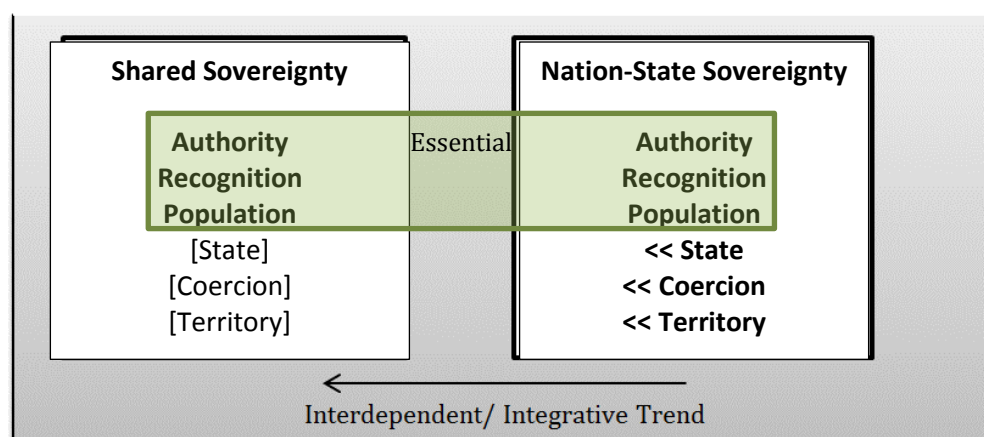


Figure 5.1. – Erosion of repositories of nation-state sovereignty (Pusterla & Piccin, 2012, p. 123)

To the contrary, a commonsense understanding of sovereignty usually relates to the concept of Westphalian sovereignty. This term address the historical juncture of the Treaty of Westphalia in 1648, which marked the end of the Third Years War. “Westphalian sovereignty consolidated political authority within a distinct territory that excluded external actors from domestic authority structures.” (Rudolph, 2005, p. 4) It accordingly provided the means to cease a number of bloody conflicts interplayed between political authorities whose jurisdiction was partly overlapping and did not know any clear distinction between inside and outside. At this historical stage, the notion of territoriality marked the decisive dimension constituting an essential sovereignty in terms of the mere recognition of one sovereign power by another. State sovereignty did not require any internal recognition at this point. The question of who and by which means sovereign power is to be exerted was rather shifted to the notion of God, deriving the monarch’s authority from divine rights. Belonging was expressed by falling subject to the government of a territory and is less to be understood as a socio-political community with citizens engaging in the production of sovereignty. (Rudolph, 2005, p. 13).

Arguably, territoriality appears as a crucial feature for notions of modern state sovereignty. Today, it remains as an important trajectory for sovereignty as a way of stating a nationally imagined ‘us’ in contrast to ‘them’ (Brown, 2010, p. 5). Despite international



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conventions or EU law, one may say, a jurisdictional space is often treated as if it emerged out of the sole national society-state relation.

The concept of speaking about national sovereignty in terms of the sovereignty of a people is rather a matter of the eighteenth century and the rise of nation-states particularly associated with the revolutions in France and the United States. It is thereby inherently connected to the emergence of liberal democratic systems as well as the idea of nationalism. The attachment of sovereign authority to a collective (the people) presupposed its constitution as a whole by creating a common identity (or common identities) that was associated with the territory. This territory that had previously been that of the monarch now belonged to the nation as is documented in the French Declaration of Rights in 1795 (Hobsbawn, 1990; cited in: Rudolph, 2005, p.5). Hence, authority needed to acquire recognition from (parts) of a people by some kind of institutionalized procedures.

## 5.2. Shared sovereignty and its reliance on state, territory and coercion

How can such a traditional notion of sovereignty be translated into 21<sup>st</sup> century EU member states? Europeanization as an integrative process appears quite the opposite to sovereign thinking. It is not about nation-states circumscribing the society-state relation but about the dissolution of interstate-boundaries towards new unities. The transformation or the compromising of sovereignty is often a central topic within studies on EU integration. Sovereignty is thereby argued to be delegated from the level of the nation-state to supranational European institutions – at least within the realm of certain policy fields touched upon in according treaties. The unessential repositories of sovereignty, namely *state*, *territory* and *coercion* are considered to be most severely subjugated to the creation of a new configuration of sovereignty (Pusterla & Piccin, 2012, p. 130).

