EDITIONS DE L'UNIVERSITE DE BRUXELLES

Governing Diversity

Migrant Integration and Multiculturalism in North America and Europe

EDITED BY ANDREA REA, EMMANUELLE BRIBOSIA, ISABELLE RORIVE, DJORDJE SREDANOVIC

iee INSTITUT D'ETUDES EUROPEENNES

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Introduction

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1. Contradictory Trends in Diversity Policies: Protection against Discrimination, Valorisation of Identity and Pressures Towards Cultural Conformity

During the 2000s, the European Union (EU) has witnessed a significant change in terms of integration policies for immigrants. Countries like Sweden and the Netherlands, who were both pioneers of multicultural policies in Europe both significantly limited such policies in the late 1990s. Restrictive measures, requiring higher levels of integration in order to access and maintain legal statuses, have been enacted by most Western European countries since then, especially after 9/11. In October 2010, in a very polemic context on immigration and immigrant integration, the German Chancellor, Angela Merkel, announced that Germany was to be considered a multicultural failure, words that were soon echoed by the Belgian Prime Minister Yves Leterme. A few months later, the British Prime Minister David Cameron and the French President Nicolas Sarkozy announced the failure of multiculturalism in almost identical terms. These sensational statements, which by and large avoid defining the concept of multiculturalism, are based on a reaffirmation of "Western values" and strengthening of national identity. These statements express the need to review the policies on integration of immigrants, in the sense that they should be more active and voluntarist, more organized by the state and more supported by the EU. In the background, one can see fear for Islamic extremism, but also the idea that the nation states can put some obligations on immigrants, and that for a too long time we have been focusing on "those who arrive", rather than on "the society that welcomes them". These speeches are situated in a politico-legal context that in recent years was characterized by an ambivalent attitude towards diversity in Europe. On the one hand, we have seen accusations of racial, ethnic and religious discrimination, based on anti-

discrimination legislation boosted by a strong European equality legal framework. On the other hand, we have seen denouncements of the perceived risk posed by Islam in Europe. These policy statements are also a result of numerous publications, often widely discussed in the media that outline the dangers of Islam in Europe (especially in the Netherlands). These political positions have also led to political decisions demonstrating the lack of legitimacy of Islam in Europe, such as the ban on building minarets in Switzerland or the Burqa bans adopted in the name of protecting national values and the "living together", notably in France and Belgium (2011).

This book intends to address the relationship between, on the one hand, cultural diversity resulting from migration, and on the other hand social cohesion and social justice within Western societies. In order to do this, we will examine what can be described as two contradictory trends in recent public policies towards foreign people or people with a foreign origin: first, the policies against ethnic, racial and religious discrimination; and second, new harsh integration policies for newcomers in Europe. Since the end of the nineties, and even before in the United States and Canada, anti-discrimination policies have been implemented mainly through the development of legal instruments, on the basis of the principle of equality, and more precisely through legal practices that promote the transition from formal equality to substantive equality. At the same time and following other goals, and especially in Europe, where political intervention is strong, new integration policies were initiated for new migrants with the claimed purpose of strengthening the social cohesion of the host societies. These new integration policies aim to reduce the risk of marginalization of the newcomers but also increase cultural conformity expected from those migrants.

This book aims to provide a trans-disciplinary analysis of the construction of "otherness" in North America and Europe. Some papers are the result of the final conference entitled "Migration, Ethnicization and the Challenge of Diversity. The Others in Europe and Beyond". Most of the papers on national integration policies here included were produced specifically for this book. Two papers (Pascouau and Bonjour) were written in 2012. The ULB team contributions reflect the results of two transdisciplinary researches: *Outsiders in Europe. The Foreigner and the 'Other' in the Process of Changing Rules and Identities* and *In Search of Cultural Conformity. The New Integration and Migration Policies in Europe*, conducted by the center for transdisciplinary research Migration, Asylum and Multiculturalism (MAM) of the Université Libre de Bruxelles. The two researches were funded by the Ministère de la Communauté française de Belgique, Direction recherche scientifique, Action Recherche Concertée.

2. Ambiguous Concepts: Integration, Multiculturalism, Diversity

Most of the concepts used to describe policies are inherently ambiguous. On the one hand, these are general concepts that aim to describe general phenomena, and always depend on assumptions on how contemporary societies work. On the other hand, the same concepts are used to describe concrete legislation, which was obviously enacted with far more goals beyond empirical clarity. Any policy analysis can start either from the general concept or from the concrete legislation existing in different contexts. In these pages we will first try to clarify some of the concepts – integration,

multiculturalism and diversity – largely used to describe policies directed at migrants and minorities[1]. We will then look at the change in concrete legislation, giving some interpretation of its directions and causes, and finally advance some general policy implications deriving from our analyses.

Integration can be subdivided – even in the simpler models – in economic (employment, class position), social (sociability, residence, intermarriage) and cultural (knowledge of and adherence to local culture and values) integration. Portes and Zhou (starting with Portes and Zhou 1993) have famously showed that the different dimensions of integration are not necessarily linked in the experience of migrants – that certain migrants reach full economic integration despite only partial cultural and social integration and that others remain economically marginal despite full cultural integration. Portes and Vickstrom's contribution to this volume returns on the issues of social and cultural integration. While they acknowledge that immigrants do not necessarily enter in tightly-woven social networks, they also criticize Putnam's (2000, 2007) claim that such networks are necessary for the common good, and show point by point the limits of Putnam's analysis in this sense.

If the image of a holistic integration that links the different aspects has been criticized, the single dimensions are not free of criticism either. Cultural integration is the most debated dimension and the one that attracts most perplexity as a concept. Not only there are normative doubts about the requirement to adopt the majority culture, but a more general doubt exists about the existence of shared, homogeneous, easily distinguishable and coherent majority cultures to which migrants should integrate (see for example the critique in Kostakopoulou 2010, and, for a larger critique of the origins and coherence of national cultures, Anderson 1983, Hobsbawm 1990 and Brubaker 2004). However, the other dimensions of integration, while less discussed and controversial, are not exempt from ambiguity. Linguists have not only criticized the general assumptions about monolingualism and universally shared standard variants of language in a given (national) context. They have more specifically objected the role of language tests in immigration and citizenship policies (e.g. Shohamy and Macnamara 2009). In the same way, the political values that republican theorists of citizenship (e.g. Schwarzmantel 2003), but also some liberals such as Habermas (1994), propose as a substitute for cultural requirements, assume a strong sharing of political values in the majority population that is hard to take for granted. Moreover, when the "national" political values are translated in policies and tests, these often refer only to general liberal-democratic principles that are hardly specific of a single state (Joppke 2010).

Social and economic integration have attracted less controversy as concepts, both because the ideas are not as value-charged as cultural integration, and because the processes are understood as being "in the migrants' own interest". However, if the same processes rather than descriptive become prescriptive, and are established for prerequisites to access formal rights, some issues arise. Economic integration assumes

[1] These are only some of the concepts commonly used. Others include the peculiarly French concept of *mixité*, or the concept of interculturalism, for which we refer the readers to the chapters by Berry, Crépeau, and Bribosia & Rorive in this volume.

a context characterized by availability of (non-marginal) jobs, social mobility and at least a modicum of economic dynamicity. Migration studies do routinely recognize the impact of the job market on migration trajectories, but in many studies the economic success (or lack thereof) of migrants is attributed exclusively to their personal characteristics or, to a lesser degree, to integration policies.

Social integration further assumes the presence of a cohesive, non-segregated society in which significant interaction is normally possible between all sectors of the population. Portes and Vickstrom's contribution in this volume points out how often the point of reference of this assumption is an outdated image of a communitarian society, which has little to do with contemporary societies regardless of the levels of immigration and diversity. More generally, one of the major arguments of the multiculturalism backlash, the idea that it creates separate groups within society, leaves unexamined the isolationism and lack of cohesiveness of the majority group, or, rather, looks only at more clearly ethnically-coded separations within a given society.

A second ambiguity present in the concept of integration is its relation to the older and cognate concept of assimilation. The interpretations of this relation goes from those stating the identity of the two (or at most that integration is a politically correct term for assimilation) (Joppke and Morawska 2003) to positions that consider the two concepts as necessarily separate (Pfeffer 2014). In some cases (Barry 1984, 1997; this volume) integration is explicitly opposed to assimilation and defined as participating both to the culture "of origin" and to the one "of residence", with assimilation involving only a participation to the latter. In this sense, there are two distinct issues involved: to what degree minority cultures are legitimized in a given context, and what is the level of expectations to conformity to the majority culture that migrants and minorities are subject to. If by assimilation we mean the lack of distinguishability from the majority group there are two considerations to make. On the one hand assimilation is a more demanding concept, as it presupposes the disappearance of all markers (which becomes particularly problematic when the marker is racial, as Oppenheimer, Prakash and Burns point out in this volume). On the other hand integration as a concept adds further assumptions: minorities and migrants are not only assumed to become similar to the majority population, but to enter social and economic structures that might not even exist in the society as a whole in the terms assumed by the idea of integration.

Multiculturalism as a concept differs from integration on the cultural dimension, as it does not prescribe that migrants or minorities should acquire the cultural orientation of the majority (on the other hand multiculturalism is silent on economic integration, and, as we will see shortly, can imply different orientations on linguistic and social integration). While multiculturalism abandons the idea of a single coherent national culture, it is in most cases still based on the assumption that cultures are homogeneous (see Turner 1993 and Caglar 1997 for a discussion). Most definitions of multiculturalism prescribe the recognition of the cultures of distinct groups and the conferment of equal cultural rights to all the groups. The ambiguities highlighted for the concept of cultural integration are thus reproduced at a smaller scale, and indeed this has been the origin of many of the criticisms against multiculturalism. The assumption of homogeneity of minority groups has been severely criticized, one of the main objections being that multicultural approaches could reinforce the

marginalization, if not the oppression, of the weaker sectors of each minority group (Eisenberg and Spinner-Halev 2005). As with integration, multiculturalism is also at the center of controversies regarding its definition. In Canada, where the term has originated in the 1970s, multiculturalism has developed as an overall policy, which also includes dimensions such as the acquisition of the majority languages (see e.g. Banting 2014; Crépeau in this volume). In Europe, in which on the other hand multiculturalism was defined as opposed to assimilation if not to integration, only the measures that attribute cultural rights to groups are recognized under the term. It should be further added that Canadian multiculturalism is more individual-oriented than the mostly groupist definitions existing in Europe (see Kymlicka 2015; Berry and Crépeau in this volume). Canadian authors, such as Banting (2014) and, in this volume, Berry and Crépeau, are thus critical of the definitions of multiculturalism prevalent in Europe. This is far from being a nominalist issue, as, as we will see shortly, the judgment on the goals, the success and the acceptance of multiculturalism vary significantly according to which definition is privileged.

Diversity is a third concept that deals with the issue of the coexistence of different subjectivities in society. Other than describing the empirical variety of a population, the term also describes measures taken to increase (and/or to valorize the existing) diversity within a given context. Such concept does not have the large diffusion and social salience of integration and multiculturalism, and it has the largest influence in the context of admission to higher education and hiring practices in the US. Where affirmative action aimed to redress historical injustices and often to represent proportionally different groups (in the US, usually racial groups) in order to compensate unequal opportunities, the diversity approach aims to give space to a larger variety of social profiles existing in society without establishing a strict proportionality. The US Supreme Court ruled against college admission quotas (and thus against proportional representation of the population) in *Regents of the University of California v. Bakke* (1978), but at the same time recognized diversity of the student body as a legitimate justification for prioritizing the admission of disadvantaged minorities. With a backlash against affirmative action gaining strength starting the 1980s, diversity was taken on as a more nuanced and less controversial policy (Anderson 2004; Herring and Henderson 2011). On the one hand diversity can be considered to have the potential to go beyond the groupist approach of multiculturalism[2] by recognizing several dimensions of disadvantage – ethnicity, gender, class, sexual orientation, (dis)ability, etc. – and has been linked with intersectional approaches to in order to recognize such dimensions within each individual (Padilla 1997; Herring and Henderson 2011). On the other hand, diversity is a more timid alternative to affirmative action, and, according to many critics (e.g. Collins 2011), a depoliticized and management-oriented one. Further, even diversity maintains an essentialist dimension, as each

[2] The understanding of diversity we propose focuses on what distinguishes the concept from multiculturalism and from affirmative action. However, the uses of "diversity" are particularly far from being uniform: Vertovec and Wessendorf (2012: 18-21) argue that "diversity" is used as a synonym of "multiculturalism" that has not undergo backlash, while in another work Vertovec (2012) argues that diversity is an inherently vague term.

individual is implicitly considered to represent, if not all the groups of which she or he is a member, at least all the cultural and social traits that she or he embodies.

3. The Directions of Change

The diffusion and fortune of the different policies here considered has attracted a significant volume of academic debates. Researchers either study the evolution of a given policy in a monographic fashion, reconstructing in detail the development in a single state, or trace comparatively the evolution in its convergences and divergences in a larger set of states. The present volume, especially in its second part, offers both a comparative framework chapter (Pascouau) and monographic chapters on Austria, the Netherlands, Italy and Belgium (Mourão Permoser, Bonjour, Caponio and Testore as well as Adam, Martiniello and Rea).

In one of the first comparative works based on a larger set of countries, and focused in particular on citizenship and naturalization legislation, Hansen and Weil (1999) suggested three mechanisms through which different countries can converge towards similar policies: institutional imitation, external constraints (in particular supranational law) and similar responses to similar situations. If these are the (cross-national) forces that influence legislation change, each policymaking context is also characterized by some degree of institutional path dependency and inertia, and by more or less codified cultural orientations, which limit the probability of radical changes of direction in the policies.

The main issue in interpreting the evolution of the policies is whether a set of states – usually Western Europe and the Anglo "settler societies" – are converging towards a common approach to migration and integration, or whether there are still strong differences, in term of current policies, direction taken, and distance between the trajectories. The first position is mostly associated with Joppke's theory of liberal convergence (2007). Such convergence is explained, beyond the categories proposed by Hansen and Weil (1999), also by the role of diffused liberal-democratic norms, and in particular by their entrenchment in the judiciary. On the other hand, several authors (see Jacobs and Rea 2007) have pointed out to continuing differences between states in terms of policy, differences that originate both from path-dependence entrenched in previous national legislation and from the lack of actual clear-cut convergence. The contributions collected in this volume continue to show that the convergence in legislation is far from being definitive. National models do not allow to foresee the direction legislation change takes in the medium period, but even in the EU, where the pressures for convergence should be stronger, the situation is far from homogeneous. Pascouau's comparative analysis of 23 European countries shows not only the existence of several approaches to (mandatory) integration, but also that even the states that choose similar approaches implement them very differently. Similarly, the single-state studies on Austria, the Netherlands, Italy and Belgium show not only strong differences between the national contexts, but also that even in the more important changes in policy there is a path-dependency effect that brings to the partial reproduction of the previous approach.

The interpretations of the diffusion and change of the three concepts previously examined – integration, multiculturalism and diversity – have to be discussed. The

concept of integration is strictly linked with the nation-building processes that started in the late 18th century (Hobsbawm 1990) and with the first policies that saw immigrants as a component of the future population – the melting pot in the US and its equivalent in France (Noiriel 1988). Joppke and Morawska (2003) point to World War I as a defining moment in the affirmation of assimilation – as the population outside the cultural norm started to become targeted as a possible internal fifth column. World War I has indeed been a turning point in defining several long standing norms that influence international mobility – including the consolidation of the national border as an institution (Torpey 2000). However, rather than the norm of cultural conformity – which is central to national projects and pre-existed the acceleration in nationalizing processes during WWI – it is the idea that immigrants have to become part of the national population that took time to develop. Differently from "settler societies" such as the US, Canada or Australia, European states started integration or quasi-integration policies only when immigrants and their descendants were recognized as a permanent presence – something that happened in Northwestern Europe during the 1980s and in Southern Europe during the 1990s. While there is a certain consensus on the history of immigration policies in Europe until the late 1980s, the period starting from the 1990s is the object of separate interpretations. Mid to late-1990s have shown a marked, although not univocal, restrictive trend in immigration and minority policies across Western Europe and, to a lesser degree, in Anglo "settler societies". The role of the xenophobic far-right and of international terrorism (New York and Washington in 2001, Madrid in 2004 and London in 2005) are the two most common explanations invoked for this shift. However – while both the phenomena have been clearly important, it should be underlined that in the European countries that had developed explicit multicultural policies – Sweden and especially the Netherlands – the restrictive shift started earlier. Multiculturalism was mostly abandoned in 1997 in both the Netherlands (Entzinger 2003) and Sweden (Borevi 2013), and the Netherlands in particular witnessed over the years a restrictionist tendency in its policies. Not only these events antecede 9/11, they also developed while both countries had no significant xenophobic far-right parties, and indeed after the exit of two smaller such parties (New Democracy in Sweden and the Center Democrats in the Netherlands) from national Parliaments. The far-right has become important later in the Netherlands (first with the List Pim Fortuyn and later with the Party for Freedoms) and more recently in Sweden (with the Sweden Democrats), and its influence has been largely demonstrated for the Netherlands (see also Bonjour's contribution in this volume). In any case, some additional factors are clearly needed to explain the overall tendency [3].

The EU has been an additional factor in the development of integration policy change. Although the policy of integration of migrants is not a EU competence as such, this policy experienced a profound convergence through the production of soft law, especially since the adoption by the Council of Ministers of the EU, in November

[3] Some recent studies have further put in doubt the degree to which the far right can be considered determinant in a comparative perspective – see Meyer and Rosenberger (2015) on the politicization of immigration in media discourse and Sredanovic (2016) on citizenship legislation change.

2004 of the Common Basic Principles of Integration. As member states in some cases opt out of, or simply do not comply to inclusive norms, while restrictive norms in some cases are applied even without being mandatory, some have argued that EU norm harmonization is done aligning the different states to the most restrictive option existing. Rea, Bonjour and Jacobs (2011) have shown that the situation is more complex. On the one hand, member states that have norms more restrictive than those existing in the European directive usually push to have such norms recognized as a possible policy option, in order to legitimize the existing legislation. Once that restrictive norms appear in this fashion within EU directives, single governments can choose the political opportunity to introduce them in their own country. EU legislation can thus influence directly member state legislation and bring about political opportunities, but in the second case the legislation change needs the political will of the government in power in order to actually happen. On the other hand, since the turn of the millennium, several EU directives (subsequently transposed into national law) have improved possibilities to fight against discrimination, by extending the scope of anti-discrimination instruments to race, ethnicity and religion (Bell 2002; Schiek, Waddington and Bell 2007). The results of the MIPEX projects reveal an extension of rights of foreign nationals in Europe. Legal instruments have been heavily reinforced, giving the courts – and in particular the Court of Justice of the European Union and the European Court of Human Rights – tools to support the emergence of an important case law in the fight against discrimination and management of cultural diversity, for example on the issue of reasonable accommodation (Bribosia, Ringelheim and Rorive 2010 and Bribosia and Rorive 2015). At the same time, other more controversial measures against discrimination (such as positive actions, the collection of data and the use of statistical tools) have remained relatively marginal (Amiraux and Guiraudon 2010).

The integration programs introduced are based on learning the language, history and institutions of the host country that are necessary for a successful integration. Several countries have imposed integration measures, such as the knowledge of the language, in the country of origin as a condition for obtaining an immigration visa (Germany, United Kingdom) (Groenendijk 2011). Others have imposed such integration measures in the country of installation (Lithuania, Greece, Austria, Cyprus), or both in the country of origin and in the country of installation (Denmark, France, Netherlands). Moreover, various integration conditions were imposed in thirteen countries (Pascouau 2011) for migrants who apply for a permanent residence permit. The EU is now trying to coordinate the integration policies without harmonizing them (Odmalm 2007). Many countries did start this policy well before the emergence of a European convergence process; at least nine European countries had introduced integration courses for new migrants (Michalowski 2004; Carrera 2006; Jacobs & Rea 2007; Carrera & Wiesbrock 2009). As observed by Carrera (2009), European countries expect migrants to be "perfect citizens". In addition, these new integration policies have evolved since their introduction. They have become more demanding in the sense that integration modules have often changed from being voluntary to being compulsory. Also, the obligation to follow training courses in order to access certain rights has given way to the obligation to successfully pass tests. Finally, coercion was coupled with another

process that is currently only verifiable in the Netherlands: the outsourcing of the implementation of these policies to private commercial actors.

Multiculturalism as an official policy has a clearer history, but is also at the center of a more heated scholarly debate. The idea of giving space to the cultures of different minority groups developed mostly in "settler societies" starting with the 1960s, and was first codified in an official and active policy in Canada in 1971. Kymlicka (2015) underlines how the policy in Canada was initially ethnicity-oriented, and only later incorporated considerations about race and religion. The history of multiculturalism is thus mostly the history of the diffusion of an institution, that reached, to different degrees, Western European countries[4]. The great controversy, as mentioned, is however about the health of multiculturalism today outside Canada. There is no doubt that a backlash hit multiculturalism in Europe, US and Australia since the mid-1990s (Joppke and Morawska 2003; Vertovec and Wessendorf 2010). For some authors such backlash has practically ended multiculturalism and brought the return of assimilation (Joppke and Morawska 2003). Other authors criticize this analysis for a different number of reasons. In some cases the degree to which single European states ever had a real multicultural policy is challenged (see e.g. Schönwälder 2010 on Germany). In other cases the backlash is understood to be mainly discursive as multicultural policies continue locally for pragmatic reasons, or are recombined in new forms (Jacobs 2004; Vertovec and Wessendorf 2010; Kymlicka 2010; Lentin 2014). Some Canadian authors (Banting 2014; Berry and Crépeau in this volume), as already mentioned, do not see a contradiction between the promotion of minority cultures on one hand and, for example, the teaching of majority language(s), and therefore see the backlash itself as a case of misunderstanding of the concept.

Diversity's history as a policy is clearly connected to the rise and fall of affirmative action in the US. As in the case of multiculturalism in Canada, affirmative action and equal opportunity policies in the US started with a focus on race but later expanded to gender, ethnicity, sexual orientation and disability. However, the decoupling between affirmative action and diversity in the US was caused by the backlash against the former that developed starting with the 1980s and by the substantial stop to affirmative action policies in the 1990s (Kelly and Dobbin 1998; Lipson 2008). Diversity as a more complex – but according to some critics, also softer – approach, survived the end of affirmative action for two reasons. Kelly and Dobbin (1998) point out to the entrenchment of anti-discrimination professionals within human resources: while the legal requirements linked to affirmative action waned, these professionals proposed diversity as having business value, finding new scopes for their own skills. In the other central domain of diversity in the US – admission to higher education – diversity substituted affirmative action to comply with gradual legal attacks that developed from the late 1970s and well into the 2000s against affirmative action, and in particular against race-based affirmative action (Berrey 2011). Moreover, an

[4] One should not however underestimate the role that the promotion of the cultures of origin had for Northwestern European states in a perspective in which immigrants were to return back after working for a limited period. In this sense a number of countries maintained similar instruments while re-orienting them from a temporary to a permanent residence perspective.

emerging professional norm sees diversity as a trait that makes universities more attractive to their (non-minority) public (Lipson 2007; Berrey 2011).

The diffusion of diversity outside the US is mainly due to the prestige of US institutions in several areas. Vertovec (2012) points in particular to two processes through which the diversity approach found a place in Europe [5]. On the one hand, the diffusion of the diversity approach benefited from the 2000 EU directives on Race Equality and Employment Equality, as the introduction of relatively new anti-discrimination norms in EU member states was the occasion to import the diversity approach that had become popular in the US (in the UK, where anti-discrimination norms were already developed, cultural proximity with the US played a role). Secondly, the prestige of US management approaches brought several large corporation in Europe to import diversity management even in absence of legislation as the one that brought to diversity management in the US (see also Calás, Holgersson and Smircich 2009).

4. Policy Indications

Given the several controversies presented until now, we can advance only some very prudent policy indications. Firstly, we have underlined the several ambiguities of the concept of integration and of its different dimensions. These do not necessarily mean that any requirement for entering and remaining on a national territory is automatically unfounded. While international norms limit the discretion for what concerns asylum, right to family life and non-discrimination, conditionality remains legitimate in the other fields of migration and integration policies. Three observations however remain for what concerns this conditionality. Firstly, requiring from migrants and minorities to fulfill requirements that are not fulfilled by significant part of the majority that is already entitled to full citizenship brings serious normative issues. Secondly, there should be a larger consciousness about the images of the majority sector of society implied in integration policies. We have underlined how the different components of the concept of integration are based on ideas about the cohesiveness of the majority population that are empirically dubious if not outright unrealistic. When establishing requirements for migrants and minorities, policymakers should never take for granted that the majority population is homogeneous under the point of view of language, culture or values, or that it is socially and economically integrated. Thirdly, one of the major policy approaches in promoting integration is to make entrance to and residence on the territory, and the acquisition of permanent residence and citizenship, conditional on measures on integration. In several cases the trade-off between the goals is potentially questionable. Through this measures governments offer a "low cost", but precious, good – legal status – to incentivize integration, rather than directing public spending to the same goal [6]. Potentially depriving migrants of rights and security in order to "make them integrate" can be a bad trade-off not only for the migrants, but in many cases for the society as a whole.

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[5] See also Faist (2009) for a similar reconstruction.

[6] There is obviously the issue of whether integration requirements are matched with publicly funded integration and language courses – see Mourão Permoser and Bonjour in this volume.

The turning point was also made with the publication of several scientific studies highlighting the negative effects of cultural diversity related to migration on the social cohesion of immigration societies. The best-known research in this area is undoubtedly the article by Robert Putnam (2007) "E Pluribus Unum: Diversity and Community in the Twenty-first Century". From a research on the relationship between ethnic diversity and social cohesion, Putnam argued that diversity in the United States is strongly related to the tendency to withdraw from collective life. The main findings of his study point out that immigration and cultural diversity tended to reduce social solidarity and civic-mindedness. Putman's paper contains one of the core questions related to the thesis of the failure of multiculturalism: Does cultural diversity reduce the social cohesion of a society or decrease the civic and political participation of its citizens? Some research (e.g. Jacobs, Martiniello and Rea 2002; Bloemraad 2006; Kesler and Bloemraad 2010) shows, to the contrary, that diversity increases the social and political participation of the minority groups and the participation of individuals belonging to the minority group. Indeed, once we define social cohesion in a non-restrictive way – that is, by avoiding the implication of a culturally homogeneous community – then much of the research would suggest the opposite – that cultural diversity actually contributes to social cohesion through participation and recognition. We propose that social cohesion has to be understood as common rules legitimated and guaranteed by institutions and accepted and shared by individual citizens regardless of their cultural background or identity. In this book we define cultural diversity as a public resource and multiculturalism as a policy that promotes and improves equality along with diversity. In other words, multiculturalism is not a policy that promotes the rights of ethnic groups but a policy that allows individuals, from ethnic majorities and minorities, to claim equal rights, not special treatments. This means that only if diversity implies a state of segregation and high levels of racial and ethnic discrimination, it becomes a threat for social cohesion.

5. Summary of the Chapters

The volume is subdivided in two parts. In the first part the focus is on diversity, multiculturalism, interculturalism and anti-discrimination in Northern America and Europe. By studying different policy aspects the chapters give a representation of the variety of roles diversity has played in the societies on the two sides of the Northern Atlantic and in history. The second part focuses on integration policies, and in particular integration requirements, in European countries. Looking closely at the restrictive turn took by migration and integration policies in Europe since the late 1990s, it gives a comparative assessment of the state of such policies across the EU. The juxtaposition of the two parts illustrates the coexistence of an integrationist, restrictive turn and at the same time of the continuing vitality and validity of diversity, anti-discriminatory and multicultural policies.

The opening chapter by John W. Berry starts from central theories in social psychology to argue that integration, multiculturalism and interculturalism are not opposite approaches, but rather different hypotheses about the relation between groups. By distinguishing between the strategies of the minority groups and those of the majority/policymakers, and by linking the different hypotheses to different policy

components (cultural, social and communicational), Berry argues that the different approaches are compatible and actually co-present in the multiculturalism policy in Canada. As other Canadian authors (e.g. Banting and Kymlicka), Berry thus gives a perspective that is different from the debate – both scholarly and political – prevalent in Europe, which considers integration and multiculturalism to be two diverging concepts.

Alejandro Portes and Erik Vickstrom return on the long-debated issue of diversity and social capital – defined, as in the work of Putnam, as diffused trust. By reanalyzing the work of Putnam on the US they show systematically how this operationalization of social capital has been overestimated in its social effects. By further reviewing the literature on social capital and diversity developed starting with Portes, they show that there might be evidence that diversity lowers mutual trust, but also that this has a limited impact on society. Rather than fragmenting society, the author points out, diversity merely clashes with a communitarian (in the sense of Tönnies) vision of society which is not only normatively superior, but is also illusory in contemporary complex societies regardless of the role of diversity.

David B. Oppenheimer, Swati Prakash and Rachel Burns also focus on the US, showing how the history of immigration in the country has not been one of integration or accommodation, but rather a history of differentialist rejection, both institutional and social, of each new group of immigrants. The authors argue that it is only through an active effort for assimilation – and assimilation to a norm of whiteness – that Irish Catholics, Eastern European Jews and Italians managed to avoid discrimination. The groups for whom whiteness is not available – including African-Americans, to a lesser degree Chinese and Japanese, and, at the present moment, Mexicans, are also consequently burdened by discrimination despite efforts for assimilation.

With François Crépeau's chapter we return to Canada. As Berry, the author also considers Canada's multiculturalism as a policy which assures the respect of the rights of minorities, but also underlines how some aspects – such as the reasonable accommodation of religious norms – have been brought into existence mainly through the role of the judiciary and the concept of equality. In the context of Quebec, where concern about the continuing vitality of French language has brought an emphasis on interculturalism rather than multiculturalism, reasonable accommodation and other issues linked to minority cultures have been met with significant hostility. The author argues therefore that full respect of minority rights can come only from constitutional entrenchment of such norms, rather than ordinary political measures.

Emmanuelle Bribosia and Isabelle Rorive analyze interculturalism and intercultural dialogue both as enacted within European societies but also within the Council of Europe and the European Union institutional frameworks, with a continuous comparison with the situation in Canada and especially in Quebec. The authors underline two paradoxes in particular. The first is that courts in Europe often find themselves dealing with conflicts between the norm of non-discrimination on the basis of gender and non-discrimination on the basis of religion when examining cases that in Canada would have been dealt under the principle of reasonable accommodation. The second is that, since the supranational courts, and in particular the European Court of Human Rights, deal with the diversity between national

majority cultures while using the national margin of appreciation, the intercultural dialogue promoted by the Court can bring it to consistently favor the majority culture at the expense of an intercultural dialogue within European societies.

In the concluding chapter of the first part Alejandra Alarcon Henriquez present the result of an experimental psychological research about anti-discrimination norms in Belgium. Starting from an actual case of explicit ethnicity-based discrimination in hiring practices, the authors conducted two separate studies to see whether the willingness to take measures against discrimination is influenced by the positive opinion of an expert and by the presence of a referent (in this case, the information that the discriminated person is of the same ethnicity of the interviewee). The conclusion is that experts have a stronger effect, as their opinion increases the willingness to take action, while there is no link between strength of identification with the referent and willingness to act.

The second part of the book starts with the frame-setting chapter of Yves Pascouau on integration policies in 23 European states. The analysis shows a large diffusion of mandatory integration requirements for non-EU migrants (17 of the 23 states studied) and a more modest diffusion of integration requirements for family reunification candidates (5 EU member states). As for pre-entrance requirements, the author underlines that there is potentially incompatibility with EU norms both for the harder version (passing a language test) and for the softer version (compulsory language course) of the requirements. As for the requirements for non-EU citizens present on the territory, the analysis shows a great variation, between approaches based on "contracts", tests or general requirements, and in terms of definition of language and civic integration requirements.

The remaining four chapters focus each on an EU member state: Austria, the Netherlands, Italy and Belgium. Julia Mourão Permoser analyses the integration norms in Austria from 2003 to 2013. She shows how the mounting exclusionary nature of integration norms on a symbolic and discursive level was matched only partly by actual restrictive effects on immigration. Language requirements did not have an exclusive effect initially because of the lack of sanctions for non-compliance and then because of public funding of language courses and the moderate numeric impact of the sanctions, while the cultural and value-based requirements were implemented in a non-assimilatory way. Only with the 2011 reform of the language requirements, which increased the hurdle without matching it with public funds, did the policy shifted from symbolic to actually exclusionary.

Saskia Bonjour investigates the different parliamentarian discourses on integration requirements in the Netherlands between 2004 and 2011. She shows how the changes in integration policies can be understood as neoliberal, provided that neoliberalism is not understood as a simple retreat of the state, but rather as a different way of government in which the state maintains coercive measures while decreasing public provision of goods. She further shows how counter-intuitively the left wing parties were the one to depict migrants as needing guidance, in order to promote mandatory participation in state-funded courses without tests. On the other hand the right-wing discourse insisted on the capacity and autonomy of the migrants, which matched their preference for the introduction of tests and the passage of courses on the free market.

Tiziana Caponio and Gaia Testore's analysis of the introduction of the integration agreement in Italy echoes Mourão Permoser's analysis of the Austrian case. The authors show how the measure was promoted as a control policy in the context of a general public order approach to immigration, but also how the implementation measure changed significantly its nature. The introduction of integration policies and the involvement of Ministry of Education structures shifted the integration agreement's nature from mainly control-oriented to control-and-integration, while the decrease of authorized work migration and the exemption of regularized migrants from the requirement *de facto* limited its application to family reunification.

Finally, the chapter by Ilke Adam, Marco Martiniello et Andrea Rea shows the internal articulations of the integration and citizenship policies in Belgium. They show how, starting with the 2000s, the federal citizenship policies first moved towards more open norms, and then back to a restrictive an integrationist approach. In parallel, different integration policies developed between the Dutch-speaking, Francophone, Germanophone and Brussels contexts. While initially only Flanders had a mandatory integration course, the Francophone Community and Brussels have also recently introduced similar course, also because of the need to match the integrationist citizenship policy, and because of a EU context that favors integration programs. At the same time the Flemish approach and that of the rest of the country remain different – cultural integration-oriented in the former, social integration-oriented in the latter, showing the continuing importance of different local approaches to integration.

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I
Diversity and Anti-discrimination Policies in North America and Europe

Intercultural Relations in Plural Societies: A Comparative Perspective

John W. Berry

Introduction

One result of the intake and settlement of migrants is the formation of culturally plural societies. In the contemporary world all societies are now culturally plural, with many ethnocultural groups living in daily interaction. A second result is that intercultural relations become a focus of public and private concern, as the newcomers interact with established populations (both indigenous and earlier migrants). How, and how well, these intercultural interactions work out is one of the main contemporary issues to be addressed by policy-makers, institutions, communities, families and individuals.

This existing cultural diversity will become more and more so over the coming years. All industrialised societies will require immigration in order to support their economies and social services. For example, by 2030, the EU will need 80 million immigrants, the USA 35 million, Japan 17 million, and Canada 11 million (Saunders 2010). Thus, research into the underpinnings of intercultural relations is an urgent matter in such societies. It is perhaps even more important in the most diverse societies in the world (such as Brazil, China, India and most of Africa), as internal migration sets the stage for intercultural engagement within these vast societies.

Much of the research on intercultural relations has been carried out in *settler societies*, ones that have largely been built upon immigration (e.g. Australia, Canada, New Zealand, and USA). A key research question is whether findings from these societies apply to nation states that have long-established national cultures, such as those in Europe and Asia. Comparative research on migration and settlement is essential in order to answer this question. With such comparative research, it may be possible to discern some basic principles that underpin the processes and outcomes of intercultural relations in these plural societies. The search for such principles can be guided by hypotheses. Three such hypotheses are considered in this paper: the

multiculturalism hypothesis; *the integration hypothesis*; and the *contact hypothesis*. The approach taken here is to use the comparative method, which is the hallmark of the field of cross-cultural psychology.

1. Cross-Cultural Psychology

The field of cross-cultural psychology seeks to understand the relationships between the development and expression of human behaviour, and the cultural contexts in which it takes place (see Berry, Poortinga, Breugelmans, Chasiotis & Sam 2011, for an overview of this field). Cross-cultural psychology is based on the premise that we cannot understand human behaviour without an understanding of the numerous cultural experiences that influence it. This approach requires the sampling of behavioural expression (through observation, assessment or experiments) in different cultural contexts, and then comparatively examining them for similarities and differences. The comparative method requires that cultures from which data are derived not be in sustained contact with each other. Only in this way can we be sure that the relationships between cultural and individual levels of observation are separate instances of such a relationship. As we shall see below, and in sharp contrast, research in the domain of acculturation and intercultural psychology requires that cultures and individuals be in sustained contact with each other.

Over the years there has been a gradual shift in interest, moving away from what is *different* between cultural groups and their individual members to what is *similar* across them. The focus has moved away from a concern for only what differentiates individuals and groups from each other across cultures, but also on what we share as members of one human community. This approach requires the introduction of the concept of cultural and psychological *universals*. Universals are cultural and psychological features of human life that are found in all human populations, even though they may be expressed in very different ways. The search for universals requires research in many societies, and then the use of the comparative method to assemble them into meaningful patterns.

The concept of universals is linked to the distinctions among three core features of psychological life: *process*; *competence*; and *performance*. The first of these is the set of basic underlying psychological processes or capacities that all human beings have at birth. Following birth, cultural experiences shape these commonalities into different behavioural repertoires (competence) over the course of development, leading to their differential expressions (performance) in different cultures and settings. The theoretical position of universalism makes the following assumptions: Basic psychological processes and capacities are present in all individuals in all cultures (e.g., perceiving, remembering, having emotions, and social relations); cultural experiences interact with these basic psychological features and shapes their development into individual competencies (e.g., abilities, attitudes, language, values); and cultural situations also provide the contexts that influence the performance of these individual competencies (e.g., exhibiting a specific ability or attitude in the appropriate context).

The universalist goal for psychology is based on the existence of universals in other disciplines: in biology (e.g., basic needs); in anthropology (e.g., family as a universal institution); and in linguistics (e.g., languages). To use language as an

example of universalism: at birth all human beings have the processes and capacities to develop language and communication; cultures influence which language(s) individuals will become competent in; and cultural and social situations will influence which language(s) people will use in any particular situation.

2. Intercultural Psychology

When cultural groups and their individual members come into contact with each other in plural societies, they are engaging in intercultural relations. This field examines the various ways in which groups and individuals can relate to, accommodate to, and adapt to, each other. The study of intercultural relations requires the examination of the two core features of cross-cultural psychology that were outlined above: links between cultural context and behavioural development and expression; and the use of the comparative method to discern any basic principles that may underpin theses links. In addition, the field of intercultural relations needs to carry out this examination in both (or indeed the many) cultures that are interacting.

The field of intercultural relations has a parallel in the field of acculturation psychology (see Sam & Berry 2006, for an overview of this field). Acculturation is the process of cultural and psychological change following contact between cultural groups and their individual members (Redfield, Linton & Herskovits 1936). These changes take place in all groups and all individuals in contact. Although one group is usually dominant over the others, successful outcomes require mutual accommodation among all groups and individuals living together in the diverse society.

The basic features of universalism are relevant to the study of intercultural relations and acculturation. This is because, in order for persons of different cultural backgrounds to interact with, and to adapt to each other, they need to share some basic psychological features (processes and capacities). Even though their competencies and performances may differ greatly across cultures and individuals, these basic psychological features enable individuals and groups to interact with, and to understand each other. Moreover, these commonalities are required in order to achieve mutual accommodation within plural societies.

Much research has been devoted to three basic intercultural issues: *how* do groups and individuals engage in intercultural relations; *how well* do they adapt to each other; and are there any *relationships* between the answers to the how and how well questions that may inform policies and practices that will improve intercultural relations.

3. The Multicultural Vision

There are two contrasting, usually implicit, models of intercultural relations and acculturation in plural societies and institutions. In one (the *melting pot* model), the view is that there is (or should be) one dominant (or *mainstream*) society, on the margins of which are various non-dominant (or *minority*) groups. These non-dominant groups typically remain there, unless they are incorporated as indistinguishable components into the mainstream. Many societies have this implicit model, including France (where the image is of the “unité de l’hexagone”; that is of one people with one language and one shared identity, within the borders of the country: see Sabatier

& Boutry 2006), and the USA (where the motto is "e pluribus unum" or "out of many, one": see Nguyen 2006).

In the other (the *multicultural* model), there is a national social framework of institutions (called the *larger society*) that accommodates the interests and needs of the numerous cultural groups, and which are fully incorporated as *ethnocultural groups* (rather than minorities) into this national framework. The concept of the *larger society* refers to the civic arrangement in a plural society, within which all ethnocultural groups (dominant and non-dominant, indigenous and immigrant) attempt to carry out their lives together. It is constantly changing, through negotiation, compromise and mutual accommodations. It surely does not represent the way of life of the "mainstream", which is typically that preferred by the dominant group, and which became established in the public institutions that they created. All groups in such a conception of a larger society are ethnocultural groups (rather than "minorities"), who possess cultures and who have equal cultural and other rights, regardless of their size or power. In such complex plural societies, there is no assumption that some groups should assimilate or become absorbed into another group. Hence intercultural relations and change are not viewed as unidirectional, but as mutual and reciprocal. This is the conception that has informed the multicultural vision in Canada (1971) and more recently, in the European Union (2005).

Both implicit models refer to possible arrangements in plural societies: the mainstream-minority view is that cultural pluralism is a problem and should be reduced, even eliminated; the multicultural view is that cultural pluralism is a resource, and inclusiveness should be nurtured with supportive policies and programmes.