Instead of the member state, it is now the EU that enforces rules over aggregated territorial spaces, not by having means of violence but through sanctions upon the violation of agreements<sup>30</sup>.

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<sup>30</sup> The debate as to whether we can speak of a shared sovereignty or an erosion of sovereignty can then be viewed as a matter of the “EU’s accountability and the member states’ authority of revocation [...]” (Walker, 2010; cited in: Pusterla & Piccin, 2012, p.130). This addresses the property of authority, and the degree to which its constitutive and functional dimensions at the moment of EU-accession (authority transfer) correspond to consecutive primary law as well as a member state’s capacity to shape the extensiveness of following legislation.

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In terms of territoriality, the “[...] disaggregation of powers that were once firmly lodged in the nation-state [...]” (Mezzadra & Neilson, 2013, p. 195) does not imply member states’ complete withdrawing from activities associated with the authority over their jurisdictional space. However, the forms in which borders might be enforced have changed in accordance to jointly shaped ordering mechanisms, permitting a reproduction of shared sovereignty of an economic and political union. As Haahr and Walters argue, the project of European integration promotes a supranational “governmentalization” of certain political issues (Walters & Haahr, 2005). We could also reversely say that the mere integrative act in terms of the negotiation phase presumes a withdrawal from Westphalian repositories of sovereignty such as national territoriality (Pusterla & Piccin, 2012, p. 129). The AFSJ might then be considered as a new quasi-territorial European order, wherein a Westphalian culture of bordering is restructured towards the external borders, while technologies following mobility prevail on a joint European inside policing borders, promoting certain expressions of power exertion while inhibiting others.

However, there is a more general point to be made with regard to the transfer of competences on borders to the EU level. An EU governmentality of borders might in its search for mediating ordering mechanism rely on technologies of bordering associated with the analytically distinguishable management of routes and circulations (as they follow the trajectory of market-based mobility). But these facilitating mechanisms alone cannot be operational on their own. The deployment of technologies that are invested in decreasing frequencies of arrivals and heightening that of returns are at best a “[...] fantasy, although it produces very real effects” (Mezzadra & Neilson, 2013, p. 202).

That is to say that a European governmentality might establish an institutional framework through transnational networks of administrative cooperation, joint databases, risk-analysis, health or identity papers or holding zones just as few examples— all this in order to predict or steer the conduct of migrants and refugees and render the process of enforcing a border more smoothly. But even if this might serve as an epistemological template of how to grasp the problem of undocumented migrants and provide clear structures for dealing with them, a joint European governing relies on repositories of nation-state sovereignty in order to actually function. Firstly, it is still the state’s bureaucratic apparatus through which border decisions are made. Secondly, border related authorities still operate within confined national territorial boundaries. Thirdly and most importantly, member states’ legitimate means of violence allow bridging the gap between a claim to ‘clean’, non-coercive enforcement of the border and the reality of resistance.

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“Sovereignty appears not only as a supplemental power that intervenes when ungovernable migration flows cannot be tamed or negotiated but as a quality of governance itself – a governance that is prepared to live and let live only until it encounters a subject who will not freely abide its rule”. (Mezzadra & Neilson, 2013, p. 183)

In this context we might highlight how walling, understood as the deployment of coercive power (which is a repository of nation-state sovereignty), is on the one hand operative along the external EU border as for example in Hungary or Spain where it might be associated more easily as a quality of EU governmentality as such, given the prevailing notion of external borders. On the other hand we might also see how in Austria, walling could serve as a “supplemental power” that was part of an intervention based on exception provisions in the Schengen acquis. This resonates with the argument according to which states are able to “provide order without being sovereign in a robust sense of the term” (Latham, 2000; cited in: Mezzadra & Neilson, 2013, p.202).

We might then ask, to what extent member states activate policing and by times even military action in order to merely enforce an EU border regime against the resistance of migrants and refugees. Given the fact that the border can materialize at different places “[...] (for example at airports or motorway toll stations) and at places outside of the European continent (for example the Moroccan harbor city Tanger)[...]” (Tietze, 2015, p.81, translated from German), we might on the other hand also wonder whether states engage in sovereignty games, picking some sites of bordering. This means to pick them strategically “[...] so as to have them [the borders] ‘read’ optimally from the state’s point of view – that is, to convey the given state’s preferred meaning to the various *addresses* of the inscriptions” (Parker & Adler-Nissen, 2012, p. 787). Arguably, the display of powers associated of sovereignty by nation-states cannot be automatically equated with an actual falling together of sovereignty and nation-state and it might therefore also not necessarily present an inconformity to EU law.

### 5.3. Walling member states – anachronistic but functional

The erection of walls is inherently tied to the symbolism of a structure that aims at signifying a distinction between inside and outside, between ‘us’ and ‘them’ (Brown, 2010, p. 5). Walls as historically salient icons of opposition – be it in terms of ideologies, nations or certain

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types of migratory flows – necessarily contribute to a discursive reproduction of an enclosure. In the context of our cases, they suggest an image of state control over a national territory as the spatial container of nation-state sovereignty (Brown, 2010, p. 118). As Geddes suggests, it is not only organizational and territorial boundaries that make migration visible, but also conceptual boundaries – that is to say a demarcation of cultural, social or political identities and the construction of notions of belonging to a national, trans-national or sub-national community (Geddes, 2005, pp. 787-788).

Walling permits the reciprocal construction of the other as coming from beyond as well as a self that is positioned on the inside or the belonging part of an affirmed divide. Considering their unconventional and by times even military character, they represent particularly strong and restrictive images of the border. Their visibility in terms of a high social and political perception indicates the deployment of seemingly extraordinary means against a perceived threat.

However, the intensified enmity is not necessarily thought of in mere categories of nationalities as counterparts to an own national sovereignty and does also not have to be turned against existential threats such as terrorism. Arguably, while walling certainly assumes a suspicion upon people that might avoid infrastructured, legalized routes of entry, these migrants or refugees are not necessarily conceptualized as hiding a radical, violent identity but in fact such classical figures like the *bogus asylum seeker* or the *economic migrant* allow for a much broader (in-)security discourse. In such conceptual categorizations “[...] many unresolved structural questions converge [...]” (Bigo, 2002, p. 80), allowing to also externalize socio-economic, structural issues such as labor market and demographical problems or welfare debates. In this context, the ‘other’ can be instrumentalized as both a plain source of issues and its solutions, for example if social services and cash allowances are scandalized or if on the other hand migrants and refugees are assumed to fill labor market needs.

The promise of a return of nation-state sovereignty against transnational forces through the deployment of walling facilities however, cannot actually be fulfilled (Brown, 2010, p. 24). Socio-economic, structural conditions and cross-border technological devices promoting mobility restrict a functional aim of full closure as do provisions deriving from European conceptualizations of security as do provisions on human rights. In this sense, walling might be considered an anachronistic approach to bordering, in terms of adhering to a Westphalian culture of bordering, which today can no longer on its own prevail under the

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mere deployment of systematic borderline control and coercive interdiction. This however is not to say that walls do not work at all.

Firstly, constructions might extend well beyond strategically salient or topographically permeable locations and operate with different technical solutions, be it razor wire or surveillance devices. In this respect, one might say that it does matter whether we are talking about fences or concrete walls – the sheer materiality of some constructions can carry serious implications for possibilities of resistance but also the physical conditions of those who try to overcome those barriers. The factual impossibility of overcoming some of these constructions at certain locations, forces the choice of ever more dangerous strategic routes. UNITED for Intercultural Action counts a minimum of 22.294 documented deaths of people trying to reach the EU from North Africa and the Middle East from 1991 to mid-2015<sup>31</sup>.

Secondly, walling might as well be embedded in a discourse on nation-state sovereignty, which has very real effects with regard to how a national government engages within a multi-leveled governing of borders. In their 2017 study, Rheindorf & Wodak illustrated on the Austrian case of bordering through fences and the establishment of a maximum limit (*Obergrenze*), how this condition among others leads to a “discursive struggle over meanings in politics” (Rheindorf & Wodak, 2017, p. 1). They show how the debate on the discourse of walling facilities itself opens up a broad range of discursive patterns legitimizing certain political agendas, while delegitimizing others. While the social-democratic chancellor Werner Faymann for example rejected to associate these measures with a “boxing in” of Austria and instead pointed out the doors and the ordering function, his conservative minister of interior Johanna Mikl-Leitner drew on the long time negatively associated figure of “building a fortress” and positively affirmed it (Rheindorf & Wodak, 2017, p. 11).