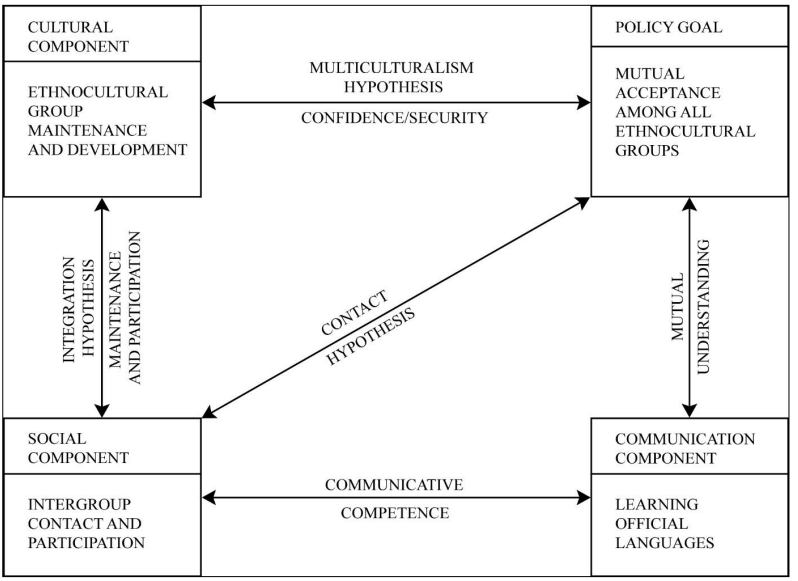
This multicultural vision was first advanced by a Multiculturalism Policy in Canada in (1971):

> A policy of multiculturalism within a bilingual framework (…) [is] the most suitable means of assuring the cultural freedom of all Canadians. Such a policy should help to break down discriminatory attitudes and cultural jealousies. National unity, if it is to mean anything in the deeply personal sense, must be founded on confidence on one's own individual identity; out of this can grow respect for that of others, and a willingness to share ideas, attitudes and assumptions (…) The Government will support and encourage the various cultural and ethnic groups that give structure and vitality to our society. They will be encouraged to share their cultural expression and values with other Canadians and so contribute to a richer life for all (Government of Canada 1971).

There are three main components to this policy. The first component is the goal "to break down discriminatory attitudes and cultural jealousies". That is, to *enhance mutual acceptance* among all cultural groups. This goal is to be approached through two main programme components. One is the *cultural* component, which is to be achieved by providing support and encouragement for cultural maintenance and development among all cultural groups. The other is the *social* component, which promotes the sharing of cultural expressions by providing opportunities for intergroup contact, and the removal barriers to full and equitable participation in the daily life of the larger society. A third component acknowledged the importance of learning a common language(s) in order to permit intercultural participation among all groups.

Twice, I have been involved in the examination and evaluation of the Canadian Multiculturalism Policy. The policy was first evaluated after ten years. I contributed to this evaluation in a paper (Berry, 1984) that proposed a number of core policy elements (and linkages among elements) formed a coherent set of social psychological concepts, principles and hypotheses. Ten years later (Berry & Laponce 1994), I co-edited a volume that included essays that examined a number of facets of the policy.

Figure 1. Components and Linkages in the Canadian Multiculturalism Policy



Modified from Berry (1984).

From the original policy statement, I discerned a number of ideas that were ripe for social psychological examination; Figure 1 portrays some of these (from Berry1984). The clear and fundamental goal of the policy is to enhance mutual acceptance among all ethnocultural groups (upper right). This goal is to be approached through three programme components. On the upper left is the *cultural* component of the policy, which is to be achieved by providing support and encouragement for cultural maintenance and development among all ethnocultural groups. The second component is the *social* component (lower left), which seeks the sharing of cultural expressions, by providing opportunities for intergroup contact, and the removal barriers to full and equitable participation in the daily life of the larger society. The last feature is the *intercultural communication* component, in the lower right corner of Figure 1. This represents the bilingual reality of the larger society of Canada, and promotes the learning of one or both Official Languages (English and French) as a means for all ethnocultural groups to interact with each other, and to participate in national life.

It is essential to note that the Canadian concept of multiculturalism and of the Multiculturalism Policy have two simultaneous and equally important emphases: the maintenance of heritage cultures and identities (the 'cultural' component) and the

full and equitable participation of all ethnocultural groups in the life of the larger society (the 'social' component). Together, and in balance with each other, it should be possible to achieve the multicultural vision. However, in some societies (e.g., many countries in Europe, and the USA) there is a common misunderstanding that multiculturalism means only the presence of many independent cultural communities in a society (only cultural maintenance), without their equitable participation and incorporation into a larger society.

In addition to these four components, there are links among them. The first, termed the *multiculturalism hypothesis* is expressed in the policy statement as the belief that confidence in one's identity will lead to sharing, respect for others, and to the reduction of discriminatory attitudes. Berry, Kalin & Taylor (1977) identified this belief as an assumption with psychological roots, and as being amenable to empirical evaluation. Our findings from national surveys (Berry et al. 1977: 224-227; Berry & Kalin 1995) lend support to this link between confidence in one's identity and mutual acceptance; this evidence will be outlined below.

A second link in Figure 1 is the hypothesis that when individuals and groups are 'doubly engaged' (in both their heritage cultures and in the larger society) they will be more successful in the lives. This is essentially a higher level of wellbeing, in both psychological and social domains. This is the *integration hypothesis*, in which involvement with, competence in and confidence in both cultural communities provides the social capital to succeed in intercultural living.

A third link portrayed in Figure 1 is the *contact hypothesis*, by which contact and sharing is considered to promote mutual acceptance under certain conditions, especially that of equality (Pettigrew 2008). In the national surveys in Canada, we found substantial support for this relationship, especially when status is controlled. For example, overall ratings of mutual *familiarity* (a rating of how much contact and interaction an individual had with members of a specific ethnocultural group) were positively correlated with positive attitudes towards members of that group. In analyses at the level of neighbourhoods (Kalin & Berry 1982) we found that with the proportion of a particular group being greater, the attitudes toward that group by non-members were more positive. There was no evidence of a 'tipping point', where a higher presence of a particular group in one's neighbourhood became associated with lesser acceptance of that group. Pettigrew & Tropp (2000, 2006) carried out meta-analyses of numerous studies of the contact hypothesis, which came from many countries and many diverse settings (schools, work, experiments). Their findings provide general support for the contact hypothesis: intergroup contact does generally relate negatively to prejudice in both dominant and non-dominant samples.

Together, and by balancing these components, it should be possible to achieve the core goal of the policy: the improvement of intercultural relations in Canada, where all groups and individuals have a place, both within their own heritage environment and within the larger society. In this sense, multiculturalism is for everyone, not only for non-dominant groups. This aspect emphasises that all groups and individuals are engaged in a process of cultural and psychological change. Research on the acceptance of this policy, and its various programmes, shows a high level of support in Canada

(Berry, Kalin & Taylor 1977; Berry & Kalin 2000; see also Adams 2006; Kymlicka 2006).

However, in some societies (e.g., many countries in Europe, and the USA) there is a common misunderstanding that multiculturalism means only the presence of many non-dominant cultural communities in a society (only the cultural maintenance component), without their equitable participation and incorporation into a larger society. It is this erroneous view that has led some in Europe to declare that "Multiculturalism has failed". However, it has not failed because it has not even been tried!

The European Union adopted a set of "Common Basic Principles for Immigrant Integration" in 2005. The first of these principles is:

> Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States. Integration is a dynamic, long-term, and continuous two-way process of mutual accommodation, not a static outcome. It demands the participation not only of immigrants and their descendants but of every resident. The integration process involves adaptation by immigrants, both men and women, who all have rights and responsibilities in relation to their new country of residence. It also involves the receiving society, which should create the opportunities for the immigrants' full economic, social, cultural, and political participation. Accordingly, Member States are encouraged to consider and involve both immigrants and national citizens in integration policy, and to communicate clearly their mutual rights and responsibilities.

While little-known and even less well-accepted, we find in this EU statement the three cornerstones of multiculturalism: the right of all peoples to maintain their cultures; the right to participate fully in the life of the larger society; and the obligation for all groups (both the dominant and non-dominant) to engage in a process of mutual change. Research on the acceptance of this policy in Europe has only just begun. However, there is some indication (e.g., van de Vijver, Breugelmans & Schalk-Soekar 2008) that Europeans make a clear distinction between the right of immigrants to maintain their cultures in *private* (i.e., in their families and communities), and the right to expect changes to the *public* culture of the society of settlement. In much of this research, it was found that it is acceptable to express one's heritage culture in the family and in the community, but that it should not be expressed in the public domains, such as in educational or work institutions. This view is opposed to the basic principles outlined by the European Union, where the process is identified as one of mutual accommodation.

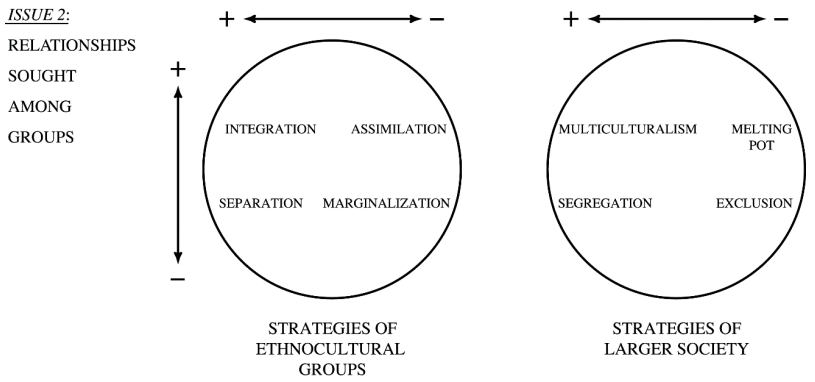
4. Intercultural Strategies

The question of *how* groups and individuals engage in their intercultural relations has come to be examined with the concept of *intercultural strategies*. Four ways of engaging in intercultural relations have been derived from two basic issues facing all peoples in culturally plural societies. These issues are based on the distinction between orientations towards one's own group, and those towards other groups (Berry 1974, 1980). This distinction is rendered as a relative preference for (i) maintaining one's heritage culture and identity and (ii) a relative preference for having contact with and participating in the larger society along with other ethnocultural groups.

These are the same two issues that underlie the multiculturalism policies outlined above (i.e., the 'cultural' and the 'social' components).

These two issues can be responded to attitudinal dimensions, ranging from generally positive or negative orientations to these issues; their intersection defines four strategies, portrayed in Figure 2. On the left are the orientations from the point of view of ethnocultural peoples (of both groups and individuals); on the right are the views held by the larger society (such as public policies and public attitudes).

Figure 2. Varieties of Intercultural Strategies in Ethnocultural Groups and in the Larger Society



Among ethnocultural groups, when they do not wish to maintain their cultural identity and seek daily interaction with other cultures, the Assimilation strategy is defined. In contrast, when individuals place a value on holding on to their original culture, and at the same time wish to avoid interaction with others, then the Separation alternative is defined. When there is an interest in both maintaining ones original culture, while in daily interactions with other groups, Integration is the option. In this case, there is some degree of cultural *integrity* maintained, while at the same time seeking, as a member of an ethnocultural group, to participate as an *integral* part of the larger social network. Finally, when there is little possibility or interest in cultural maintenance (often for reasons of forced cultural loss), and little engagement with the larger society (often for reasons of exclusion or discrimination) then Marginalization is defined.

These two basic issues were initially approached from the point of view of the non-dominant ethnocultural groups. However, there is a powerful role played by the dominant group in influencing the way in which ethnocultural individuals groups would relate (Berry 1974). The addition of the views of the larger society produces the right side of Figure 2. From the point of view of the larger society, Assimilation when sought by the dominant group is termed the Melting Pot. When Separation is forced by the dominant group it is called Segregation. Marginalisation, when imposed by the dominant group is termed Exclusion. Finally, when both diversity maintenance

and equitable participation are widely-accepted features of the society as a whole, Integration is called Multiculturalism.

It is important to emphasise that within this framework, the concept of *integration involves* engagement with *both* cultures. It is not a euphemism for assimilation, which involves engagement with only the larger society; that is, cultural maintenance is a core part of the concept of integration. And the concept of *multiculturalism* does not refer to engagement only within their own ethnocultural groups; members of these communities also engage with, and become constituents of, the larger society.

These intercultural strategies are related to a number of psychological and social factors. The most important is the discrimination experienced by an individual; less discrimination is usually reported by those opting for integration and assimilation, while more is experienced by those opting for separation or marginalization (see Berry, Phinney, Sam & Vedder 2006). This is an example of the reciprocity of intercultural attitudes found in the literature (Berry 2006); if persons (such as immigrants or members of ethnocultural groups) feel rejected by others in the larger society, they reciprocate this rejection by choosing a strategy that avoids contact with others outside their own group.

We now examine three hypotheses that lie at the core of intercultural relations research: the *multiculturalism hypothesis*; the *integration hypothesis*; and the *contact hypothesis.* As we shall see, they are very much inter-related, each one influencing the conditions under which the others may be supported by empirical evidence.

5. Multiculturalism Hypothesis

The multicultural vision enunciated in Canada in 1971 had a key section with implications for research on intercultural relations. We (Berry et al. 1977) developed the *multiculturalism hypothesis*, based on the assertion in the policy that freedom from discrimination "must be founded on confidence in one's own individual identity". The basic notion is that only when people are secure in their identities will they be in a position to accept those who differ from them; conversely, when people feel threatened, they will develop prejudice and engage in discrimination (see also Stephan et al. 2005). The *multiculturalism hypothesis* is thus*:* when people are secure in their own identity will they be in a position to accept those who differ from them (i.e., when there is no threat to their culture and identity).

There is now substantial evidence to support this hypothesis. For example, in two national surveys in Canada (Berry et al. 1977; Berry & Kalin 2000), measures of cultural security/threat and economic security/threat were created with respect to extant diversity, and the continuing flow of immigration. These two security scores were correlated positively with each other and with various intercultural attitudes. Cultural security was negatively correlated with ethnocentrism, and positively with multicultural ideology and with perceived consequences of multiculturalism. Economic security had a similar pattern of correlations with these variables. In New Zealand, using a structural model, Ward & Masgoret (2008) found that security was positively related to multicultural ideology and with attitudes towards immigrants. In Russia, Lebedeva & Tatarko (2008) studied migrants from Caucasus to Moscow and Muscovites. They found that cultural security predicted tolerance, integration

and social equality in both groups, but to a lesser extent among Muscovites. Most recently, a representative sample of Russian speakers in Estonia was asked about their intercultural strategies, their ethnic self-esteem, their experience of discrimination, and their level of cultural threat, civic engagement and economic and political satisfaction (Kruusvall, Vetik & Berry 2009). The four usual intercultural strategies were found. Groups following the separation and marginalisation strategies had the highest levels of threat and lowest levels of self-esteem and civic engagement. In contrast, the integration and assimilation groups had lowest threat and discrimination, and highest civic engagement and satisfaction. Public policy attempts in Estonia (which are largely assimilationist) seek to make the Russian-speaking population "more Estonian", while placing barriers to achieving this. Such a policy appears to have lead to the development of a "reactive identity" among Russian-speakers, and their turning away from the country of Estonia.

From this sampling of empirical studies, it is possible to conclude that security in one's own identity underlies the possibility of accepting "others". This acceptance includes being tolerant, accepting cultural diversity in society, and accepting immigrants to, and ethnocultural groups in, that society. In contrast, threatening an individual's or group's identity and place in a plural society is likely to lead to hostility.

6. Integration Hypothesis

In much research on intercultural relations and acculturation, the integration strategy has often been found to be the strategy that leads to better adaptation than other strategies (Berry 1997). A possible explanation is that those who are 'doubly engaged' with both cultures receive support and resources from both, and are competent in dealing with both cultures. The social capital afforded by these multiple social and cultural engagements may well offer the route to success in plural societies. The evidence for integration being associated with better adaptation has been reviewed (Berry 2010). More recently, Benet-Martínez (2011) carried out a meta-analysis across 83 studies and over 20,000 participants. They found that integration ('biculturalism' in her terms) was found to have a significant and positive relationship with both psychological adaptation (e.g., life satisfaction, positive affect, self-esteem) and sociocultural adaptation (e.g., academic achievement, career success, social skills, lack of behavioural problems).

These general relationships have been further examined in some specific contrasts between societies that have different immigration and settlement policies. In one, second generation immigrant youth in Canada and France were compared (Berry & Sabatier 2010). The national public policy and attitude context was found to influence the young immigrants' acculturation strategies and the relationship with their adaptation. In France, there was more discrimination, less orientation to their heritage culture (identity, behaviour), and poorer adaptation (lower self-esteem and higher deviance). Within both samples, integration was found to be associated with better adaptation and marginalisation with poorer adaptation. However the magnitude of this relationship was less pronounced in France than in Canada. This difference was interpreted as a result of it being more psychologically costly to express one's

ethnicity in France than in Canada, and to be related to differences in national policy and practices.

Overall, it is now clear that when individuals are engaged in both their heritage cultures and (are accepted in) the larger society, there are higher levels of both psychological and sociocultural wellbeing. The integration hypothesis is now well supported in comparative research.

7. Contact Hypothesis

The *contact hypothesis* asserts that "Prejudice (...) may be reduced by equal status contact between majority and minority groups in the pursuit of common goals" (Allport 1954). However, Allport proposed that the hypothesis is more likely to be supported when certain conditions are present in the intercultural encounter. The effect of contact is predicted to be stronger when: there is contact between groups of roughly equal social and economic status; when the contact is voluntary, sought by both groups, rather than imposed; and when supported by society, through norms and laws promoting contact and prohibiting discrimination. A good deal of research has been carried out to test this hypothesis. In a massive comparative examination, Pettigrew & Tropp (2001) conducted a meta-analysis of hundreds of studies of the contact hypothesis, which came from many countries and many diverse settings (schools, work, experiments). Their findings provide general support for the contact hypothesis: intergroup contact does generally relate negatively to prejudice in both dominant and non-dominant samples: "Overall, results from the meta-analysis reveal that greater levels of intergroup contact are typically associated with lower level of prejudice (...)" (Pettigrew & Tropp 2001: 267). This effect was stronger where there were structured programs that incorporated the conditions outlined by Allport than when these conditions were not present.

One remaining issue is whether the association between intercultural contact and positive attitudes is due to situations where those individuals with positive attitudes seek more intercultural contact, or whether more such contact leads to more positive attitudes. One source of information is a study by Kalin & Berry (1982). Using data from a national survey in Canada, they examined the ethnic attitudes of members of particular ethnocultural groups towards members of other ethnocultural groups. Their attitude data were aggregated by census tracts (essentially neighbourhoods), in which the proportion of particular ethnocultural groups was also known from the Census. They found that the higher the proportion of members of a particular group in a neighbourhood, the more positive were the attitudes of non-members towards that group. This kind of ecological analysis permits the suggestion that contact actually leads to more positive intercultural attitudes. The alternative possibility is that individuals actually move to particular neighbourhoods where liked ethnocultural groups are residing. More such research of needed, and in other intercultural settings, before firm conclusions can be drawn.

Longitudinal studies are very important to the disentangling of the direction of the relationship between intercultural contact and attitudes. One study (Binder et al. 2009) has shown an interactive effect of contact and intercultural attitudes. They conducted a longitudinal field survey in Germany, Belgium, and England with school student

samples of members of both ethnic minorities and ethnic majorities. They assessed both intercultural contact and attitudes at two points in time. Contact was assessed by both the quality and quantity of contact. Attitudes were assessed by social distance and negative feelings. The pattern of intercorrelations, at both times, supported the positive relationship between contact and attitudes. Beyond this correlational analysis, path analyses yielded evidence for the relationship working in both directions: contact reduced prejudice, but prejudice also reduced contact. Thus in this study, support for the contact hypothesis is partial: contact can lead to more positive attitudes, but initial positive attitudes can lead people into contact with each other.

A key element in the contact hypothesis is the set of conditions that may be necessary in order for contact to lead to more positive intercultural relations. The three hypotheses are linked because the first two hypotheses speak to some of these conditions under which contact can have positive outcomes. First, for the multiculturalism hypothesis, we saw that when the cultural identities of individuals and groups are threatened, and their place in the plural society is questioned, more negative attitudes are likely to characterise their relationships. This consequence applies to all ethnocultural groups, both dominant and non-dominant. For example, when members of the larger society feel threatened by immigration, and when members of particular groups have their rights to maintain their heritage cultures and/or to participate in the larger society are questioned or denied, a mutual hostility is likely to ensue. Under these conditions, increase contact is not likely to lead to more positive intercultural attitudes.

Second, for the integration hypothesis, we saw that 'double engagement' (that is, maintaining contact with, and participating in both the heritage culture and the larger society) is associated with better wellbeing, including greater self-esteem and life satisfaction. When psychological and social wellbeing are low (that is, when confidence in one's identity is low) there can be little basis for engaging in intercultural contact. And when contact does occur, as we saw for the multiculturalism hypothesis, it is likely to lead to more hostile mutual attitudes.

The evidence is now widespread across cultures that greater intercultural contact is associated with more positive intercultural attitudes, and lower levels of prejudice. This generalisation has to be qualified by two cautions. First, the appropriate conditions need to be present in order for contact to lead to positive intercultural attitudes. And second, there exists many examples of the opposite effect, where increased contact is associated with greater conflict. The conditions (cultural, political, and economic) under which these opposite outcomes arise are in urgent need of examination.

8. General Conclusions

Intercultural relations research has been guided by a number of concepts, and has resulted in a number of findings. First, we always need to understand the cultural underpinnings of individual human behaviour; no person develops or acts in a cultural vacuum. Second, we need to carry out research comparatively; research findings from one cultural or social setting alone are never a valid basis for understanding intercultural behaviour in another setting. Comparative research is also required if we are to achieve an understanding of some general principles that underpin intercultural

behaviour. Third, policies and programmes for improving intercultural relations take many forms. Some have been shown to threaten individuals and groups, and provide the conditions that generate mutual hostility. Conversely, there are policies and programmes (termed integration and multicultural in this chapter) that appear to provide the cultural and psychological bases for enhancing positive intercultural relations.

Plural societies now have the possibility to use concepts, hypotheses and findings from research to guide the development and implementation of policies and programmes that will improve intercultural relations. This way-forward stands is sharp contrast to using preconceptions and prejudices that are currently often the basis for intercultural policies.

In my experience, policy-makers would usually prefer to make informed decisions, which are more likely to achieve their goals in the long run, than are decisions based on short term interests. As researchers, we now have the opportunity to provide the information required for such effective policy decisions, and in a form that can be used.

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Diversity, Social Capital and Cohesion[1]

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Introduction

The concept of social capital is arguably the most successful "export" from sociology into the public domain in recent years. Ironically, that feat was not accomplished by the major theorists who developed the concept – the French sociologist Pierre Bourdieu and the American sociologist James S. Coleman – but by political scientist Robert Putnam who redefined and popularized the term. As numerous reviews have noted, the "social capital" about which Bourdieu wrote has little to do with what the concept became later on. For the French author, social capital is a resource of individuals and families inherent in their network of relationships and capable of being transformed into other forms of capital – economic and cultural. It is, in essence, the ability of persons and families to command resources through their membership in networks and other social structures (Bourdieu 1979, 1980; Wacquant 2000). For Putnam, in contrast, social capital is a public good – the amount of participatory potential, civic orientation, and trust in others available to cities, states, or nations (Putnam 1993, 2000). Coleman's definition fell somewhere in the middle having to do with the density of social ties and its capacity to enforce the observance of the norms. "Closure" was the term that he used to refer to mutual knowledge and social ties between community members who support each other and sanction deviance. Coleman lamented the disappearance of community closure which gave way, in the modern world, to ever-growing atomization and anomie (Coleman 1988, 1993).

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Despite their conceptual differences, the use of the term by Bourdieu and Coleman led to similar operational definitions. In both cases, they were based on the network of relationships in which individuals and families were embedded and on the density and other characteristics of such networks. When Putnam telescoped the concept into much larger social units, the empirical focus changed from the immediate circle of relationships surrounding individuals and families to aggregate characteristics of the population. These included such indicators as the average number of civic associations per thousand population, the percentage of people who participate in a local organization, and the percentage of people who endorse the survey item "most people can be trusted". On the basis of these and related items, Putnam and his collaborators were able to construct a composite index that allowed them to compare the "stock" of social capital available to all 50 states of the United States (Putnam 2000).

In the end, this was the version of the concept that prevailed in the public mind and that has been adopted, in some form or another, by major institutions such as the World Bank (Grootaert and Bastelaer 2002). This feat was due, in large part, to the rhetorical skill with which Putnam contrasted the civicness and solidarity of earlier generations with the atomization of today's "uncivic" generation which has led so many Americans to "bowling alone". That image was accompanied by a fervent argument in favor of rebuilding social capital as a key source of many public goods: from the strengthening of democracy and the reduction of economic inequality to public health and personal happiness (Etzioni 2001).

In 2006 at Uppsala University in Sweden, Putnam presented initial findings from an ongoing research program investigating the relationship between ethnic diversity and social cohesion (Putnam 2007). Despite professing enthusiasm for the positive social and economic effects of immigration and diversity, he reported that diversity in the United States is strongly related to the tendency to withdraw from collective life. Although some of these findings had previously been presented, this address was the first comprehensive summary of the project's initial results and thus reinvigorated research into the relationship between heterogeneity and social cohesion. Much subsequent research has responded to Putnam's call to test the proposed relationship in contexts other than the United States, but the resulting findings have been far from unanimous in confirming his arguments. Instead of the strong, negative relationship between diversity and social cohesion evident in Putnam's address, many studies find a relationship that is weak and contingent on a variety of individual and contextual factors.

We begin this review with a discussion of the concept of social capital as it evolved into "civicness" and its empirical underpinnings. We then examine the bourgeoning literature that has evolved on the relationship between ethno-racial diversity, civicness, and social cohesion. We then return to a theoretical discussion of the implications of these finding and seek to place contemporary immigration in this framework. Overall, our review is guided by the following questions: First, is social capital – defined as communitarianism and generalized "trust" – the powerful causal force that Putnam and his followers allege it to be? Second, is this form of social

capital the main basis for cohesion in modern society? Third, what are the real effects of modern immigration on both diversity and social cohesion?

1. Social Capital as Civicness and Trust [2]

During the 1980s and 1990s, Putnam's work recast social capital as a feature of communities and entire societies during the eighties and early nineties, a strong group of critics questioned both the re-definition of the concept and its alleged consequences. They argued that sociability and participation were not necessarily the bonanzas predicted by Putnam and his followers and that they could have significant downsides. In her analysis of the collapse of the Weimar Republic, political scientist Sheri Berman (1997: 424-25) concluded, for example:

> The German case reveals a distinct pattern of associationism that does not conform to the predictions of neo-Tocquevillian theories. German civil society was rich and extensive (…) and this nation of joiners should accordingly have provided fertile soil for a successful democratic experiment. Instead it succumbed to totalitarianism (…) The vigor of civil society continued to draw public interest and involvement away from parties and politics. Eventually, the Nazis seized the opportunities afforded by such a situation (…).

In a critical review of social capital as a characteristic of cities and nations, Portes (1998) noted that, for Putnam's argument to be taken seriously, three methodological conditions had to be observed: First, social capital must be defined, conceptually and empirically, as distinct from its alleged consequences; Second, measures of social capital must be taken prior to its hypothesized effects to insure that the causal relationship does not run in the opposite direction; Third, there must be a control for other variables that could plausibly explain the observed relationship in order to guard against spuriousness.

Putnam's response to his critics was to assemble a vast amount of empirical data and to analyze them along lines that conformed broadly to these three criteria. Results were published in *Bowling Alone* (Putnam 2000). Having constructed a 14-item index of social capital as an aggregate characteristic of the fifty states of the Union, Putnam proceeded to relate it to a host of important collective outcomes including "education and children's welfare"; "safe and productive neighborhoods"; "economic prosperity"; "health and happiness"; and "democracy". The results, presented in successive chapters of the book, show how the Social Capital Index (SCI) relates positively to each of these results and how these relationships endure even after controlling for a host of factors.

For example, the SCI was strongly correlated with test scores at the elementary, junior, and high school levels. This correlation was graphically portrayed in a figure showing that states low in social capital have very low average scores and those high in social capital also report the best results. The analysis then controls for a number of factors that could account for this relationship – racial composition, economic affluence, inequality, poverty rates, religious affiliation, and others. Putnam reported: "Not surprisingly, several of these factors had an independent effect on state test scores

[2] This section drawn from a previously unpublished paper (Portes et al. 2003).

and dropout rates, but astonishingly; social capital was the single most important explanatory factor" (Putnam 2000: 301-302).

In another chapter of *Bowling Alone*, Putnam took on the critics who stressed the "dark side of social capital". He did this by splitting the concept into "civic social capital" – which promotes tolerance of diversity and equality – and "sectarian" social capital – which leads to intolerance. So far the critics were about half right, but then Putnam turned to his index of social capital to show that the higher the stock of social capital in a state, the higher the level of tolerance toward minorities and dissenters. He reported that this relationship held even after controlling for average education, income, urbanism, and other factors and concluded that: "Except for the very common finding that religious involvement, especially in fundamentalist churches, is linked to intolerance, I have not found a single empirical study that confirms the supposed link between community involvement and intolerance" (Putnam 2000: 355).

There is something surprisingly consistent in the set of findings presented in Putnam's book. For researchers accustomed to the imperfections of the real world, the rolling of charts portraying the invariably positive relationships of social capital to a host of important collective outcomes is nothing short of astonishing. To his credit, Putnam placed the entire data set on which his results are based on the public domain, thereby allowing others to reanalyze it. A number of authors have done this, coming up with mixed results. As prelude to the review of the more recent literature, we present results from our own analysis bearing on the methodological issues noted above: first, the question of causal order; second, the possibility of spurious relationships; and third, the sources of communitarianism and public trust.

1.1 The Endogeneity Question

The issue of causal order is not well addressed in *Bowling Alone* (hereafter *BA* or *Bowling*). Putnam's SCI consists of 14 items measuring contemporary traits of associational life or public opinion. A factor analysis of these items shows that they indeed have a high level of internal consistency, as shown by a first factor that explains almost 70 percent of common variance and whose eigenvalue (the amount of total variance accounted for) quadruples that of the next higher factor. The index also possesses high face validity based on the content of its components. The question then becomes whether social capital, as captured in this index (thereafter SCI) has the multiple positive causal effects that *BA* alleges. To address this question, we may consider five key dependent variables that are claimed to be consequences of social capital: child welfare, single parenthood, economic inequality, poverty, and general population health.

Child welfare is measured by the Kids Count Index, whose item components make it reasonable to believe that they be associated with the civic involvement and trusting attitudes comprising SCI. However, because the index was measured contemporaneously with the dependent variable, it is not at all clear which comes first. It is equally likely that associational life and trust lead to lower juvenile delinquency and arrest levels than that the absence of widespread juvenile crime and other forms of deviance promote greater expressions of public trust and social participation. Empirically, this is shown in the first row of Table 1 that presents the reciprocal effects

of social capital and child welfare, as well as their net effects controlling for other variables. The SCI retains a strong positive net effect on the Kids Count Index with other variables controlled, but the opposite is also the case. Without including a time-sensitive measure, Putnam's analysis does not allow us to disentangle these effects and truly determine whether or not social capital is *causing* the positive effects observed [3].

A similar story emerges from the regressions of poverty and economic inequality on social capital. In these instances, the argument for reverse causality is even stronger because these are major structural factors that do not change easily over time. It is thus quite plausible that the levels of poverty and economic inequality in a state influence the extent and quality of its associational life and the attitudes of its citizens, rather than vice versa. As shown in Table 1, the reciprocal effects of poverty and inequality on social capital are sizable making this reasoning at least as credible as the causal order proposed by Putnam. When controls are introduced for other variables, the effects of social capital on poverty and vice versa cease to be significant, suggesting that the original association was spurious. Effects of SCI on the Gini Index of Inequality remain significant; but the reverse relationship also remains robust, keeping the original causal ambiguity unresolved. No attempt was made to lag social capital or to instrument it in order to, at least, partially overcome this ambiguity.

Table 1. The Relationship between Social Capital and Selected Outcomes

Outcomes	**Social Capital as Cause**		**Social Capital as Consequence**	
	Gross Effect[1]	Net Effect[2]	Gross Effect[1]	Net Effect[2]
Child Welfare[3]	14.528*** (8.2)	7.316** (3.3)	.041*** (8.2)	.041*** (5.2)
Single Parenthood[4]	-3.351** (3.1)	-.927 n.s. (1.4)	-.051** (3.1)	.001 n.s. (0.0)
Poverty Rate, 1981	-2.610** (3.6)	-.182 n.s. (0.3)	-.083** (3.6)	-.020 n.s. (1.9)
Economic Inequality, 1989[5]	-.021*** (6.4)	-.011** (2.8)	-22.624*** (6.4)	-13.418** (3.5)
General Population Health[6]	4.812*** (8.01)	3.291*** (4.1)	.121*** (8.01)	.091*** (4.8)
N=50				

* p<.05 ; **p<.01 ; ***p<.001 ; n.s. = not significant.

Source: Authors're-analysis of *BA* data. Portes et al. (2003).

[3] Another method, common in economics and sociology, would be to instrument the alleged causal factors with a variable that affects it, but is unrelated to the final outcome. This path was not attempted in any of the chapters in *BA* that allege a causal effect of social capital. See Finebaugh (2008) and, for an illustration, Acemoglu et al. (2001).

[4] Unstandardized regression coefficients. T-ratios in parentheses.

[5] Controlling for percent college graduates, percent black population, poverty rate, 1969 (except when poverty is the dependent variable), economic inequality, 1969 (except when inequality is the dependent variable), single parenthood (except when this is the dependent variable), and region (South).

[6] Scores in the Kids Count Index. See text.

[7] Percent of families with children headed by a single parent ca. 1990.

[8] Gini index of inequality, 1989.

[9] Scores in the Healthy States Index.

The remaining figures in Table 1 demonstrate the same problem and need not be described at length. The key methodological issue is that all the statistical results presented in *Bowling* purporting to demonstrate "effects" of social capital are based on unlagged correlations where the causal order of variables cannot be established with any degree of certainty. Child welfare, low juvenile delinquency and low single parenthood may be part of a single complex – along with safe streets and a strong associational life – representing a better quality of life and determined jointly by the same set of historical factors. This possibility leads logically to the issue of spuriousness.

1.2 The Spuriousness Question

The problem of spuriousness refers to the extent to which an alleged causal relationship between two or more variables is due to common antecedent factors. When the partial correlation or regression coefficient between two variables goes down to zero after a third or fourth are controlled, this does not necessarily mean that the original relationship is spurious, since this result can also be obtained when the controlled variables intervene or mediate a valid causal relationship. In the case of social capital, the prospect of a spurious rather than a "mediated" relationship is stronger because the argument is couched in terms of a direct positive effect of high levels of social capital on each outcome.

Academic performance provides a good example. The theory is that in states that are blessed with a strong associational life and a civic citizenry, students do much better in school. This is shown by a bivariate graph in *Bowling* demonstrating a strong positive linear relationship between the two variables (Putnam 2000: 300). However, as the first column of Table 2 indicates, as soon as controls are introduced for a few other relevant variables, in particular economic inequality, the original relationship between SCI and test scores drops to insignificance. For this analysis, economic inequality – measured by the Gini Index – was lagged twenty years relative to both social capital and SAT scores, making the causal direction of these relationships unambiguous.

The case of poverty is still more straightforward. *BA* includes a chapter on "Economic Prosperity" which argues that social capital makes an effective contribution to wealth and growth. However, this chapter omits any of the bivariate graphs that grace others in the book documenting the various benefits of associational life. That omission is for a reason. As shown in Table 2, when controls are introduced for other relevant variables the original relationship between social capital and poverty drops down to insignificance. Particularly important is the strong effect of lagged economic inequality. It is not difficult to understand how a real and hard-to-change structural variable like inequality, rather than any miraculous social balsam, has the true causal effect on poverty. As with academic performance, states that were highly unequal decades ago have much greater relative poverty at present, regardless of how "trusting" or sociable their citizens happen to be.

The same story is revealed by the analysis of single parenthood rates, where the apparent effect of social capital disappears as soon as controls are introduced for lagged economic inequality, percent black population, and region. More will be said

about the effects of ethnic composition and geographic location below, but, for the time being, the key finding corroborates the notion that many of the apparent effects of social capital are just that. The SCI components correlate with other indicators of good quality of life, but once basic structural variables are brought into play, the alleged causal relationships between these indicators disappear.

Table 2. Social Capital Effects, Real and Spurious

Predictors	**Effects**[10]			
	Academic Test Scores[11]	Poverty Rate, 1989	Single Parenthood Rate[12]	Economic Inequality, 1989[13]
Social Capital Index	.138 n.s. (0.7)	-.177 n.s. (1.4)	-.091 n.s. (0.9)	-.495*** (4.7)
Percent College Graduates, 1970	-.129 n.s. (1.0)	-.025 n.s. (0.3)	.124 n.s. (1.6)	.080 n.s. (1.0)
Economic Inequality, 1969	-.795*** (3.9)	.784*** (5.1)	.331** (2.9)	.562*** (4.4)
Poverty Rate, 1969	-.061 n.s. (0.5)	.052 n.s. (0.6)	.045 n.s (0.6)	.025 n.s. (0.3)
Single Parenthood Rate	-.422* (2.3)	.042 n.s. (0.2)	--	.278 n.s. (1.8)
Percent Black Population	.034 n.s. (0.2)	-.072 n.s. (0.4)	.744*** (7.1)	-.124 n.s. (0.8)
South	-.246 n.s. (1.1)	-.071 n.s. (0.5)	-.399** (3.6)	-.160 n.s. (1.2)
Adjusted R^2	.298	.622	.755	.743
N=49				

* p<.05 ; ** p<.01 ; *** p<.001 ; n.s.= not significant.
Source: Portes et al. (2003).

There is an exception to this pattern and it pertains to economic inequality itself. The effect of SCI on the Gini index does not disappear when other variables are controlled. This result suggests that civic attitudes and associational life, if not the universal panacea that *BA* alleges them to be, may have an autonomous influence on at least one important outcome. If this is the case, the logical next question becomes where this social capital comes from and whether it can be produced or recreated in areas where it does not exist.

1.3 The Origins Question

It is clear from the preceding analysis that social capital and economic inequality are intimately related, with the latter accounting for most of the apparent effects of associational life and trust, but being in turn influenced by them. This suggests a causal

[10] Standardized regression coefficients (beta weights). T-ratios in parentheses.
[11] Adjusted SAT scores ca. 1990.
[12] Percent of families with children headed by a single parent ca. 1990.
[13] Gini index of inequality.

loop. That hypothesis is supported by results in the first column of Table 3 which shows that lagged economic inequality, along with the level of education of a state's population, have strong effects on social capital. Both variables jointly account for 22 percent of variance in the SCI. Were the analysis to stop here, we would conclude that economic inequality is a key determinant of levels of social capital, but that the latter in turn affects future inequality leading to "vicious circles" in inegalitarian states and "virtuous" ones in those blessed with an early fairer wealth distribution.

Though elegant, this interpretation does not take into account the possibility that more basic historical and demographic forces may be at play that affect both inequality and the associational and civic life of communities and states. As is well known, there are major regional differences in wealth and its distribution in the United States, with the South being generally at the bottom in both dimensions. Along the same lines, race has been a major historical cleavage in the history of the nation, with non-whites confined to the bottom of the economic hierarchy and commonly excluded from the political and educational associations that really count (Cox 1948; Blauner 1972; Geschwender 1978). These more basic historical forces may have something to do with contemporary economic disparities *and* with the associational life of the citizenry.

Table 3. Determinants of Social Capital

Predictors[14]	**I**	**II**	**III**	**IV**
Economic Inequality, 1969[15]	-.396** (3.0)	.212 n.s. (1.4)	-.128 n.s.	.013 n.s.(0.1)
Poverty, 1969	.021 n.s. (0.2)	.023 n.s. (0.2)	.021 n.s. (0.3)	.002 n.s. (0.0)
Percent College Graduates	.289* (2.2)	.353** (3.2)	.176* (2.0)	.261** (2.8)
Percent Black Population		-.597*** (4.5)		-.258* (2.2)
South		-.357* (2.5)		
Confederate State			-.230* (2.1)	-.160 n.s. (1.4)
Percent Scandinavian-origin Population			.631*** (7.4)	.552*** (6.2)
R^2	.221	.517	.693	.717
N=50				

* p<.05 ; ** p<.01 ; *** p<.001; n.s. = not significant.
Source: Portes et al. (2003).

Column II in Table 3 supports this line of reasoning. With the historical variables controlled, economic inequality ceases to have any independent effect on social capital. Percent black population becomes, by far, the most powerful predictor, followed by education and region. Together these variables succeed in increasing explained variance in the SCI to a respectable 52 percent. According to these results,

[14] Figures are standardized regression coefficients (beta weights) of predictors of the Social Capital Index (SCI). T-ratios in parentheses.

[15] Gini Index.

non-southern states with a homogenously white and better educated population are those where we find the higher stocks of civic life and community participation that *BA* so much praises.