It seems that the mere way in which walling is being thought and talked about can have an impact on the perception of borders as closures of national power containers. Yet, although the talk on strong nation-states and blockages produces very real effects that should not be underestimated (especially in an age of wide spread online communication where “ugly images”<sup>32</sup> quickly spread among those who might be addressed by the border), we

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<sup>31</sup> List of 22.394 documented deaths of asylum seekers, refugees and migrants due to the restrictive policies of Fortress Europe. Source: UNITED Against Racism (2015), retrieved from: <http://www.unitedagainstracism.org/wp-content/uploads/2015/06/Listofdeaths22394June15.pdf>, 17.4.2016.

<sup>32</sup> Österreich und die hässlichen Bilder. Source: nzz.ch (2017), retrieved from: <https://www.nzz.ch/international/ein-jahr-schliessung-der-balkanroute-oesterreich-und-die-haesslichen-bilder-ld.150087>, 3.10.2017.

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might not simply reproduce a discourse of nation-state sovereignty, if these facilities can as well be features of the implementation of an EU border regime based on shared sovereignty.

A contemporary context in which sovereignty has come to be detached from the nation-state not only urges us to search for it elsewhere, but also sets limits as to whether we can consider associated expressions of power, most notably such of coercive policing and military action as unambiguously related to nation-state sovereignty. Thus, instead of essentializing claims of sovereignty by nation-state actors, it is necessary to conduct systematic empirical investigation on the intersectional working together of technologies of bordering in one case or another. That is to say that one has to inquire for the ways in which member states implement and negotiate on ordering mechanisms based on their own resources but also those of supranational, private and regional resources and how these mechanisms relate to premises of mobility, supranational European conceptions of borders and most importantly provisions on human rights that might be inherent to the latter.

This work does not account for such an empirical analysis, yet in this last section, I will use the example of Austria to sketch how walling might only be the point of departure for a rearrangement of technologies of bordering in favor of nation-state sovereignty.

#### 5.4. Asserting nation-state sovereignty beyond walling – the example of Austria

The proliferation of walling facilities might in fact demonstrate a waning of nation-state sovereignty. Their theatrical staging of an enclosed container of power does not match corresponding capacities of traditional sovereignty repositories of state, territory and coercion. Nonetheless, it might be indicative of a resurging discourse on nation-state sovereignty, which carries real implications for political negotiations on borders and their implementation.

“The contemporary revival of sovereignty in political debates is thus to be understood as the deployment of a narrative, with the specific purpose of playing with positions of symbolic authority so as to force social practices to bend in a required way.” (Bigo, 2002, p. 68)

In the following we might therefore briefly recapitulate the example of Austria.

The bordering crisis following the summer of migration 2015 was marked by rapidly changing member-state and EU-level reactions, which, given the resistant character of group

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dynamics involved in those migratory movements, did not allow for notions of systematic response under a prevailing EU border regime. Thus, during the early weeks of September 2015, the logics of managing routes and circulation were intriguingly reversed, when member states like Austria installed ad-hoc infrastructures of buses and trains to allow fleeing people to travel to their self-determined destination – thereby de facto ignoring the Dublin regulation.

While this situation led governments across Europe to appear incapable of restoring control over their territories, it was only accepted for a short period of time and consequently met with increasingly restrictive counter-measures. Arguably, the Austrian government soon reinstalled systematic border controls along its southern border to Slovenia with the accompanying border fence in Spielfeld. And although the Commission does not support the erection of such facilities, particularly along internal Schengen borderlines<sup>33</sup>, their placement within a non-infrastructured periphery does not seem to violate EU provisions on the removal of technical and legal barriers as of today. It is not the border fence as such but rather the technologies of bordering associated with systematic control (or even coercive interdiction) along internal borderlines that might bother the Commission. Given the Schengen Borders Code's provision on the re-introduction of controls in urgent cases, negotiations on their temporal extension between some member states and the Commission began and endure until today, leaving us questioning when the exception will institutionalize as de-facto norms<sup>34</sup>.

The Austrian border fence, although not restorative of nation-state sovereignty as such, went along with a strong internal debate on borders under the discursive premise of borders as national territorial borderlines. Political parties struggled, as mentioned at the beginning of this paper, with the attribution of different meanings to this construction, particularly given the context of regional elections in some Bundesländer that were strongly affected by the migratory movements, such as Styria and Burgenland. Legitimizing borders followed different patterns as pointing out the adherence to law or stating a socio-economic burden (Rheindorf & Wodak, 2017, pp. 6-7), yet it culminated under the arc of borders as nation-state borders as opposed to the borders of the AFSJ for example. The manipulation

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<sup>33</sup> This has for example shown by its approval of Italy's complaint on Austrian considerations for further fencing at the *Brenner* (Rosenberger & Müller, 2017, p.125).

<sup>34</sup> Back to Schengen: Commission recommends phasing out of temporary border controls over next six months. Source: European Commission Press Release Database (2017), retrieved from: [http://europa.eu/rapid/press-release\\_IP-17-1146\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1146_en.htm), 1.7.2017.

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of border provisions of the EU-regime was considered necessary, disregarding that it might be detrimental to other member-states' attempts of enforcing borders under a prevailing EU system, but also disregarding human rights considerations formulated along border procedures.

Accordingly, the Austrian government decided on establishing an organizational boundary of a maximum of 37.500 applications for asylum per year, known as *Obergrenze*. Interestingly, this provision is triggered by a state of emergency, arguably a classical example of nation-state sovereignty as a state's "capacity to 'decide on the exception'" in the terminology of Carl Schmitt (Schmitt, 1985, p.5; cited in: Neal, 2009, p.337). Even if the provision has not been called into place as of today, notions of installing waiting zones<sup>35</sup> that have been discussed earlier, point out how nation-state sovereignty on the separation of 'self' and 'other' is not necessarily achieved through blocking certain people's entrance at the territorial line qua some sort of legitimated violation of otherwise bind rules. Instead, a variety of 'liberal' ordering mechanisms are available to states and particularly EU member states, which permit for 'silent', at least legally ambiguous ways of reasserting nation-state sovereignty. Waiting zones as a technology of bordering that permits entrance into a jurisdictional space but places security consideration above those of human rights (Basaran, 2008, p. 340) are certainly an example for that.

In early 2016, the Austrian government went on to pursue solutions to the crisis of borders with the deployment of coordinated policing along crucial migratory routes. The project of 'closing' the *Western Balkan Route* called for a network of cross-border regions particularly affected by the movements of 2015. However, instead of acting cooperatively as members of an EU border regime, few member states went on for intergovernmental talks with non-EU states, disregarding that their actions might negatively affect non-invited member states such as Greece. The pressure on Greek authorities, who had to deal with a congestion of migratory flows during the following weeks, might then in fact allow for a talk on lacking solidarity, given a shared sovereignty over asylum and border related issues.

Arguably, while potentially undermining a harmonized European governing of borders, Austria continually enforces post-entry border decisions with the help of mechanisms deriving its involvement in an EU border regime. It actively conducts returns to third states such as Afghanistan based on return agreements negotiated under an EU

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<sup>35</sup> Post-Pröll-Ära: Sobotka unterstützt Mikl-Leitner. Source: Kurier.at (2017), retrieved from: <https://kurier.at/politik/inland/wer-folgt-auf-erwin-proell-innenminister-wolfgang-sobotka-unterstuetzt-johanna-mikl-leitner/241.430.759>, 1.10.2017.



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foreign affairs umbrella. Likewise it tightly cooperates with FRONTEX on organizing charter flights for the deportation of people based in Austria and other member states<sup>36</sup>, while trying to increase the demand for these facilities through initiatives on ‘voluntary’, that is to say self-instructed, return in terms of adversary campaigns and cash incentives<sup>37</sup>. In contrast to that, dispersal mechanisms developed in the light of human rights considerations, such as the relocation program of 2015, have as of today barely been implemented<sup>38</sup>.

Eventually, the question on the meaning of walling facilities with regard to sovereignty might be regarded under the light of an intersectional working together of different technologies of bordering. In this case, walling is an expression of a scrutiny towards territorial borderlines as sites of blockage and systematic control. However, while the limitations of a Westphalian culture of bordering might be factually acknowledged, their implications with regard to nation-state sovereignty are discursively instrumentalized and might be projected onto the way in which consecutive ordering mechanisms are negotiated but also the form in which prevailing provision are implemented.

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<sup>36</sup> Archive of operations. Source: FRONTEX (2017), retrieved from: <http://frontex.europa.eu/operations/archive-of-operations/?p=6&host=Austria>, 1.10.2017.

<sup>37</sup> Neuer Folder „Freiwillige Ausreise und Rückkehrhilfe“. Source: Bundesamt für Fremdenwesen und Asyl (2016), retrieved from: <http://www.bfa.gv.at/presse/news/detail.aspx?nwid=314E514C2F383372456E553D>, 1.10.2017.