Non-southern states with a predominantly white and more educated population were also those that received the great waves of European immigration in the XIX and early XX centuries (Thomas 1973; Higham 1955; Portes & Rumbaut 1996). That immigration was very diverse in origins and culture and was dominated by migrants from the British Isles, Germany, and Italy. One group, however, was highly distinct both in its settlement patterns and its associational life. Norwegians, Swedes, Finns, and Icelanders tended to settle in northern states with climates as harsh as or harsher than those they had left behind and to form tightly knit, self-sufficient communities where strongly egalitarian traditions and participation in collective activities required for survival were the norm (Rosenblum 1973; Boe 1977; Kivisto 1984). No other European group immigrated so disproportionately to northern Michigan and Wisconsin, Minnesota, and the Dakotas and no other established such strong, independent institutions of community life. Perhaps not by coincidence, these are the states that show the highest "stocks" in the map of social capital presented in *Bowling* (Putnam 2000: 293).

By extension, it is possible that the percent of the population that is of Scandinavian origin may serve as a proxy for the patterns of community activism and collective life imported by certain European immigrants from their respective countries and implanted in the new land. These historical traditions may be at the root of both different levels of economic inequality and of civic and social activism observed a century later. Column III in Table 3 presents results of this analysis. It strongly supports this line of reasoning by showing that, with percent Scandinavian controlled, economic inequality remains an insignificant predictor of social capital and the effect of proportion of college graduates declines markedly. Percent Scandinavian in a state's population becomes, by far, the strongest influence on social capital, followed by membership in the southern Confederacy. Proportion of explained variance increases to 70 percent indicating that these two historical variables, plus a residual effect of education, account for the bulk of the variance in the SCI [16].

To examine whether membership in the southern Confederacy accounts for the previously observed effect of black population, we add that variable as a predictor in Column IV of Table 3. When this is done, two important things happen: First, the effect of a state having been part of the Confederacy, though still negative, becomes insignificant; second, the proportion of explained variance in social capital increases to 72 percent. Therefore, it is not the case that the influence of slavery on civic participation and associational life is limited to the South for it extends, in fact, to

[16] The North/South cleavage is so distinct in the geographical distribution of social capital that sheer average temperatures may be used as a proxy for the historical forces just discussed: the lower the temperature, the higher the social capital. Additional regressions (not shown) indicate that the gross effect of average winter temperatures on the SCI is very strong, exceeding eight times its standard error. Predictably, the effect of this proxy variable is significantly reduced when the actual historical variables accounting for these inter-state differences are introduced.

the entire nation. The fundamental racial cleavage that Myrdal (1944) called in his time the "great American dilemma" is reflected well in these figures. This cleavage is stronger in the former slave states, but it is present elsewhere and translates into *both* greater economic inequality and lower social capital.

Putnam himself noted in passing the existence of these causal forces, but dismissed them with the comment that: "Whether patterns of immigration and slavery provide the sole explanation for contemporary differences in levels of social capital is an issue that deserves more concerted attention than I can devote to it here" (Putnam 2000: 294). That statement failed to recognize the theoretical and especially the practical implications of the causal patterns uncovered here. For, if social capital is the outcome of historical forces buried deep in the nation's past, there is little point in promoting it as a cure for social ills and exhorting citizens to become more participatory. Since social capital cannot be willed into existence but arises out of complex historical processes, such exhortations would have little effect on alleviating present social problems.

Fortunately, for states and regions low on Putnam's social capital, many of its supposed benefits are illusory. Under scrutiny, most of the alleged positive outcomes turn out to be either problematic in causal direction or a spurious consequence of more basic structural conditions. Efforts to improve these conditions – in particular increasing the educational level of the population and decreasing economic inequality – would go a long way toward producing the collective benefits, erroneously attributed to the "magic of social capital" (Putnam 2000: 288). The basic lessons of the preceding analysis, in particular the causal impact of racial diversity on social capital and the limited effects of the latter on key collective outcomes bear directly on contemporary immigration and its alleged effects. These are examined next.

2. Social Capital and Ethnic Dversity

These problems notwithstanding, Putnam has carried on with his research program. His more recent contention is that people living in diverse communities are more likely to experience isolation and declines in social capital, an argument that has become known as the "hunkering down" hypothesis (Putnam 2007). According to this new discovery, increase in immigration in the United States and Western Europe since 1960 have resulted in permanently high levels of ethnic diversity. Putnam ambivalently lauds the positive long-term effects of immigration for these societies, while contending that it has a corrosive effect on social capital and hence societal cohesion. Evidence from the Social Capital Community Benchmark Survey (SCCBS), conducted in 2000 with over 29,000 respondents in 41 US communities, bolster the argument that the diversity associated with increasing immigration increases social isolation and, with it, a host of negative consequences along the lines described in *BA*. In Putnam's (2007: 51) colorful metaphor, "diversity brings out the turtle in all of us".

2.1 Recent Research

This thesis has awakened a great deal of attention and produced a veritable mountain of research with mostly contradictory results. In the United States, Alesina and LaFerrara (2002) investigated the determinants of social trust, as measured in the

General Social Survey from 1974 to 1994. They found that racial fragmentation, as measured in the 1990 US Census, had a significant negative effect on the proportion of trusting respondents even when controlling for inequality, ethnic ancestry fragmentation, and individual characteristics. Costa and Kahn (2003) found that racial diversity was associated with lower civic engagement among 25- to 54-year olds in the form of volunteering in the DDB Lifestyle Survey (1975-1998) and organizational membership in the American National Election Survey (1974-1994).

Subsequent studies have added nuance to the assertion of a linearly negative relationship between diversity and various aspects of social capital. Stolle et al. (2008) report a negative association between contextual diversity (measured as the proportion of residents who are a "visible minority") and social trust, but argue that the effect is greater for majority (white) respondents and that those who regularly interact with neighbors are less susceptible to the negative effects of community heterogeneity. Uslaner (2010) uses Putnam's own dataset (the SCCBS) and reports a negative effect of contextual diversity for whites only. He also finds that the interaction of diversity and segregation in the United States drives down trust more than diversity alone does, with those living in integrated and diverse communities with diverse social networks more likely to trust others. Fieldhouse & Cutts (2010) underline the correlation of neighborhood diversity and poverty levels in the United States and show that the negative effect of diversity on social capital is a small fraction of the negative effect of poverty.

Studies of the relationship between diversity and social cohesion elsewhere have tended to focus on a limited number of countries, especially the United Kingdom (UK), Canada, Australia, and the Netherlands. Evidence from the UK shows some support for Putnam's thesis, but also illustrates the importance of taking material deprivation and social interactions into account. Drawing on the 2001 UK Citizenship Survey, Letki (2008) investigated the impact of neighborhood-level racial heterogeneity on four dimensions of social capital: attitudes and opinions about neighbors and the neighborhood, informal sociability, formal volunteering, and informal help. She found that racial diversity was negatively associated with attitudes towards one's neighbors and neighborhoods, but uncovered little support for the "aversion to heterogeneity" argument since racial diversity did not have a detrimental effect on informal sociability, once neighborhood-level deprivation was taken into account. Laurence (2011) similarly finds a negative relationship between diversity and localized trust in the UK, but shows that this association is reduced considerably by community-level deprivation. Sturgis & Smith (2010) find that the effect of ethnic heterogeneity depends on the kind of trust examined: diversity has no relationship with generalized trust once compositional differences between areas are controlled, but there is a negative relationship between ethnic heterogeneity and trust in neighbors. Despite this negative relationship, these authors find that diversity accounts for a miniscule portion of the variability in strategic trust and that the effect is strongly moderated by neighborhood deprivation. Fieldhouse & Cutts (2010) report a negative relationship between diversity and both attitudinal and behavioral social capital in the UK, but find that this effect depends on both other contextual variables (especially poverty) and on the racial/ethnic background of the respondent.

Evidence from other countries similarly reveals that the relationship between ethno-racial heterogeneity and social capital is contingent on a number of factors. At the aggregate level, there appears to be a positive relationship between diversity and trust in Canadian cities, with the exception of Montreal (Kaziemipur 2006). Stolle et al. (2008) report a negative relationship between contextual diversity and trust in Canada, with visible minorities less susceptible to this effect than the white majority. Phan (2008) finds that diverse friendship ties moderate the effect of city-level racial diversity, with residents of more diverse cities with more diverse friendship ties showing higher levels of social trust, while neighborhood-level racial diversity has no effect on trust in the presence of inequality. Leigh's (2006) study of heterogeneity in Australia reports a strong negative relationship between ethno-linguistic fractionalization and localized trust (with a stronger effect of linguistic heterogeneity), but finds little evidence of a negative relationship between diversity and generalized trust. In the Netherlands, Tolsma et al. (2009) find that the negative bivariate relationship between ethnic heterogeneity and three indicators of social capital is conditional on respondents' income and educational levels, as well as the level at which diversity is measured: more affluent and highly educated respondents living in diverse neighborhoods report more contact with neighbors and more tolerance; municipal diversity is positively related to trust and negatively related to contact and volunteering among the highly educated.

Much of the research that has investigated the link between diversity and social cohesion has employed a cross-national research strategy, pooling respondents from wide a number of countries. Several studies have used data from multiple world regions. Bjørnskov (2007) draws, for example, on the World Values Survey and the Danish Social Capital Survey to show that ethnic heterogeneity across 76 countries is not significantly related to the proportion of a country's respondents identified as "trusting", a finding that is confirmed by a study with the same data sources plus the Latinobarometer and Afrobarometer surveys (Bjørnskov 2008). Despite the lack of association between ethnic heterogeneity and trust in Bjørnskov's studies, this research lends consistent support to the hypothesis that income inequality is a consistently negative predictor of trust.

Other cross-country studies with samples from multiple world regions suggest that the relationship between diversity and cohesion at the country level may be moderated by good governance. Delhey and Newton (2005) report a strong negative bivariate correlation between ethnic fractionalization and average levels of generalized trust, but the association is significantly weakened in the presence of good government and national wealth. Another study of 44 countries using the World Values Survey (Anderson & Paskeviciute 2006) finds that ethnic diversity is not significantly associated with trust, while linguistic diversity has a negative effect. However, the effect of linguistic diversity disappears when the sample is restricted to established democracies; weak democracies, on the other hand, show a negative relationship between linguistic heterogeneity and social trust.

Gesthuizen et al. (2009) use the 2004 Eurobarometer survey of 27,000 respondents in 28 European countries to examine determinants of interpersonal trust, informal social capital (contact frequency and social support), and formal social capital

(participation in and donation to organizations). With an analytic sample limited to native-parentage respondents, ethnic fractionalization has no significant effect on any of the measures of social capital. In a similar study of 21 countries using the European Social Survey, Hooghe et al. (2009) also find that ethnic diversity is unrelated to generalized trust. These two studies also include measures of immigration-related diversity. Gesthuizen et al. find that migrant stock is not a significant predictor of any indicator of social capital, while average net migration between 1995 and 2000 had a negative effect on trust and a positive effect on informal social capital. Hooghe et al. include a host of measures of immigration and find that none of them is significantly and consistently related to generalize trust, once the analysis is adjusted for outliers.

2.2 Methodological Gaps and Conceptual Issues

The empirical evidence from a variety of within- and cross-country studies lends only very qualified support to Putnam's hunkering-down hypothesis. These "nuanced and inconsistent" findings (Sturgis & Smith 2010: 4) point to a variety of conceptual and methodological gaps in this research field, including the inconsistent conceptualization and operationalization of the core concepts of social capital, cohesion, and diversity; the multitude of levels of analysis; and the lack of sufficient attention to methodological issues of endogeneity and clustering.

The "hunkering-down" hypothesis linked diversity with lower levels of social capital and solidarity, but empirical studies of this relationship have used a wide array of dependent variable whose relationships to the concept of cohesion is not always apparent. Putnam and his followers have been raising the alarm of governments about the threat posed by migration-driven diversity. However, as seen above, a substantial number of studies suggest that is is not diversity *per se*, but *unequal* diversity that makes a difference. According to these studies when, by reason of spatial propinquity or lessened economic inequality, different ethnic groups come to interact more with one another, indicators of civicness or trust do not decline. Conversely, when ethnic differences are accompanied by high inequality and spatial segregation, these indicators suffer (Sturgis & Smith 2010; Hooghe et al. 2009; Uslaner 2006). These results are in line with those presented in the previous section which show that, according to Putnam's own data, racial diversity drives down social capital. These findings have been replicated by others, such as Alexander (2007) who also notes the opposite effects of higher education and a farming population in raising measures of trust.

Taken as a whole, this set of results suggests that, rather than an autonomous force, social capital defined as "communitarianism" or "trust" is really a by-product of more basic structural factors of which racial homogeneity, education, and economic equality are paramount. Communitarianism and trust are thus found in predominantly white, relatively affluent, and largely rural areas – of which towns in South Dakota (identified by Putnam as "awash in social capital") are examples (Hallberg & Lund 2005). It is relatively easy to find bowling leagues in such towns, but these are epiphenomena of more basic factors.

Other authors, however, are adamant that it is diversity itself, which mass immigration necessarily increases, that leads to a decline in social capital. According

to this view, even educated and relatively affluent immigrants will bring down social capital by virtue of their cultural distinctness. Putnam (2007) himself emphasizes that, in areas of high diversity, even native-born whites come to distrust one another. If this is really the case, it is worth asking again whether this decline over which so much alarm has been raised, is that important. As seen previously, there is reason to believe that many of the alleged benefits of social capital are largely illusory. While Putnam and his followers have been keen on persuading us that the disappearance of associationism is near apocalyptic in its implications (Hallberg & Lund 2005), realities on the ground appear rather different.

Mutual trust and bowling leagues are nice things to have, but they do not represent a *sine qua non* for a viable society. To see this point more clearly, it is useful to return to the sociological classics – largely forgotten in the current debate – to seek guidance in understanding what is really taking place. Durkheim (1984 [1893]) distinguished between the "mechanical" solidarity of traditional societies – based on cultural homogeneity and mutual acquaintance – and the "organic" solidarity of modern societies – based on heterogeneity, role-differentiation, and a complex division of labor. Other classic authors such as Toennies (1963 [1887]), Sombart (1982 [1911]), and Malinowski (1926) also stressed and developed the same idea.

The contemporary relevance of this distinction is two-fold. First, it suggests that present calls toward homogeneity and communitarism are backward-looking and, hence, reactionary. They promote a return to an idealized past – society as it presumably was and not as it really is, or is likely to be in the future. Bucolic rural communities have always held a powerful attraction for American public culture, but they represent an ideal scarcely compatible with the requirements of a complex world. Second, there are *other* ways of organizing social life that foster individual growth and collective well-being and that do not depend on mechanical solidarity. Instead, they rely on increasing differentiation and diversity along with the organic integration of complex, multiple roles. We turn next to an analysis of what these forms are as a prelude to examine the place and the real effects of contemporary immigration.

3. Cohesion in the Modern World

Stepping into a crowded metro in any modern metropolis may well represent the antithesis of Putnam's view of community: no one knows any one; there is scarcely any communication among passengers who regard each other with what Simmel (1964 [1902]) referred to as "a slight mutual aversion". Yet, the train arrives at the appointed time; people step out to let others in or out; and they routinely use the service to get to their jobs and back. There is no community in the metro car; there are instead individuals, but individuals-in-roles following the rules of over-arching institutions. This is the kind of cohesion that makes the modern world run: it does not depend on mutual acquaintance, but on a set of norms that are understood and accepted by all and are enforced by specialized agencies. Large corporations and impersonal markets do not run on social capital; they operate instead on the basis of universalistic rules and their embodiment in specific roles. You do not know nor need to know the metro station clerk to hand in your money and receive your ticket; you do

not have the slightest notion of who the train driver is, but fully expect him to deliver you safely to your destination.

Organic solidarity, not communitarianism, coordinates the daily lives of millions in modern society and makes possible the achievement of both individual expectations and collective goals. If, after a hard day at the office, you decide to join your fellows at the bowling alley, that is just fine, but it is not a precondition or a requirement for your membership in society. As Durkheim (1984 [1893]) recognized more than a century ago, organic solidarity does not lead to disaffection and anomic, but to their opposite. The emotional identification that the individual feels with her nation or her metropolis does not depend on mutual acquaintance with all their members, but rather on shared values and the recognition of a common normative order required for the fulfillment of individual goals. This is the type of cohesion that leads people to identify as citizens of a nation, fulfill their obligation toward it, and support it in times of need.

Organic solidarity depends on three conditions: a) diversity among members of a society; b) a complex division of labor; c) strong coordinating institutions. When these conditions exist, communitarian networks may or may not be present, but they are not required for the continuation of a viable social order. In some circumstances, community groups and voluntary associations may be a helpful add-on; in others, excessive communitarianism may actually create obstacles by advancing particularistic interests and narrow views over the universalistic goals of a democratic society. As Berman's (1997) analysis of the role of grassroots associations in the rise of the Nazi party in Germany reminds us, there can be severe downsides to this form of social capital. Because strong coordinating institutions are a necessary condition for organic solidarity and because they may or may not co-exist with communitarianism, it is possible to observe in reality a plurality of forms of social organization. These are schematically summarized in Figure 1.

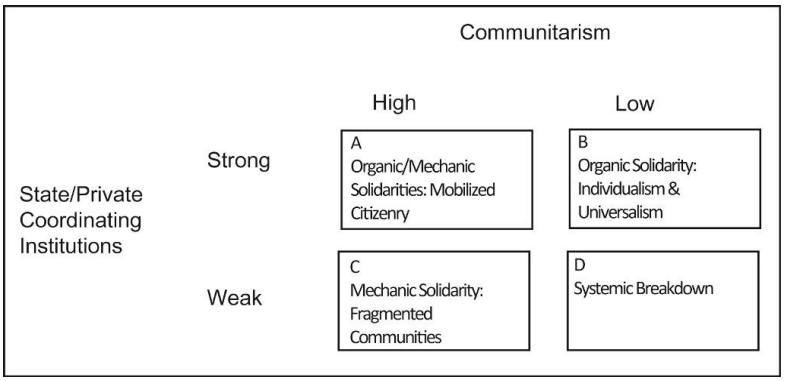
Cells in this figure represent ideal types of the forms in which societies may be organized. Cell A represents the Tocquevillian ideal of a strong public order backed by a mobilized citizenry. Presumably, this is also the situation favored by Putnam and his followers. Clearly, this situation is preferable to Cell D where individualism and anomie threaten the collapse of society and the rise of a Hobbesian problem of order (Centeno and Portes 2006). The remaining cells are, however, of more theoretical interest. Social order is sustainable in both, but on a very different basis. Communitarian association can take the role of weak or absent coordinating institutions, but at the cost of reverting to mechanical solidarity. This is the situation portrayed in Cell C. Since community social capital is predicated on tight networks and mutual acquaintance, the resulting social order will necessarily be fragmented – a small town world of semi-isolated, self reliant communities.

Cell B represents the ideal type of organic solidarity where an individualistic society operates through strong public coordinating institutions. Citizens connect with these institutions, through established formal channels. Given the previously noted downsides of communitarianism, it is not necessarily the case that this situation is less preferable to that of Cell A. While decried as "atomistic" by the advocates of social capital, the sway of impartial universalistic rules is less challenged in these instances than in those where a mobilized populace creates multiple organized groups, each

seeking to advance its own particularistic interests. In such cases, community social capital may create a significant obstacle to the rule of law and the viability of its institutions (Almond & Verba 1965; Berman 1997).

In reality, advanced complex nations operate somewhere between Cells A and B, where the overarching cohesion created through organic solidarity is supplemented by manifold forms of associations – from informal groupings to organized special interests. Least developed societies subsist somewhere between Cells C and D where the mechanical solidarity of extended families and tribal networks keeps a semblance of order in the face of weak or absent coordinating institutions. The cases of so-called "failed states", such as Somalia or Haiti, provide examples. The push toward more social capital blindsides us to its negative aspects and its limitations. While communitarianism is an appealing ideal, it cannot provide the basis for organization of modern democratic society and, when practiced in excess, may actually threaten its stability.

Figure 1. Types of Macro-social Organization



4. The Role of Immigration

The "discovery" that immigration reduces cultural homogeneity and communitarianism is perfectly reasonable. The alarm following that discovery that migration would lead to social disorganization and breakdown is not. In terms of the preceding typology, high migration moves receiving societies somewhat from Cell A to Cell B, but the presence of strong institutions averts any risk of systemic breakdown. This is indeed what has happened: while unauthorized migration poses some problems for the authorities, the weight of modern institutions is quite sufficient to insure that the flow of newcomers is properly channeled. No developed nation in North America or Western Europe has been seriously challenged by mass migration; the "feel" and the sights at street level have change considerably, but the core institutions of these societies have remained intact (Castles 2004; Hollifield 2004).

What migration does accomplish is to increase demographic and cultural diversity. The coziness of homogenous communities is shaken by the presence of migrants from so many different cultural origins. Their arrival does not actually challenge the class structure which, like core institutions, remains the same, but mostly the composition of the working-classes. The diversity created by mass migration in the working

population is actually a good thing. As seen previously, diversity is necessary for a complex division of labor grounded on organic solidarity. In the contemporary world, an ethnically homogenous and aging population poses an arguably greater challenge to the long-term survival of advanced societies than the presence of immigrants (Alba & Nee 2003; Castles 2004; Massey 2007). The latter represent a much-needed injection of youth and energies and a force slowing down demographic decline (Massey et al. 2002).

The argument that immigration reduces social capital has inevitably brought Putnam and his followers into the company of conservative nativists and restrictionists, including his late Harvard colleague Samuel Huntington (2004). In a sense, Putnam has been caught in the web of his own logic: If social capital is an unqualified public good and mass immigration reduces it, then the latter must be an unmitigated public evil. As just seen, however, those alarmed by this argument may rest at ease. Communitarianism and expressions of trust in public surveys are neither the universal balsam predicted by social capitalists, nor necessary conditions for the proper functioning of modern society. The latter can operate indefinitely on the basis of the higher form of cohesion.

As seen in previous sections, empirical studies have shown Putnam's SCI to be a correlate or a consequence of more basic processes such as economic inequality and racial segregation. These processes are the ones deserving attention for they do threaten the long-term viability of modern democratic societies. The solidarity of these societies is ultimately predicated on the opportunity they offer to all to fulfill their individual goals. Systematic denial of such opportunities to large numbers on the basis of their race or ethnic origin is inimical to higher forms of cohesion based on universalistic and impartial rules.

In synthesis, immigration does increase demographic and cultural diversity, but the dangers associated with this trend are illusory. This diversity contributes to the long-term viability of nations dependent on modern, not backward forms of sociation. To the extent that newcomers are incorporated in ways that reduce the inevitable initial inequalities and offer opportunities for upward mobility to their offspring, the effects of immigration will be to strengthen the receiving economies and rejuvenate their populations. The decline in old-time bowling leagues and in generalized expressions of trust is a small price to pay for these benefits.

5. Conclusion

The determination and rhetorical skill with which Putnam succeeded in wrestling the concept of social capital away from its sociological creators; persuading authorities and the general public about the central importance of his own version of the concept; and, of late, scaring them with the announcement of its disappearance due to immigration and ethnic diversity have been remarkable. At some point, historians of ideas will have much to say about this unique intellectual trajectory. At present, a veritable industry has emerged to analyze indicators of trust and other dimensions linked to Putnam's social capital, and measures of the same populate the social surveys of many nations. A secondary literature has also emerged to analyze methodological issues associated with these studies, including the proper measures

of trust, the differing ways of assessing diversity, and the nature of the relationships between diversity, trust, and cohesion.

Although analyzing expressions of trust in public surveys and measures of grassroots communitarianism is a perfectly legitimate intellectual enterprise, we have eschewed in this review a detailed discussion of its multiple (and largely contradictory) findings and of the methodological issues they pose in favor of considering a more general question. That question may be phrased succinctly as: What is the fuss really about? Or, more specifically, has the enormous investment in time and money to investigate communitarian social capital being worth it? A subsidiary question is whether the diversity brought about by contemporary immigration poses a significant threat to the host societies.

The answers depend on two key considerations. First, whether social capital, in Putnam's version, represents a major collective resource causing a wide variety of positive outcomes. Second, whether communitarianism and inter-personal trust represent the best or the only ways of producing social cohesion in modern societies. Results of our empirical and conceptual analysis answer both issues in the negative. Empirically, many of the alleged benefits of communitarian social capital turn out to be correlates, rather than consequences; most of these correlations are jointly dependent, in turn, on more basic structural factors of which inequality, level of education of the population, and its racial-ethnic composition are paramount. Once these factors are controlled, the alleged beneficial effects of social capital largely disappear.

Second, a theoretical analysis of the organizational basis of modern society makes it evident that it does not depend on inter-personal networks or mutual expressions of trust. A simple excursion into the sociological classics suffices to remind us that the "glue" that keeps modern society together is not the mechanical solidarity associated with such networks, but a higher form of cohesion associated with a complex division of labor and the strength of its institutions. Trust in these societies does not depend on mutual knowledge, but on universalistic rules and the capacity of institutions to compel their observance. Not surprisingly, empirical studies have shown that good governance in regions and nations increases trust and eliminates the alleged negative effects of diversity (Delhay & Newton 2005).

This being the case, the question of whether immigration brings about diversity and, hence, reduces communitarianism loses much of its urgency. Apocalyptic warnings to the contrary, the issue of whether immigration increases discomfort among members of a formerly homogeneous population and leads to their "hunkering down" is not all that crucial. The research literature is not nearly unanimous in confirming that this pattern holds, but even granting that some people choose to disconnect in the face of increasing diversity, that cost pales by comparison with the real benefits that immigration brings to host societies. Confronted with an aging population and the need for new skilled and unskilled labor supplies in many sectors of their economies, there are few avenues other than sustained immigration for these societies to rejuvenate themselves [17].

[17] The recent recession and rising levels of domestic unemployment provide evidence contrary to the need for new foreign labor supplies. However, two considerations run contrary

The answers to the preceding questions have an important corollary. Preoccupation with declining expressions of trust and with alleged effects of diversity serves to detract attention from real and far more urgent problems. While some academics and policy makers wring their hands about how to increase participation in local associations and make people express more trust in each other, basic problems such as how to fashion an immigration policy that effectively incorporates newcomers fall by the wayside. In the United States, the millions of dollars spent in investigating whether public trust is declining or whether immigration reduces it could have been more fruitfully invested in devising a labor management program that flexibly incorporates immigrants and establishing paths to promote the economic and social integration of them and their offspring.

Pseudo-problems have their costs. While cries of alarm about declining social capital in the face of diversity have undoubtedly stricken a chord, it is doubtful that the vast research program spawned by such fears have made American society any better or its public policies any more effective.

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to this argument. First, the long-term trend has been for a sustained and growing demand for both skilled foreign professionals, and technicians and for manual labor, as documented in a number of government reports (Congressional Budget Office 2005, 2010) The present situation, brought about by financial mismanagement on a massive scale, is exceptional and unlikely to set the long-term course of the economy. Second, even today, specific sectors of the American economy continue to source their labor needs abroad. A perusal of the annual report of the Office of Immigration Statistics shows that hundreds of thousands of foreign professionals and their families continued to arrive in recent years. At the same time, the flow of unauthorized workers for agricultural and other labor-intensive sectors, though diminished, has continued on a mass scale (Massey 2009; Office of Immigration Statistics 2009; Passel 2009). These figures give clear evidence that the need for foreign labor represents a structural, not a conjunctural feature of the American economy.

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A US Perspective on the Relationship of Immigration Restrictions and Racism

David B. Oppenheimer, Swati Prakash, Rachel Burns [1]

Introduction

In April 2010 the Governor of Arizona signed into law a controversial bill giving state and local police broad discretion to detain individuals they "reasonably believe" to be in the United States unlawfully, and making it a crime for individuals unauthorized to work in the United States to apply for, solicit, or perform work in the state (Act of April 23, 2010, Ariz. Legis. Serv. Ch. 113 ("S.B. 1070")). Formulated in response to growing perceptions that unauthorized migration across the border with Mexico is responsible for an array of woes experienced by Arizona residents, S.B. 1070 was decried far and wide, including by the President of the United States, and simultaneously lauded as an example of state government cracking down on "illegal immigration".

In June 2012 the United States Supreme Court held that some aspects of the state law were preempted by Federal law – the portions penalizing the failure to carry alien registration documents, criminalizing undocumented immigrants from applying for or soliciting work, and giving state police the authority to make warrantless arrests of undocumented immigrants based on their removability (*Arizona v. United States*, 132 S. Ct. 2492, 2501, 2503, 2506 (2012)). A fourth provision of the bill – allowing police to stop and detain anyone they reasonably suspect of being an undocumented immigrant, and requiring police to verify the immigration status of every person

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they arrest or detain – was not directly decided by the Court, which noted that its constitutionality would not be clear until the bill had gone into effect and Arizona state courts had an opportunity to interpret it (Id. at 2507, 2510).

Thus, the highest court of the land partially reaffirmed that immigration is a matter of national and not state policy. Indeed, time and again, as we discuss in this paper, this country has seen that when states endeavor to directly legislate immigration policy, it is to give legal voice to undercurrents of racial hostility. While the Supreme Court acted as a partial brake to the latest attempt by states to do so, by leaving to the Arizona courts to interpret the bill's provision affording police wide latitude in determining who might be in the country "illegally", many fear that the Court has left open the door for the racial profiling of nonwhite immigrants in Arizona and other states that have promulgated similar bills across the country, some far more restrictive than S.B. 1070[2].

This wave of state laws targeted at the problem of "illegal immigration", and the response by federal courts to reign in some of the more punitive aspects of these laws, is the latest chapter in the longer story of legal restriction on immigration into the United States. To understand US immigration law, one must examine the history of US racial exclusion and inequality. Immigration law and racial, ethnic, and religious discrimination in the United States can be seen as flip sides of a single coin. Our immigration laws, from the formation of the republic, reflected racist policies toward various and changing racial, ethnic and religious minority groups. In 1790 the first Congress enacted our first naturalization law, providing citizenship to persons who were "free, white, and of good moral character" (Naturalization Law of March 26, 1790 (1 Stat. 103)). Ever since, our immigration laws have tried, with varying success, to exclude the disfavored groups of each era, usually defining those groups in racial terms. Yet for all these efforts the "unwanted"[3] continued to arrive, and for the most

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[2] For example, Alabama passed a similar bill that also requires school districts to collect data on whether enrolled students were born outside the United States, and that makes it a crime for individuals to give a ride or otherwise "transport or harbor" undocumented individuals (see Ala. H.B. 56 (2011)). A federal circuit court of appeals held that most provisions of this bill were preempted by federal law; however, it left open the question of the constitutionality of provisions requiring police to investigate the immigration status of anyone they detained because they reasonably suspected of being undocumented, or who were arrested for driving without a license (*United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012)). The court also held that a provision making it a felony for undocumented individuals to apply or attempt to apply for any state license was not preempted by federal law (Id. at 23).

Likewise, Georgia enacted a statute permitting police in inquire into immigration status while conducting routine criminal investigations, and imposing heavy fines and prison time for using fake identification papers to obtain employment (Illegal Immigration Reform and Enforcement Act of 2011, GA H.B. 87 (2011)).

[3] Unwanted by law, that is. In most cases, immigrants subjected to exploitation were very much wanted by their potential exploiters, principally employers who wanted demand for jobs to outstrip supply. Immigration was sufficiently linked to labor markets that the federal immigration service became part of the Department of Commerce and Labor in 1903, which became the Department of Labor in 1913. Immigration services moved to the Justice Department in 1940 and then to the Department of Homeland Security in 2003.

part those who arrived out of their own (relatively) free will, in time became largely assimilated (in the case of Europeans) or at least integrated (in the case of many, though not all, of the still racialized Asians and to some extent Latin Americans) into American society, transforming it as they did. The notable exception for the eventual assimilation or integration of immigrant groups are the descendants of Africans, forcibly brought to the New World and held in bondage for more than two centuries, who continue to face significant structural barriers to integration.

Today, with anti-immigrant hysteria as great as it has ever been in American history, largely directed at immigrants from Mexico [4], a question emerges of whether Mexican immigrants will follow the same patterns of assimilation or integration as past groups of immigrants, or whether they will join Black Americans as long-standing second-class citizens. In addition to the mixed judicial disposition of state legislation targeting undocumented immigrants, an array of social, economic, and political factors will continue to influence whether Mexican immigrants are ultimately fully embraced as the latest members to join America's racially heterogeneous identity.

In addressing this question, we confront our own history as the descendants of immigrants. We write this as Americans of European and South Asian descent, respectively. Two of us thus are descendants of one of the great migrations in recorded history, the European diaspora. In the United States, a nation of just over 300 million people, there are approximately 200 million individuals classified as "white non-Hispanic", most of whom are of European ancestry (United States Census Bureau, 2012). Our population includes approximately 43 million of German descent, 31 million Irish, 25 million English, 16 million Italian, 9 million Polish, 5 million Scottish, 8 million French, 5 million Norwegian, 5 million Dutch, 4 million Swedish, 3 million Russian, 2 million each Welsh, Hungarian, and Czech, and 1 million each of Danish, Greek, and Austrian descent (United States Census Bureau 2004).

Another 16 percent (approximately 50 million) are classified as "Hispanic/Latino" ethnicity; that is, having descended from Spain and/or (in most cases) former Spanish colonies, mostly in Central and South America. Because race and ethnicity are classified as separate categories, in most cases people of Hispanic ethnicity are at least partly descended from European whites as well, and half self-identify to the Census Bureau as both "Hispanic" and "White".

Some 13 percent are "Black" or "African American", largely the descendants of slaves. Another 5 percent self-describe as "Asian", while less than 1 percent are the descendants of the American Indians, the sole inhabitants prior to the European invasion that began in the late fifteenth century.

Our own family stories embody a few of the migration patterns we explore in this essay. The earliest American family members for one of us immigrated from near Frankfurt, Germany in the early nineteenth century seeking greater economic opportunity. Others followed from villages near Vienna, Prague, and Riga in the late nineteenth and early twentieth centuries, sometimes fleeing from religious oppression,

[4] There has also been a sharp rise in Islamophobia, dating from September 11, 2001, resulting in a similarly hysterical anti-immigrant stance toward people of Middle Eastern and South Asian background.

sometimes seeking economic freedom, sometimes both. The stragglers were rescued from the Holocaust, arriving in the 1930s.

The earliest family members for another of us crossed the Atlantic during the mid-seventeenth century from England as part of the early settlement of North America. Family members continued to trickle in from England throughout the late seventeenth and eighteenth centuries, initially settling on the East Coast and then moving west. Other family members arrived in a wave during the early to mid-nineteenth century from Germany, Norway, and Denmark as part of the European Diaspora.

Another one of us is a second-generation South Asian-American whose parents immigrated to the United States after the Immigration Act of 1965 relaxed quotas for individuals from many Asian nations. Although we do not explore the migration of South Asians per se in this essay, their immigration history has at least some commonalities with the United States' treatment of other Asian immigrants.

We all made our way to California, from which we write this essay.

As many of the papers in this book reveal, even when immigrants are needed (usually for their labor), they are paradoxically unwelcome. In this regard, the experience of immigrants to the United States may serve as a worthwhile lens for inspecting migration to and within Europe. In every generation of American immigration the dominant immigrant group has been the victim of discrimination and oppression. In this essay we describe the experience of several migrations to and within the United States, focusing on seven groups: The immigration of Irish Catholics, Italian Catholics, Eastern European Jews, Chinese, and Japanese to the United States during the early to mid-nineteenth through early twentieth centuries, the migration of African Americans from the rural Southern United States to the industrial Northeastern, Mid-Western and Western United States in the early- to mid-twentieth century, and the immigration of Mexicans to the United States in the late twentieth and early twenty-first centuries. While these groups by no means represent an exhaustive list of immigrants to the United States, they represent both an historical and contemporary cross-section of the largest groups to enter the United States since the 17th century. We also leave for another day an in-depth discussion about the experience of Native Americans, whose presence within the borders of what was to become the United States did not exempt them from experiencing genocidal violence and continued economic and cultural oppression.

Each of these groups was badly needed for economic reasons, and each experienced sustained exploitation and discrimination, coupled with diminished legal status, in their new home. However, members of several of these groups eventually experienced and/or brought about some degree of integration into the social, political, and economic mainstream of the United States, either through evolving boundaries of who is considered "white", (in the case of Irish Catholics, Italian Catholics, and Eastern European Jews) or through the relaxation of the significance of whiteness as a critical factor for broader acceptance (in the case of Chinese and Japanese individuals).

Throughout this essay we distinguish between assimilation and integration, borrowing from Professor John Berry's discussion elsewhere in this volume. Berry discusses two key dimensions influencing the relationship between immigrant groups and other minority and majority groups in culturally plural societies: (1) the orientation

of minority groups and their members towards one's own group – for example, the extent to which minorities exhibit "a relative preference for maintaining one's heritage culture and identity", and (2) the orientation of those groups and individuals towards other groups, or the "relative preference for having contact with and participating in the larger society along with other ethnocultural groups" (Berry 2005: 704). Assimilation results "[f]rom the point of view of non-dominant groups (…) when individuals do not wish to maintain their cultural identity and seek daily interaction with other cultures" (Id.: 705). In contrast, integration results "[w]hen there is an interest in both maintaining one's heritage culture while in daily interactions with other groups" (Id.). To the extent that we depart from Professor Berry's work, it is in our observation that the majority group (here long-settled European Americans) substantially control whether a minority group remains segregated, is integrated, or is assimilated. Thus, our assertion that European immigrants have been assimilated, while Asian immigrants have begun to integrate, and Black Americans and Mexican Americans remain substantially segregated, reflects the racism of white European Americans toward those categorized as the "other".

Recognizing the complexity of the social construction of "otherness", in this paper we explore three aspects of assimilation or integration by immigrant and migrant groups into American society: social/cultural, economic, and political. The relative progress of each of the groups we examine has not always been even along all three of these dimensions. Indeed, as we explore in this essay, a current conundrum of race relations is that although we have a black president, and here in California a black mayor in Sacramento, Asian-American mayors in San Francisco and Oakland, and a Mexican-American mayor in Los Angeles, we continue to see substantial evidence of racial discrimination against African-Americans, Mexican-Americans, and Asian-Americans based on their racialized otherness (see, for example, Brown et al. 2003; de Souza Briggs 2005).

For the most part, Irish Catholics, Italian Catholics, and Eastern European Jews have fully assimilated into American society along all three of these aspects, although in terms of social and cultural factors, the persistence of ethnic self-identification remains a distinctive feature for some descendants of Eastern and Southern European immigrants. While occasional experiences of ethnic stereotyping and even hate crimes remain for people of Irish, Italian or Eastern European Jewish descent, for the most part what remains of a separate ethnic identity for these groups is by and large self-generated, as reflected in ethnic pride celebrations or religious and cultural institutions (see generally Glazer & Moynihan 1970). Japanese-Americans and Chinese-Americans, in contrast, remain to some degree a racialized "other" in many respects, primarily social and cultural. This is not so much a self-generated phenomenon as it is imposed by the white European majority. Nonetheless, people of Chinese and Japanese descent are also well along in the process of integration, as reflected in terms of economic and increasingly political success. Borrowing from Professor Ian Haney Lopez's concept that an "honorary white" status exists "for certain persons and groups whose minority identity seems unequivocal under current racial schemas, but who are nevertheless extended a functional presumption of Whiteness" (Haney Lopez 2006, 152) we describe the diminished significance that being nonwhite now has for many

members of East Asian groups as "constructive whiteness". (See also, Gomez 2007 on "comparative racialization").

African-Americans, in contrast, have never been fully accepted as a group into the core of American opportunity and society, and they continue to face significant social, economic, political, and legal obstacles to full integration. This raises the question of whether Mexican immigrants, currently comprising the largest proportion of arriving immigrants and facing considerable exploitation and discrimination, will end up more like preceding waves of European and Asian immigrants and eventually assimilate or integrate into American society, or if they will share the status of African-Americans as a permanent underclass. Although, as we explore in this essay, the migration of Mexicans within and to the United States is more than 150 years old, the reaction by American citizens has oscillated between desiring the presence of Mexicans as a valuable economic asset, and vilifying their presence as unwanted interlopers. While the current prevailing sentiment tilts far towards vilification, one possibility for the long-term is that, as with preceding groups of immigrants, the current animosity toward Mexican-Americans, both enabled by and expressed as their racialization as nonwhite, will yield to their absorption into either a white or "constructively white" status. Another possibility, however, is that the racialization of Mexican-Americans as non-white takes on a more permanent nature, confronting this latest group of immigrants with a bleak future unless the underlying racism of American society is fundamentally transformed.

This chapter falls into 5 parts. Part 1 provides an overview of early US immigration policy and describes the assimilation experiences of three European immigrant groups: Irish Catholics, Eastern European Jews, and Italians. Part 2 explores the racism faced by Chinese and Japanese immigrants to America's west coast and their struggle for integration. Part 3 discusses the involuntary immigration of Africans to the Unites States and their continued struggle for social and economic integration. Part 4 provides an overview of Mexican immigration to the United States. Finally, Part 5 presents and analyzes various factors likely to affect future integration and assimilation of Mexican immigrants to the US.

1. European Immigration and American Immigration Policy

1.1 Early American Demographics and Immigration Policy

The earliest roots of American political treatment of immigrants can be found in pre-Revolutionary English and colonial policies. Emigrants from England and their children in the colonies were considered subjects of the English king and therefore citizens, as distinguished from outsider "aliens" (Kanstroom 2007: 24-25). Some colonies recognized a common law intermediate category of "denizen", a person who is "in a kind of middle state, between an alien and a natural-born subject", as early as 1620 (Id.: 24, citing Blackstone 1800: 374). Both the English and colonial governments selectively naturalized some immigrants to the colonies, displaying strong biases against Catholics, the poor, convicts, and individuals they feared would not exhibit loyalty to the colonies. For example, a 1643 Virginia law ordered Catholic priests be deported within 5 days of their arrival, while in 1717 Pennsylvania, concerned about the "great numbers of Foreigners from Germany", ordered all immigrants to

take loyalty oaths (Id.: 30). The 1740 Plantation Act provided for naturalization of Protestants residing in American colonies who met certain restrictions (Id.: 25).