<sup>38</sup> Erste Relocation-Flüchtlinge in Österreich eingetroffen. Source: Kurier.at (2017), retrieved from: <https://kurier.at/politik/inland/erste-relocation-fluechtlinge-in-oesterreich-eingetroffen/282.399.971>, 1.10.2017.

## 6. Conclusio

This master's thesis has tried to understand some contemporary political struggles over walls and borders in the European Union under the lens of sovereignty. While the talk on sovereignty seems to have experienced a particular revival in the eye of an unprecedented mediatized visibility of volatile migratory flows across a European landscape, I have pointed out how political science research might not fall into the trap of essentializing such symbolic claims to nation-state sovereignty. Instead, the far-reaching integration of internal matters by EU member states forces us to consider bordering practices such as walling through the lens of a shared sovereignty (Pusterla & Piccin, 2012; Parker & Adler-Nissen, 2012). While a shared European sovereignty on borders cannot rely on traditional repositories of a unified territory and legitimate means of violence, governmentality studies have offered us analytical tools for understanding migration or asylum related security measures as ordering mechanisms that realize borders beyond notions of territorial borderlines and coercion (Bigo, 2002; Walters, 2015). I have named those as bordering through *zoning* as well as the *management of routes*, respectively relating these ordering mechanisms to Foucauldian technologies of power. This has helped us to understand how a European border regime based on shared sovereignty, even though it operates through and relies on traditional sovereignty repositories of state, territory and coercion, adds another layer of complexity to how bordering in the EU is structured. As the following table shows, walling might be understood differently, depending on our thinking about sovereignty.

**Table 6.1: Analytical focuses depending on the theoretization of sovereignty**

	Nation-State Sovereignty	EU Shared Sovereignty on borders
<b>Repositories of order</b>	State Territory Coercion	EU AFSJ Management
<b>Governing</b>	Interior Ministry/ Exterior Ministry / Defense Ministry	EU Justice and Home Affairs
<b>Manifestation of borders</b>	National government Territorial lines	Governmentality Only external borderlines Routes Zones
<b>Understanding of walls</b>	Walls as fortifications	Walls with doors: Walls in conflict with integration

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Initially I have raised the question: what is the meaning of walling endeavors by EU member states with regard to their sovereignty? In the following, I will try to summarize the implications that a theorization of sovereignty and borders beyond the nation-state carries for our understanding of walling along three theses. The first one relates to walls as an expression of coercive power and thus a property of nation-state sovereignty, the second one to walls as an ordering mechanism associated with a Westphalian culture of bordering and the third to the discourse on nation-state sovereignty coming along with walls .

1. *Walls are expressions of states' deployment of their legitimate means of violence, illustrating how EU member states are continually able to coercively intervene in order to sustain an otherwise non-coercive institutional arrangement providing for spatial division under an EU border regime. This becomes particularly evident within the Schengen area, where coercive policing intervention for the purpose of bordering continues, despite an 'abolishment of internal borders'.*

Arguably, EU member states have delegated sovereignty on borders within European integration (although not all did in the same scope). This particularly concerns the implementation of the Schengen acquis but also the integration of interior matters such as migration, asylum and criminal justice within the political domain of Justice and Home Affairs. The institutional arenas where border policies are made but also their content, namely their conceptualization as ordering mechanisms have thereby undergone a crucial transformation, latest since the Treaty of Amsterdam. No longer was this subject that is tightly associated with sovereignty a concern of national interior, exterior or defense ministries and no longer did borders follow the trajectory of national territoriality as enforced along the frontiers of jurisdictional space. Hence, the Area of Freedom, Security and Justice served as a quasi-territorial figure of a political European union, whose borders' conceptualization went in accordance with an economic integration trajectory. The creation of a single market and the associated freedoms within the Treaty of Maastricht had formed a discursive template for the way in which borders were envisaged. In this sense, the abolishment of non-tariff boundaries called for a reconceptualization of internal borders – primarily as a security function to newly won freedoms of mobility (Walters & Haahr, 2005).

Arguably, the creation of a new border regime did not only require new institutionalized forms of action coordination within European arenas, but also some corresponding ordering mechanism, thus technologies of bordering that permit for sensible

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coordination. Far from creating a superstate of systematic surveillance, member states tried to establish a network of institutionalized cooperation that encompasses joint organizational boundaries (particularly through Visa and Dublin provisions), databanks, supranational organizations like FRONTEX, and harmonized procedures for those who are subject to common boundaries. Notwithstanding the persisting of legitimate means of violence within member states, a multi leveled European governing of borders added an additional layer of non-coercive means of bordering in order to ensure a seamless spatial separation of certain groups of people. In turn, the so-called abolishment of internal borders restructured strategic options of policing intervention away from a systematic controlling along territorial lines.

Particularly the erection of walling facilities as expressions of state coercion within the Schengen area renders evident how, for certain types of people, this seemingly unbounded space is far from being devoid of borders. Even if policing might not always be as openly and bluntly displayed as with walling, the member states' legitimate means of violence are continually being activated for the purpose of bordering, regardless of whether one has already crossed a territorial line. While internal borders have changed their form in that they have come to follow mobility instead of being fixed at a national frontier, it is still the traditional repositories of nation state sovereignty through which the realization of borders is achieved. The member *states* continually operate within their *territory*, making decisions on border enforcement and deploying the legitimate means of violence if a "voluntary" compliance of migrants and refugees with the rules of an EU border regime is not given.

Nation-state sovereignty and the corresponding capacities are both a supplemental power resource and a quality of a multi-leveled governing as such (Mezzadra & Neilson, 2013). The latter might operate with ordering mechanisms that are tied to a shared sovereignty as well as such which derive from nation-state sovereignty.

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2. *Walling suggests a consolidation of nation-state sovereignty, without being able to hold this promise. This means that nation-states might claim their own sovereignty rather than a shared sovereignty for different political agendas, although it is not necessarily given in an analytically coherent way.*

Although member states are no longer able so self-determinedly inscribe and enforce borders, they might co-opt provisions of an EU border regime in a way that while border activities are in line with EU law based on shared sovereignty, they are being read optimally by certain addressors as if the state had sovereignty over borders (Parker & Adler-Nissen, 2012).

In this context, walls and fences represent a technical instrument to inscribe borders topographically along a periphery without infrastructure. This might happen along the so-called external borders where, amongst others, EU resources like FRONTEX are used, or even within the Schengen area as it has been illustrated with the example of Austria. Despite different material executions, they can never fully enclose a territory – firstly due to alternative routes and technological cross-border infrastructure and secondly because of ‘doors’, namely legal provisions on mobility or human rights. In this case, they are not more than a quality of a joint European governing of borders per se (as becomes for example evident with Viktor Orban’s claim for the Commission refunding of his walling endeavor<sup>39</sup>) or an additional capacity of power in order to sustain the functioning of European ordering mechanisms (as might be argued in the case of Austria in 2015).

In spite of this, member states might claim nation-state sovereignty. Walls and fences work as icons of a separation between a nationally imagined community that is assumed inside of territorial container and an externally located ‘other’. They permit for symbolic politics reciprocally constructing a self and other as a discursive site of conflict between ‘us’ and ‘them’ which might well be operational for national political agendas (Rheindorf & Wodak, 2017, p. 14).

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<sup>39</sup> EU court dismisses complaints by Hungary and Slovakia over refugee quotas. Source: The Guardian (2017), retrieved from: <https://www.theguardian.com/world/2017/sep/06/eu-court-dismisses-complaints-by-hungary-and-slovakia-over-refugees>, 1.10.2017.

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3. *Although walls as such do not represent a resurgence of nation-state sovereignty, they might come along with a discourse that creates very real effects with regard to the intersectional working-together of different technologies of bordering in favor of nation-state sovereignty and to the detriment of a shared sovereignty.*

This means that member-states are well aware of the limitations of technologies of blocking and controlling along borderlines. Yet this does not keep them from pursuing a Westphalian ideal of sovereignty within the negotiation and implementation of joint ordering mechanisms (Bigo, 2002, p. 68).

I have argued with the example of Austria, where a fence was erected along the southern border to Slovenia in 2015. The project was accompanied by a meta-discursive debate among political actors on the interpretation of this construction. The question of how far Austria was enclosing its territory was eventually replied with the maximum admission level (*Obergrenze*). This organizational boundary of annually 37.500 asylum applications permits for an interruption of further application processing under the declaration of state of emergency. Likewise, Austria has continually negotiated a prolongation of systematic border control along its Schengen borders with the Commission. While the *Obergrenzen* provision has not been activated as of today, it has been met with a lot of criticism, not only with regard to a possible violation of Schengen rules but more importantly due to the question of whether it conforms to human rights and the principle of non-refoulement.