In the first United States Census, taken in 1790, a year after the first Congress met, the total population of what was then the United States (13 States devolved from British colonies, plus the districts of Kentucky, Maine, and Vermont, and the Southwest Territory (Tennessee)). was slightly under 4 million (United States Census 1790). Approximately 700,000 were African American slaves (Id.). Among the other 3.3 million, most were members of various Protestant denominations and were property owners descended from, or immigrants from, England or Scotland, or indentured servants from Ireland or Germany. We have found no reliable estimate of the number of American Indians living in the United States at the time, and the number present before the European invasion is heavily contested. The French community in Louisiana, the Spanish communities of the Southwest, and the Russian outposts of the Northwest were not yet part of the United States and were not counted by the United States Census (Id.).

In the early years of the United States, immigration policy could be characterized more as an open door than a barbed wire fence (but see Neuman 1993, describing this as a "pleasant myth" given the restrictions described herein). Immigration was open to any healthy person likely to be self-sufficient, although immigrants in those early decades were almost entirely from Europe. Even then, immigration law was racially marked. Most African immigrants, as slaves, were considered property, and thus ineligible for citizenship or internal migration. The Naturalization Act of 1790, the first act of Congress to address the question of immigration, recognized only "free white persons" of "good moral character" as eligible for naturalization. Subsequent amendments to this law increased the residence period for naturalization, first to 5 years in the Naturalization Act of 1795, and then to 14 years in 1798 (Kanstroom 2007: 54).

However, although immigration policy in the United States began as an "open door", as Noel Ignatiev and Ian Haney Lopez have demonstrated, the racial status of "white", an important mediator of quality of life and opportunity, was not bestowed upon all European immigrants. Successive waves of European immigration led "only to shifts in where, not whether, racial lines are drawn" (Haney Lopez 2006: 149; Ignatiev 1995: 2). Hence, German immigrants were not considered "white" until the 1840s to 1860s, Irish immigrants until the 1850s to 1880s, and eastern and southern Europeans immigrants until the 1900s to 1920s (Id.). As discussed below with the example of Irish immigrants, "enter[ing] the white race was a strategy to secure an advantage in a competitive society" (Ignatiev 1995: 2). In this section we explore the ways in which successive waves of European immigrants challenged and helped re-draw the often-overlapping categories of who was considered "white" and who was considered deserving of citizenship through naturalization and a continued open door immigration policy.

1.2 Irish Catholic Immigration

The Irish were one of the earliest and largest non-English groups of immigrants to enter the United States, with a total of 7 million entering the country between

the early seventeenth century and 1921 (Miller 1985: 3). Approximately 250,000 to 350,000 immigrants arrived between 1700 and 1776, primarily Presbyterians from the North of Ireland (Miller 2008: 145). Many of the arrivals during the seventeenth and eighteenth centuries were indentured servants. Some of these had been forcibly removed to the New World by the English government, which feared the development of Catholic influence in Ireland (Kanstroom 2007: 26-28). Others "voluntarily" left Ireland for the New World through the indentured servant system, seeking to escape the oppressive regime under England's Penal Laws (Id.: 27; Dolan 2008: 18), while still others simply left in search of better economic opportunities (Miller 2008: 48-50).

Irish immigration sharply dropped between the American Revolution and the War of 1812, but beginning in 1815 and continuing through 1844, between 800,000 and 1 million Irish came to the United States (Miller 1985: 169, 193). Until 1830, the majority were Presbyterians and Anglicans, not Catholics, from the North of Ireland, and many were farmers, artisans, tradesman and professionals (Miller 2008: 255). Many were descendants of Scots who had settled in Ireland (Ignatiev 1995: 38-39). After 1830 the demographics of arriving Irish shifted to include far more laborers and servants, and the majority shifted from Protestant to Catholic (Miller 2008: 198). Their arrival was not always met with enthusiasm. Indeed, the Alien & Sedition Acts of 1798 were enacted by the Federalists, the political party then in power, in part out of fear of Irish sympathies to French radicalism and to the Republican Party (Ignatiev 1995: 65). One congressman advocated for such measures as necessary because he did "not wish to invite hoards of wild Irishmen, nor the turbulent and disorderly of all parts of the world, to come here with a view to disturb our tranquility, after having succeeded in the overthrow of their own governments" (Id.).

The next notable wave of Irish immigration took place between 1845 and 1855, when 1.8 million immigrants arrived during the Great Famine in Ireland (Miller 1985: 280). This group was predominantly Catholic, considerably poorer than previous immigrants, and primarily from southern Ireland. These immigrants were widely regarded as nonwhite, and were subjected to terrible exploitation. Many of the males worked as canal, railroad, building-construction, and dock laborers, or other "dirty, backbreaking, poorly paid jobs that white Native Americans and emigrants from elsewhere generally disdained to perform" (Id.: 318). Women found employment as domestic servants and in textile factories, garment sweatshops, and other needle trades (Id.). Families lived crowded together in both urban and rural communities. For example, in the primarily Irish Fifth Ward of Providence, Rhode Island, an average of nine people lived in one- and two-room dwellings (Id.: 319). In the southern states, Irish workers were often preferred to slaves for intensive construction projects in the south because slaves represented a capital investment, whereas "if the Paddies are knocked overboard, or get their backs broke, nobody loses anything" (Ignatiev 1995:109, quoting an Alabama stevedoring company official). In the North, "[m]any of the newly arrived Irish, hungry and desperate, were willing to work for less than free persons of color" (Id.).

By the middle of the nineteenth century, Irish immigrants and their descendants were nearly 10 percent of the total United States population and much higher in some cities. For example, in 1855 they comprised 28 percent of the population in New York

City (Miller 2008: 288). Even as the economic situation for some Irish stabilized in the decades following the Great Famine, by 1870 fully 40 percent of Irish-born immigrants to the United States were working as unskilled laborers or domestic workers (Miller 1985: 319). The Irish who arrived prior to the Great Famine, both Protestant and Catholics who were relatively more economically secure, were "still too small, insecure, or indifferent to extend paternalistic assistance to the newcomers" (Id.: 321).

Although labor organizing would eventually become a key path to economic stability, it also served to focus anti-Irish sentiment and justify a growing "nativist" movement in the mid-nineteenth century. In 1859 Irish workers in New Jersey who blockaded railroad tracks they had just finished building were denounced as "a mongrel mass of ignorance and crime and superstition", and "utterly unfit for (…) the common courtesies and decencies of civilized life" (Miller 1985: 322). In 1854 the "Know-Nothing" party, fueled by growing anti-Catholic sentiment in the preceding decade, burst briefly onto the national political stage on an expressly nativist, anti-Irish and German platform (Anbinder 1992: 3, 9-15). This same period saw the appearance of "No Irish Need Apply" signs (Miller 1985: 323).

Despite this period of intense exploitation and discrimination, several social, political, and economic institutions helped the Irish ultimately become integrated into the central core of an American identity. In terms of economic institutions, labor organizing played a key role in ensuring upward economic mobility, which enhanced political and social advancement and vice versa. By 1870 more than 85 percent of Irish immigrants were working in non-agricultural sectors, and were heavily represented in the rapidly expanding manufacturing, construction, and transportation industries (Miller 2008: 254). Ireland had a long history of labor organization dating back to 1641 (Ignatiev 1995: 92). Some of the laborers who began arriving in larger numbers during the 1830s engaged in strikes and other labor unrest, often attacking competing English and German workers. Ignatiev notes that "[t]he participants showed little awareness that being white, or immigrant, or Catholic, or even Irish formed a basis for solidarity", although they exhibited some solidarity based on Irish county lines (Id., 95). Eventually, however, this atomized labor unrest gave way to labor organization based on ethnic solidarity and on the incorporation of Irish into a "white" identity (Id.: 96). Thus, as argued by Ignatiev, "[e]arly labor unions (…) should be regarded not so much as Irish institutions, in the way they later became, but as institutions for assimilating the Irish into white America" (Id.: 103). By 1900 Irish men were engaged in approximately the same proportion of white-collar and skilled work as other white Americans (Miller 2008: 254). Some scholars have observed that the arrival of the Irish (and, as discussed later, Eastern and Southern Europeans) in mid-nineteenth century America coincided with, and indeed likely helped fuel, the shift of the American economy from largely agricultural and rural to primarily urban and industrialized (Id.: 253-55). Thus, "in the 1870's Irish predominance in factory labor, construction, and transportation proved highly advantageous as those sectors expanded in subsequent decades" (Miller: 1985, 500).

The Catholic Church can be seen as an important social and cultural factor contributing to the integration of the Irish in America. Although the majority of

Famine immigrants to the United States were Catholic, they were not necessarily practicing Catholics when they first arrived to the United States (Miller 1985: 327). Miller has noted that "in circumstances which demanded abandonment of so many indices of nationality, such as the Irish language, Catholicism itself became the primary expression of Irish-American identity" (Id.: 327, 332). Over time as the Catholic Church expanded and began establishing parochial schools and hospitals to counter growing anti-Catholic sentiment, more Irish immigrants and later generations began flocking to the Church. These institutions played a key role in upward economic mobility for many Irish Catholics (Portes and Rumbaut 2006: 332), and by the 1870s "the gothic spires of the newly complete St. Patrick's Cathedral, towering above New York's fashionable Fifth Avenue, symbolized the Irish-dominated Catholic church's increasing solvency and self-confidence" (Miller 1985: 495).

Another key factor permitting the assimilation of the Irish into the mainstream of America was the expansion of the white identity to include the Irish. Irish immigrants arriving in America prior to the Civil War were often identified as a race independent of, and somewhere between, white and black (Ignatiev 1995: 76). As abolitionism gained momentum, southern white slave owners, represented by the Democratic Party, sought an alliance with workers of European descent in the North, appealing to their fear that emancipation would lead to labor competition from newly freed blacks migrating north. A key strategy in building this alliance was to construct a common ground on the basis of skin color. One way whiteness was defined was through the nature of work; "white man's work" became work from which African-Americans were excluded (Id.: 112), which meant the gradual expulsion of skilled, free black artisans and craftsmen in the North from their trades even after emancipation (Id.: 99-101). Thus, Ignatiev argues that "the assimilation of the Irish into the white race made it possible to maintain slavery. The need to gain the loyalty of the Irish explains why the Democratic Party, on the whole, rejected nativism (against the Irish)" (Id.: 69).

Politically, the Democratic party also became an important institution for the assimilation of Irish Americans, based "partly on historic alliances (…) partly on antagonism to the strong evangelical Protestant and anti-Irish Catholic strains which ran through opposing political organizations (…) and partly on pragmatic considerations" in which Democratic politicians offered "opportunities for upward mobility" in exchange for the Irish vote (Miller 1985: 329). In New York City the rise of Boss Tweed – a fourth-generation American of Scotch-Irish descent – in the 1860s paved the way for Irish-American politicians in municipal government, a trend reflected throughout Northeastern cities (Miller 1985: 329-31). The ascent of Irish politicians at this municipal level, and eventually in state and federal government, fueled the positive cycle of Irish participation in political institutions that in turn stabilized economic and social well-being by returning resources and opportunities, such as jobs and support for cultural and religious expressions, to Irish communities.

Today Irish-Americans represent one of the most assimilated groups of immigrants absorbed into American society. Although institutions for displaying cultural pride, such as Irish-American parades on St. Patrick's day, remain an important facet of life for many Americans of Irish descent, the extent of residential integration, loss

of language, and parity of economic and political well-being achieved by Irish-Americans illustrates the nearly-complete absorption of this once-outside ethnic group into American identity. Today, Americans with Irish ancestry have higher high school and college graduation rates, a higher median income, and higher rates of home ownership than does the average American (United States Census Bureau 2011).

1.3 Eastern European Jews

The first wave of Irish Catholic immigration in the mid-nineteenth century overlapped with the first of two waves of Jewish immigration. This first wave between 1840 and 1880 was relatively uncontroversial. There had been a small Jewish population in the United States during the colonial period, primarily immigrants from Spain, Portugal, and Holland whose families had left Spain during the Inquisition; they were known as "Sephardim" (McLemore 1983: 63). Those arriving in the middle of the nineteenth century were largely German Jews seeking greater economic opportunity, and they were largely undifferentiated from the general category of "German" immigrants who settled in the East and Midwest, in part because they "had undergone a high degree of cultural assimilation in Germany" (Id.). As a whole, this first wave of European Jewish immigrants was highly literate. Early twentieth century scholarship suggests that this wave of immigrants had illiteracy rates of just 2.5 percent (compared with illiteracy rates of 25.7 percent for Jewish immigrants from 1880 to 1909), and their numbers were small enough that they could be integrated into the existing Jewish community. Thus, in 1840 the Jewish population was 15,000 (of 17 million in the United States). By 1880 the population had reached 250,000 (of 50 million total United States population), compared with an Irish Catholic population of over 2 million (Id.).

Beginning around 1880 substantial numbers of Eastern European Jews began immigrating to the United States. These were primarily Yiddish-speaking Russian Jews escaping persecution in Russia after the anti-Semitic Alexander III took the Russian throne in 1881. Two million Jews left Russia between 1880 and 1914 (Portes and Rumbaut 2006: 128), and the wave continued through 1924. As a result of this persecution, including their relegation to live in the Pale of Settlement and face organized violence in the form of pogroms, Russian Jews "remained strongly united and had maintained their native culture and language to a high degree" (McLemore 1983: 64). Unlike the previous generation of German Jews, these immigrants had fewer resources and were less educated and less western in their customs and appearances. They also "had every intention to keep their culture intact in the New World", and thus were far more likely than German Jews already living in America to maintain their outward "Jewish-ness" through their language and cultural expression (Id.). The Eastern European Jews also came in far larger numbers. In fifty years, the Jewish population rose from 250,000 (0.5 percent of the overall population of 50 million) to 4.5 million (3.7 percent of the population of 123 million).

Their arrival in large numbers was met with a rise in virulent anti-Semitism. One of the most visible forms of this anti-Semitism was in the exclusion of Jews from elite institutes of higher learning. Elite universities saw the number of Jewish applicants and admitted students rise steadily after 1908 (incoming class was 7 percent Jewish)

reaching over 20 percent of Harvard's incoming class in 1922. Because many Jewish immigrants at this time were generally well-educated (see Portes and Rumbaut 2006: 75), they performed well on entrance exams. These schools reacted with alarm. As Malcolm Gladwell describes, "Jews were thought to be sickly and grasping, grade-grubbing and insular. They displaced the sons of wealthy Wasp alumni, which did not bode well for fund-raising" (Gladwell 2005). A. Lawrence Lowell, Harvard's president in the 1920s, noted that "[t]he summer hotel that is ruined by admitting Jews meets its fate (…) because they drive away the Gentiles, and then after the Gentiles have left, they leave also" (quoted in Gladwell, 2005). Three elite universities, Harvard, Yale, and Princeton, changed their entire admissions system to incorporate the personal statement and assessment of an applicant's "character" as a way to exclude Jews without imposing explicit quotas (Gladwell 2005). Schools required applicants to provide a photograph and information about their "character", including personal references, a list of extracurricular activities, and an essay demonstrating their leadership potential (Id.).

In addition to these changes, early adopters of the recently developed Scholastic Aptitude Test (SAT), today a hallmark of college admissions, were motivated in part by the potential of the test to exclude Jewish applicants (Gladwell 2001). In 1926 Columbia University adopted the test as a basis for college admission, in part because this test was considered to be a measure of "inherent" intellectual ability and "uncoachable". As Malcolm Gladwell has chronicled, the dean of Columbia College, Herbert Hawkes, liked this approach "because the typical Jewish student was simply a 'grind,' who excelled on the Regents Exams because he worked so hard, a test of innate intelligence would put him back in his place (…) I do not believe however that a College would do well to admit too many men of low mentality who have ambition but not brains" (Gladwell 2001).

Another expression of prejudice against arriving Jewish immigrants took the form of racially restrictive covenants, which expressly barred homeowners from selling their homes to African-Americans, Jews, and many other racial or religious minorities (Silva 2009; *Shelley v. Kraemer*, 334 US 1, 5 (1948) (describing a covenant between neighbors forbidding the sale of a home to "any person not of the Caucasian race")). After the 1917 *Buchanan v. Warley* (US Supreme Court 1917) decision that struck down as unconstitutional a city ordinance prohibiting the sale of property to African-Americans, white homeowners turned en masse to private agreements between themselves. These racially restrictive covenants permitted private parties who wished to create precisely the same sort of racial segregation to simply include such a covenant in their sales contracts or rental leases. The Supreme Court upheld their right to engage in this form of "private" discrimination in 1926 in *Corrigan v. Buckley* (US Supreme Court 1926), and this practice thrived until well into the 1940s, when it was finally ruled unconstitutional in *Shelley v. Kraemer* (US Supreme Court 1948). Although it was most often used to exclude African-Americans, it was not uncommon to use such covenants against Eastern Europeans (Fogelson 2005: 128-31). In part for this reason, Jews in many parts of the country were crowded into tenements like the Lower East Side of New York City.

As with Irish Americans, labor organizing was one factor facilitating the eventual economic integration of some Jews, particularly in the northeast. Segregation and religious persecution in czarist Russia had forced many Jews into a limited range of occupational trades, including textile and needle trades (McLemore 1983: 65). As they moved into this occupational niche, Russian Jews also simultaneously were bolstered by and helped expand existing labor organizing in this trade. For example, the United Hebrew Trades, founded in 1888 to organize Jewish needle trade workers in the Lower East Side of New York City, comprised a vigorous core of organizing workers in the extensive garment industry in New York City well into the twentieth century (Sachar 1992: 179-80).

Today, American Jews have by and large assimilated into American culture, changing it in the process, while changing Jewish culture as well (see Dershowitz 1997). A 2009 survey by the Anti-Defamation League found that anti-Semitic sentiments held by Americans was at the lowest point since the survey began 45 years ago, although that figure then showed an uptick two years later, from 12% to 15% (Anti-Defamation League 2011). This assimilation was internally driven, to some degree, as Russian Jews fleeing persecution in the late nineteenth century "were extremely eager to make use of their new freedom and, consequently, embraced the opportunities that existed in public education and politics" (McLemore 1983: 64). While anti-Semitism still exists, it is not a social force that defines American life as it was in the early part of the twentieth century.

1.4 Italians

The same period that saw the largest influx of Jews to the United States – the 1880s to 1920 – also saw the arrival of 4 million Italian immigrants to America (Nelli 1983: 19). Eighty percent of these were southern Italians, whose exodus from Italy was due in large part to declining economic conditions following the unification of Italy in 1861 (Richards 1991: 99-100). Many chose the United States as a destination in response to American labor recruiters who were going abroad to induce labor migration (Portes and Rumbaut 2006: 17, 355) to sustain the insatiable appetite of the rapidly expanding American industrial sector.

Italian-Americans (like European Jews) arrived in America during Reconstruction, an era that gave rise to what David Richards calls "cultural racialization": "The central mechanism of the cultural construction of racism was the radical isolation (…) of a race-defined people from the culture-creating rights extended to all others" (Richards 1999: 166). Richards argues that after the Civil War and the Reconstruction Amendments created a constitutional presumption of equality between all men, the justification for ongoing oppression of blacks, particularly in the South, shifted from the pseudo-scientific explanations of biologically-based racial inferiority to a culturally-based racial inferiority (Richards 1999: 166-171). "If race and culture were in this period so unreasonably confused, it is not surprising that American intolerance (…) should turn from blacks to non-Christian Asians or Catholic Latins or Jewish Slavs, whose cultures appeared, to nativist American Protestant public opinion, so inferior and (equating culture and race) therefore peopled by the racially inferior" (Richards 1999: 171). The ease with which American nativists could express

racial animosity toward European Jews and Italians arriving after 1880, despite the ostensibly "white" physical characteristics of these groups, can be seen as a product of the same thinking that found irrelevant the fact that Homer Plessy was a man of "one-eighth African blood [whose] mixture of colored blood was not discernible" (*Plessy v. Ferguson*, 163 US 537, 541) to the question of whether he had a right to sit in the "white" section of a segregated train. Richards further suggests that the lack of animosity by arriving Italians towards blacks and Jews in America furthered white nativist suspicion (Richards 1999: 173).

The Southern Italians arriving in the United States encountered significant discrimination. Their Catholic faith served as one target, as did emerging stereotypes regarding their involvement in organized crime, which was catapulted to national visibility following the 1891 lynching of 11 Italians in New Orleans who had been accused and acquitted of killing a local police commissioner in an act of organized crime (Botein 1979: 272). Italians also were accused of being reluctant to assimilate, working long days, earning little money, and sending much of that money back home with the hopes of eventually going back. Many Italians took manual labor positions including railroad and other construction work, ditch digging, and coal mining, and occupied positions in the garment industry and as pushcart vendors in the burgeoning cities (Pisani 1957: 87-89). Others migrated to the South, Midwest, and far west to work as agricultural laborers. As one contemporary newspaper account noted, in "sections of the South, where it has been extensively tried, Italian labor has proved itself well-nigh indispensable in the cultivation of the immense plantations" (*Raleigh Observer*, November 6, 1904, in Lord 1905: 171).

The vast majority of Southern Italians during this period earned less than $600 per year, or less than half the income of American-born workers (Nelli 1983: 91). Labor contractors also often recruited Italians to play a strikebreaking role, earning them additional scathing criticism from trade unions. For example, in 1874 Southern Italian immigrants were sent to the Pennsylvania coalmines to break a strike, and in 1882 were brought in as strikebreakers on New York's docks and railroads (Id.). As late as 1904 the president of the United Mine Workers, John Mitchell, declared:

> No matter how decent and self-respecting and hard working the aliens who are flooding this country may be, they are invading the land of Americans, and whether they know it or not, are helping to take the bread out of their mouths. America for Americans should be the motto of every citizen, whether he is a working man or a capitalist. There are already too many aliens in this country. There is not enough work for the many millions of unskilled laborers, and there is no need to for the added millions who are pressing into our cities and towns to compete with the skilled American in his various trade and occupations (*New York Times*, January 17, 1904, cited in Lord 1905: 159-60).

This animosity from trade unions, combined with the strong belief held by many Italian workers that they would soon be returning home, did mean that Italians remained a fairly unorganized workforce. However, many Italians were familiar with the strong agricultural trade unions and benevolent societies back in their home country, and eventually workers began organizing themselves to challenge their economic exploitation (Pisani 1957: 93). By 1903 they led a strike of excavation workers digging

New York City's subway lines, which eventually resulted in the induction of the predominantly Italian-American Excavators Union into the American Federation of Labor (Nelli 1983: 91). Trades in which Italians were heavily represented – including longshore workers, garment workers, shoemakers, masons, and bricklayers – also began seeing more Italians involved with union organizing (Id.), and in turn workers of Italian descent helped these unions grow in size and power.

While the majority of Italian organized labor leaders occupied a political middle ground, a few of these leaders developed a reputation as extreme leftists and anarchists. These few highly visible leaders in turn helped make Italians a target during the Palmer Raids of 1919-1920. These raids were the political culmination of the wider "Red Scare" phenomenon that had been ostensibly triggered by the Bolshevik Revolution of 1917 and widespread fear of the incursion of communists. Some of this fear was fed by the newly formed class of wealthy industrialists who were frustrated by the growing power of the organized labor movement (Kanstroom 2007: 146). Indeed, 1919 saw 3,600 strikes involving over 4 million workers in the United States.

Fears about the potential "Bolshevik" threat represented by European and Russian Jewish immigrants coalesced with fears of anarchists. In the spring of 1919 followers of the extremist Luigi Galleani sent through the mail and set off a series of bombs around the United States, aimed directly at prominent business and political leaders. In response, Attorney General Palmer launched a series of raids, resulting in some 6,000 arrest warrants issued for alien "reds", with 4,000 arrests made (including of citizens) (Kanstroom 2007: 149, 154). On December 21, 1919, 249 people, including famed anarchist and literary celebrity Emma Goldman, were loaded onto the "Soviet Ark" and deported to Finland and Soviet Russia (Id.: 150). Suspicion that Italians were anarchists and significant domestic threats also fueled the 1927 execution of Nicola Sacco and Bartolomeo Vanzetti, anarchists who were convicted, despite a remarkable absence of evidence, of robbing a bank in Massachusetts (Frankfurter 1927).

Eventually, however, Italian immigrants and their descendants experienced a significant rise in their economic, social, and political situation that can be described as their slow assimilation into American society. As it did with Irish immigrants a few generations before, the Catholic Church played an important role as a "mobility machine", creating an infrastructure of schools, universities, and hospitals "to counter the hostility and disadvantages of a Protestant-dominated society" (Portes and Rumbaut 2006: 332). Also as it did with the Irish, politics proved to serve as "an avenue of individual upward mobility when other paths remain blocked" (Id.: 64); the election of Fiorello LaGuardia as Mayor of New York in 1934 paving the path for many subsequent politicians of Italian descent. The absorption of Italian-Americans into a "white" identity also played a key role. Today, despite lingering stereotypes about connections to organized crime, the descendants of Italians in America by and large have achieved social, economic, and political parity with other Americans.

1.5 Early Twentieth Century Changes to Immigration Policy

At the turn of the twentieth century, concerns about the rising tide of "nonwhite" immigrants from Eastern and Southern Europe reflected a deep racial anxiety that gave rise to a race-based "political irrationalism" (Richards 1999: 172). This racial

anxiety, compounded by fears of the growing industrial class of radicalism in the labor movement, took advantage of the 1901 assassination of President William McKinley by Leon Czolgosz, an anarchist and the son of Polish immigrants, to pass the first federal immigration legislation since the Chinese Exclusion Act (see paragraph 2.1 below). The Immigration Act of 1903 excluded "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government (…)" (Johnson 2004: 61-62). While the law, on its face was designed to keep out political enemies and anarchists, as some commentators have noted, "[a] growing belief that the new immigrants from Eastern and Central Europe held political values that threatened the existing social and political status quo helped fuel the attack on anarchism" (Scanlan 1988: 1518).

As nativist sentiment ramped up in the early twentieth century, Congress passed the Immigration Act of 1917 which barred immigration from those over the age of 16 "who can not read the English language, or some other language or dialect, including Hebrew or Yiddish". As Kevin R. Johnson notes, in operation the test restricted the immigration of most non-English speakers, as intended, including Italians, Russians, Poles, Hungarians, Greeks, and Asians (Johnson 2004: 23).

Despite these restrictions, by 1920 nearly one million immigrants a year were arriving in the United States, most of whom were Catholics and Jews coming from Southern and Eastern Europe. In 1921 Congress applied the brakes, limiting total immigration to 300,000 for 1921 and 1922 combined. Then Congress passed the Immigration Act of 1924, or the Johnson-Reed Act. Johnson-Reed restricted immigration to 150,000 people per year, and set national origin quotas proportionate to the number of foreigners residing in the United States. However, instead of using the population residing in the United States at the time the law was enacted, the Johnson-Reed act reached back 34 years to set 1890 as the baseline – the year that waves of immigration from Southern and Eastern Europe first began arriving. By doing this Congress was able to reflect concern that "continued arrival of great numbers [from southern and eastern Europe] tends to upset our balance of population, to depress our standard of living, and to unduly charge our institutions for the care of the socially inadequate" (Johnson 2004: 23, quoting Staff of House Committee on Immigration and Naturalization, Report on Restriction of Immigration, House of Representatives Report No. 68-350, pt. 1, at 13-14 (1924)).

The effect of Johnson-Reed was to dramatically reduce the flow of immigrants from Eastern and Southern Europe, and, as with the Chinese Exclusion Act, discussed in paragraph 2.1 below, create a class of illegal immigrants, who found their way to the United States despite their lack of documents. Immediately after the passage of Johnson-Reed, Europeans from not only Southern and Eastern Europe but Belgium, the Netherlands, and Switzerland found ways to illegally enter the country through Canada and Mexico (Ngai 2003: 83). Over time many took advantage of a loophole permitting Europeans to enter the United States after residing in Canada for five years (Id.).

The pernicious effects of the Johnson-Reed Act reached an acute pitch during World War II, when few Jewish refugees from Hitler's Europe could enter the United

States. Some who tried were returned to Germany by the United States government, where they were shipped to the death camps (Blackmun 1994: 44).

Neither the Immigration Act of 1917 nor the Johnson-Reed Act was directed exclusively at Europeans, of course. Congress also acted to completely exclude people from Asia through these laws. In doing so they built on decades, if not centuries of anti-Asian sentiment codified through immigration policy and legal precedent.

2. Chinese and Japanese Immigration and American Immigration Policy

2.1 Chinese Immigration

As European immigrants settled in the Eastern United States during the mid-nineteenth century, the western United States saw the arrival of immigrants from Asia. James Marshall discovered gold in Coloma Creek, California in 1848, attracting thousands of Chinese with big dreams of striking it rich on *Gum Saan*, or Gold Mountain, as the Chinese called the United States (Lee 2003: 1). Between 1852 and 1882, over 300,000 Chinese immigrants arrived to work in the gold fields and then to help build the first intercontinental railroad (Yung et al. 2006: 1). When it became clear that many Chinese intended to stay, hysteria against them escalated in California and spilled over into the national political arena. As a result, the United States excluded Chinese immigrants for nearly a century, though thousands were nonetheless able to evade the exclusion. Those who managed to make it suffered discrimination and diminished legal status. The anti-Chinese movement developed an ideology of "white supremacy/Oriental inferiority that was wholly consistent with the mainstream of American racism" (Daniels 1977: 3). As discussed herein, ultimately this "inassimilable" group fought for its legal rights and gradually integrated into mainstream American society.

Chinese immigration can be effectively divided into four periods: "[1] years of free immigration from 1849 to 1882; [2] an age of exclusion from 1882 to 1943; [3] a period of limited entry under special legislation from 1943 to 1965; and [4] an era of renewed entry under special legislation from 1965 to the present" (Chan 1991: viii). The vast majority of early immigrants arriving during the period of unrestricted immigration were young and middle-aged men who left China to earn wages in the United States and send part of their savings home to their families (Id.). By 1860 the United States Census reported 34,933 Chinese immigrants in the country, with almost all of them residing in California (Qin 2008: 8).

Natives tolerated Chinese immigrants during this period to the extent that they filled demand for low-cost, flexible labor. The 1868 Burlingame Treaty with the Chinese government ensured a sustained supply of cheap labor from China, and large mining and railroad companies heavily recruited and ruthlessly exploited these new arrivals (Qin 2008: 8). Like many white Americans during this era of "manifest destiny" and white supremacy, the mining industry viewed Chinese immigrants as racial inferiors and put them to work for long hours in harsh conditions in gold and quicksilver mines (Yung et al. 2006: 2). Mining companies also recruited Chinese laborers for grueling and dangerous work in borax deposits and coal mines for subsistence-level wages (Id.). By 1870, the United States Census reported 60,000

Chinese, with some 50,000 of them in California and about half of the entire Chinese work force involved in mining (Qin 2008: 8).

In addition to exploitative working conditions, Chinese miners suffered discrimination, resentment, and violence on the job. In 1875, the Union Pacific Company stirred racial hostility when it hired Chinese immigrants to replace white coal miners who had gone on strike in Rock Springs, Wyoming (Yung et al. 2006: 48). Employers frequently hired racial minorities as strikebreakers during this period, as noted above with Italian Americans (see paragraph 1.4 above). Tensions intensified between white and Chinese miners for years until in 1885 a mob of white labor union members opened fire on Chinese miners, killing 28 and wounding 15 (Yung et al. 2006, 48). This tragic event exemplified the increasingly hostile attitude of white workers towards Chinese immigrants, whom they viewed as cultural threats, labor competition, and racial inferiors. Prompted by growing hostilities, many mining companies passed regulations and special taxes to exclude the Chinese despite the immense profits that Chinese laborers earned for the mining industry (Chan 1991: 2). After gold fever subsided in California, the Central Pacific Railroad Company recruited Chinese laborers, putting Chinese immigrants to work "leveling roadbeds, boring tunnels, blasting mountainsides, and laying tracks" (Yung et al. 2006: 3). Some of the most grueling work brought Chinese laborers to the High Sierra, where they lived in caverns carved below the snow and often fell victim to snow storms and avalanches (Id.).

California entered the United States as a state in 1850 and almost immediately began passing laws restricting the rights of Chinese immigrants. In 1852 the California State Legislature passed the foreign miners tax, the first piece of discriminatory legislation to target Chinese immigrants in the United States (Chan 1991: 2). Authorities initially enforced the tax almost exclusively against Chinese gold miners, and the California legislature would later amend the bill to apply exclusively to Chinese miners (Id.: 4). Between the tax's enactment in 1852 and its repeal in 1870, the State of California collected 5 million dollars, a sum that represented between 25 and 50 percent of the state's revenue (Yung et al. 2006: 2). In 1862, the California legislature passed a "measure of special and extreme hostility to the Chinese" that extended the Chinese miner's tax to most other Chinese laborers in the state (Chan 1991: 6-7). The anti-Chinese sentiment that permeated Sacramento politics also infiltrated San Francisco's courts. In 1854, the California Supreme Court barred Chinese witnesses from testifying against white men in court in *People v. Hall* (California Supreme Court 1854), upholding and expanding a Civil Code provision that "no Black, Mulatto person, or Indian shall be allowed to give evidence against a white man". This ruling proved especially damaging to the Chinese community because Chinese residents were often the sole witnesses to violence perpetrated by white Americans against Chinese immigrants.

The Civil Rights Act of 1870 and the Fourteenth Amendment to the US Constitution ended California's explicit discrimination against the Chinese. The California State Legislature, however, adapted to the new legal landscape by passing laws that appeared neutral on their face but that either operated effectively only on the Chinese or could be enforced selectively against the Chinese (Chan 1991: 8).

The City of San Francisco passed one such facially neutral law in 1870 that required every lodging house to provide at least five hundred cubic feet of air per inhabitant (Id.: 9). Although the ordinance appeared neutral on its face, the city enforced the law exclusively against Chinese residents (Id.). The law afforded violators a choice between imprisonment and paying a fine, and convicted Chinese residents routinely chose jail time (Id.). In order to encourage the payment of fines, the San Francisco Board of Supervisors enacted the infamous "Queue Ordinance" in 1873 (Lee 2003: 9). The measure, which has since been described as "an action that must surely rank as one of the most spiteful and vindictive of all official measures directed against the Chinese", required jailers to crop the hair of every male prisoner within one inch of the scalp (Id.). The ordinance effectively discriminated against the Chinese, who were required to wear their hair in long queues, or braids, under the laws of the Qing dynasty (the penalty in China for not doing so was execution) (Id.). The law stood until 1879 when a federal court struck it down on equal protection grounds in *Ho Ah Kow v. Nunan* (Circuit Court for the District of California 1879) (Id.: 11).

Perhaps the most notorious example of discriminatory legislation in California was the passage of "Laundry Ordinances" enacted by the San Francisco Board of Supervisors between 1873 and 1884. The anti-Chinese movement in California viewed the roughly 240 Chinese-owned laundries in San Francisco as a symbol of Chinese economic success and as proof that the Chinese intended to reside permanently in California (Chan 1991: 12). On three nights in July 1877, mobs swept through the streets of San Francisco, attacking Chinese laundries, "smashing windows, pelting their interiors with rocks, and looting their contents" (Id.). The board responded to the violence by enacting "laundry ordinances", which appeared neutral on their face but were clearly designed to drive Chinese laundries out of business. The ordinances required all laundry owners to obtain licenses from the board, which reserved the power to approve or deny applications at will (Id.: 13). Every white laundryman who applied for a license received one, but not a single Chinese laundryman obtained a license under the ordinances (Id.). The Supreme Court of the United States ultimately invalidated the ordinances in the landmark case *YickWo v. Hopkins* (United States Supreme Court 1886), in which Associate Justice Stanley Matthews spoke for a unanimous Court when he declared, "Though the law itself be fair on its face and impartial in appearance, if it is applied and administered by public authority with an evil eye and an unequal hand (…) the denial of equal justice is still within the prohibition of the Constitution". As discussed herein, though the Chinese community successfully vindicated its rights in court, community leaders struggled unsuccessfully to influence public opinion, which remained staunchly anti-Chinese throughout the United States and particularly in California.

After decades of lobbying by anti-Chinese activists in California, Congress finally heeded the call of Californians to protect them from the so-called "Chinese invasion" by passing a series of laws restricting immigration from China. The Page Law of 1875, which excluded Asian contract labor and women suspected of entering the country for "lewd or immoral purposes", represented the United States' first regulation of immigration at a national level (Lee 2003: 24). Despite its general mandate, the law targeted Chinese immigration and served as an important step toward

general Chinese exclusion. The Chinese Exclusion Act of 1882 struck the final blow to Chinese immigration, limiting entry into the United States to members of certain "exempted classes" – merchants, diplomats, students, and travelers (Chan 1991: viii). The Act required deportation of some who were already present in the United States and precipitated the first wave of illegal immigration to the United States as Chinese immigrants seeking work continued to arrive, smuggled in as if contraband goods.

In affirming the legality of the Chinese Exclusion Act, the Supreme Court of the United States accepted as legitimate its racist motivation. The Court noted in *Chae Chan Ping v. United States* (United States Supreme Court 1889) that Congress passed the Chinese Exclusion Act in response to the fact that Chinese immigration to California "was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization". The Court further observed that the Chinese "remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country", and that "[i]t seemed impossible for them to assimilate with our people" (Id.). In justifying the Congressional exercise of power to protect the national security against "the vast hordes of [a foreign nation's] people crowding in upon us", and "the presence of foreigners of a different race in this country, who will not assimilate with us", the Supreme Court picked up on the "extra-constitutional" concept of federal plenary power initially articulated in *Johnson v. M'Intosh* (United States Supreme Court 1823), the Supreme Court decision limiting judicial review of the exercise of governmental power "to extinguish the Indian title of occupancy" (Id.; see Frickey 1999: 390).

The language of the Chinese Exclusion Act, as well as the willingness of the federal judiciary to look the other way while state and federal government restricted or forced the movement of racially-designated groups, also drew from the Fugitive Slave Act of 1793 and antebellum state laws regulating the migration of slaves (Johnson 2004: 19). By accepting "a large-scale, relatively efficient federal system for the forced removal of people from one place to another on the basis of rather scanty proof, with minimal or no judicial oversight, and with only the most flimsy constitutional protections" (Kanstroom 2007: 82), the Supreme Court in *Prigg v. Pennsylvania*, (United States Supreme Court 1842) set the stage for later race-based restrictions on immigration and permissive deportation schemes, elements that continue to characterize the United States' immigration and deportation policies.

In 1892 Congress passed the Geary Act, which extended the Chinese Exclusion Act for another ten years and added onerous new requirements for Chinese residents. First, the Act required all Chinese residents to carry a resident permit, with violators facing either deportation or one year of hard labor (Hing 2004: 39). This permit constituted the very first permanent residence card – modernly referred to as a "green card" due to its color at one time – that the United States government ever required as proof of legal status. The Geary Act further provided that Chinese residents could not bear witness in court or receive bail in habeas corpus proceedings (Id.). Quoting its earlier decision in *Chae Chan Ping*, the Supreme Court upheld the harsher Geary Act in *Fong Yue Ting v. United States* (United States Supreme Court 1893). Congress renewed the Act in 1902 and made it permanent in 1904 until its repeal in 1943.

Another series of immigration laws passed throughout the 1920s ended Asian immigration almost entirely. As discussed earlier, the passage of the Emergency Immigration Quota Act of 1921, which restricted immigration to 3 percent of the foreign-born nationalities included in the 1910 census, the Johnson-Reed Immigration Act, and the Emergency Quota Act of 1924, which further restricted immigration to 2 percent, indexed to the 1890 census, greatly reduced immigration into the United States. Although the most vocal advocates supported these acts as a way to limit immigration from eastern and southern Europe, the quotas effectively eliminated immigration from Asia almost entirely (Chan 1991: 123-25). According to an official House Report, "[The quota system] is used in an effort to preserve, as nearly as possible, the racial status quo in the United States. It is hoped to guarantee, as best we can at this late date, racial homogeneity" (House Report, quoted in Johnson 2004: 23).

Congress finally repealed the Chinese Exclusion Act in 1943 when Chinese troops joined United States troops in fighting Japan during World War II (Chan 1991: ix). The primary groups of Chinese immigrants permitted to enter the United States during this period were brides and wives of Chinese-Americans who served in the United States armed forces during World War II and refugees seeking to escape the Communist Party in China (Id.). Although Congress capped immigration from China at a mere 105 individuals, the repeal of the Chinese Exclusion Act marked a turning point in the history of Chinese immigration (Qin 2008: 12). Most importantly, Congress finally permitted Chinese residents already in the county to gain full United States citizenship through naturalization, a right that Chinese immigrants had been denied for nearly a century (Id.).

In the final stage of Chinese immigration, the Immigration and Nationality Act of 1965 permitted entire families to enter the United States from China for the first time by abolishing the national quota system and prohibiting discrimination against immigrants on the basis of race, gender, nationality, and place of birth (Chan 1991: ix). By 1970, the Chinese population in the United States reached 341,583 according to the United States Census, making the Chinese the second largest Asian ethnic group in the country after the Japanese (588,324) (Qin 2008: 13).

One hundred and twenty years after the decision in *Chae Chan Ping*, there are nearly 4 million American citizens of Chinese ancestry (United States Census Bureau 2010). We could point to much evidence of continuing animosity by white Americans against Asians generally and Chinese and Chinese-Americans in particular, but by many measures the children and grandchildren of Chinese immigrants have successfully integrated into American culture. Drawing from Berry's distinction between assimilation and integration, the experience of Chinese-Americans appears to more closely resemble the latter. For example, the demonstration by Chinese-Americans for a "relative preference for having contact with and participating in the larger society along with other ethnocultural groups" (Berry 2005: 204) is illustrated by the high level of Chinese participation in the American education system. According to Professor Bibin Qin, the Chinese community has long viewed educational attainment as "an important pathway to socioeconomic mobility and self-improvement" (Qin 2008: 18). Today, educational achievement is greater than the national average, with 50.6 percent of Chinese-Americans over the age of 25 holding a Bachelor's degree

or higher compared to the national average of 28.2 percent (United States Census 2010). Additionally, 25.3 percent of Chinese-Americans in the same age group hold a graduate or professional degree compared to the national average of 10.4 percent (Id.).

In terms of economic integration, measured by annual household income, Chinese-Americans matched and then surpassed the average American family. According to the 2010 United States Census, Chinese-Americans earn roughly 30 percent more than the national average. Other indicators suggesting a preference on the part of Chinese-Americans for interacting with other ethnocultural groups include the high rates of residential integration and intermarriage among Chinese-Americans and the larger society. Although these indicators to some degree obscure differences in the availability of educational and economic opportunities between more recent immigrants and descendants of previous generations, overall they evidence high levels of cultural and social integration into American society, relative to many other demographic groups.

Unlike so many European Americans, however, as a group Chinese-Americans have not fully assimilated into American society, and continue to be racialized as "other", often during times of economic or political crises. From an exclusion perspective, many continue to suffer from hate crimes and discrimination in employment, housing, and access to public accommodations (see, for example, Chou & Feagin 2008; Hall & Hwang 2001; Ling 2009). Thus, one may argue that the Chinese community has largely integrated, though not assimilated, into mainstream American society.

2.2 Japanese Immigration

Scholars have divided Japanese immigration into five periods: (1) unrestricted and scattered immigration from 1861-1890 (3,000 immigrants), (2) unrestricted and growing immigration from 1891-1900 (27,000 immigrants), (3) peak, unrestricted immigration from 1901-1908 (127,000 immigrants), (4) reduced immigration under the Gentleman's Agreement from 1909-1924 (118,000 immigrants), and (5) no legal immigration under the Immigration Act of 1924 (Daniels 1977: 1). To this we add a sixth period: renewed immigration following the Immigration Act of 1965.

During the first period, Japanese citizens began migrating to Hawaii to work as laborers on sugar plantations (Id.: 6). Around the same time, employers in California felt the harsh effects of the Chinese Exclusion Act of 1882, which created labor shortages throughout the state (a shortage of labor willing to work at close-to-subsistence levels, that is), and in turn acted as an inducement to prospective Japanese immigrants and attracted a large number of Japanese workers from Hawaii to California (Id.: 6-7).

The population of Japanese in the United States increased from 150 in 1880 to 140,000 in 1930, mostly in California. Californians welcomed these new immigrants only as temporary workers and restricted their basic civil rights, including the right to own real property. Employers welcomed these early first generation Japanese recruits, especially because Chinese laborers in the agricultural sector had begun using their diminished numbers to increase wages. Just as the railroad and mining companies recruited Chinese laborers beginning in the 1850s, California's agricultural and mining industries sought to replace low-cost Chinese labor by enticing Japanese immigrants

with promises of high wages and new opportunity. Once the Japanese laborers arrived, however, employers required them to work long hours in return for near-subsistence-level pay. Japanese immigrants who were able to establish themselves in California initially assisted newcomers, providing them with lodging and work upon arrival in California (Daniels 1977: 7). Some of these first generation Japanese joined employers in exploiting arriving Japanese; before long, clusters of boardinghouses run by first generation Japanese developed along the California coast with boardinghouse owners doubling as small-scale labor contractors, recruiting and then exploiting their fellow immigrants. A typical Japanese-language advertisement running in Hawaii declared:

> GREAT RECRUITING TO AMERICA: Through an arrangement made with Yasuwaza, of San Francisco, we are able to recruit laborers to the mainland and offer them work. (…) Employment offered in picking strawberries and tomatoes, planting beets, mining and domestic service. Now is the time to go! (Id.: 8).

Around the turn of the century, however, Japanese farm workers began striking for higher wages and improved working conditions, and Californians became increasingly hostile towards Japanese immigrants (Daniels 1977: 9). Without Chinese workers to supplement their agricultural labor requirements, employers grudgingly yielded to some of their demands (Id.). Such labor actions quickly soured relations between California farmers and their Japanese workers, with one grower complaining about the "saucy, debonair Jap, who would like to do all his work in a white starched shirt with cuffs and white collar accompaniments" (Id.). In addition to striking for higher wages, many first generation Japanese began slowly acquiring the capital necessary to purchase their own land. By 1904 first generation Japanese farmers had already acquired 2,422 acres of land, a figure that would rise to 16,499 acres in 1909 and 74,769 acres in 1919 (Id.). The rapid economic success of the first generation Japanese as farmers and businessmen quickly sparked hostility among Californians, who viewed them as economic and cultural threats. In many ways, the anti-Japanese movement was a continuation of the long-standing agitation against the Chinese. The anti-Oriental movement that targeted Chinese immigrants in previous decades turned its attention to what it perceived as a new threat to California's economic success and cultural identity – the so-called "Japanese invasion".

The first major protest against the Japanese in California took place in May of 1900 in San Francisco, where San Francisco Mayor James Duval Phelan declared: "The Japanese are starting the same tide of immigration which we thought we had checked twenty years ago (…) The Chinese and Japanese are not bona fide citizens. They are not the stuff of which American citizens can be made (…) they will not assimilate with us and their social life is so different from ours, let them keep at a respectful distance" (Daniels 1977: 21). That same year, the Democratic plank urged that the Chinese Exclusion Act be applied to all "Asiatic races" and the pro-Bryan Populists demanded a halt to the "importation of Japanese and other laborers under contract" (Id.: 22). Even the radical segment of the American left was staunchly anti-Japanese, with some members putting forth blatantly racist arguments. One Socialist writer stated that "our feelings of brotherhood toward the Japanese" must be postponed "until we have no longer reason to look upon them as an inflowing horde of alien scabs" (Id.: 30). Other prominent Socialists wished to restrict immigration from all "backward races" and

keep the United States "White Man's countr[y]" lest it become "a black-and-yellow country within a few generations" (Id.).

The anti-Japanese movement gained significant traction in early 1905 when the most influential newspaper on the Pacific Coast, the San Francisco *Chronicle*, published the following headline: "THE JAPANESE INVASION, THE PROBLEM OF THE HOUR" (Daniels 1977: 25). Other headlines appearing in the San Francisco *Chronicle* over the next few months included the following:

> BROWN MEN ARE MADE CITIZENS ILLEGALLY
> BROWN MEN AN EVIL TO THE PUBLIC SCHOOLS
> THE YELLOW PERIL – HOW JAPANESE CROWD OUT THE WHITE RACE
> BROWN ARTISANS STEAL BRAINS OF WHITES (Id.).

The anti-Oriental movement thus framed the Japanese issue as "brown versus white", "yellow versus white", and "good versus evil".

In 1905, California trade unionists formed the Japanese and Korean Exclusion League, whose sole purpose was the exclusion of Japanese and other Asian peoples (Saxton 1971: 247). The organization argued for exclusion on primarily racial grounds, alleging that "[n]o large community of foreigners, so cocky, with such distinct racial, social and religious prejudices, can abide long in this country without serious friction", and that "it should be against public policy to permit our women to intermarry with Asiatics (...)" (Daniels 1977: 28). The organization's message was not anti-immigrant but anti-Asian. Members were convinced that assimilation could not cross the color line, declaring that "an eternal law of nature has decreed that the white cannot assimilate the blood of another without corrupting the very springs of civilization" (Id.: 28). Given that many of the organizations leaders were immigrants themselves, but from European nations, this example highlights the ways in which the boundaries of whiteness were expanded to include these groups at the expense of Asian immigrants. Whereas European immigrants assimilated within the span of a few decades, non-European immigrants struggled to integrate over nearly a century and still have not assimilated.

Local and state legislation during this period reflected the general anti-Japanese hysteria of the time. Following the vicious anti-Japanese campaign instigated by the San Francisco *Chronicle* in 1905, the California legislature passed a resolution that called upon Congress to "limit and diminish the further immigration of Japanese" (Daniels 1977: 27). The resolution enumerated ten reasons for exclusion, including that "Japanese laborers, by reason of race habits, mode of living, disposition and general characteristics, are undesirable (…)" (Id.). Anti-Japanese bills were introduced in the California legislature in every biennial session for the next four decades without exception (Id.).

Anti-Japanese hysteria in California soon spilled over into the national political arena as the California lobby pressured Congress to pass exclusionary legislation similar to the Chinese Exclusion Act. President Theodore Roosevelt, however, was wary of excluding the Japanese for an important political reason: Japan had recently annihilated Russian military forces and ascended into the first rank of world powers (Daniels 1977: 36). California's extreme hostility towards the Japanese and its continuous enactment of discriminatory legislation, particularly the San Francisco

School Board's 1906 order mandating segregation for Japanese students, created a very sticky diplomatic situation for Roosevelt, who sought to maintain friendly relations with the new world power. After weeks of dickering between Washington and California, Roosevelt finally reached an agreement with California's politicians that permitted San Francisco to place overage pupils and those with limited English in separate schools so long as all other Japanese children continued to attend regular public schools (Id.: 42). In return, the federal government withdrew its lawsuits against San Francisco and promised to limit Japanese immigration (Id.).

In 1907 American and Japanese diplomats formed the "Gentleman's Agreement", which barred Japan from issuing passports to laborers bound for the United States (Chan 1991: vii-viii). That same year President Theodore Roosevelt signed Executive Order 589, which barred Japanese laborers with visas to Hawaii, Canada, and Mexico from re-immigrating to the United States (Id.: viii). These reforms did little to limit Japanese immigration, but instead shifted the demographics from young male laborers to young female "picture brides", who arrived in the United States without ever having met their future husbands. Ultimately, however, the 1924 Immigration Act virtually ended Japanese immigration altogether (Chan 1991: viii). The Immigration Act prohibited "aliens ineligible to citizenship" from immigrating, and the then-existing naturalization laws allowed only free white immigrants and people of African ancestry to become naturalized citizens (Id.).

Anti-Japanese hysteria reached an historical high during World War II when the United States government shipped roughly 112,000 Japanese-Americans to concentration (or "internment") camps (Daniels 1993: xv). After the attack on Pearl Harbor in 1941, nearly every newspaper on the Pacific Coast "spewed forth venom against all Japanese", using terms such as "Jap", "Nips", "yellow men", "Mad dogs", and "yellow vermin"" (Id.: 32). Magazines and newspapers published articles explaining how to tell the Japanese from other Asian nationalities, noting that "Chinese and Koreans both hate the Japs more than we do (…) Be sure of nationality before you are rude to anybody" (Id.: 33). The press also spread fear and incited racial violence by leading the public to believe that Japanese spies were all around them (Id.). Of the roughly 112,000 Japanese-Americans sent to internment camps, 64.9 percent were American-born (Id.: 104), and therefore US citizens.

Perhaps the most visible display of Japanese participation in the courts occurred during the years of Japanese internment, when Japanese-Americans brought a number of cases to the Supreme Court to test the validity of internment. Although the Supreme Court upheld the validity of Japanese internment, the cases revealed the belief by those challenging internment that they were entitled to all of the rights conferred by American citizenship. In *Hirabayashi v. United States* (United States Supreme Court 1943), the Supreme Court upheld the conviction of a University of Washington student who violated curfew and failed to report for evacuation, stating that just because "racial discriminations are in most circumstances irrelevant and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly prevented from taking into account those facts (…) which may in fact place citizens of one ancestry in a different category (…)" (Daniels 1977, 133). The Supreme Court later upheld the evacuation of Japanese-Americans

from their homes in *Korematsu v. United States* (United States 1944) on the basis that "the gravest imminent danger to the public safety" justified evacuation (Id.: 137). Korematsu's conviction was later overturned in 1984 (*Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984)).

The history of Japanese immigration to United States thus reveals nearly 150 years of struggle for full citizenship and integration. Like the Chinese, Japanese immigrants and their children refused to sit idly by as courts and legislatures denied them their rights. Today, although we could point to much evidence of continuing animosity by white Americans against Asians generally and Japanese and Japanese-Americans in particular (see, for example, Chou & Feagin 2008; Hall & Hwang 2001; Ling 2009), Japanese-Americans have largely integrated into American society, as evidenced by a desire to interact with other ethnocultural groups through robust involvement in the nation's institutions of higher education. Educational achievement among Japanese-Americans is greater than the national average, with 46.1 percent of Japanese-Americans over the age of 25 holding a Bachelor's degree or higher compared to the national average of 28.2 percent (United States Census Bureau). Additionally, 15.2 percent of Japanese-Americans in the same age group hold graduate or professional degrees compared with the national average of 10.4 percent (Id.). Thus, Japanese-Americans have integrated, though not fully assimilated, into American society. Like Chinese-Americans, Japanese-Americans still retain their unique culture, though the current generation may be distancing itself from the traditions brought from Japan by their parents and grandparents.

As these two sections demonstrate, the path to integration by Chinese-Americans and Japanese-Americans was long, arduous, and fraught with discrimination and daunting structural barriers. Many factors ultimately led to the acceptance and integration of the Chinese and Japanese communities into mainstream American society; for example, the Chinese community's continued involvement in the nation's courts and legislatures certainly contributed to their success, as did evolving notions of "whiteness" and the decreased salience of "whiteness" as a requirement for successful integration. Chinese and Japanese-Americans have also assumed what we call a "constructively white" status through educational, professional, and economic achievement. As Professor Haney Lopez points out, Asian Americans "with the highest levels of acculturation, achievement, and wealth increasingly find themselves functioning as White, at least as measured by professional integration, residential patterns, and intermarriage rates" (Haney Lopez 2006: 152).

Thus, although a central mechanism of the absorption of European immigrant groups into the mainstream of American life was the gradual expansion of the boundaries of whiteness to include those groups initially considered nonwhite, in the case of some Asian groups, this mechanism is expressed differently. Rather than being considered white, a dominant white culture in America has created an "exceptional" category for certain Asian groups, for which certain aspects of white identity – most notably more archaic, biological constructions of race – are considered irrelevant, while the social, economic, and cultural accomplishments are emphasized to bestow a constructive or "honorary" white identity. However, as the next section explores, the development of this "constructively white" racial category is very narrowly confined

and meted out by the white majority to select immigrant groups, primarily from middle class backgrounds or with the ability to attain rapid economic upward mobility once within the United States. In both cases, the enduring legacy of this racialized pattern of Americanization can be best understood through reference to the place of African-Americans in the broader racial hierarchy in the United States (see generally Bell 1992).

3. African-Americans

While not usually thought of as an "immigrant" group per se, the internal movement of Black Americans has been very tightly controlled for most of United States history. Legal barriers to where African-Americans could live did not fully fall until the mid-twentieth century, and extra-legal barriers continue to this day to force most Black Americans into largely Black neighborhoods. This regulation of the movement of African Americans was closely connected to the regulation of immigration by groups considered "nonwhite" into the United States. However, whereas many immigrant groups ultimately assimilated or integrated into the mainstream United States population, in many ways, African-Americans have never been fully accepted, either economically or socially.

In 1860 the Black population in the United States was 4.5 million, including 4 million slaves, out of a total United States population of 31 million. In the wake of the American Civil War (1861-1865), newly emancipated slaves tried to move from the plantations where most of them had been held in bondage to towns and cities. But the Freedmen's Bureau, established by Congress to help freed slaves transition to independence, did little to help them establish genuine economic independence. While the Bureau permitted newly freed African-Americans to leave their own plantations, and to search for family, it also acted quickly to restrict their ability to acquire their own land, and insisted that they contract for their work with the white former slave owners (Litwack 1980: 230, 408-417). These contracts were primarily share crop agreements, by which the black laborer worked the land of the white property owner for a share of the crop; the laborer usually found himself in greater debt each year, and was thus increasingly tied to a near-slavery relationship.

As noted by historian Kenneth Stampp, while Southern political leaders grudgingly accepted the Thirteenth Amendment abolishing slavery, "clearly most of them intended to replace slavery with a caste system that would keep the Negroes perpetually subordinate to the whites. Negroes were to remain a dependent laboring class; they were to be governed by a separate code of laws; they were to play no active part in the South's political life; and they were to be segregated socially" (Stampp 1969: 13). For example, South Carolina in 1865 passed a series of repressive laws known as the "Black Code", decreeing among other things that colored children "whose parents are not teaching them habits of industry and honesty" may be bound by District Judges as "apprentices" to a white "master" who "shall receive to his own use the profits of the labor of his apprentice" (South Carolina Black Code §§ XVII – XXIV). Further, they had to apply for a permit, at an annual cost of between ten and one hundred dollars, to work as an artisan, mechanic, or shopkeeper. Any person found without "lawful and reputable employment", could be arrested and serve out

his or her sentence by being hired as servant by a master who then retained the rights to seek "suitable corporal punishment" should this servant violated the terms of the contract (§ XCVI, XCVII, LII). Alternately, blacks who were not approved to receive an occupational license could make a "contract for service" to become a servant to a white master, usually to perform agricultural work and "voluntarily receive[ ] no remuneration except food and clothing" (§ XXXV, XLIII).

White northerners, perhaps exhausted by the brutality of the Civil War and caught up in their own concerns over the rising tide of immigrants arriving on their shores, turned their back on southern Blacks or actively condoned the southern caste system. In 1890 the Nation magazine proclaimed that "[t]he sudden admission to the suffrage of a million of the recently emancipated slaves belonging to the least civilized race in the world (…) was a great leap in the dark (…) Who or what is (…) [the Negro] that we should put the interests of the 55,000,000 whites on this continent in peril for his sake?" (quoted in Stampp 1969: 16). Trapped by Jim Crow laws throughout the South, a few blacks did manage to escape to the marginally friendlier North, with 70,000 blacks leaving the South in 1870s, 80,000 in 1880s, 174,000 in the 1890s, and 197,000 between 1900 and 1910 (Massey and Denton 1993: 27, citing Lieberson).

After the turn of the century, the growing needs of industrial concerns in the Northeast and Midwest (for workers, and for strike breakers as labor unions gained strength), combined with a growing repressiveness of southern racial oppression, helped spark the Great Migration. Between 1915 and 1975 over six million Black Americans left the rural South heading north and west (Wilkerson 2010: 177), along three major tributaries: east coastal, central, and western (Id.: 178). As with many immigrants who had arrived on America's shores during the preceding century, the initial streams of what would coalesce into this Great Migration was instigated by recruiters paid to deliver labor to foundries and slaughterhouses of the North (Id.: 216). Prior to World War I, demand for unskilled labor in industrializing the North was met primarily by rural immigrants from southern and eastern Europe (Massey & Denton 1993: 27, citing Erickson 1957). But migration from Europe was not consistent; it varied with booms and busts of European economy. When this happened, recruiters turned to rural south in the United States (Massey & Denton 1993: 27). Indeed, after the Johnson-Reed act of 1924 cut immigration to a trickle, northern industrialists had few options but to encourage the movement of blacks from the south. Once early migrants – primarily young men – had established themselves, they sent word back home that there was better opportunity in the North. The *Chicago Defender*, a black newspaper, exhorted southern blacks to escape to the north (Id.: 29).

Working-class whites feared economic competition and reaffirmed their belonging to a white mainstream by "oppressing a people that was even lower in the racial hierarchy" (Id.). While labor competition is one explanation for northern racism, it is by no means the only one. Although the North had long prided itself for shunning the institution of slavery, it was not immune to the ideology of white racial superiority that characterized much of American history. As Massey and Denton have meticulously documented, as the number of black residents in the North grew precipitously, residential segregation became an entrenched institution for maintaining white domination over economic, social, educational and political

resources. While racially restrictive covenants played a key role in maintaining this segregation, the Federal government also was an important contributor. In 1933 the Federal Home Owners' Loan Corporation (HOLC), aiming to provide home mortgage assistance to homeowners at risk of default in urban neighborhoods, designed a series of color-coded "Residential Security Maps" portraying the risks associated with loans in every neighborhood (Id.: 51). Areas that were given the highest ranking were described by HOLC as "homogenous", while describing neighborhoods with "rapidly increasing Negro population", as giving rise to the "problem in the maintenance of real estate values" (Id.: 52). The Underwriting Manual used by the Federal Housing Administration to determine whether to extend home loan insurance explicitly considered the presence of "inharmonious racial or nationality groups" to be a liability, and recommended the use of racially restrictive covenants by homeowners as a means of ensuring "stable" neighborhoods (Id.: 51). As one real estate appraiser noted in 1933, "certain racial and national groups, because of their lower economic status and their lower standards of living (...) cause a greater deterioration of the property than groups higher in the social and economic scale" (Hoyt 1933: 314).

Although many European immigrants also lived in "ethnic enclaves" in Northern cities, Massey and Denton note three important factors that distinguish these neighborhoods from black ghettoes: they had never been homogenous, they just had a plurality comprised of a particular ethnicity, rather than the majority of individuals of that ethnicity living in those neighborhoods, and they were "fleeting, transitory stage in the process of immigrant assimilationnism" (Massey & Denton 1993: 32-33). Indeed, such ethnic enclaves proved to be "vehicles for integration, economic advancement, and, ultimately, assimilation into American life", whereas "for rural blacks (…) cities became a trap – yet another mechanism of oppression and alienation" (Id.: 18).

Violence also played an important role in enforcing segregation in the North, beginning with a series of race riots that swept northern cities between 1900 and 1920, and victims were singled out on the basis of their race (Id.: 30, 34). After these riots, as black neighborhoods become increasingly crowded, families attempted to leave to neighboring suburbs only to be met with more violence. Among the more spectacular displays of this unbridled violence was the 1951 Cicero race riot. The Clark family, a black college educated couple with 2 children were sharing a 2-room apartment in Chicago with another family (of 5), and paying 50 percent more than were tenants in white neighborhoods (Wilkerson 2010: 372). They found a 5-room apartment for similar rent just 1 block over the dividing line in Cicero, and were met by white protesters and local police who physically prevented them from moving in. They sued and won the right to occupy the apartment, and in June 1951 after moving their furniture in, were attacked by a mob that entered the apartment, and destroyed all their belongings (Id.: 373). Within days the violence escalated, with 4,000 white residents participating and firebombing the 22-unit building. The National Guard was brought in and 118 rioters arrested. None were prosecuted, although the rental agent and apartment building were indicted on charges of inciting a riot (charges that were later dropped) (Id.: 374).

This fierce patrolling of the boundaries between black and white spaces and of the movement of black people in America illustrates the critical role played by "place" in mediating access to opportunity. Historian Ira Berlin has noted that

> [f]or much of American history, place was not merely a geographic locale, but a social imperative – as in 'stay in your place' – that black men and women violated at great risk (…) Manifested at times in fugitive slave law, racial covenants and redlines, or urban renewal policy that required 'negro removal,' the struggle for place was an ongoing part of the American experience (Berlin 19).

Like immigrants from Europe and Asia (or migrants within Europe, also moving from south to north), blacks fled the south for the north to seek economic opportunity and to escape oppression and subordination. And like immigrants from parts of Europe and Asia, they found better lives, but also found exploitation and discrimination. But if the consistent story for European immigrants, and for some Asian immigrants, has been one of integration, assimilation and success, for Black migrants as well as those who remained in the South the story has been one of continuing segregation, discrimination, exploitation, and subordination. As set forth below, for Black Americans, the legacy of inequality has been continuing inequality.

In 2010 the median household income for a black family (including families who reported "some other race" in addition to black on their census forms) was just 56 percent that of white non-Hispanic families (and 64 percent that of the average of all American households). This is not a significant improvement over the economic situation of black families in 1947, when their household income was just a little over half (51 percent) that of white families (United States Census Bureau). In terms of education, black Americans have enjoyed relatively little progress as a result of the Supreme Court's landmark *Brown v. Board of Education* decision in 1954. In 2009 black (and Latino) children attended schools more segregated than they were in 1968 (Orfield 2009: 4). Indeed in 2006, 38.5 percent of black children were attending schools that were more than 90 percent minority (Orfield 2009: 4 at Table 5). Just one in four African-American men hold an associate's degree or higher (Orfield 2009). A host of evidence documents that African-Americans continue to be far less likely to be hired or promoted than similarly qualified whites, (Bertrand & Mullainathan 2004; Bussey & Trasvina 2003; Turner et al. 1991: 1-4), less likely to receive prime rate mortgage loans for which they qualify (Gruenstein Bocian et al. 2006: 3), likely to be charged higher prices or higher credit interest rates than similarly qualified whites for consumer goods like cars (Ayers 1991: 819).

Racial inequities express themselves perhaps most acutely in the criminal justice system, where African-Americans are treated more harshly than similarly situated whites at every step of the process, from being stopped (Buckman & Lamberth 2001: 103-04) and searched (Smith & Durose 2006: 5) by the police, to being arrested (Blumstein 1993), to being incarcerated (Mauer & King 2007: 3), to receiving parole (Hughes et al. 2001: 8, Table 8). As a result of these endemic inequities, in some states one in four African American men carry a felony conviction that bars them from voting (Manza & Uggen 2006: 10).

This is not to say there has been no progress for Black Americans. The Civil Rights Movement of the 1950s and 60s brought the end of legally sanctioned segregation and

intentional discrimination. Affirmative action in the 1980s helped create a larger Black middle class. There are some Black Americans visible at every level of American life. Indeed, perhaps the most significant paradox of race relations in the United States is that although we have an African-American in the nation's highest political office, African-Americans as a whole experience overwhelming inequities in educational, economic, and health outcomes and continue to experience the cumulative effects of implicit bias at both the interpersonal and structural levels. The significant inequality that Black Americans continue to suffer illustrates the enduring legacy of racism in the United States. The late Derrick Bell concluded that racism against Black Americans was endemic and ultimately permanent (see generally Bell 1992).

4. Mexican-Americans

Unlike US immigration policies towards European, Japanese, and Chinese immigrants, which followed a pattern of free immigration, followed by exclusion and then gradual acceptance, US immigration policies towards Mexican immigrants have oscillated between recruitment and restriction, acceptance and exclusion depending on the economic conditions of the day (Massey et al. 2002: 8). Individuals of Mexican ancestry have resided in the United States since the two countries signed the Treaty of Guadalupe-Hidalgo in 1848 following the Mexican-American War. Despite their continued presence in the United States for over 150 years – far longer than either Japanese or Chinese-Americans – Mexican-Americans as a group still struggle to obtain similar levels of acceptance and integration. This observation leads to the final question raised by this essay: Will Mexican-Americans integrate into mainstream American society as European and (to some extent) Asian immigrants have, or will they continue to live at the margins of society as African-Americans have for over two centuries?

The first individuals of Mexican ancestry to reside in the United States did not arrive as immigrants but remained in the country after the Treaty of Guadalupe-Hidalgo transferred vast territories from Mexico to the United States. Beginning in the 1820s, European and American immigrants settled in Texas – then still a part of Mexico – which led to the United States' annexation of Texas in 1845 (Menchaca 2001: 216). The annexation sparked the Mexican-American War, which raged from 1846 until 1848 and ended in an American victory over Mexico. The resulting Treaty of Guadalupe-Hidalgo transferred immense amounts of territory from Mexico to the United States, including all or part of the present day states of Texas, California, New Mexico, Arizona, Colorado, Utah, Nevada, Oklahoma, Kansas, and Wyoming (Id.).

The Mexican government had become despotic by the end of the Mexican-American War and had demonstrated an unwillingness to protect citizens from military and Indian raids (Menchaca 2001: 216). As a result, an overwhelming majority of former Mexican citizens chose to remain in the United States and become full US citizens, eager to join a country that promised greater prosperity. In the years following the Mexican-American War, Mexicans continued to cross the vaguely-defined US-Mexico border, with thousands of immigrants arriving in California to work as miners during the Gold Rush and thousands more arriving to work in the railroads. Between 1850 and 1900, roughly 13,000 immigrants arrived in the border

states from Mexico (Massey et al. 2002: 29). Like Chinese and Japanese miners, Mexican miners faced discrimination and violence in the workplace. In much the same way that natives viewed Chinese and Japanese immigrants as economic and cultural threats, natives lashed out against successful Mexican immigrants. Mexican-Americans living in Texas suffered the worst violence at the hands of the Texas Rangers, who brutally repressed the population and are estimated to have murdered hundreds if not thousands of Mexican-Americans. During the remaining half of the nineteenth century, Mexican immigrants continued to arrive in the border states of California, Texas, Arizona, and New Mexico where they experienced a mix of success and discrimination familiar to other immigrant groups of the time (Id.).

From 1900 until the present, Mexican immigration into the United States can be divided into five periods: (1) a period of active recruitment from 1900 to 1929, (2) a period of deportation from 1929 to 1941, (3) a second period of recruitment under the *bracero* program from 1942 to 1964, (4) a period of undocumented migration from 1965 to 1985, and (5) a period of deep division over the fate of Mexican immigration into the United States that persists to the present day (Massey et al. 2002: 26-51).

During the period of immigration from 1900 until 1929, Western businesses vigorously recruited Mexican labor to fill shortages created by the exclusion of other groups. By 1908, the Chinese Exclusion Act of 1882 and the Gentleman's Agreement of 1907 had cut off Chinese and Japanese immigration and renewed the demand for cheap, flexible labor in mining, railroads, agriculture, and construction (Massey et al. 2002: 27). Just as Japanese boardinghouse owners in California recruited Japanese labor from Hawaii, private labor contractors in the west employed "a variety of coercive measures to recruit Mexican laborers and deliver them to jobs north of the border" (Id.). Recruiters traveled to Mexico and lured workers to the United States with promises of "high wages and untold riches" awaiting them in the north (Id.). These arrangements frequently entailed a great deal of exploitation that bordered on indentured servitude: potential immigrants were loaned money to travel northward and expected to repay the loans plus interest from their wages (Id.: 28). When Mexican laborers discovered they had been tricked – that working conditions were harsher and wages were lower than they had been led to believe – they often had little choice but to remain in the United States and repay their debts.

Immigration from Europe dropped sharply after the onset of World War I, and industrialists as far as Chicago and Kansas City began employing contractors to recruit Mexican labor (Massey et al. 2002: 28). In fact, Mexican labor was in such high demand during the decades leading up to and following World War I that the various restrictive immigration policies affecting Asian and European immigrants did not apply to Mexican immigrants. The head tax and literacy test imposed on all new arrivals in 1917, for example, exempted Mexicans, as did the quota system implemented between 1921 and 1929 (Id.: 29). Mexican immigration boomed after 1900 as a result of the United States' demand for labor coupled with friendly immigration policies towards Mexico and Mexico's deteriorating economic condition (Id.). From 1900 to 1930, 728,000 Mexican immigrants entered the United States compared with the 13,000 immigrants that entered between 1850 and 1900 (Id.).

Beginning in the 1920s, a strong nativism took hold in the United States and immigrants came to be viewed as a threat to American well-being. With the stock market crash of 1929 and the deepening of the depression in the early 1930s, attitudes toward Mexican immigrants became more hostile. Just as the economic downturns of the 1870s and 1890s spurred resentment toward Chinese and Japanese immigrants, Mexican immigrants were blamed for "taking away jobs from Americans" and "living off public relief" (Massey et al. 2002: 33). As history demonstrates, "the United States has an immigration dark side. A mean-spirited, anti-immigrant impulse (…) sporadically grip[s] the nation, particularly during times of social stress. During these times, the US immigration laws have been harsh, discriminatory, and aggressively enforced" (Johnson 2007: 2). To allay the fears of struggling US workers, Congress initiated a massive roundup and deportation of immigrants. Instead of using the quota system in place to halt European immigration, Congress founded the US Border Patrol in 1924 to apprehend and deport Mexican immigrants (Massey et al. 2002: 33). A series of deportation campaigns throughout the 1930s managed to reduce the size of the Mexican population in the United States by 41 percent (Id.: 34).

During the mobilization of American industry during World War II, natives who had worked in agriculture during the Great Depression were either drafted or returned to the cities to take high paying, unionized jobs. Once again, agricultural growers complained about the shortage of cheap labor and turned to Congress for a solution. Fearful about disrupting America's food supply during war mobilization, the Roosevelt administration negotiated a "binational treaty for the temporary importation of Mexican farmworkers, who became known as *braceros*" (Massey et al. 2002: 35). Under the *bracero* program, the Immigration and Naturalization Service ("INS") regulated immigration and enforced the terms of temporary visas issued to Mexican laborers. In all, some 168,000 Mexican laborers were recruited to the United States from 1942 to 1945 (Id.: 36). After 1945, Texas and California pressured Congress to extend the program through the late 1940s, and when the program finally ended growers began recruiting undocumented workers themselves (Id.). In 1951, Congress caved to the pressure from growers to extend the *bracero* program permanently, passing Public Law 78 (Id.: 37). Although the INS immediately increased the number of *bracero* visas to 200,000, the number of undocumented immigrants began to rise as well as Mexicans gained connections and support through family and friends working in the United States (Id.).

Following the Korean War and the ensuing recession, United States immigration policy once again reversed course from recruitment to exclusion. Even as agricultural growers pressured Congress for more workers, a strong and highly mobilized anti-immigration movement lobbied Congress to secure the borders (Massey et al. 2002: 37). The result was a 1954 INS-initiated attack known as "Operation Wetback" in which the INS apprehended over one million undocumented immigrants and deported them back to Mexico (Id.). In a move that exemplified the United States' inconsistent immigration policy regarding Mexico, the Department of Labor frequently issued *bracero* visas to immigrants deported to Mexico under Operation Wetback and immediately sent them back to the farms from which they had been arrested in the first place (Id.). This system ensured that growers got their workers under the *bracero*

program and that the public was reassured by the militarization of the border and the large number of apprehensions.

From 1954 until 1965, Mexican immigration was relatively predictable and rested on the delicate compromise between public demands for border control and grower demands for workers (Massey et al. 2002: 39). Overall, nearly 5 million Mexican laborers entered the United States during the *bracero* program's twenty-two year history (Id.: 39). The program finally ended in 1965 after civil rights groups attacked the program, calling it exploitative, discriminatory, and detrimental to the socioeconomic well-being of Mexican-Americans (Id.: 41). Over the next decade US immigration policy towards Mexico oscillated between unrestricted access and strict quotas.

While the federal government attempted to control the border, state legislatures attempted to control the lives of arriving immigrants. Many states, for example, passed discriminatory laws in the area of education. In 1975, revisions to Texas education laws gained national attention when the Supreme Court struck them down as unconstitutional in *Plyler v. Doe* (United States Supreme Court 1982). The new laws denied educational funding to children who had not been legally admitted into the United States and authorized local schools to deny enrollment to such students (Id.). Although the Supreme Court invalidated the law on Fourteenth Amendment grounds, the law nonetheless reflected the widespread anti-Mexican sentiment of the time and represented but one of the many laws passed to restrict access to education for Mexican immigrants.

The deep economic and social anxiety that characterized the mid-1980s led Congress to pass the Immigration Reform and Control Act (IRCA) of 1986 (Massey et al. 2002: 48). IRCA sought to reduce the benefits associated with immigration into the United States and increase the costs. IRCA imposed sanctions against employers who knowingly hired undocumented workers and increased the budget to carry out workplace investigations (Id.: 49). IRCA also authorized a 50 percent increase in the INS's budget to expand the Border Patrol (Id.). Finally, IRCA authorized amnesty for long-term undocumented residents, provided they take English-language and civic classes, which legalized roughly 2.3 million Mexican workers (Id.).

When it became clear after four years that IRCA had failed to slow Mexican immigration, Congress passed the Immigration Act of 1990. The Act focused primarily on patrolling the border and authorized funds for one thousand new agents (Massey et al. 2002: 91). The Act also "tightened employer sanctions, streamlined criminal and deportation procedures, and increased penalties for numerous immigration violations" (Id.). Finally, the Act imposed limits of the total number of immigrants admissible each year, including children and spouses of US residents and citizens (Id.). At the same time, the Act increased the number of visas going to well-educated job seekers primarily from developed European countries, thus revealing Congress's preference for European immigrants over other regions (Id.: 92).

From 1993 to 1997 the INS launched a number of initiatives aimed at further reducing illegal immigration, including "Operation Blockade", "Operation Hold-the-line", and "Operation Gatekeeper" (Massey et al. 2002: 94). Under Operation Gatekeeper, a fourteen-mile-long, eight-foot fence was installed near San Diego,

California, which later came to be known as the "tortilla curtain" (Id.). In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act, which authorized funds for additional fencing, military technology, and additional Border Patrol agents (Id.: 95). The Act went further than the 1990 Act by declaring "illegal aliens" ineligible to receive Social Security, limiting their ability to receive other public benefits, and authorizing states to limit public assistance to aliens (Id.).

Because immigration is primarily a matter of federal law, state actions during the 1990s had more symbolic significance. One popular way in which states displayed their dislike of foreigners was to approve initiatives making English the official language of their state (Massey et al. 2002: 93). By 1998, 25 states had passed such initiatives, sending a clear message to immigrants that their language was inferior (see Massey et al. 2002: 93). In California, voters passed Proposition 187, which prohibited undocumented workers from using public services, including public schools, and required state and local agencies to report suspected illegal aliens (Massey et al. 2002: 93). Most of the Proposition's provisions were challenged by the American Civil Liberties Union (ACLU) and declared unconstitutional before they went into effect, but the public sentiment they reflected rang clear.

As this Section makes clear, it is not easy to be a Mexican immigrant in the United States. The path toward integration and assimilation for Mexican-Americans has spanned over 150 years and yet remains uncertain. The Mexican-American population taken as a whole falls well below the national average in a variety of indicators of economic, social, and political integration. Unlike European, Japanese, and Chinese-Americans, who generally enjoy educational attainment near or above the national average, only 9.4 percent of all Mexican-Americans over the age of 25 hold a Bachelor's degree compared with the national average of 28.2 percent (United States Census Bureau). Additionally, only 2.6 percent of Mexican-Americans in the same age category hold a graduate or professional degree compared with the national average of 10.4 percent (Id.). From the perspective of economic integration as measured by household income, Mexican households make significantly less than the national average, with a median household income of $39,000 versus the $50,000 national average (Id.). Moreover, Mexican-American families are more likely to live in poverty and rely on food stamps to survive (Id.).

5. The Future of Mexican-Americans in the United States

Throughout history, immigrant groups have been deemed inassimilable or have been accused of refusing to assimilate. At different points in history, opponents of immigration have claimed that Irish, German, Chinese, Japanese, and eastern European immigrants were incapable of assimilating into mainstream US society, yet each of these groups has successfully integrated, and in some cases assimilated, into American social life. The difference between the experience of European immigrants, who within a few generations have assimilated into American society (or, as some race scholars would say, have "become white"), the experience of Asian immigrants, some of whom, within a few generations have integrated, if not assimilated, into American society, or become "constructively white", and the experience of Black Americans, free of slavery for nearly 150 years, and yet still effectively second class

citizens, leads to the final question raised by this essay: What should we expect for Mexican immigrants to the US?

Some predict continuing second-class citizenship, and hold the Mexican immigrants to blame. Samuel Huntington, for example, expressed many of the same concerns regarding Mexican immigration that anti-immigrant activists have expressed throughout American history (Huntington 2004a). Huntington views Mexican immigration as a threat to the security and national identity of the United States (Huntington 2004b), echoing nativist fears once expressed against Irish, Italians, Chinese and Japanese immigrants. He argued that the Founding Fathers "considered the dispersion of immigrants essential to their assimilation", meaning that the more concentrated Mexican communities become, the slower and less complete their assimilation is (Id.). His view resonates with 19th century rhetoric that blamed arriving immigrants (whether from Ireland, Italy, Eastern Europe, or East Asia) for living crowded together in "their own" neighborhoods, rather than acknowledging the legal and social constraints that prevented these groups from seeking economic opportunities elsewhere.

By exploring the social, political, and economic aspects of the assimilation and integration of previous immigrant groups and racial minorities, and illuminating the crucial role played by the social construction of race in immigration and internal migration, we hope to lay a foundation for a wider discussion about the likely future of not only Mexican immigrants to the United States, but the fate of recent immigrants to other industrialized nations as well.

5.1 Racialization of Immigrants: Then and Now

The dominant racial hierarchy in the United States from its inception, deeply rooted in the foundational institution of race-based slavery, has been a spectrum or vertical hierarchy in which white identity has existed on one end, and black identity at the other, with the accumulation and distribution of resources, opportunity, and power depending in large part on where in this hierarchy any given individual or group of people lies. As immigrant groups from various nations and cultures have arrived over the years, many were placed toward the "black" end of the spectrum with their economic, political, and social mobility upward and inward to the heart of "American-ness" co-occurring with their movement along this spectrum toward the "white" end (see, for example, Ignatiev 1995: 34-59).

Indeed, the persistence of this American racial hierarchy has depended in part on new immigrants' defining themselves in terms of their distance from African-Americans. As David Richards has noted, "American racism could not have had the durability or the political power it has had (...) unless new immigrants, themselves often regarded as racially inferior, had been drawn into accepting and supporting many of the terms of American racism" (Richards 1999: 2). History thus suggests that one possibility for the long-term fate of Mexican-Americans depends in part on where on this spectrum they presently lie, and whether or how quickly they are able to move away from the "more-like-African-Americans" end of the spectrum to the "more-like-white Americans" end. The possibility remains that Mexican-Americans ultimately will traverse a similar pathway of integration as millions of preceding immigrants

who arrived in the United States out of a relatively free volition. This integration may be enabled in large part by the expansion of "white" racial identity or by the bestowal of a form of "constructive whiteness" on these most recent immigrants.