In this context, the Austrian interior minister suggested another ordering mechanism<sup>40</sup> that might intersectionally work together with these provisions on the hardening of territorial lines. Arguably, the spatial compartmentalization of those who are non-eligible for application could be conducted within international waiting zones. This would permit for a governing of border without directly blocking certain migratory flows, while undermining not only EU border provisions but also human rights standards.

At the same time, Austria has been very active in seizing regional networks for a joint management of the *Western Balkan Route* (regardless of possible negative effects on other EU member states such as Greece). It also uses European technologies of bordering provided by networks for deportation to both Dublin states and third states, while on the other hand

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<sup>40</sup> Post-Pröll-Ära: Sobotka unterstützt Mikl-Leitner. Source: Kurier.at (2017), retrieved from: <https://kurier.at/politik/inland/wer-folgt-auf-erwin-proell-innenminister-wolfgang-sobotka-unterstuetzt-johanna-mikl-leitner/241.430.759>, 1.10.2017.

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rejecting to participate within a European humanitarian relocation program of 2015 for a long time.

As this last dimension of walling shows, we might not underestimate the resurgence of some border politics of the territorial line. The latest walling endeavors in the EU demonstrate how a discourse on nation-state sovereignty has reignited latest after the summer of migration 2015. Dismissing these constructions as ineffective amid a deeply integrated political landscape appears just as problematic as a belief in the omnipotency of a fortification of borderlines. Instead, we must consider how, under a shared sovereignty on borders, new technologies of bordering have emerged, forming another layer of complexity to traditional notions of systematic surveillance and blockage along territorial lines. Far from having disappeared even inside the Schengen area, the transforming appearance of borders away from their former Westphalian character has created new sites of contestation. This concerns both, those social and political groups opposing the confinement of movement but also member state actors that are not willing to give up on their territorial borderlines. Neither group might pursue their goals without a broader understanding of borders as multi-level governed ordering mechanisms that take hold of and externalize the non-belonging beyond traditional frontiers.

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## List of tables and figures

Figure 5.1. – Erosion of repositories of nation-state sovereignty (Pusterla & Piccin, 2012, p. 123)

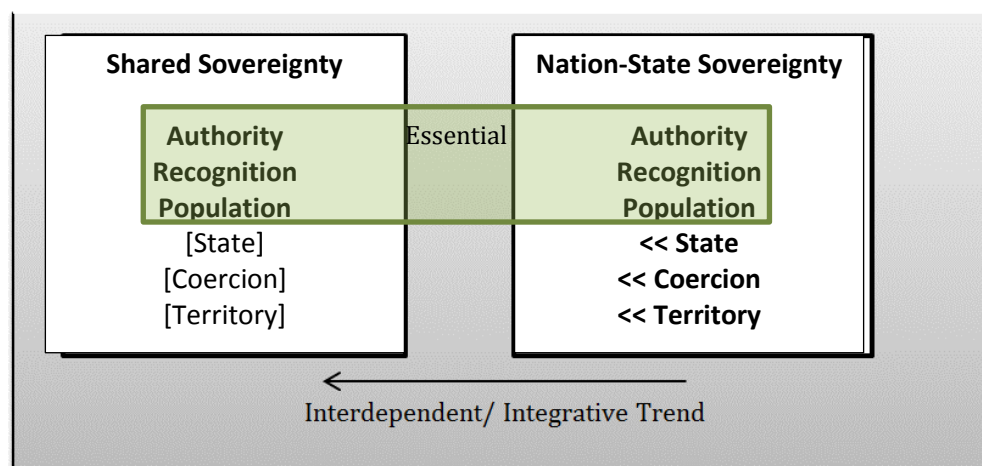


Table 6.1: Analytical focuses depending on the theoretization of sovereignty

	Nation-State Sovereignty	EU Shared Sovereignty on borders
<b>Repositories of order</b>	State Territory Coercion	EU AFSJ Management
<b>Governing</b>	Interior Ministry/ Exterior Ministry / Defense Ministry	EU Justice and Home Affairs
<b>Manifestation of borders</b>	National government Territorial lines	Governmentality Only external borderlines Routes Zones
<b>Understanding of walls</b>	Walls as fortifications	Wallls with doors: Walls in conflict with integration