Of course, one contrary view on this is that the white-black, or even the white-nonwhite binary is of decreasing relevance in an increasingly multi-ethnic and multi-racial United States and an increasingly global community. Indeed, in many ways the very presence of people of Mexican descent specifically, and of "Hispanic descent" more broadly in the United States has challenged and complicated the idea of race as two-dimensional spectrum for decades. Consider the categorization of Mexicans by the United States Census. In 1930, for the first and only time in the history of the Census, the category of "Mexican" appeared in the racial classifications used by the United States Census (Hendricks and Patterson 2002). Both before and after that time people of Mexican descent were considered white for purposes of the Census (Id.). Then, in 1980, the category of "Hispanic Origin" appeared as an ethnic classification, separate from and in addition to racial classification (Nobles 2002: 58), with sub-categories of Mexican/Mexican-American/Chicano, Puerto Rican, Cuban, and Other (Rodriguez 2000: 8). The parallel classification system can be seen as a third dimension of the American racial hierarchy, reflecting a complex history of considering what would come to be called "Latinos" in the United States.

The emergence of a "Chicano" political identity beginning in the 1930s, with a resurgence in the 1960s', the rise of "Brown Power" as a contemporary to the Black Power movement of the 1970s, and the rise of ethnic studies programs during the 1980s also illustrate an endogenous resistance by Mexican-Americans to this binary racial hierarchy (Haney Lopez 2003: 1-2, 18; Hu-DeHart 1993: 51). In light of the increasingly multi-cultural composition of the United States, one aspirational view is that the future of Mexican-Americans, instead of reiterating the story of previous immigrant generations, may hew more closely to a cultural-pluralism model, in which structural mediators of opportunity and well-being are not meted out in accordance with one's place in the racial hierarchy.

5.2 Geography as Context

The different experiences of Mexican immigrants to the United States and their European and Asian counterparts might be partly explained by history and geography. Unlike European and Asian immigrants, who traversed oceans to arrive on foreign soil, some Mexican-Americans can claim a historical right to the territories acquired by the United States in 1848. In the Western and Southwestern United States, the shifting borders between the colonial Mexico under Spanish rule, the emergent Mexican nation, and the United States complicated the question of who was an "American" during the late 19th century. As Dale McLemore notes, "[l]ike the blacks and American Indians, the Chicanos did not originally become a part of American society through voluntary immigration (...) Except for the American Indians, the Chicanos have been the only American ethnic minority to enter the society through the direct conquest of their homelands" (McLemore 1983: 209).

The movement of immigrants from Mexico over a land border, in contrast with arrival primarily from overseas of previous major immigrant groups, may also play

some role in the persistence of animosity against Mexican immigrants. This anxiety is likely amplified by history. For example, Huntington invoked fear of a possible reconquest of the southwestern United States by Mexicans (Huntington 2004b). Because Mexico once possessed much of the southwestern United States, the argument goes, Mexican Americans might feel entitled to take back their lost territory, culturally if not politically. Huntington also argued that Mexican immigration into the United States is unique to the United States and to the world: "No other First World Country has such an extensive land frontier with a Third World country" (Id.). This contiguity makes immigration much easier for prospective immigrants, who can cross the border cheaply and stay in contact with friends and family in Mexico, and also fuels fears of a so-called "immigrant invasion". The current pitch of anti-immigrant sentiment by white non-Hispanics in Arizona, Texas, and California seems both poignant and ironic in light of the historical reality that major swaths of these states were in fact once a part of Mexico.

5.3 Economic Integration: The Role of Labor Organizing

Labor organizing represented a key pathway to securing economic stability for previous groups of immigrants, and has played a similar role for Mexicans as well. The history of immigration and migration to and within the United States, as with migration patterns worldwide, can often be told as two stories: the story of *movement toward* economic opportunity, and the story of *movement away* from religious and political persecution. The need for workers has been a catalyzing force behind the movement of almost every major demographic group that has moved (or been brought) to the United States. Usually the earliest labor recruitment dovetails with simultaneous expulsive pressures from the home countries of immigrant groups, and often gives way to the self-propelling momentum of early arrivals who then send word of economic opportunity to friends and relatives back home.

The demand for labor that underlay major migration shifts has usually been a desire for a low-cost labor force that is perceived as easily exploitable and new arrivals within and to the United States almost universally underwent severe exploitation and discrimination as workers. Each group was used as strike-breakers by industrialists and private companies in efforts to weaken the organized power of the prior generation of American workers. Indeed, culturally-based xenophobia has often given way to the pragmatism of economic realities during economic "boom" times. As discussed earlier, the ability to organize and consolidate economic power as workers played a key role in enabling the eventual assimilation of Irish, Italian, and Eastern European Jewish immigrants. In some cases the ascendancy within the ranks of organized labor reflected traditions of labor organizing each of these immigrant groups brought with them.

For Mexican immigrants (and descendants of Mexicans who have been in this country for generations), the relationship to labor organizing has yielded mixed results. The organizing work of Cesar Chavez and Dolores Huerta, co-founders of the United Farm Workers union in 1962, and the subsequent nonviolent protest tactic of consumer boycotts of grapes to improve working conditions stand out as a highlight of American labor history. Yet forty years after this first grape boycott ended, Mexican-

Americans broadly, and farm workers specifically, continue to lag behind other ethnic groups in indicators of social, economic, and physical health and well-being. The decline of the American labor movement more broadly may be one influential factor here. Writing in 1993, Portes and Zhou observed that:

> Fifty years ago, the United States was the premier industrial power in the world, and its diversified industrial labor requirements offered to the second generation the opportunity to move up gradually through better-paid occupations while remaining part of the working class. Such opportunities have increasingly disappeared in recent years following a rapid process of national deindustrialization and global industrial restructuring. This process has left entrants to the American labor force confronting a widening gap between the minimally paid menial jobs that immigrants commonly accept and the high-tech and professional occupations requiring college degrees that native elites occupy" (Portes and Zhou 1993: 76).

For previous generations of European immigrants, assimilation has gone hand-in-hand with upward mobility (see Gans 2007, 152). Portes and Zhou introduce the concept of "segmented assimilation", drawing a distinction between immigrants and subsequent generations who assimilate socially and culturally but retain a distinct status as economic "outsiders" to help explain the differences between pre- and post-1965 immigration (Portes and Zhou 1993). This concept is a mirror image to our proposition that many Asian immigrants and their descendants have achieved a "constructively white" status most strongly reflected in their economic and, to a lesser degree, political integration, even as they retain some aspects of social or cultural segregation.

Although the fundamental transformation of the American economy, as highlighted by Portes and Zhou, means that the pathway to economic stability will likely look different for the current generation of immigrants than it has for previous generations, it also further underscores the crucial role that labor organizing will continue to play in ensuring this form of success.

Other factors that were significant mediators of assimilation and integration for previous immigrant groups can also be further explored for their potential implication for Mexican-American integration. For example, the Catholic Church played an important role as an upward "mobility machine" (Portes and Rumbaut 2006: 332) for Italian and Irish immigrants. Yet while Mexicans are proportionately as or more Catholic than these preceding ethnic groups, the Church has not had a similar impact for them. While a thorough discussion of this phenomenon is beyond the scope of this paper, other scholars have contrasted the "integrationist" stance adopted by the Catholic Church in the 1930s, which emphasized the "Americanization" of new immigrants, with the Church's strong community empowerment ethic for previous generations of immigrants (Odem 2004: 28-31).

6. Conclusion

In June 2012, as the Supreme Court prepared to hand down its ruling in *Arizona v. United States*, two professors observed, in an op-ed published in the New York Times, that the rate of undocumented migration to the United States from Mexico was, for the first time in decades, approaching zero, while the rate of permitted

migration was sharply rising (Castaneda & Massey 2012). This "circular" migration pattern may simply be a reflection in the latest oscillation of American sentiment toward its immigrants, alternately courted (and exploited) for their economic power as workers, and vilified as unwanted interlopers. Or, it may reflect the contraction of the American economy and accompanying decrease of employment opportunities. Either way, even in the absence of immigrants arriving, the scapegoating continues through the implementation of punitive legislation and through hyperbolic political rhetoric.

As this essay demonstrates, the history of the legal and social regulation of immigration to the United States has been a history of discrimination, white supremacy, and overt racism. Each immigrant group studied which has succeeded in assimilation or integration – in "becoming American" – has done so by becoming white, or constructively white. Those seen as non-white continue to suffer second-class citizenship. Thus, history suggests that the eventual social, political, and economic status of Mexican immigrants will likely be linked to their racialization.

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Canadian Multiculturalism in Question: Diversity or Citizenship?

François Crépeau [1]

On October 8, 1971, then Prime Minister Pierre Elliott Trudeau stood in Canada's House of Commons to deliver a speech on a subject that had previously garnered little attention in Canada: multiculturalism. During the course of his speech, Trudeau outlined what were to become the major themes of Canadian multiculturalism policy over the next decades:

> National unity (...) must be founded on confidence in one's own individual identity; out of this can grow respect for that of others and a willingness to share ideas, attitudes and assumptions. A vigorous policy of multiculturalism will help create this initial confidence. It can form the base of a society which is based on fair play for all. (...) Canadian identity will not be undermined by multiculturalism. Indeed, we believe that cultural pluralism is the very essence of Canadian identity. A policy of multiculturalism must be a policy for all Canadians [2].

Prime Minister Trudeau's remarks are best understood as elements in an effort by the Canadian government to rebrand Canada in the eyes both of its people and of the world. Though Canada had effectively been created by the British North America Act in 1867 [3], and then granted sovereignty from Britain in 1931 by virtue of the Statute of Westminster [4], it was still viewed as a colonial outpost throughout the mid-20th century. Successive Canadian governments sought to change these perceptions by embarking on a project of national redefinition. On a symbolic level, a new Canadian

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[2] *House of Commons Debates*, 28th Parl, 3rd Sess, Vol. 115, No. 187 (8 October 1971) at 8545-6 (Prime Minister Pierre Elliot Trudeau).

[3] 1867 (UK), 30-31 Vict., c 3.

[4] 1931 (UK), 22-23 Geo V, c 4.

flag [5] and a national anthem [6] were introduced. Significant legislation was later passed, such as the Canadian Charter of Rights and Freedoms [7] and the Official Languages Act [8]. Canada also broke with its prior foreign policy record, ushering in an assertive approach to foreign relations, distinct from that of the United States.

1. A Political Discourse

It is in the context of this increasingly self-aware Canada that Trudeau made his statements on multiculturalism. Over time, multiculturalism has become an established political discourse in Canada, articulated around the principle of equality: citizens can freely and equally decide the parameters of their cultural identity. The discourse aims at developing the self-esteem and personal identity. It favours the social and political participation of all. It posits differences as a collective enrichment and diversity as a shared resource, valuing the contribution of immigrants to the wealth and stability of Canada. Most of all, it seeks to foster a sense of belonging to a common Canada.

Multiculturalism is a central component of contemporary Canadian identity. It serves as a means of adapting to the demographic reality of Canada. According to the 2006 census, Canadians come from over 200 declared origins (Statistics Canada 2006). The census found that 19.8 percent of Canadians (6.1 million out of a total of 31.2 million) were immigrants (born outside of Canada), 20.9 percent of Canadians have a mother tongue other than English or French, and 16.2 percent describe themselves as a member of a "visible minority" (up from 4.7 percent in 1981) [9].

Unlike in some other countries, the Canadian process for selecting immigrants, i.e. permanent residents, actually consists of the selection of future citizens, the citizenship process a few years after immigration being mostly pro forma for any permanent resident who has not committed any crime. Canada accepts one million new immigrants every four years, nearly half of whom come from the Asia-Pacific region [10]. These figures do not include temporary migrant workers, numbering nowadays over 150,000 annually [11].

The Canadian conception of multiculturalism contains at its base a preoccupation for the individual as a member of society. The Canadian state does not define the cultural parameters of "Canadianness", except in three realms. First, the test for Canadian citizenship requires familiarity with Canadian history and geography [12].

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[5] Inaugurated on February 15, 1965. See, Canadian Heritage, *The National Flag of Canada*, online: Canadian Heritage <http://www.pch.gc.ca>.

[6] Proclaimed on July 1, 1980. See, Canadian Heritage, *National Anthem: O Canada*, online: Canadian Heritage <http://www.pch.gc.ca>.

[7] Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].

[8] RSC 1985, c 31 (4th Supp) [Official Languages Act].

[9] *Ibid*.

[10] Citizenship and Immigration Canada, "Permanent Residents", *Facts and Figures 2011 – Immigration Overview*, online: Citizenship and Immigration Canada <http://www.cic.gc.ca>.

[11] Citizenship and Immigration Canada, "Temporary Residents", *Facts and Figures 2011 – Immigration Overview*, online: Citizenship and Immigration Canada <http://www.cic.gc.ca>.

[12] Citizenship and Immigration Canada, *Welcome to Canada: What you should know* (Ottawa: CIC, 2013) at 137-8.

Second, immigrants are required to possess knowledge of either of Canada's official languages [13]. Third, respect for Canada's constitutionally-entrenched parliamentary democracy, rule of law and guarantee of human rights and freedoms constitutes an overarching obligation for all [14].

It should be noted that this concern for the individual within society means that, apart from "Québécois" now officially recognised as a "Nation" because of their predominantly French-speaking culture [15], and First Nations and Inuit's, also specifically recognized as "indigenous peoples" in international law, Canada does not favour group rights or culturally-based polities. The Canadian state does not engage in officially defining any cultural group: such groups are free to officially organize if they so wish, but can never become political constituencies. In favouring individual choices over communal polities, Canadian multiculturalism, in line with international minority law, actually favours self-identification by individuals who are free to decide to which communities they wish to belong or not to belong. Perhaps paradoxically, multiculturalism may thus weaken community belongings, as individuals may decide to partly or totally disaffiliate themselves from their community of origin. An example of this is the high percentage of Canadians (18%) who self-identify their "ethnic origin" (not their own ethnicity) as "Canadian" in the census, eschewing various other possibilities (English, French, Italian, Indian, Chinese…) [16]: anthropologically, apart for Aboriginals, this makes little sense, but it may be very coherent as a self-representation.

2. Evolution of the Dominant Theme: Concerted State Support for Multiculturalism

Canadian multiculturalism policy has not been static over recent decade [17]. In the 1970s, multiculturalism policy sought to value diversity by encouraging cultural communities to retain their language and culture. The government funded community organizations through direct schemes, and initiated a longstanding policy of recruiting immigrants to work in the federal public service.

In the 1980s, Canadian multiculturalism policy moved beyond valuing diversity. Struggles to combat racial discrimination were emboldened by the enactment in 1982 of the Canadian Charter of Rights and Freedoms [18]. Significantly, the principle

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[13] *Ibid*.

[14] *Ibid*.

[15] The "Québécois nation motion" was tabled by Prime Minister of Canada Stephen Harper on Wednesday, November 22, 2006, was approved by the House of Commons of Canada on Monday, November 27, 2006, and read: "That this House recognize that the Québécois form a nation within a united Canada" (Hansard; 39th Parliament, 1st Session; No. 087; November 27, 2006).

[16] See the table produced by Statistics Canada: "Ethnic Origin (247), Single and Multiple Ethnic Origin Responses (3) and Sex (3) for the Population of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2006 Census – 20% Sample Data", online: Statistics Canada <http://www.statcan.gc.ca>.

[17] On the evolution of multiculturalism policies in Canada, see McAndrew, Helly and Tessier 2005.

[18] Charter, supra note 7.

of multiculturalism was enshrined in Section 27 of the Canadian Charter of Rights and Freedoms, which states that the "[t]his Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians"[19]. The role of the Canadian Charter of Rights and Freedoms in fostering multiculturalism will be discussed at greater length below.

The dominant theme of the 1980s was state support for the participation of cultural communities in the social and political life of Canada through institutional reforms, public campaigns, and legal protections. In 1988, the Canadian Multiculturalism Act came into force. It explicitly acknowledged "the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage"[20]. The Canadian Multiculturalism Act affirmed individual rights within the context of Canadian multiculturalism policy, ensuring that "all individuals receive equal treatment and equal protection under the law, while respecting and valuing their diversity"[21]. Crucially, the Canadian Multiculturalism Act welcomed the contribution of cultural communities in Canada by promoting "the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society"[22]. To this end, the Canadian government broadened its hiring policy to include women, aboriginals and visible minorities.

The focus of Canadian multiculturalism policy in the 1990s turned to the promotion of social cohesion within, and of a sense of belonging to, Canada. Common, non-culturally specific, and uncontentious values such as personal responsibility and civic participation were brought to the fore in order to develop and promote allegiance to a Canadian identity. Government support for multi-ethnic community organizations increased, while support to organizations whose core users came from a single cultural community declined. Strangely, perhaps, government funding was reduced for programmes that taught Canada's official languages to cultural communities. The recruitment of immigrants in the federal public service remained a constant: being served at a postal counter or a passport office offers today a vivid experience of the Canadian population's diversity.

Canadian multiculturalism policy shifted again in response to the attacks of September 11, 2001. However, alongside securitization measures, new policies were put in place to tackle racism. In an effort to transform public opinion, the government instituted programmes to sensitize Canadians to cultural and "racial" diversity. These efforts have not altogether been successful, and subsequent governments have been less willing to address issues of diversity and tolerance. This has given rise to passionate public debates in recent years, which have brought to light an apparent distrust of claims (and in particular religious claims) made by certain minority groups. For instance, in the face of public outcry, the province of Ontario decided in 2006 to

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[19] *Ibid.*, s. 27.

[20] Canadian Multiculturalism Act, RSC 1985, c 24 (4th Supp), s. 3(1)(a) [Canadian Multiculturalism Act].

[21] *Ibid.*, s. 3(1)(e).

[22] Canadian Multiculturalism Act, supra note 20, s. 3(1)(c).

prohibit the use of religious arbitration, such as Sharia tribunals, in family matters [23]. In 2007, Hérouxville, a town in the province of Quebec, enacted a code of conduct prohibiting stoning, female genital mutilation, the wearing of kirpans in schools, and the use of rooms in public buildings for prayer [24]. In response to seemingly growing public resentment regarding measures put in place to accommodate certain cultural communities, Quebec appointed in 2008 the Bouchard-Taylor Consultation Commission on Accommodation Practices Related to Cultural Differences [25]. The particular case of Quebec will be discussed further below.

3. The Central Role of the Judiciary

Due to the enactment of the Canadian Charter of Rights and Freedoms and provincial human rights charters, human rights law can be seen as the overarching framework for relationships between citizens in Canada. Judicial and quasi-judicial procedures allow courts and tribunals to base their interpretation of legal challenges flowing from multicultural-based claims on the Canadian Charter of Rights and Freedoms or on a provincial human rights charter. It should also be noted that all provinces and some municipalities have explicitly adopted policies of multiculturalism, varying in form and content.

If immigrants are to become full citizens within Canadian society, they must be granted full protection of the law. The Canadian judiciary has, on the whole, acknowledged this necessity by rendering strong judgements in favour of multiculturalism, grounded in a concern for individual rights. By basing their decisions in constitutional human rights protections, courts have prevented subsequent political squabbles, and, importantly, have participated in strengthening the Canadian discourse on multiculturalism. In a 2004 Canadian Charter of Rights and Freedoms case, a majority of the Supreme Court of Canada threw its weight behind a robust construction of multiculturalism:

> (...) [A] multi-ethnic and multicultural country such as ours (...) accentuates and advertises its modern record of respecting cultural diversity and human rights and of promoting tolerance of religious and ethnic minorities – and is in many ways an example thereof for other societies (...) Indeed, mutual tolerance is one of the cornerstones of all democratic societies. Living in a community that attempts to maximize human rights invariably requires openness to and recognition of the rights of others [26].

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[23] "Ottawa Premier rejects use of Sharia law", *CBC News Canada* (11 September 2005), online: CBC News <http://www.cbc.ca/news>. For critical commentary on this debate, see Fournier (2010: 123).

[24] See, "'Canadian style' multiculturalism a menace to Quebec, commission hears: Central Quebec a hotbed in immigrant accommodation debate", *CBC News Canada* (24 October 2007), online: CBC News <http://www.cbc.ca/news>; "Strict code de conduite pour les immigrants", *Radio Canada* (14 September 2007), online: Radio Canada <http://www.radio-canada.ca>.

[25] "Let's move on, says Quebec accommodation commission", *CBC News Canada* (22 May 2008), online: CBC News <http://www.cbc.ca/news>. Bouchard and Taylor 2008.

[26] *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551, at para 87 [*Amselem*].

In recent years, the concept of reasonable accommodation, as applied to Canadian cultural communities, has been the subject of societal debate. This has been particularly true in Quebec, as discussed in this paper's next section. Reasonable accommodation is a corollary of the right to equality, requiring the substantive, and not merely the formal, actualization of equality. *In concreto*, implementation of reasonable accommodation obliges state entities to treat different persons differently in different situations. International judicial fora have pioneered this substantive view of equality [27].

Though questions relating to reasonable accommodation have been central to judicial decisions on the rights of cultural communities, the term itself is actually derived from the field of labour law [28]. Reasonable accommodation was initially developed – and is still mostly applied – in cases of disability or of workers seeking flexible hours. Religious requests for reasonable accommodation are relatively recent in Canada, having begun in the beginning of the 1980s. While claims for religious accommodation from fundamentalist Christian and Hassidic communities have historically dominated juridical development, cases from, particularly, the Muslim and Sikh communities have increased in the 2000s in response to growing xenophobia and "Islamophobia", and negative stereotyping against these groups in particular Canadian communities [29].

Courts have been a central player in the Canadian project of multiculturalism. The judiciary's role in promoting Canadian multiculturalism was encouraged by the government-funded Court Challenges Program of Canada, which funded plaintiffs who contended that legislation violated their constitutional rights [30]. In many instances, the courts have successfully arbitrated between competing claims that had triggered heated political debate [31].

The Supreme Court of Canada allowed the construction of a temporary religious shelter (a "sukkah") on a balcony, a construction which violated a condominium

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[27] See, for example: *Minority Schools in Albania*, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (April 6) (Permanent Court of International Justice).

[28] See *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536, which was, in fact, a case regarding religious accommodation in an employment context. The Supreme Court of Canada, in *Simpsons-Sears*, cites the "duty to accommodate" principle as originating in the United States (citing *Reid v. Memphis Publishing Co.*, 468 F.2d 346 (6th Cir. 1972); *Riley v. Bendix Corp.*, 464 F.2d 1113 (5th Cir. 1972)) and as having been adopted by boards of inquiry under human rights legislation in Canada: see para 20. See also Beaman 2012.

[29] For an interesting commentary on the changing landscape of religious claims in Canada, see Beyer 2012.

[30] After initially cutting the Court Challenges Program, the Conservative government restored its capacity to assist Charter claims for linguistic minorities in Canada. See "Tories restore parts of scrapped court challenges program", *Montreal Gazette* (19 June 2008), online: Canada.com <http://canada.com>.

[31] For case law concerning the role of the judiciary in balancing competing rights and equality claims, see, i.e.: *Singh v. Minister of Employment and Immigration,* [1985] 1 SCR 177; *R v. Edwards Books and Art Ltd*, [1986] 2 SCR 713; *Grant v. Canada (Attorney General) (TD)*, [1995] 1 FC 158; *B(R) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315; *Elridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624; *Amselem*, supra note 26.

agreement [32]. The temporary character of the religious shelter and the aesthetic nature of the contravened regulation were reasons, in the Court's estimation, to accommodate the religious freedom in question, and therefore to allow the shelter's erection. Another reasonable accommodation case is highly instructive as to the Canadian judiciary's view of, and its role with respect to, multiculturalism. In *Multani*, professors in a Quebec elementary school objected to a Sikh boy wearing his kirpan – a ceremonial dagger usually worn under one's shirt – based on the idea that weapons should not be allowed on school grounds for safety reasons [33]. According to the student, his religion required him to wear his kirpan at all times. The school director had, as a reasonable accommodation, come to an agreement with the student and his parents, on a range of conditions, including keeping the kirpan sealed within a sewn sheath. However, the professors appealed to the school board, which refused to accept this agreement and prohibited the student from wearing his kirpan in school. The Quebec Superior Court restored the school director's decision, but the Quebec Court of Appeal (three judges) unanimously overturned the judgement ruling in favour of prohibition. In the end, the Supreme Court of Canada issued a unanimous decision (nine judges) that clearly spelled out the contents of contemporary Canadian multiculturalism. The Court found that the absolute prohibition on the student wearing his kirpan was an unjustified infringement on his freedom of religion.

While all judges ruled in favour of Multani, the majority followed what in Canada is commonly known as the Oakes test, a well-established judicially-created framework for adjudicating alleged constitutional violations. After ascertaining that there was in fact a restriction of a constitutionally-protected right that was "neither trivial nor insignificant" [34], the Court applied the four-step Oakes test, which, if satisfied by the state, allows by virtue of Section 1 of the Canadian Charter of Rights and Freedoms action that infringes a complainant's constitutional rights.

At step one of the Oakes test, courts are tasked with determining whether the objective of the impugned restriction is sufficiently important to stand. The majority found that the objective claimed by the school, that of ensuring pupils' safety, warranted the restriction of Multani's freedom of religion. At the second step, courts are to consider whether a rational connection exists between the restriction in question and furtherance of the objective claimed. Here too, the majority was satisfied.

However, the restriction on Multani's freedom of religion failed the third and fourth steps of the Oakes test. Step three requires courts to decide whether the restriction minimally impairs the infringed right. The question at this stage concerned whether the prohibition on Multani carrying his kirpan, which the majority termed "absolute", could be justified. Factual arguments were central to the majority's decision that the absolute prohibition was not minimally impairing. The majority found that there were no violent incidents involving kirpans over the 100 years that Sikhs had been attending Canadian schools. It reasoned that other objects commonly found in schools, such as scissors, compasses, pencils and baseball bats, were just as dangerous as might be a

[32] *Anselem*, supra, note 27.

[33] *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 SCR 256 [*Multani*].

[34] *Multani*, supra, note 34 at para 40.

kirpan. In the majority's estimation, instead of insisting on the absolute prohibition of kirpans, the school could have instituted other, less impairing, restrictions, such as requiring Multani to keep his kirpan sheathed.

The majority also discarded the argument that, without an absolute prohibition on wearing kirpans, the school's environment would be "poisoned" by symbols of violence. In rejecting this contention, the majority had in mind the broader context of Canadian multiculturalism and the role of educational institutions in promoting multiculturalism:

> The argument that the wearing of kirpans should be prohibited because the kirpan is a symbol of violence and because it sends the message that using force is necessary to assert rights and resolve conflict must fail. Not only is this assertion contradicted by the evidence regarding the symbolic nature of the kirpan, it is also disrespectful to believers in the Sikh religion and does not take into account Canadian values based on multiculturalism (…) Religious tolerance is a very important value of Canadian society. If some students consider it unfair that Gurbaj Singh [Multani] may wear his kirpan to school while they are not allowed to have knives in their possession, it is incumbent on the schools to discharge their obligation to instil in their students this value that is (…) at the very foundation of our democracy [35].

Though the school had failed to discharge its burden by virtue of the third step of the Oakes test, the majority pursued its analysis to the test's fourth step, which requires consideration of the proportionality between the restriction's salutary and deleterious effects. Again, in emphasizing the importance of schools in advancing Canadian multicultural policies, the majority found that the proportionality requirement was not met:

> A total prohibition against wearing a kirpan to school undermines the value of this religious symbol and sends students the message that some religious practices do not merit the same protection as others. On the other hand, accommodating Gurbaj Singh and allowing him to wear his kirpan under certain conditions demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities. The deleterious effects of a total prohibition thus outweigh its salutary effects [36].

The Supreme Court of Canada's decision in *Multani* illustrates how Canadian courts play a pedagogical role in shaping public opinion. The decision's legitimacy derives from the rigour of its reasoning. It employs a pre-established framework, thereby rendering critiques that the decision is arbitrary unfounded. This framework is applied whenever a constitutionally-protected right is alleged to have been violated. Though factually-grounded, similar reasoning could be applied to restrictions on wearing other religious symbols, such as the hijab or the niqab. At a more general level, reasoning such as that in *Multani* provides Canadians with a model – both in tone and in substance – to how multiculturalism should be debated.

The *Multani* decision triggered the reasonable accommodation political crisis in Quebec, which in turn led to the aforementioned Bouchard-Taylor Commission.

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[35] *Ibid*., at paras 71 and 76.

[36] *Multani*, supra, note 34 at para 79.

4. The Case of Quebec

Quebec presents an apparent exception to the Canadian norm of multiculturalism. Concerns over the preservation of Quebec's francophone cultural and linguistic heritage appear to make Quebec less welcoming of multiculturalism than are other Canadian provinces. According to the 2006 census, 11.5 percent of Quebec's 7.5 million inhabitants are immigrants [37]. Much of Quebec's immigrants are concentrated in Montreal, as is the case for most Canadian urban centres: 30.8 percent of Montreal's 1.6 million inhabitants are immigrants [38]. About 47 percent of Montrealers do not possess French as their first language [39]. Francophone Quebecers openly express anxiety over an uncertain future *vis-a-vis* their identity. This has led to what are sometimes highly xenophobic reactions to immigrants.

4.1 Evolution of a Different Theme: Interculturalism

Through concerted government efforts, Quebec opted for a policy of "interculturalism" rather than multiculturalism. In 1981, the provincial government put in place *Autant de façons d'être Québécois* [40], an action plan that sought to subsume cultural communities within Quebec's francophone majority [41]. The Quebec people (*peuple québécois*) were described as forming a "nation": such strong language was (and still frequently is) deliberately employed within the political context of nationalist movements (either seeking to obtain Quebec's secession from Canada, or trying to prevent that outcome by offering a non-secessionist nationalist alternative). The action plan portrayed francophone culture as a point of convergence for all cultural communities in an attempt to integrate these communities within Quebec's society. The plan also contained measures to sensitize the francophone cultural majority to the contributions of cultural communities.

In 1990, the provincial government put out a white paper entitled *Au Québec pour bâtir ensemble: Enoncé de politique en matière d'immigration et d'intégration* [42]. It enunciated the bases of a moral contract between immigrants and Quebec's francophone majority by pursuing a range of policies crafted around what was termed the *culture publique commune* (common public culture) founded on democratic values, as defined in Quebec's Charter: "Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group" [43]. The policies put forth in the white paper sought to promote public

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[37] 2006 Census, supra, note 9.

[38] *Ibid*.

[39] *Ibid*.

[40] Autant de façons d'être Québécois: plan d'action du gouvernement du Québec à l'intention des communautés culturelles (Ministère des Communautés culturelles et de l'Immigration 1981).

[41] Bilan du siècle, "Publication du plan d'action du gouvernement du Québec concernant les communautés culturelles", online: Université de Sherbrooke <http://bilan.usherbrooke.ca>.

[42] *Au Québec pour bâtir ensemble: Enoncé de politique en matière d'immigration et d'intégration* (Ministère des Communautés culturelles et de l'Immigration du Québec 1990), available online: <http://www.micc.gouv.qc.ca>.

[43] Charte des droits de la personne du Québec, RSQ cC-12, Article 43.

participation, ensure respect for fundamental democratic values, and define a pluralistic identity for Quebec society.

Quebec pursued democratic objectives by creating institutional tools to steer the adoption and implementation of policies, thereby transforming the State and society. The French-language Charter[44] (*Charte de la langue française*) imposed restrictions on the use of languages other than French in the public sphere. A human rights commission and tribunal were established to fight against discrimination[45]. Programmes aimed at ensuring workplace equity were launched, intercultural training was instituted, and reasonable accommodation measures were put in place. However, until very recently, goals to increase the representation of cultural communities within the Province's public service had failed abysmally, reaching only 3.7% in 2006, although it has increased to 7.1% by 2011[46]. While significant tensions remained in some conservative corners of Quebec, the State and its people progressively evolved. Gone was the resistance-based identity of Quebec, centred as it was on an ethnically-homogenous and rural French-Canadian construction. Rather, the new, increasingly metropolitan Quebec had a project-based identity, that of an intercultural reality. Except for the prominence recognised to the French language in Quebec, the principles of interculturalism are today quasi-indistinguishable from those of multiculturalism.

However, over time, it has become clear that Quebec's project-based identity through interculturalism has fallen far short of the accomplishments achieved by Canada and other Canadian provinces through multiculturalism. The francophone majority's existential fears have become politically immune from any serious probing or questioning. Quebec's policy of interculturalism is rarely mentioned in political discourse, contrary to multiculturalism which is a constant reference in political speeches elsewhere in Canada: public acknowledgement of cultural and linguistic diversity is seen by Quebec politicians as electorally toxic. The relationship of minorities with state-based entities is, as will be discussed in the next section, highly contentious. While multiculturalism is firmly established as a basis of the Canadian "imagined community" (of which Quebec is a part), Quebec institutions and polity have resisted openly advocating the values of interculturalism/multiculturalism altogether.

4.2 Crisis in Quebec

The 2006 release of the *Multani* decision (described above), which originated in Quebec but was ultimately decided by the Supreme Court of Canada, provoked a "media circus" throughout Quebec. Mostly outside of Montreal, call-in shows and local newspapers were flooded with racist and anti-Muslim opinion that often confounded reasonable accommodation (based on a judicial decision) and "concerted adjustments" (based on private decisions, between neighbours for example). *Multani* aroused alarm over supposed changes induced by immigration to Quebec. This

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[44] Charte de la langue française, RSQ cC-11.

[45] The Commission des droits de la personne et des droits de la jeunesse <http://www.cdpdj.qc.ca>; The Human Rights Tribunal <http://www.tribunaux.qc.ca>.

[46] *L'effectif de la fonction publique 2010-2011* (Gouvernement du Québec 2012), available online: <http://www.tresor.gouv.qc.ca>.

alarm, however, was largely disconnected from Quebec's actual social realities. After 40 years of wilful blindness on the subject of immigration, during which time Quebec had prioritized its "national" identity over questions of immigration, a desire to reappropriate the immigration policy debate had suddenly surfaced among Quebec's francophone majority.

In the face of public outcry, and to reduce the political pressure under which it found itself, the Quebec government created the Bouchard-Taylor Consultation Commission on Accommodation Practices Related to Cultural Differences [47]. Headed by two well-respected Quebec academics, the Commission's mandate was to:

> (…) take stock of accommodation practices related to cultural differences, analyse the attendant issues bearing in mind the experience of other societies, conduct an extensive consultation on this topic, and formulate recommendations to the government aimed at ensuring that accommodation practices conform to Quebec's core values (Bouchard and Taylor 2008: 33).

The Commission construed its mandate broadly, acknowledging that the debate that *Multani* evoked was the "symptom of a more basic problem concerning the sociocultural integration established in Quebec since the 1970s" (Id.: 17). The Commission recognized that it had to investigate the "sociocultural motivation that deeply sustained the collective feeling that culminated in 2006-2007" (Id.: 33). The Commission held televised public consultations across Quebec. Xenophobic rants were often expressed in rural parts of the province, while nuanced opinion was frequently expressed in Montreal. In addition to these hearings, the co-chairs commissioned research projects, met with experts, organized focus groups, and established an advisory committee (Id.)

In a well-written and thoroughly-referenced report, tellingly entitled *Building the Future: A Time for Reconciliation* (Id.), the Commission reaffirmed that the principle of reasonable accommodation was a fruitful legal tool, designed to implement fully and substantially the individual right to equality. The Commission expressed confidence in the ability of courts to manage individual cases of reasonable accommodation. Finally, the Commission endorsed a model of a Quebec founded on religious neutrality, while rejecting one of ideological secularism.

Following the publication of the Bouchard-Taylor Commission's report in 2008, Quebec's media practically stopped covering the reasonable accommodation debate. The government, too, was silent until, in 2010, concerned about losing political ground due to a media discussion on the legality of wearing face-veils (niqabs) in public, it put forth Bill 94, entitled "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions" [48]. The Act provided the classical definition of reasonable accommodation as "[a]n adaptation of a norm or general practice, dictated by the right to equality, in order to grant different treatment to a person who would otherwise be adversely affected by the application of that norm

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[47] "Mandat", La Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles, online: CCPARDC <http://www.accommodements-quebec.ca>.

[48] Bill 94, An Act to establish guidelines governing accommodation requests within the Administration and certain institutions, 1st Sess, 39th Leg, Quebec, 2010 [Bill 94].

or practice"[49]. It also correctly provided that a prospective measure for the purposes of reasonable accommodation could be instituted only if it "does not impose on the department, body or institution any undue hardship with regard to, among other considerations, related costs or the impact on the proper operation of the department, body or institution or on the rights of others"[50].

Despite the Bill's rejection of ideological secularism, it affirmed the principles of substantive equality and the non-hierarchisation of rights. It reiterated respect for the Quebec's Charter, stating:

> An accommodation must comply with the Charter of human rights and freedoms, in particular as concerns the right to gender equality and the principle of religious neutrality of the State whereby the State shows neither favour nor disfavour towards any particular religion or belief[51].

The Bill specifically addressed the much-debated subject of face veils:

> The practice whereby a personnel member of the Administration or an institution and a person to whom services are being provided by the Administration or the institution show their face during the delivery of services is a general practice.

If an accommodation involves an adaptation of that practice and reasons of security, communication or identification warrant it, the accommodation must be denied[52].

Many commentators have described Bill 94 as being a purely political speech act. While it affirmed that reasonable accommodation is a means by which to ensure substantive equality and introduced measures that seem to respect accepted Canadian jurisprudential principles, the Bill seemed to treat reasonable accommodation as a threat which ought to be constrained wherever possible.

Where does Quebec find itself today? The public discourse in the province remains beholden to a nationalist ideology (that cuts across political parties) which vocally presents the federal version of multiculturalism as being antithetical to "Quebec's values". According to this nationalist ideology, immigrants and minority groups must conform to values of the francophone majority, and must, in particular, recognize the singular importance of the French language. It invokes secularism, and even republicanism, over and above state neutrality to religion, and wishes to remove religious signs from the public domain. The movement also seeks to create a hierarchy of rights, particularly with regard to gender issues. Although they probably represent the silent majority, anti-secessionist politicians are not very vocal (and are politically divided), as they fear a backlash from the "soft nationalism" middle-ground.

The government that proposed Bill 94 was replaced by a new secessionist minority government which is even more nationalist – although the secessionist option itself

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[49] *Ibid*, s. 1.
[50] *Ibid.,* s. 5.
[51] *Ibid.*, s. 4.
[52] Bill 94, supra, note 54, s. 6.

remains low in the polls – and which has evoked the possibility of adopting a *Charte de la Laïcité*[53]. The debate is not over.

5. Conclusion

Minority protection cannot depend on the will of the majority. If a constitutional framework is to be employed, it must require that issues touching on cultural minorities be treated as legal and not simply political. Indeed, courts play a key role in ensuring that multicultural policies go beyond mere aspirational statements. Courts send a strong signal to cultural communities when they tell our elected representatives that their policy choices do not conform to constitutionally-enshrined standards. The ability of the individual belonging to a minority to win her day in court – against the government and often against a majority of public opinion – encourages cultural communities to exercise their civil liberties. *Multani* clearly demonstrated that majorities can be wrong as regards the treatment of so-called "foreigners". Recent Canadian case law on same-sex marriage has further consolidated this position[54]. The legitimacy of policies is the result of an inter-institutional dialogue between courts and elected representatives. Opposition to the power of "unelected judges", as frequently voiced by conservative voices, denotes a profound misunderstanding of the structures of contemporary democracy, which is based on a triptych, composed of political representation, human rights guarantees and the rule of law understood as meaning that anyone can oppose a decision of the powers that be on human rights grounds (Crépeau 2000).

Canadian multiculturalism policy outside of Quebec has, over the past four decades, consisted of three elements. Firstly, there has been a consistent and strongly-worded political discourse on the centrality of pluralism as a component of Canadian identity. Indeed, political will may be the key factor that distinguishes the Canadian context from that of continental Europe. Secondly, Canada has instituted a hiring policy within its civil service with a goal of "changing the face of Canada". Thirdly, courts and other human rights instruments in Canada have rigorously implemented the principle of equality, and have acknowledged cultural difference by employing a robust construction of reasonable accommodation.

It would be illusory, however, to believe that these three components of Canadian multicultural policy have created a society free of cultural tensions. Indeed, conflicts do remain.

Aboriginal issues still fester. Although they are considered to be outside the multiculturalism debate proper – as Aboriginals are not immigrants who are in need of integration into mainstream Canadian society –, all civic, economic and social indicators converge to indicate that First nations and Inuit communities and individuals are on the losing side of Canadian diversity policies and practices, their Canadian citizenship being often mostly virtual.

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[53] See: "Québec lance une nouvelle consultation sur la laïcité", *La Presse* (1 February 2013), online: La Presse <http://www.lapresse.ca>.

[54] Reference re Same-Sex Marriage, 2004 SCC 79.

Exactly 39 years after Pierre Elliot Trudeau's much-celebrated address to the Canadian House of Commons, an editorial in a prominent national Canadian newspaper proposed that multiculturalism should be abandoned in favour of a renewed conception of citizenship [55].

More recently, the Supreme Court delivered a nuanced judgement on the issue of whether a witness in a criminal proceeding could wear a face veil ("niqab") while delivering testimony [56]. The Court stressed the importance of balancing the witness's right to religious freedom against the significant liberty claim at stake for the accused in criminal proceedings, declining to affirm a "one size fits all" ruling on this issue. This case attracted significant media attention and fierce public debate. Despite the apparent polarized discourse surrounding this case, the Supreme Court's nuanced reasoning avoided taking sides by following a rigorous analytical process that eschewed the rhetorical arguments on both sides.

On such delicate social and cultural issues, Canada can manifestly count on several expert institutions (courts, tribunals, national human rights institutions) to inform the public debate by showing how to deconstruct unhelpful populist arguments that miss the point through broad generalizations. Hopefully, the political class will also understand that defusing tension on these issues is more important than winning each and every point in the polls if Canada is to uphold its reputation as a protector of human rights, and continue to be celebrated for its rich and diverse society.

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Are Equality and Non-Discrimination a Double-sided Argument in the Intercultural Dialogue in Europe[1]?

Emmanuelle Bribosia, Isabelle Rorive

1. Introduction

Since the first decade of the 21st century, multicultural policies put into place by certain European countries have been repeatedly called into question. At the political level, the culmination of these criticisms was marked by the heads of states successively taking a stand, in 2010-2011, publicly proclaiming the collapse of multiculturalism. Thus, in October 2010, in the midst of controversy regarding immigration and the integration of "foreigners", Angela Merkel announced that multicultural Germany was a failure[2]. A few months later, this statement of the collapse of multiculturalism was repeated, in almost identical terms, by David Cameron[3], in the United Kingdom, and by Nicolas Sarkozy[4], in France. These deafening statements, taking care not to define the concept of multiculturalism, are part of a wider atmosphere of suspicion towards people of immigrant origin, of reaffirmation of "fundamental values" and of strengthening of national identity.

At the same time, the concepts of interculturalism or intercultural dialogue are emerging in the official discourses in Europe, where they seem to enjoy some legitimacy, or even cachet. The White Paper on intercultural dialogue adopted by the

[1] This paper was presented at the "Symposium international sur l'interculturalisme – Dialogue Québec-Europe" (Montréal, 25-27 mai 2011). A revised and updated version of this presentation has been written in the framework of the IUAP project The Global Challenge of Human Rights Integration: Towards a Users' Perspective (2012-2017): www.hrintegration.be/ which is funded by the Interuniversity Attraction Poles Programme (IUAP) initiated by the Belgian Science Policy Office (BELSPO).

[2] In an address to the youth congress of the CDU in Postdam, on October 16, 2010.

[3] In an address to the Munich conference on security, on February 5, 2011.

[4] Interview in the television show *Paroles de Français* (TF1), on February 10, 2011.

Council of Europe in 2008 [5] is explicit in this regard [6]. It highlights the emergence of an intercultural paradigm in Europe. This model is described as incorporating the best principles of the two models of integration – assimilationism and multiculturalism – while adding a new dimension. Thus, interculturalism would borrow "from assimilation the focus on the individual [and] from multiculturalism the recognition of cultural diversity" and add the new element of dialogue (White Paper 2008: 19). Likewise, in April 2011, the Report of the Group of Eminent Persons of the Council of Europe, *Living together: Combining diversity and freedom in 21st century Europe*, recommended "the creation of a regular process of follow-up or assessment of the development of intercultural dialogue in Council of Europe member states".

Intercultural dialogue is also valued by the European Union, which promoted it by organizing a European Year of Intercultural Dialogue in 2008 [7]. To use the words of M. James, "today, the European Commission still largely understands interculturalism to be about dialogue between different cultural groups, proposing that this type of dialogue will enable European citizens to acquire the knowledge and aptitude to enable them to deal with a more open and more complex environment" (James 2008: 3). Yet the conceptual approaches to interculturalism in Europe are not widespread, which makes it difficult to put forward a common definition (James 2008; Laflèche 2007). Generally, it seems that the political use of the concept of interculturalism has been (re-)emerging in Europe in recent decades, in reaction to the alleged failure of integration models such as assimilation, communitarianism or multiculturalism (Home Office, The Cantle Report 2001). Thus, the emergence of the notion of interculturalism in the official discourse can partially be explained by the negative connotation that multiculturalism has taken on in recent years (Silj 2010) and the desire to distance oneself by proposing an alternative model.

Interesting parallels can be found on the other side of the Atlantic, in that it is also mainly by differentiation or opposition to multiculturalism, associated with the Canadian Federal State, that Quebec interculturalism was defined and theorized. In his article, "Qu'est-ce-que l'interculturalisme?", Professor Gérard Bouchard attempts to identify the specificities of interculturalism, by distinguishing it particularly from Canadian multiculturalism (Bouchard 2011). Without going into an in-depth analysis

[5] The Paper defines intercultural dialogue as follows : "Intercultural dialogue is understood as an open and respectful exchange of views between individuals, groups with different ethnic, cultural, religious and linguistic backgrounds and heritage on the basis of mutual understanding and respect. It operates at all levels – within societies, between the societies of Europe and between Europe and the wider world" (White Paper 2008: 10).

[6] Please refer, within the Council of Europe, to the 3rd Summit of Heads of States and of government which in 2005 confirmed that one of the key missions of the Organization was to encourage intercultural dialogue. See also Intercultural cities. Towards a model for intercultural integration, joint action of the Council of Europe and the European Commission, Council of Europe publishing, 2010.

[7] Decision 1983/2006/CE of the European Parliament and of the Council 18 December 2006 concerning the European Year of Intercultural Dialogue – 2008, *OJ*, L 412/44, 30.12.2006. See also the website dedicated to the Year of Intercultural Dialogue within the European Union: http://www.interculturaldialogue2008.eu/406.0.html; Fundamental Rights Agency, "Beyond tolerance. Learning from Diversity", Equal Voices 23, May 2008.

of the two models of integration developed in Canada and in Quebec in recent decades, the literature on the subject (Bouchard 2011; Rocher, Labelle et al. 2007; Baubérot 2008; Gagnon & Iacovino 2007; Crépeau 2014) shows that although academic papers are full of considerations concerning the difference between Canadian multiculturalism and Quebec interculturalism, a definitional fuzziness remains [8] (Rocher, Labelle et al. 2007: 22) to the point that some consider that the two models are impossible to distinguish in terms of principles, except for the pre-eminence given to the French language in Quebec (Crépeau 2014) [9].

In Europe, this conceptual confusion – if not some kind of instrumentalization – is also encountered in the recent use of the idea of interculturalism, at the political level. This is evidenced notably by the use in Belgium of a set of arguments based on interculturalism, as a model of society allegedly opposed to multiculturalism, to justify the law aimed at forbidding the wearing of the burqa or the niqab in public spaces, which was adopted by both Belgian Federal Parliamentary Chambers almost unanimously [10]. Without going into the detail of confusions and approximation in the presentation of these two models of society which are supposedly opposed to each other in all respects, it is enough to reproduce an extract from the presentation of multiculturalism, proposed by the explanatory statement, which in our opinion reveals a grotesque and false presentation of the philosophy which inspired it [11]. Thus, according to parliamentarians of the francophone reform party (*Mouvement réformateur*, a traditional right wing party), "multiculturalism results in the exacerbation of identity differences (leading, *in fine*, to communitarianism), in a sort of 'babelization' of living together, as well as in the emergence of legal castes. This 'right to isolation' generates mutual misunderstanding, fear of others and social tensions" [12]. What is more, it is

[8] "Les travaux universitaires regorgent de considérations sur la différence entre le multiculturalisme canadien et l'interculturalisme québécois (…)", un "flou définitionnel demeure" (Rocher, Labelle et al. 2007: 22).

[9] It is worth noting however that the government of Quebec is eager to single out the Quebec model by strengthening the assertion of its values. In this sense, see its proposal to adopt a Quebec Charter of values made in September 2013 (http://www.nosvaleurs.gouv.qc.ca) which gave rise to a vivid controversy in Quebec and more largely in Canada. (For an overview of this debate, see http://www.lapresse.ca/actualites/politique/politique-quebecoise/201309/11/01-4688098-dossier-notre-couverture-sur-la-charte-des-valeurs.php).

[10] Law prohibiting the wearing of any clothing totally, or principally, hiding the face – Loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage – (referred to under the term burqa in the public debates, whereas they specifically concerned niqab) of June 1st, 2011, *Moniteur belge*, July 13, 2011, No. 2011000424: 41734.

[11] Multiculturalism has been one of the distinctive traits of the Canadian State since 1971. A 1996 survey by the firm Environics revealed that multiculturalism was identified as a symbol of Canadian identity more often than hockey! ("Le multiculturalisme est l'un des traits distinctifs de l'Etat canadien depuis 1971. Un sondage de la firme Environics réalisé en 1996 révélait que le multiculturalisme était identifié comme symbole de l'identité canadienne plus souvent que le hockey!") (Rocher & Labelle 2007).

[12] "Le multiculturalisme aboutit à une accentuation des différences identitaires [menant, *in fine*, au communautarisme], à une forme de 'babelisation' du vivre ensemble, ainsi qu'à l'émergence de castes légales. Ce 'droit à l'isolement' génère la méconnaissance mutuelle,

clear that by basing their claims on the model of interculturalism, the authors of the draft legislation justify a prohibition, subject to penal sanctions, of wearing the burqa in public places, while the burqa itself is euphemistically subsumed by the neutral terms "any piece of clothing which hides the face totally or partially'. However, on the other side of the Atlantic, Gérard Bouchard – one of the theorists of interculturalism in Quebec – argued from the same concept to exclude the prohibition of wearing the burqa in streets and public places (except for public security reasons) (Bouchard 2011).

Beyond the conceptual confusions, interculturalism is characterized by the central role played by intercultural dialogue, in that it promotes the mediation and acceptance of differences on the basis of mutual respect between citizens of diverse origins (Rocher, Labelle et al. 2007). Intercultural dialogue is without doubt one of the essential components or at least a distinctive feature of interculturalism as a model for accommodating diversity, whether it be in Quebec (Bouchard 2011; Rocher & Labelle et al. 2007; Gagnon & Iacovino 2007) or in Europe (White Paper 2008). The concepts of equality and non-discrimination are also widely used in the different models proposed to manage cultural diversity. However, this use is multifaceted if not paradoxical in certain respects. Sometimes equality is used to justify multicultural policies and rules which enable differences and minority cultures to be taken into account; at other times, it is invoked in support of the refusal to recognize certain cultural traditions which are deemed contrary to it (Okin 1999; Song 2007).

Adopting the distinction between different levels highlighted by the White Paper on intercultural dialogue, this chapter examines this dialogue as it is happening in Europe, *within European societies* (2) but also *between these European societies* (3), with special emphasis on the role played by equality and non-discrimination in these dialogues.

2. Intercultural Dialogue within European Societies

The notion of equality is central to the Council of Europe White Paper on intercultural dialogue. It is presented both as a prerequisite for this dialogue (2.1) and as a limit to the acceptance of diversity or even a non-negotiable element which cannot be called into question in the dialogue (2.2). However, on a closer look, if one wishes to take equality seriously as a condition for dialogue, we believe that it is important to enable discussion on the meaning of this equality, both as the basis and as the limit of dialogue. A great deal can be learned from the example of invocations of gender equality in the debate on wearing the Islamic headscarf, which vary widely according to circumstances.

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la peur de l'autre et des tensions sociales". Draft legislation prohibiting the wearing of any clothing totally, or principally, hiding the face (Proposition de loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage), Chambre des représentants, 2nd session of the 53rd legislature, Doc 53 0219/001.

2.1 Equality and Non-discrimination as a Prerequisite for Implementing Intercultural Dialogue

In the White Paper on intercultural dialogue, equal dignity and mutual respect are presented as prerequisites of intercultural dialogue, essential for overcoming obstacles to its implementation. Yet what is meant by equality is not agreed (Fredman 2011; Westen 1983). "Equality and Non-discrimination are complex concepts, with considerable debates on their meanings and justification. The discussion on equality and discrimination is, in general, characterized by considerable conceptual and methodological confusion" (McCrudden & Prechal 2009).

Formal equality is not always sufficient, and encouraging an effective or substantial equality may require the taking into account of differences (Barnard & Hepple 2000; De Schutter 2006; Ringelheim 2006). Effectively combating discrimination requires the prohibition both of direct discrimination, which is a difference of treatment based on a protected ground (gender or religion, for example), and indirect discrimination, which occurs when apparently neutral arrangements, practices or criteria produce the same effect (De Schutter 1999). Moreover, "achieving equality in practice – substantive equality – may require compensatory measures designed to redress the effects of discrimination in the past" (Bell 2007). And sometimes, these various facets of equality could come into tension with each other (McCrudden & Prechal 2009).

For once, the European Union turned out to be a pioneer in the fight against discrimination and, in particular, of achieving equality between men and women (Fredman 2011; European Commission 2009). It is within the European Union that the prohibition of indirect discriminations was enshrined, first in the case law of the Court of Justice and then in the European Directives (Bell 2002; Bribosia 2008). Although this came slightly later, the European Court of Human Rights has also recognized the need to prohibit indirect discrimination resulting from measures or practices which are apparently neutral but which have the effect of especially disadvantaging a group of persons (Sudre 2008; *Handbook on European non-discrimination law* 2011). The Court took this stance resoundingly in the famous case *D.H.* [13], where the issue was the segregation of Roma children at school, in that they were automatically placed in special schools following supposedly objective tests, but the tests turned out to be culturally biased (Dubout 2006, 2008; Henrard 2004). The Court ruled that there was discrimination based on the ethnic origin of the claimants and that it was, in this case, the absence of a differential treatment to correct factual inequalities which resulted in discrimination. The Grand Chamber noted in particular that "as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority" (§ 182). The Court had already highlighted elsewhere the emergence of an international consensus within the Council of Europe recognizing "the special needs of minorities and an obligation to protect their security, identity and lifestyle (…), not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community" [14]. In this way, the European Court is actually clarifying the meaning of

[13] ECtHR (GC), *D.H. v. Czech Republic*, November 13, 2007, § 175.

[14] ECtHR (GC), *Chapman v. United Kingdom*, January 18, 2001, § 93.

'equal enjoyment of rights' in the context of societies that are culturally and socially diverse, where certain people might need a differential treatment to enjoy an effective legal protection (Wiater 2011: 40). In this regard, we agree with the theory of Julie Ringelheim, who argues that the approach to equality adopted by the European Court corresponds to the approach that is advocated by some thinkers of the multiculturalist movement (Kymlicka 1995; Benhabib 2002). Indeed, these thinkers argue that to achieve a real equality between individuals belonging to different cultural groups, it is necessary to take the differences into account in the law and in the institutions [15] (Ringelheim 2006).

This taking into account of differences can be implemented by various legal mechanisms. The case of school segregation of Roma in Czech Republic, for example, shows the close link between the fight against indirect discrimination, required by the objective of achieving an effective equality, and the delicate issue of 'positive measures' or positive actions aimed at compensating for the inequalities arising from past or present discriminations suffered by members of disadvantaged groups (White Paper 2008; De Schutter 2006). The reasonable accommodation tool, which originates from the United States and Canadian law, is the duty for the author of a provision, practice or policy, which de facto penalizes an individual on the basis of a prohibited ground of discrimination, to take into account as far as possible the specific needs of that individual and to protect him or her from the discriminatory effects of such provision, practice or policy. Under Canadian law, the notion of reasonable accommodation is conceived as a derivation of the equality principle and more specifically of the prohibition of indirect discrimination (Bribosia, Ringelheim and Rorive 2010). This concept could imply, for an employer, the duty to adjust working hours so as to take a religious celebration into account or for an educational institution to adjust the school canteen menus in order to take into account specific dietary requirements imposed by certain beliefs, as far as is reasonable. In Europe, starting from the same principle of equality and of prohibition of discrimination, the concept of reasonable accommodation is recognized in favor of people with disabilities, but on the other hand, its application to other grounds such as religion or beliefs, for example, is much more controversial (Bribosia, Ringelheim, Rorive 2009). Although this analysis shows that the notion of equality, in the substantive sense, entails taking differences into account and constitutes a tool for managing cultural and religious diversity (Ballard et al. 2009), nevertheless equality, in some of its aspects, is invoked as a limit to the taking into account of differences and to intercultural dialogue.

2.2 Equality and Non-discrimination as a Limit to Intercultural Dialogue

During the consultations prior to the adoption of the White Paper on intercultural dialogue within the Council of Europe, the issue of equality was raised several times and by most of the parties involved (governments, non-governmental organizations, migrant associations, etc.). The reference to equality and non-discrimination is presented as a limit to intercultural dialogue or a limit to the culture of tolerance

[15] "Pour réaliser une véritable égalité entre les individus appartenant à des groupes culturels différents, il est nécessaire de tenir compte des différences dans le droit et les institutions".

and respect. Thus, it is claimed that "cultural traditions, whether they be 'majority' or 'minority' traditions, could not trump principles and standards of the European Convention on Human Rights and of other Council of Europe instruments concerning civil and political social, economic and cultural rights" (White Paper: 10). Among those principles and standards, gender equality occupies a central place and is consistently presented as "a non-negotiable foundation of any discussion of cultural diversity" (White Paper: 21). More recently, in Quebec – homeland of interculturalism –, the Quebec government has put forward several proposals intended to reinforce the values and the identity of Quebec. One of these proposals is to modify the Quebec Charter of Human Rights and Freedoms in order to define what truly constitutes a reasonable accommodation. Notably, the Charter would explicitly specify that an accommodation could only be consented to if it respects gender equality [16].

It is definitely not our intention to minimize the fundamental importance assigned to equality and more specifically to gender equality in our multicultural societies. However, it seems to us that it is important to take two elements into consideration so as to develop an approach that is better in line with the ethics of dialogue. Firstly, it is important to consider the conflicts of fundamental rights that may arise notably between the assertion of identity grounded in religious freedom, for example, and the prohibition of discrimination based on gender. Secondly, all stereotypical views of gender equality should be avoided. In fact, this is emphasized in the White Paper which points out that

> the fight against gender inequality should not give rise to insidious stereotyping (...). It is important to stress the illegitimacy of coded equations between 'minority communities' and 'gender inequality', as if all in the 'host' community was perfect and as if everything related to minorities and adherents to particular religions was problematic. Common gender experiences can overlap communal divides precisely because no community has a monopoly of gender equality or inequality (White Book: 21).

2.2.1 A Limit which Entails the Resolution of Conflicts of Rights

A conflict of rights is liable to arise between, on one hand, religious freedom (or non-discrimination based on religion) and, on the other, the prohibition of discrimination on the grounds of sex or sexual orientation (Bribosia & Rorive 2010; Commission des droits de la personne et des droits de la jeunesse 2008). Such is the case, for instance, of the requests for accommodation on religious grounds, which were made in the Netherlands, so as not to be required to shake the hand of persons of the opposite sex, or the case of Christian civil registrars refusing to officiate at the weddings of persons of same sex or in the registration of partnerships in the

[16] See a presentation of these proposals on the Quebec government website: http://www.nosvaleurs.gouv.qc.ca.

Netherlands [17], the United Kingdom [18] or France [19]. Often, in these affairs, those who request the accommodation base their argument not on religious freedom but rather on their right to non-discrimination on the grounds of religion. This highlights the tensions inherent to the principle of equality of treatment itself, when it includes, under prohibited criteria of discrimination, gender, religion or beliefs as well as sexual orientation (Bribosia & Rorive 2010; McColgan 2009).

As Frances Raday rightly underlines, the great majority of traditional religions and cultures are grounded on norms and social practices which developed in a patriarchal context at a time when no protection was granted consistently to individual human rights, in general, and to the right of women to equality or to the freedoms of others (Raday 2003, 2009). It is therefore not surprising that, even today, it is a complex task to implement the principle of equal treatment, simultaneously independently of sex, religious beliefs and sexual orientation. This ties in with what A. Shachar describes as the "paradox of multicultural vulnerability" when "culture becomes an alibi for the majority (or the most powerful) group within a minority to impose its rule on a more vulnerable segment of the same group" (Shachar 2001: 3).

Several official positions both worldwide and at the European level tend to claim that, faced with a conflict between religious freedom or non-discrimination on this ground and women's rights, that the latter should enjoy precedence [20]. Thus, in a resolution entitled *Women and religion in Europe*, the Council of Europe stated, in 2005, that "freedom of religion cannot be accepted as a pretext to justify violations of women's rights, be they open or subtle, legal or illegal, practiced with or without the nominal consent of the victims – women" (§ 5). Such an approach, grounded on an *a priori* hierarchy (McColgan 2009), is prone to come into tension with the principle of indivisibility of human rights (Bribosia & Rorive 2010; Bribosia & Hennebel 2004) and, more importantly, seems powerless to resolve all situations of conflict. In some cases at least, it seems to us that an approach aimed at the conciliation of rights that are in tension with each other in a given context should be preferred to the logic of *a priori* hierarchy (Bosset 2009; Brems 2008). This conciliatory approach can be likened

[17] See R. Holmaat, Netherlands Report on Measures to Combat Discrimination. Directives 2000/43/EC and 2000/78/EC, European Network of Legal Experts in the Non-discrimination Field, 2008, Section 0.3.

[18] See notably ECtHR, *Ladele and McFarlane v. United Kingdom*, req. No. 51671/10 and 36516/10, January 15, 2013.

[19] See the position of the French Constitutional Council relating to the "conscience clause", decision No. 2013-353 QPC, October 18, 2013.

[20] A report of the United Nations (Abdelfattah Amor Report, 2002) goes along the same lines. It clearly affirms, without compromise that the precedence over any custom or tradition, whether it be of religious origin or not, of the imperative universal principles that are respect for a person and of his/her inalienable right to dispose of him/herself, as well as complete equality between men and women ("la prééminence sur toute coutume ou tradition, qu'elle soit d'origine religieuse ou non, des principes universels de nature impérative que sont le respect de la personne et de son droit inaliénable de disposer d'elle-même, ainsi que de la pleine égalité entre les hommes et les femmes"). See also the 2009 Report submitted by Mrs. Asma Jahangir, Special Rapporteur on freedom of religion or belief in accordance with the United Nations Commission on Human Rights resolution 6/37.

to the concept of "transformative accommodation" developed by A. Shachar in her work on "multicultural jurisdiction". She argues that this concept would allow society to "identify and defend only those state accommodations which can be coherently combined with the improvement of the position of traditionally subordinated classes of individuals within minority group cultures" (Shachar 2001). Without ruling on the thorny debate concerning the method of resolving these conflicts, we wish to emphasize the importance of determining, without cultural bias, what is likely (or not) to violate the principle of equality between men and women.

2.2.2 A Limit with "Variable Geometry"– Wearing of the Hijab at School and Gender Equality

As P. Bosset notes, the view of law on gender equality is never perfectly completely neutral (Bosset 2009). This is illustrated by J. Baubérot when he writes that

> to pretend that the affair of the frosted windows of the YMCA[21], well-known in Quebec, fundamentally brings into play the equality between men and women, while the media obsession with women's cleavages would have nothing to do with this equality, represents a dogmatic standardization of a common view. This leads to transforming gender equality, which is a value, and like all other values is the object of an interpretative debate (...), into a dogma that is to be swallowed whole[22] (Baubérot 2008: 243).

When it is claimed that gender equality is a non-negotiable prerequisite to intercultural dialogue, often what is concealed is the fact that what is claimed to be non-negotiable is actually a certain conception of this equality, which itself becomes dogmatic.

In this regard, the issue of the wearing of the hijab at school can teach us a great deal. Although gender equality is considered essential on both sides of the Atlantic, a generalized prohibition of the display of this religious symbol is considered as leading to discrimination grounded on religion or sex in Canada (Commission des droits de la personne et des droits de la jeunesse 2008; Bosset 2009; Koussens 2007-2008; Woehrling 2007), while in Europe, gender equality played a central role in justifying the generalized prohibition (in secondary schools in France and in universities in Turkey) (Rorive 2009; Bosset 2004; Koessens 2007-2008; "Fleury" Report 2007). It is worth remembering here that, in the famous case *Leyla Sahin v. Turkey* (2005), the European Court of Human Rights based its judgment notably on the fact that the hijab, a "powerful external symbol", "appeared to be imposed on women by a religious

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[21] This affair concerns an incident that was highly publicized in Quebec and often criticised in the name of gender equality, and which led to a YMCA sports centre at Montréal to frost the windows of its aerobics room, following a request of the nearby Hasidic Jewish school, in order to spare young pupils the sight of women in revealing sport clothes.

[22] "Faire comme si l'affaire [des vitres givrées] du YMCA bien connue [au Québec] met de façon évidente fondamentalement en jeu l'égalité homme-femme alors que la fixation médiatique sur le décolleté d'une femme n'aurait rien à voir avec cette égalité, constitue une uniformisation dogmatique d'une pensée commune. Cela induit de transformer l'égalité des sexes, valeur, qui comme toutes les autres valeurs est l'objet d'un débat interprétatif (…), en dogme à avaler tout cru".

precept that was hard to reconcile with the principle of gender equality" ruling that the prohibition of the wearing of the headscarf at university in Turkey did not violate the fundamental rights guaranteed by the Convention [23] (Bribosia & Rorive 2004; Rorive 2009).

The reasoning of the European Court of Human Rights falls in line with the argumentation of "offense to values" presented and criticized by Jean-François Gaudreault Desbiens (2007). According to this position, certain religious symbols should be prohibited, particularly in public places such as a school, on the grounds that they would be intrinsically offensive or because they would contradict a fundamental societal value, such as gender equality, for example. However, as this author demonstrated, such an argument is problematic in several respects. Firstly, in so far as it ignores the polysemous nature of the religious symbol in question, in this case of the hijab, by giving it a predominant meaning of women's submission to men. Secondly, because it results in denying all autonomy to women or young girls who wear it by assuming that they are never capable of making a free and enlightened choice to do so (Gaudreault-Desbiens 2007; Philips 2009).

Moreover, this is in essence what Judge F. Tulkens argued in her dissenting opinion appended to the *Leyla Sahin* judgment:

> It is not the Court's role to make an appraisal of this type – in this instance a unilateral and negative one – of a religion or religious practice, just as it is not its role to determine in a general and abstract way the signification of wearing the headscarf or to impose its viewpoint on the applicant. The applicant, a young adult university student, said – and there is nothing to suggest that she was not telling the truth – that she wore the headscarf of her own free will. In this connection, I fail to see how the principle of sexual equality can justify prohibiting a woman from following a practice which, in the absence of proof to the contrary, she must be taken to have freely adopted. Equality and non-discrimination are subjective rights which must remain under the control of those who are entitled to benefit from them. 'Paternalism' of this sort runs counter to the case-law of the Court, which has developed a real right to personal autonomy on the basis of Article 8 (*Keenan v. the United Kingdom*, April 3, 2001, § 92; *Pretty v. the United Kingdom*, April 29, 2002, § 65-67; *Christine Goodwin v. the United Kingdom*, July 11, 2002, § 90) (point 12).

This brings us back to the importance of intercultural dialogue, in order to determine the meaning that is to be given to a religious symbol such as the hijab, including with respect to gender equality, without excluding members of minorities from this process of determination (Philips 2009).

The polemical debates surrounding the adoption of laws prohibiting the wearing of the full-face veil in public spaces, notably in France and in Belgium, does not reflect a great openness towards the women concerned. While gender equality and dignity

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[23] ECtHR (GC), *Leyla Sahin v. Turkey*, Novembre 10, 2005 (req. No. 44774/98), § 111 ; *contra* : Judge Tulkens in her dissenting opinion. It is however important to keep in mind that any comparison between the respective positions of the Supreme Court of Canada and the European Court of Human Rights is delicate in light of the important role played by the national margin of appreciation in the case law of the European Court of Human Rights (see the discussion below, in the second part of this paper).

of women have been waved around to justify these prohibitions, Muslim women who wear the niqab, although central to these concerns, have been largely forgotten in the consultations that were held (Brems 2014).

3. Intercultural Dialogue between European Societies

At the European level, an intercultural dialogue can also take place between the various European societies. This is illustrated by the European Court of Human Rights resorting to comparative law and to the national margin of appreciation (3.1). The latter may, however, reveal itself to be a double-edged sword in terms of taking cultural diversity into account, in that it might result in favoring the culture of the majority within a given society (3.2).

3.1 Comparative Law and the National Margin of Appreciation – Tools of an Intercultural Dialogue in the Case Law of the European Court of Human Rights

As pointed out by Judge Luzius Wildhaber, when he was president of the European Court of Human Rights, the role of comparative law in the case law of this court is constantly growing. He referred in particular to the national legislations and judicial precedents upon which the European Court relies in its rulings (Wildhaber 2005). Patricia Wiater links this comparative law approach to the implementation of an intercultural dialogue in the European system of protection of human rights: by comparing the protection standards established at domestic level, the Court creates an "intercultural legal dialogue" in order to identify possible "common European grounds" in response to a specific legal question (Wiater 2011: 21).

In the case law of the European Court of Human Rights, the "intercultural legal dialogue" that P. Wiater indicates is reflected by the notion of European consensus, itself closely linked to that of the national margin of appreciation, which refers to the latitude given to States by the Court to define the contours and limits of certain fundamental rights [24]. It is a corollary of the principle of subsidiarity that characterizes the system of protection of fundamental rights established by the European Convention on Human Rights, according to which States Parties are primarily responsible for monitoring compliance with those rights [25]. The system of the Convention is aimed at the harmonization, rather than the uniformity, of the protection of fundamental rights, and the national margin of appreciation is the legal tool that is used by the Court to implement this harmonization (Brems 2001). The national margin of appreciation thus regulates the scope of control over State authorities exercised by the Court. It

[24] This concerns rights that are not intangible (Bribosia and Weyembergh 1999).

[25] In the case "relating to certain aspects of the law on the use of languages in education in Belgium", in which the Court expressly resorted to the doctrine of the national margin of appreciation for the first time, it declared that it "cannot disregard those legal and factual features which characterize the life of the society in the State which, as a Contracting Party, has to answer for the measure in dispute. In doing so it cannot assume the role of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention" (EctHR, July 23, 1968, Series A, No. 8, § 10).

crystallizes the assumption that State authorities, because of their proximity to the driving forces of their country, are in a better position to decide the content of certain objectives, such as the protection of morals, of public order or of national security, on the grounds of which interferences with fundamental rights can be tolerated [26]. The national margin of appreciation results in promoting pluralism and cultural diversity (Hoffmann & Ringelheim 2004; Matscher 1998) which are not only desirable in every democratic society [27], but also at the European level. Furthermore, this technique is not only used to accommodate cultural specificities, it also enables the taking into account of specificities linked to the economic context, to the political system, even to the national legal order (Brems 2001).

The width of the margin of appreciation that the Court grants to States when appropriate is assessed in each case and varies according to diverse factors which, depending on the case, combine with or annul each other (Schokkenbroek 1998; Van Drooghenbroeck 2001). Among these factors, an essential place is given to the European consensus [28] in that the Court held that it limits the scope of the margin of appreciation when it identifies a convergence of national systems and conversely. In other words, the comparative method is used at the stage of the test of proportionality, in order to measure whether an interference with a fundamental right can be tolerated on the grounds that it is "necessary in a democratic society".

Additionally, the use of this method is frequent when the Court wishes to reinforce an evolutive interpretation of the Convention and bases its judgment on the transformation of the law in a significant number of States Parties (Dialogue between judges 2011) [29].

How the Court has applied the concept of European consensus is not, however, free of criticism. Indeed, the inconsistencies and the lack of rigor in the reasoning that is followed often give the impression that it is the conclusion which it wanted to attain that determined the arguments used and not the other way around, which raises the issue of the instrumentalization of the European consensus and, in turn, of the national margin of appreciation (Bribosia & Weyembergh 1999). This observation, made in 1999, has not been belied since then and the examples in which the Court abuses the comparative method (Rorive 2007) and distorts the notion of European consensus are not strictly accidental in its case law. The case of Leyla Sahin mentioned above [30] constitutes an example of the lack of rigor, if not the manipulation of the recourse to comparative law in highlighting the absence of a consensus (Bribosia & Rorive 2004; Rorive 2009). Thus, although only three States that are members of the Council of

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[26] ECtHR, *Handyside v. the United Kingdom*, December 7, 1976, Series A, No. 24, § 48.

[27] ECtHR (GC), *D.H. and others v. Czech Republic*, November 13, 2007, § 176.

[28] See for example, ECtHR, *Rasmussen v. Denmark*, November 28, 1984, Series A, No. 87, § 40.

[29] Thus, for example, concerning the right to equality and non-discrimination, see ECtHR, *Goodwin v. the United Kingdom*, March 27, 1996; *E.B. v. France*, January 22, 2008; *Glor v. Switzerland*, April 30, 2009.

[30] ECtHR (GC), *Leyla Sahin v. Turquie*, November 10, 2005. See also, among many others, *Fretté v. France*, 26 February 2002 (decision in relation to which the Court has distinguished itself in *E.B. v. France*, January 22, 2008); *A B and C v. Ireland*, December 16, 2010.

Europe prohibited the wearing of the veil in universities at the time of the case, the European Court of Human Rights expanded the issue to cover the wearing of any religious symbols in schools (including secondary and primary education): "rules in this sphere will consequently vary from one country to another according to national traditions". It then deduced from this the absence of a European consensus and granted Turkey a wide margin of appreciation for settling the issue.

3.2 The National Margin of Appreciation, a Biased Tool for Taking Cultural Diversity into Account?

The *Lautsi* [31] case, decided by the Grand Chamber of the European Court of Human Rights in March 2011, sheds light upon the extent to which the national margin of appreciation can operate to the detriment of cultural diversity. The presence, imposed by two Italian regulations dating back to the 1920s' [32], of a crucifix in every public school classroom, was at the heart of the debates. Mrs. Lautsi had failed to obtain the removal of these crucifixes by the competent administrative bodies on the grounds of the principle of secularism by which she wished to raise her children, aged 11 and 13 at the time of the facts. The Italian Council of State had considered that "the crucifix can perform – even in a 'secular' perspective distinct from the religious perspective specific to it – a highly educational symbolic function, irrespective of the religion professed by the pupils" [33]. Initially, the seven judges composing the Court unanimously condemned Italy in 2009 for the violation of the right to education (Article 2 of Protocol No. 1) examined together with the freedom of religion (Article 9 of the ECHR). After having restated the religious neutrality to which the State is bound within the context of public education, the Chamber of the Court had added that "it could not see how the display in state school classrooms of a symbol that it was reasonable to associate with the majority religion in Italy could serve the educational pluralism which was essential for the preservation of 'democratic society' within the Convention meaning of that term" [34] (§ 31).

This condemnation caused an outcry, mainly in Italy but also in other European countries [35]. The reactions were so intense that they could not have been unrelated to the decision of the Court to re-examine the case, sitting as a Grand Chamber, at the

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[31] ECtHR (GC), *Lautsi v. Italy*, March 21, 2011.

[32] Article 118 of the royal decree No. 965 of April 30, 1924 on the internal regulations governing middle schools (*ordinamento interno delle giunte e dei regi istituti di istruzione media*) and Article 119 of the royal decree No. 1297 of April 26, 1928 approving the general regulations governing the provision of primary education (*approvazione del regolamento generale sui servizi dell'istruzione elementare*). In Italy, the obligation to expose the crucifix in classrooms dates back to a royal decree of Septembre 15, 1860 of the Kingdom of Piedmont-Sardinia, according to which "each school must without fail be equipped (…) a crucifix" (Article 140). This requirement became that of the Italian State in 1861 and has not changed since then (Gonzalez 2010: 467).

[33] Italian Council of State, judgement No. 556, April 13, 2006, cited by the Court at § 16.

[34] EctHR (2nd Ch.), *Lautsi v. Italy*, November 3, 2009.

[35] For a presentation of these various reactions, including those within the European Parliament, see the file of the Humanist Federation on the *Lautsi* case available online: http://www.humanistfederation.eu/index.php?option=com_content&view=article&id=277.

request of the Italian government. The particularly numerous third party interventions [36] (ten States Parties to the Convention, thirty-three members of the Parliament of the European Union acting collectively and ten non-governmental organizations acting to support the Italian government) testify to the extreme sensitivity of the issue. Thus, it was in a climate of tension that the Grand Chamber of the Court overturned its decision, by an overwhelming majority of 15 judges out of the 17 that composed it (Piret 2012). The opening of Judge Bonnello's concurring opinion reflects the magnitude of the controversy at the heart of which the role of the Court itself was under the spotlight:

> A court of human rights cannot allow itself to suffer from historical Alzheimer's. It has no right to disregard the cultural continuum of a nation's flow through time, nor to ignore what, over the centuries, has served to mold and define the profile of a people. No supranational court has any business substituting its own ethical mock-ups for those qualities that history has imprinted on the national identity (point 1.1).

Judge Bonnello added: "The Court has been asked to be an accomplice in a major act of cultural vandalism" (point 1.4). Among the lines of argument put forward by the Italian government, one can find a dialectic between majority and minority culture:

> Lastly, the Government emphasized the need to take into account the right of parents who wanted crucifixes to be kept in classrooms. That was the wish of the majority in Italy and was also the wish democratically expressed in the present case by almost all the members of the school's governing body. Removing crucifixes from classrooms in such circumstances would amount to 'abuse of a minority position' and would be in contradiction with the State's duty to help individuals satisfy their religious needs (§ 40).

The aim here is not to undertake a critical analysis of each stage in the reasoning of the Court, but rather to examine the relationship between national margin of appreciation and cultural diversity in this case [37]. While the Chamber of the Court had not recognized any margin of appreciation to the Italian State, the Grand Chamber decided otherwise. Three grounds support this reversal of perspective. Firstly, the Court held that "the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation of the respondent State" (§ 68), though not without confining the scope of this affirmation by emphasizing that the evocation of a tradition is not such as to exonerate a State Party of its obligation to respect the rights and freedoms under the Convention and its Protocols. Secondly, the Court reiterated its settled case-law according to which the States enjoy a large margin of appreciation in the planning of school curriculum, in order to expand it to the organization of the school environment (§ 69). Thirdly, and this element strengthens the first two, the Court noted the absence of a "European consensus on the question of the presence of religious symbols in state schools" (§ 70), drawing on a comparative law study

[36] It is worth noting that the European Court of Human Rights has discretionary power to take into account the briefs of intervening third parties which act as *amicus curiae* (Hennebel 2007).

[37] For a thorough analysis of the *Lautsi* case from a multidisciplinary perspective, see Temperman (2012).

demanded by the Italian government and several intervening third parties (§§ 26-28). This great diversity of approaches between the Member States of the Council of Europe (which is contested in the dissenting opinion of Judge Malinverni, with which Judge Kalaydjieva sides) reinforces yet again the granting of a broad national margin of appreciation by the Court, which adds, however, that this margin goes hand in hand with a European supervision and cannot give free reign to Italy.

In reality, the specific situation of pupils belonging to religious minorities is neglected by the Court, which gives preponderance, via a broad national margin of appreciation and a limited European supervision, to the views and beliefs of the majority [38]. This pitfall is admirably highlighted by Judge Malinverni in his dissenting opinion:

> We now live in a multicultural society, in which the effective protection of religious freedom and of the right to education requires strict state neutrality in state school education, which must make every effort to promote pluralism in education as a fundamental feature of a democratic society within the meaning of the Convention (point 2).

In the *Lautsi* case, the national margin of appreciation reveals itself to be a double-edged sword. On the one hand, it allows the European judge to take into account diversity between European societies and, to a certain extent, to establish an intercultural dialogue between them. On the other hand, within a given society, it leads to exclusively take into account the version of culture that is upheld by the State, with the risk of favoring majority culture while neglecting cultures of minorities (Brems 2001).

4. Conclusion

While the uses of interculturalism in European debates on managing cultural diversity are still often imbued with terminological and conceptual confusion, there seems to be a consensus about the central importance of intercultural dialogue today. This was highlighted, in April 2011, in the Report of the Group of Eminent Persons of the Council of Europe, *Living together: Combining diversity and freedom in 21st century Europe*, which recommends "the creation of a regular process of follow-up or assessment of the development of intercultural dialogue in Council of Europe member states".

When this dialogue is considered from within European societies, equality and non-discrimination play an essential role both as a foundation and as a limit. Concerning this, the issue of wearing of the hijab at school and its relationship with gender equality, as dealt with on both sides of the Atlantic, points to the importance of

[38] Compare this approach with the one adopted by Judge Dickson in the case *Big M Drug Mart* of the Supreme Court of Canada: "To the extent that it binds all to a sectarian Christian ideal, the *Lord's Day Act* works a form of coercion inimical to the spirit of the Charter. The Act gives the appearance of discrimination against non-Christian Canadians. Religious values rooted in Christian morality are translated into a positive law binding on believers and non-believers alike. (...) The protection of one religion and the concomitant non-protection of others imports a disparate impact destructive of the religious freedom of society" (*R. v. Big M Drug Mart Ltd*, [1985] 1 *S.C.R.* 295: 336-337).

clearing the principle of equality of its cultural stereotypes by resorting to dialogue. When it comes to establishing a dialogue between European societies, however, the *Lautsi* case shows that the national margin of appreciation to which the European Court of Human Rights resorts can be a double-edged sword. Although it allows the accommodation of a certain amount of diversity between European societies, the danger lies in consistently favoring the majority culture, and there is a risk that intercultural dialogue between European societies may take place at the expense of an intercultural dialogue within European societies.

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Willingness to File a Discrimination Complaint Examining Socio-Psychological Aspects in Fighting Discrimination through Legal Means

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When we think about the notion of racial or ethnic discrimination, most of us will probably think of injustice. After several legislative changes in Europe to reduce inequality by prohibiting discrimination, discriminatory treatments based on alleged race or ethnicity in certain domains such as employment, became illegal. In parallel, among the population, being racist progressively became taboo. Indeed, nowadays racial or ethnic discrimination is less accepted than in the past, not only legally, because it is officially repressed by the law, but also normatively, because it is socially disapproved (Devine et al., 2001: 200). Allport in *The Nature of Prejudice* states that laws, even if not aimed at controlling prejudice, could influence inner habits of thought and feeling, by reducing the legitimacy of the outward expression of intolerance. He listed for this reason "legislative action as one of the major methods of reducing, not only public discrimination, but private prejudice as well" (1955: 477). Nevertheless Allport also noticed that even those who know the law "usually fail to enter complaints or take any steps whatever to invoke the law" (Id.: 470). More than 50 years later, Allport's statement is still relevant. Indeed, with regards to the legal fight against discrimination, recent European reports reveal that the victims are generally unwilling to report their experiences with discrimination to the institutions and conclude that this remains an important issue to tackle in Europe (FRA 2009).

To our knowledge, the specific act of using the law as a mean to fight against discrimination by its own victims has not been studied so far in social psychology. Some scholars have investigated the conditions under which victims of discrimination express their experiences with discrimination in the presence of in- and out-group members (ex. Stangor, Swim, Van Allen, & Sechrist 2002; Postmes, Branscombe, Spears & Young 1999) or the conditions under which they express disapproval to the person who made prejudiced comments (Swim & Hyers 1999). Nevertheless, if

these studies have generally shown that individuals are reluctant to talk about their experiences with discrimination to people who are not members of their group, they have not investigated actual complaint, mainly defined as "an expression of dissatisfaction" (Kowalski 1996: 180) to an institution such as the police, or an organization in charge of struggling against discrimination. Since complaints are likely to be determined by the audience to which they are made (Kowalski 1996), reporting discrimination to such institutions has unique properties that need to be investigated as such.

According to relative deprivation theorist Runciman (1966), the mere experience of dissatisfaction depends on individuals' relative expectancies of what they deserve. Such expectancies are partly determined by social norms. Indeed, individuals can react differently to the same situation because they have different subjective norms or frame of references (Sherif 1935, 1936 cited by Sherif & Sherif 1956). Norms or values indicate which behaviours are permissible or not in a group. Cialdini, Reno, and Kallgren (1990) distinguish between two types of norms: injunctive and descriptive norms. Injunctive norms refer to what is generally approved or disapproved in society, while descriptive norms refer to perceptions of what most others do in reality. Laws are a type of injunctive norm (Cialdini & Trost 1998) defining the moral rules of the group.

The majority of ethnic minority group members are generally not aware of the existence of antidiscrimination laws and organizations (FRA 2009), and some of them are less familiar with social norms that disapprove discrimination (Alarcon-Henriquez & Azzi 2011). Besides, norms only motivate behaviour when they are made salient (Cialdini, Reno & Kallgren 1990). The formation, transmission and perception of norms are highly context-dependent (Hogg & Reid 2006). Sherif's (1936) study on norm formation and transmission for example has shown that when confronted with an uncertain situation, individuals become more vulnerable to social influence, looking for useful frames to guide their judgements. If social norms influence individuals' behaviours, then the willingness to take legal actions to fight against discrimination should also be influenced by the salience of anti-discrimination norms. In this chapter, we will explore by means of two experimental studies how different sources conveying this type of norms influence ethnic minorities' 1) willingness to take legal actions against discrimination in an imagined situation, and 2) real behaviours of seeking information about anti-discrimination laws and other actions to struggle against discrimination (e.g. information about future demonstrations and other activities carried out by associations).

So far investigations in social psychology have mainly focused on conformity to group norms through identification or "referent influence", which occurs when people strongly identify with the source of the norm (see e.g. Hogg & Reid 2006; Hogg & Smith 2007; Smith & Louis 2009 for reviews on the topic). Conformity to group norms through "expert influence" – which occurs when the source is considered to have more knowledge – has been far less investigated. We believe that an expert source (e.g., an institution specialized in the fight against discrimination) is more efficient in influencing ethnic minority group members to fight legally against discrimination than a referent source (e.g., fellow ingroup members).

1. Typology of Norms and Influence

As mentioned above, a first typology of norms distinguishes between descriptive and injunctive norms, respectively defined as what is in general (not) done in reality versus what is officially (dis)approved by society (Cialdini, Reno & Kallgren 1990). Another dimension distinguishes between norms on the basis of the kind of impact they exert on the target, in other words, the type of a social influence. French and Raven (1959, 2001) define 5 forms of influence – or "power" –, namely reward, coercive, referent, legitimate and expert influence. In this paper we will focus on the two forms that do not need surveillance in order to maintain influence: referent and expert. Referent influence – or referent informational influence (Hogg & Turner 1987; Kelman 1958) takes place when the individual conforms to the source to which he identifies in order to maintain a positive relationship. In contrast, when an individual is influenced by a source because he thinks that the source has more knowledge than he has on how to behave, the source exerts *expert* influence on the individual. In this chapter, a first experimental study (Study1) tests the influence of anti-discrimination norms conveyed by referent and expert sources on 1) ethnic minorities' willingness to take legal actions to fight against discrimination in an imagined situation, as well as on 2) their *actual behaviour* to inform themselves about anti-discrimination laws and other activities to fight against discrimination (e.g. demonstrations). While Study 1 only manipulates the mere presence (or absence) of anti-discrimination norms conveyed by expert and referent sources, Study 2 refines the analysis of referent source's impact by making the source's social identity salient.

1.1 Expert Influence

Expert influence takes place when the source of influence is considered to have more knowledge than the target of influence in a specific domain (French & Raven 1959, 2001). Moore (1921) is, to our knowledge, one of the first social psychologists having experimentally tested the impact of an expert's opinion on individual judgements. He has found that an expert's opinion exerts influence on individuals with regard to their moral or ethical. Burtt and Falkenburg (1941) have found an effect of expert's opinion on religious attitudes; Johnson, Torcivia, and Poprick (1968) on well accepted practices, e.g. tooth brushing behaviour; Patel and Gordon (1960) have found that children are more suggestible if they perceive that the source is from a higher grade than them; and a recent meta-analysis shows that source credibility, which is strongly associated with expertise, has an effect on persuading individuals on different type of issues, and mostly when individuals have less prior knowledge or attitudes on these issues (Kumkale, Albarracín & Seignourel 2010). One of the aims of this chapter is to investigate the power of one expert source in influencing ethnic minority group members to fight against discrimination by legal means.

1.2 Referent Influence

Referent influence is based on identification with the source: if the individual thinks he is like – or wants to be like – the source, he will think or behave like the source (French & Raven 1959, 2001). According to Festinger (1954, 1985), when an individual has no objective basis to evaluate his own opinion, he looks for a "social

reality" (in contrast to a physical reality) by comparing his situation and responses with others, and preferably similar others or his reference group. The concept refers to Hyman's reference group (1942, cited by Sherif & Sherif 1956), also used by Sherif, which is a group "to which the individual relates himself as a part or to which he aspires to relate himself psychologically" (Sherif & Sherif 1956: 628). Similar to this notion, Tajfel & Turner (1986: 16) define social identity as "(…) those aspects of an individual's self-image that derive from the social categories to which he perceives himself as belonging". When making an individual's reference group (or social identity) salient, it influences his attitudes in the direction of the reference group's norms.

Charters and Newcomb (1950, cited by Sherif & Sherif 1956) have obtained this effect in their experiment with Catholic participants: they reacted differently to general statements when their Catholic membership is made salient than when it is not. Similarly, in an experiment with social sciences' students, Reicher (1987) has shown that when making their social identity salient, they were more influenced by social scientists' norms and norm-consistent messages than when their identity was not made salient. Other research has demonstrated the importance of referent influence by showing that exactly the same message provokes less reactance when stemming from in-group rather than from out-group members (e.g. Mills & Jellison 1968; Pennekamp, Doosje, Zebel & Alarcon-Henriquez 2009; Wilder 1990). Especially when social identity is an important part of a persons' self-definition, the norms of the group to which the person identifies, influence his or her behaviour, as shown by research on a range of behaviours such as recycling, smoking, or healthy eating (see Smith & Louis 2009 for a review). Most investigations that have demonstrated the power of referent influence have actually investigated majority influence. However, as we already mentioned people rarely take legal action to fight against discrimination and thus we could not conceive it as a majority influence. Could one and only referent source influence fellow in-group members to take action against discrimination by legal means? Investigating the power of one referent source is the second aim of this chapter.

The best historical example of such referent influence we can find is probably the Rosa Parks' protest in a racially segregated United States of America. In December 1955, Rosa Parks confronted institutionalized discrimination by not willing to give up her seat in a bus to a "White" passenger and the police arrested her for doing so. The story spread in the "Black" community, and inspired others to take similar actions of protest against discrimination (Lalonde & Cameron 1994). However, Rosa Parks was not the first who protested this way in a segregated bus. On the contrary, many others did so before her (King 1958, 2011). Why did Rosa Parks influence the "Black" community more than her predecessors? King describes in his *Stride towards freedom* that the resentment felt by the "Black" community regarding the segregation they faced daily spread well before the Parks' case. It substantially increased with the arrest of a fifteen year-old girl, Claudette Colvin, a few months earlier because of the same reasons. However Claudette was not the first either. It seems that Rosa Parks was the straw that broke the camel's back. Highly respected in the "Black" community, she became the perfect icon to rally the community and strengthen an incipient movement, growing in to concrete actions such as the Montgomery bus boycott, led

by Martin Luther King, and the legal actions taken by the NAACP[1] that was looking for the perfect case to challenge racial segregation in the Courts. Hence as we just saw, a closer look to this historical episode shows that one person – a referent – taking action against racial discrimination is probably not enough to influence and facilitate similar behaviours among fellow in-group members. Referent influence is a complex phenomenon and empirical research has demonstrated that it is moderated by many factors that condition its effectiveness (for a review, see Hogg and Smith 2007).

1.3 The Wider Context: Contradictory Norms

In real life, norms are multiple and sometimes even contradictory. For example, if some ethnic minority group members know the injunctive norm that discrimination is wrong (e.g. prohibited by law) yet do experience discrimination in their daily lives, then they face a descriptive norm that contradicts the injunctive norm: "people *should not* discriminate against ethnic minorities but *they do* in reality". It is particularly in this context of contradictory norms, that *one* referent source that acts against discrimination may not be enough to influence fellow in-group members to act similarly. Indeed, if discrimination is common in everyday life and examples of anti-discrimination struggle are rare; one referent source cannot lead to the emergence of a *descriptive* norm indicating what *most* of the people *actually do*. However, unlike referent influence, one expert source could be enough to lead to the reinforcement of an existing *injunctive* norm indicating what *most* of the people *should do* and therefore influence their behaviour in direction of the norm. Our studies are designed to investigate simultaneously this type of referent and expert influence and tease out their effects on ethnic minority group members' willingness to fight against discrimination by legal means. We predict that an expert source explaining that it is important that victims of discrimination fight against it by legal means will influence ethnic minority group members to do so, while a referent source that actually fights against discrimination will not be sufficient to exert the same.

2. Overview of the Studies

In our studies, we manipulated the source of influence in a manner that was very close to reality. Indeed, the media is an important mean to convey different types of messages, including social norms (ex. Paluck 2009). The Belgian news media sometimes communicates about discrimination by diffusing legal and sociological studies on its pervasiveness, and sometimes through the description of discrimination cases. Experts are often asked to give their opinion on the topic. One public, yet autonomous organization in charge of struggling against discrimination is particularly visible in the media in this domain: the Belgian Equality Body called the *C*entre for Equal Opportunities and Opposition to Racism (hereafter the Centre). The Centre, as an independent governmental organization, is considered an expert on discrimination issues, both by the media, and the public (see Alarcon-Henriquez, in preparation). As a consequence, their messages to the Belgian public exert expert influence on them. Part of Study 1 aims to test how describing the Centre's role and opinion

[1] National Association for the Advancement of Coloured People.

on a real discrimination case affects 1) participants' willingness to fight against discrimination by legal means in an imagined situation as well as 2) their actual requests to obtain information about laws and activities with regards to the struggle against discrimination.

To manipulate the referent source conveying an anti-discrimination norm, we used a real discrimination case that actually has been covered by the Belgian news media: the "Eurolock case". This legal case became recently (in 2007) the first case of legal conviction of an employer for discrimination on the field of employment in Belgium. In this case, the victim of ethnic discrimination decided to file a complaint against the employer. The communication of such an example could be a mean to convey anti-discrimination norms to the public by referent influence. Indeed, ethnic minority group members who perceive discrimination towards themselves or towards their group in general, may identify with the victim that has been discriminated against – a referent – and be influenced by his or her behaviour. We used the natural setting of the "Eurolock case" as a base to experimentation in our studies. We operationalized referent influence by manipulating the presence or absence of the example of the victim that filed a complaint against discrimination. Just like with expert influence, the aim was to investigate how this referent influence also affects 1) participants' willingness to fight against discrimination by legal means in an imagined situation and 2) their actual requests to obtain information about laws and activities with regards to the struggle against discrimination. Part of Study 1 investigates expert influence, while part of Study 1 and Study 2 tests referent influence on ethnic minorities' willingness to fight against discrimination by legal means.

2.1 Study 1

The aim of Study 1 is to disentangle referent and expert sources' influence on ethnic minorities' willingness to take legal actions in order to fight against discrimination. According to the literature, both expert and referent sources exert influence on individuals' beliefs and actions. Nevertheless, so far the literature mainly conceived referent influence as the influence of the majority on an individual; thus, one individual may not be sufficient as a referent source, especially in a context of contradictory norms in which the injunctive norm (e.g. anti-discrimination laws) does not correspond to the descriptive norm (e.g. people do discriminate). Therefore we predict that an expert – yet not a referent – source emitting an anti-discrimination norm will significantly facilitate ethnic minorities' willingness to use legal actions to fight against discrimination. Seeing that both sources convey the same norm (people should fight against discrimination), we had no reason to expect an interaction effect between the two independent variables, only main effects.

2.1.1 Method

Sampling and Participants: Considering that our main aim was to recruit potential victims of racial or ethnic discrimination, we made a request for volunteers who perceived racial or ethnic discrimination towards their group in different training centres usually attended by disadvantaged persons in search for employment, among which ethnic minority group members ($N = 64$). Participants were also recruited via

the Internet ($N = 22$), by e-mailing our request to different ethnic minority associations and social networks (e.g. Facebook and other forums). Comparisons between the two versions of the questionnaire (paper and Internet) on all dependent variables did not yield any significant difference. Both versions were thus collapsed for all subsequent analyses.

A total of 86 ethnic minority group members participated in our study. The average age was 32 ($M = 32.47$, $SD = 10.28$) and of the 78 participants who indicated their gender, 28 were male and 50 female. Among the 74 participants who indicated their religion or philosophical conviction, 35 were Muslim, 32 Christian, 7 agnostics or atheist. Most of them had sub-Saharan African ($N = 35$) or North African origins ($N = 26$); some were southern or eastern European ($N = 7$), from the Middle East ($N = 3$), Latin America ($N = 5$); Asia ($N = 1$) and 8 did not indicate their origins. Of the 70 participants who indicated their nationality, 42 were Belgian. Having a 2 (absence or presence of referent source) X 2 (absence or presence of expert source) experimental design, the 86 participants were randomly assigned to these four conditions.

Discrimination perception: Participants rated on a 9-point scale their perception of ethnic discrimination towards their group and racial discrimination towards them personally (e.g. Persons who share my origins are often discriminated against; I was often discriminated against for racial reasons).

Manipulation of referent and expert source conveying anti-discrimination norms: We had 4 different conditions and all the participants of the 4 conditions read a small text describing a real example of discrimination, as it was in reality mentioned via the Belgian news media:

> A Belgian of immigrant descent applied for a job in the security sector and received a negative response through an e-mail from the secretary. The e-mail accidentally contained a previous exchange between the manager and the secretary in which the former wrote: "Can you get rid of this candidate? A foreigner applying for a security job, that is unheard of".

Participants in the No Norm Condition (NNC) only read this part of the text.

Participants in the Referent Source Condition (RSC) read in addition to the discrimination example the following sentence: *The person decided to file a complaint in order to denounce this discrimination.*

Participants in the Expert Source Condition (ESC) read instead of the previous sentence the following information:

> The Centre for Equal Opportunities and Opposition to Racism declares it is important to take that case to Court[2]. The Centre is a public organization in charge of promoting equal opportunities and fighting all forms of distinction or exclusion based on alleged race, origin, religious or philosophical convictions, etc. It has among others as role to concretely accompany the victims of discrimination and advice the government with regard to the struggle against inequality.

[2] This opinion was also in line with the real declarations of the Centre about the case. The victim consulted the Centre and the Centre joined the victim in filing a complaint against the employer; they went to Court and won the case.

Participants of the Referent and Expert Source Condition (ERSC) read both that the victim filed a complaint and the additional information about the existence of the Centre:

> The person contacted the Centre for Equal Opportunities and Opposition to Racism to denounce this discrimination and decided to file a complaint against the employer. The Centre declares it is important to take that case to Court. The Centre is a public organization in charge of promoting equal opportunities and fighting all forms of distinction or exclusion based on alleged race, origin, religious or philosophical convictions, etc. It has among others as role to concretely accompany the victims of discrimination and advice the government with regard to the struggle against inequality.

Willingness to use legal anti-discrimination actions. Participants were then asked to imagine themselves in the victim's shoes and to rate the probability that they would engage in actions similar to that undertaken by the victim (e.g. consult an anti-discrimination organization and find out what can be done about the discrimination, take legal action against the employer, ask advice to a lawyer, gather evidence to prove you were discriminated against). This scale contained 6 items and was averaged into a composite score (Cronbach's $\alpha = .84$).

Socio-demographic and other exploratory questions. Participants mentioned their gender, age, nationality, origin and religion/ philosophical conviction. Other exploratory questions were also asked in the same questionnaire, but not used in the frame of the present experimental study.

Information request on the fight against discrimination by legal means. At this point, participants were thanked for having participated. Presented as totally apart from the study – nevertheless attached to the questionnaire – they received a form, in a completely different layout than the one used in the questionnaire. This way, participants could easily notice the difference between the two. It was presented as a form in case they were willing to receive information on: 1) Their rights with respect to discrimination; 2) How to react personally in case of discrimination (e.g. housing, employment); 3) Demonstrations and events concerning the struggle against discrimination organized by associations.

If they checked one of these answers, they had to mention their e-mail address in order to send them the right information. If they completed this part, the experimenter removed the second part of the questionnaire, which is the form that contained the e-mail address. Indeed, the experimenter copied the requests on the first part of the questionnaire without keeping the personal data in order to maintain anonymity of the participants. In the internet version, a different file was created with the personal details and the requested information. The personal information was deleted from the file containing the rest of the data. This way, anonymity of the participants was warranted and e-mail addresses were only used in order to send them the requested information. Indeed, all the provided information is real. The e-mail addresses were not kept afterwards.

Debriefing: Participants were fully debriefed after having completed the study, orally for the paper questionnaire and through a written text for the electronic on-line version of the questionnaire, immediately after they completed the form.

2.1.2 Results

Discrimination perception: As previously mentioned, referent influence is based on feelings of association with the source which is perceived as similar in a given context. Identification with the victim described in the scenario should be facilitated if participants themselves also experienced personal or group discrimination in the past. Given that we explicitly targeted a sample of participants that perceived racial or ethnic discrimination, their scores on perceived group and personal discrimination for racial or ethnic reasons are relatively high: 7 on a 9-point scale on perceived group discrimination (M = 7.31, SD = 2.01) and almost 6 for perceived personal discrimination (M = 5.91, SD = 2.91). In order to control for the effects of perceived discrimination on our dependent variables, we first included perceived discrimination in all our analysis. Except for information request on anti-discrimination laws on which perceived personal discrimination had an effect (OR = 1.36, $Wald\ \chi^2(1) = 5.09$, $p < .05$) and which will be described later, no other significant effect was found for discrimination measures on the different dependent variables we used in this study.

Willingness to use legal anti-discrimination actions: We predicted that mentioning the opinion and role of the Centre would exert an *expert* type of influence on the participants and facilitate their willingness to take legal actions to fight against discrimination. We also predicted that mentioning an example of a victim of discrimination – a *referent* source – filing a complaint will not sufficiently exert influence on the participants in order to favour their tendency to use legal anti-discrimination actions. To test this hypothesis, we conducted a 2 (referent source: absence vs. presence of the victim's complaint) X 2 (expert source: absence vs. presence of the Centre's role and opinion) between-subjects ANOVA with the willingness to engage in legal actions against discrimination as dependent variable. Results confirmed our assumptions. As expected, no interaction effect was found, $F(1,72) = 0.83$, $p > .05$ and we only obtain a main effect of the expert source, $F(1,72) = 5.51$, $p < .05$. Participants that read about the Centre were more willing to take legal actions against discrimination (M = 7.41, SD = 1.49) compared to participants to whom we did not mention the Centre (M = 6.48, SD = 2.24). We did not find an effect of the referent source (the victim's complaint), as predicted $F(1,72) = 1.72$, $p > .05$.

Information request on the fight against discrimination by legal means: We used logistic regression in order to test whether expert and referent sources conveying anti-discrimination norms had an impact on real actions of information request on the fight against discrimination by legal means. The two independent variables, expert source and referent source (both dummy coded -1 for absence and 1 for presence) were simultaneously entered in three different analyses with the three type of request (dummy coded -1 for no request and 1 for request) as dependent variables. The overall model was significant in the three analyses, indicating that the model with the entered predictors fitted better than the model without (see Table 1). Again, we obtained, as expected, an effect of the expert source and no effect of the referent source on the three dependent variables was obtained (see Table 1)[3]. Mentioning the existence of the

[3] Seeing that perceived personal discrimination (PPD) also had an effect on information request on anti-discrimination laws, we conducted a second analysis for this dependent variable

Centre increased the participants' actual information requests on anti-discrimination laws and the struggle against discrimination by other normative means, such as demonstrations and events organized by associations.

Table 1. Model Fit and Odds Ratios of Information Request on the Fight Against Discrimination by Legal Means as a Function of Anti-discrimination Norms Conveyed by Expert and Referent Sources

Type of requested information	Model fit χ^2 (2)	Type of Source	Odds ratio	Wald
Anti-discrimination laws	8.27*	Expert	2.22	6.63**
		Referent	1.10	1.67
What to do personally in case of discrimination (e.g. housing, employment)	14.03**	Expert	3.16	10.71**
		Referent	1.10	0.09
Demonstrations, events organized by associations relating to the struggle against discrimination	8.36*	Expert	2.79	6.23*
		Referent	1.00	0.00

** Significant at 0.01 level, * significant at 0.05 level.

Socio-demographic questions: We did not obtain any effect of age or gender on the dependent variables.

2.1.3 Discussion

Study 1 shows that an expert source conveying an anti-discrimination norm increases ethnic minority members' willingness to take legal actions against discrimination in an imagined situation, and also incite them to actively request information on the fight against discrimination by legal means, which confirms our hypothesis. A referent source is not as effective to provoke these effects, as expected.

A possible explanation for this absence of referent influence is that according to the literature, identification with the source is an important dimension of referent power (e.g. French & Raven 1959, 2001) and Study 1 might have failed to provoke sufficient identification feelings with the victim. Indeed, the referent source manipulation of Study 1 mentioned a victim of discrimination that filed a complaint and even if the participants perceive they are potential targets of discrimination themselves, making that categorization salient might be insufficient to create a sense of identification with the victim. Social identification not only comprises a cognitive component according to which the individual knows he is part of a social category, but also an affective and evaluative component, that ties him to the group (e.g. Tajfel 1978, cited by Ouwerkerk, Ellemers, & De Gilder 1999). Knowing that we are personally, or our group, often target of racial or ethnic discrimination can facilitate a sense of common fate, as "victims of discrimination", yet it misses a stronger affective and evaluative component present in other more frequently solicited and

in which we added PPD in order to control for its effect. The results remained the same: despite a significant effect of PPD ($OR = 1.36$, $Wald\ \chi^2 = 5.09$, $p < .05$), we still have an effect of expert source ($OR = 2.40$, $Wald\ \chi^2 = 7.27$, $p < .05$) and no effect of referent source ($OR = 1.62$, $Wald\ \chi^2 = 2.21$, $p > .05$).

committed social identifications, such as e.g. national or ethnic origin. Study 2 solves this problem by introducing a manipulation of the victim's ethnic origin (match with participant's ethnic origin or not). Describing the victim as having the same ethnic identity as the participants should facilitate identification with the source and create referent influence that induces normative behaviour. Indeed, the salience of a shared social identity leads to a cognitive redefinition of the self – a depersonalization – in which people see themselves less at an individual level as differing individuals (personal identity) but more at a collective level as interchangeable individuals, similar to other in-group members, sharing the same social category (see Turner's self-categorization theory, 1984, cited in Turner 1999). As a consequence, the norms associated to this social identity are internalised: "Identification-based conformity is not a process of surface behavioural compliance, but a process of genuine cognitive internalisation of group attitudes as one's own" (Hogg & Smith 2007: 97). In other words, individuals conform to the norms that define the group in a given context through self-categorization (Abrams & Hogg 1990: 206). In line with this literature, making participants' ethnic identity salient by mentioning the victim's ethnic origin should exert more referent influence than when the source's ethnic background is not made salient. However as explained above, given the context of contradictory norms with regards to discrimination, one and only referent source, even if making the shared social identity salient, may not be enough to create a sense of descriptive norm and influence fellow in-group members accordingly. Study 2 is designed to test these two contradictory predictions.

2.2 Study 2

Study 1 demonstrated that an expert source is a more efficient mean to influence ethnic minority group members to take legal action against discrimination than a referent source. However, Study 1 contained a weak manipulation of referent source. Study 2 addresses this issue by manipulating the salience of the ethnicity of the referent source shared by the participants. A shared ethnicity facilitates a stronger social identification with the source. Study 2 is analogous to Study 1. However instead of using perceived discrimination as a shared categorisation with the victim, we used the ethnic origin. Therefore only participants with the same ethnic origin were recruited for this study. We choose Turkish participants as they share the same ethnic origin as the real victim of discrimination we gave in example. Moreover, unlike Study 1 that contained four conditions, Study 2 contained only two conditions: we either mentioned the Turkish origin of the victim or not – in a vignette very similar to the "Referent and expert source condition" of Study 1. Consequently, in one condition, the victim was described as "A person with Turkish origins" (Shared Identity Condition), and in the other condition as "A person with immigrant origins" (Unspecified Identity Condition). As already mentioned, we exclusively recruited participants with Turkish origins in order to match the ethnic origin manipulation. We have 2 possible hypothesis for Study 2: Hypothesis 1 predicts that the participants will be more influenced by a referent source when a shared ethnicity is made salient than when it is not; Hypothesis 2 however predicts that the participants will not be more influenced by a referent source when a shared ethnicity is made salient than when it is not. Indeed, according

to a part of the literature described in the previous discussion we could expect that the participants will be more influenced by the victim's example when a shared ethnic identification has been made salient than when it has not. However we believe that one referent may not be sufficient to create a descriptive norm – given the existing contradictory context of norms with regards to discrimination – and therefore not powerful enough to influence the fellow in-group members.

2.2.1 Method

Sampling and participants: Participants of Study 2 (N = 34) were recruited via a Turkish association that provides various trainings in Turkish to their public. The average age was 23 years old (M = 23.06, SD = 3.83) and of the 31 participants that indicated their gender, 6 were male and 25 were female. On the 30 participants that indicated their nationality, all were Belgian. Except for one participant that indicated to have no religion, all the other participants considered themselves as Muslim. The participants were randomly assigned to either the Shared Identity Condition, either the Unspecified Identity Condition.

Identity manipulation: Similar to Study 1, participants of the Unspecified Identity Condition read the following text:

> A person of immigrant descent applied for a job in the security sector and received a negative response through an e-mail from the secretary. The e-mail accidentally contained a previous exchange between the manager and the secretary in which the former wrote: "Can you get rid of this candidate? A foreigner applying for a security job, that is unheard of".
>
> The person contacted the Centre for Equal Opportunities and Opposition to Racism to denounce this discrimination and decided to file a complaint against the employer. The Centre declares it is important to take that case to Court. The Centre is a public organization in charge of promoting equal opportunities and fighting all forms of distinction or exclusion based on alleged race, origin, religious or philosophical convictions, etc. It has among others as role to concretely accompany the victims of discrimination and advice the government with regard to the struggle against inequality.

The participants of the Shared Identity Condition read exactly the same text but the victim was described as "a person with Turkish origins" instead of "a person of immigrant descent".

Perceived discrimination and identification measures: In addition to the same measures of perceived discrimination of Study 1, we added 3 items to measure identification with Turkey. Indeed, we asked the participants to rate on a 9-point scale if they agreed with the following items: "I feel Turkish", "Being Turkish is important for me", "I'm proud to have Turkish origins".

Dependent variables: We used exactly the same measures as in Study 1: willingness to take legal actions against discrimination (Cronbach's α = .83) and type of information request on the fight against discrimination by legal means.

Socio-demographic and other exploratory questions: Participants mentioned their gender, age, nationality, origin and religion/ philosophical conviction. Other

exploratory questions were also asked in the same questionnaire, but not used in the frame of present experimental study.

2.2.2 Results

Perception of discrimination [4]: As we targeted participants based on ethnic origin instead of potential victims of discrimination for this study, the participants of Study 2 had lower levels of perceived discrimination than the sample recruited in Study 1. On a 9-point scale, participants rated their perception of personal discrimination around 3 ($M = 2.79$, $SD = 1.86$) and of group discrimination around 4.5 ($M = 4.53$, $SD = 1.97$).

Identification measures [5]: Participants highly identified with their Turkish origins. Indeed, participants scored in general over 8 on a 9-point scale on the three identification items: "I feel Turkish" ($M = 8.35$, $SD = 1.13$), "Being Turkish is important for me" ($M = 8.38$, $SD = 1.07$) and "I'm proud to have Turkish origins" ($M = 8.64$, $SD = .99$).

Willingness to use legal anti-discrimination actions: According to part of the literature, more identification with the source should improve its referent type of influence. Thus a source that conveys anti-discrimination norms (e.g. report discrimination) may influence more the participants to take legal anti-discrimination actions if their shared social identity is made salient than when it is not. However, given the contradictory context of norms regarding discrimination, we also expect an alternative result: one and only referent source, even if sharing the same ethnic identity as the participants, will not be enough to create a descriptive norm and influence them. In order to test the two opposing predictions, we used a t-test for independent samples with the participant's willingness to take legal actions to fight against discrimination as dependent variable and the referent identification (Shared vs. Unspecified Identification) as independent variable. As predicted by Hypothesis 2, no effect was found, $t(29) = 0.86$, $p > .05$. Indeed, Turkish participants to whom we mentioned the Turkish background of the victim were not more willing to fight against discrimination by legal means in an imagined situation ($M = 7.31$, $SD = 1.85$) compared to the Turkish participants to whom we did not mention the victim's Turkish origin ($M = 7.79$, $SD = 0.73$).

Information request on the fight against discrimination by legal means: We conducted three logistic regressions in order to test whether a shared identification with the source conveying anti-discrimination norms also influenced real actions of information request. The independent variable, Referent identification was dummy coded -1 for Unspecified and 1 for Shared Identification and the three different type of information request, the dependent variables, were dummy coded 0 for absence and 1 for presence of request. The overall models are not significant in any of the three analyses, indicating that the models with the entered predictors do not fit better than the models without (χ^2 (1) = .11 or 1). Under these conditions, subsequent analyses could not be fulfilled.

Socio-demographic questions: We did not obtain any effect of age or gender on the dependent variables.

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[4] No effect of discrimination perception was found on the dependent variables.

[5] No effect of identification was found on the dependent variables

3. General Discussion

Based on real situations, we attempted to test the influence of anti-discrimination norms conveyed by two different sources – expert and referent – on 1) ethnic minorities' willingness to fight against discrimination by legal means in an imagined situation, and 2) actual behaviour to request information related to the fight against discrimination by legal means (e.g. laws and other legal activities). Our results show only a main influence of anti-discrimination norms conveyed by an expert source, and failed to find an effect for an anti-discrimination norm conveyed by a referent source in Study 1, as expected. We replicated the absence of referent influence with a more refined manipulation in Study 2.

Another possible explanation of the absence of effect of referent influence is that even if in Study 2 the participants shared the same ethnic identity than the victim, they did not really perceive discrimination towards themselves or their group and it is possible that they saw the anti-discrimination norm and the victim as atypical for their group. Less prototypical in-group members are less liked or trusted, especially among members of high-salience groups (Marques & Paez 1994). As a consequence, their influence is less powerful on fellow in-group members (Hogg & Reid 2006). With regard to Study 1 in which the participants did perceive discrimination towards their group or their own, this could create assimilation feelings with the victim by this shared categorization. Nevertheless, being part of a group defined by rejection from the larger society is not a very valuable social identity and misses other elements to create effective reference influence form the victim's example.

In short, mentioning the example of a victim that files a complaint was probably not too relevant for the participants since the victim may not be sufficiently representative of a referent group, because of lack of shared identification in Study 1 and lack of prototypically in Study 2. The influence of expert source as shown in Study 1, is less complex because it is not based on identification: people acknowledge that the Centre, as a recognized authority in the struggle against discrimination "knows better" what has to be done when confronted to discrimination. Quantitative and qualitative studies through interviews with ethnic minority group members (Alarcon-Henriquez & Azzi 2011; FRA 2009), have shown that most have a lack of knowledge of anti-discrimination laws. An expert source may be more relevant than a referent source when it comes to conform to incipient norms such as anti-discrimination laws that may be injunctive, but that have not become descriptive yet. Indeed, experiences with discrimination are not every-day life experiences and anti-discrimination laws are not well known. This is in line with recent meta-analysis that shows that expert sources are particularly influential on certain issues when individuals have less prior knowledge or attitudes on these issues (Kumkale et al. 2010). Moreover, Moore's study (1921) indicates that different type of sources have differential effects depending on the type of subject and shows that an expert source has for instance more influence on issues about morality than on issues as language or music preferences. We only know of one field experiment that has tested both referent and expert power and it has obtained similar results. It has investigated a complete different object, however it is also related to a complex object for which in general people have less knowledge of: insurances. In this study (Busch & Wilson 1976), salesmen appearing as experts were

more successful in changing customers' attitudes towards life insurance (agreed more with the salesman) and behavioural intentions (willingness to take a step further to buy life insurance) than were referent type of salesmen. In the domain of the struggle against discrimination, a qualitative analysis of interviews with ethnic minority group members that consulted the Centre (see Alarcon-Henriquez, in preparation) has shown that some of them will only take a step further in the fight against discrimination (e.g. file a complaint) if the Centre – considered as expert on discrimination issues – recognizes their situation as truly discriminatory and advices them to take a step further (e.g. mediation or legal action). This evidence stemming from qualitative data seems to confirm the results obtained quantitatively in Study 1.

In our experiments, we operationalized the expert source by giving a description of the Centre, a recognised autonomous institution in charge of struggling against discrimination by the Belgian government.

A last comment on the results addresses the overall means of willingness to take legal action against discrimination by the participants. In the "No Norm Condition" of Study 1 in which we gave no indication of norm, as neither an expert nor a referent source were mentioned, the overall mean for willingness to take legal actions against discrimination is 5 ($M = 5.09$, $SD = 2.45$), which is right in the middle of the 9-point scale. This indicates that participants were quite neutral with regard to actions to take in case they would be confronted to discrimination. This increases in the other conditions where we did introduce the anti-discrimination norm through referent and/or Expert sources (overall means in Study 1 is $M = 6.96$ and in Study 2 where both sources were mentioned is $M = 7.55$) and indicates that participants seem more willing to take legal action when exposed to anti-discrimination norms. Note that previous studies have shown that participants imagining themselves as victims of discrimination are generally overconfident that they would confront if they were to experience it, but do less in reality (Swim & Hyers 1999). Nevertheless, our studies also contained behavioural measures showing that participants actually requested more information on anti-discrimination laws, as well as on demonstrations or events relating to the struggle against discrimination in the presence of an expert source. Even if the participants overestimate the willingness to use legal tools to fight against discrimination, their estimations still remain good predictors of their actual behaviours in this direction. We could therefore conclude with relative confidence that when exposed to an anti-discrimination norm conveyed by an expert source, ethnic minority group members are in general not reluctant to report their experiences with discrimination to the institutions by legal means.

In several countries considerable efforts have been made to raise awareness among the population on the need to fight against overt racism in the public domain. In Belgium, it gave rise to the first anti-racism laws, thirty years ago. Institutions in charge of fighting discrimination as Equality Bodies are now spreading over Europe in order to achieve this goal by legal means. Nevertheless, reports still point out that ethnic minorities have a lack of knowledge about existing institutionalized options to fight against inequality caused by racial or ethnic discrimination on the field of employment. When they have that knowledge, they rarely make use of such tools (e.g. FRA 2009, 2010). Communicating on discrimination issues to its own victims

seems not to be an easy task. Indeed, as showed by our two experimental studies, mentioning a single victim of discrimination that fights against discrimination by legal means does not seem to have much impact on ethnic minorities' willingness to follow this example. However our results also indicates that mentioning the existence of an official organization expert in the domain of the fight against discrimination and that highlights the importance of the struggle against discrimination, could indeed facilitate stigmatised individuals to use existing legal options to fight against it.

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II
European Integration Policies

Integration Requirements in EU Member States

Yves Pascouau

Over the years, the integration of third country nationals has become a very important issue in EU Member States as well as at EU level.

At national level, the rising importance in public debate of questions relating to the integration of migrants has often been due to social movements. Urban riots in the United Kingdom in 1976, 1981 and 2001, riots in France in 1989 and 2005 and the assassination of Theo Van Gogh in the Netherlands have all triggered questions about integration of migrants into the receiving society (Garbaye 2011).

These events have raised the question of whether integration schemes adopted and developed in the Member States have reached their goal in promoting the social inclusion of migrants. In a context where emphasis is put on the idea of "failed integration", concepts such as "multiculturalism" and "assimilationism" have been questioned and the issue of how social cohesion is attained in diverse societies has come to the forefront of national debates and policies.

At EU level, integration-related issues have been approached in a different manner. Since the Amsterdam treaty came into force, empowering the European Union to act in the field of immigration and asylum, the question has been more precisely to define whether or not the EU was entitled to act in the field of integration of third country nationals legally residing in the Member States.

The first answer was unclear as the Amsterdam treaty, which came into force in May 1999, remained silent in this regard. Indeed, none of the treaty's provisions were specifically devoted to integration. As a consequence, there was no clear legal basis for the EU to act in this field.

The second answer came with conclusions adopted by the heads of State and Government in Tampere in October 1999. Aiming to define the orientation of common EU policy in the field of immigration and asylum, the conclusions stated that: "A more vigorous integration policy should aim at granting them [third country nationals]

rights and obligations comparable to those of EU citizens". At this stage, EU action in this field remained vague and limited.

On the one hand, the Tampere conclusions were vague as it remained difficult to identify domains where regulations could be adopted. Integration involves a wide range of issues – access to the labour market, schooling, education, healthcare, housing, services... – where comparable rights may be awarded.

On the other hand, the scope of action looked somehow limited. Third country nationals should be entitled to benefit from comparable rights and not equivalent or equal rights. In this regard, these conclusions made clear that for the heads of State and Government a distinction will exist between the status of EU citizens and that of third country nationals.

The third answer came with the Treaty of Lisbon which stated that the EU legislative actors "may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonization of the laws and regulations of the Member States" [1]. In other words, the EU can adopt rules which support and coordinate national policies but do not harmonize them.

As a result, the competence of the EU in the field of integration is limited to the coordination of national policies. This is indeed what the EU has done on the basis of a myriad of tools (such as the Common basic principles adopted by Justice and Home Affairs Ministers in 2004 [2]; the Commission's Agenda on Integration [3]; the European Integration Fund [4]; Integration Handbooks [5] and the Integration website [6]) and bodies (such as Ministerial conferences dealing with integration issues [7], regular

[1] Article 79, paragraph 4, TFEU.

[2] Council Justice and Home Affairs, 19 November 2004, Doc. 14615/04.

[3] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A Common Agenda for Integration. Framework for the Integration of Third Country Nationals in the European Union", COM(2005)389 final, 01.09.2005.

[4] Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows", *OJ*, L 168/18, 28.06.2007.

[5] The main objective of the Handbook is to act as a driver for the exchange of information and good practice between integration stakeholders in all Member States. The first edition of the Handbook, published in 2004, covered introduction courses for newly arrived immigrants and recognised refugees, civic participation and integration indicators. The second edition, released in 2007, focused on integration mainstreaming and governance, housing and economic participation. The third edition, published in 2010, covers the following topics: the role of mass media in integration, the importance of awareness-raising and migrant empowerment, dialogue platforms, acquisition of nationality and practice of active citizenship, immigrant youth, education and the labour market.

[6] http://ec.europa.eu/ewsi/en/index.cfm.

[7] Several Ministerial conferences have been regularly organised with a view to discussing integration issues. These conferences were organised in Groningen (2004), Potsdam (2007), Vichy (2008) and Zaragoza (2010).

meetings between national contact points on integration [8] and the establishment of an Integration forum [9]) which have allowed the coordination of national policies on the basis of exchange of knowledge and practice in the field of integration.

However, a closer look at EU rules adopted in the field of immigration shows that the EU also intervened directly or indirectly in the harmonization of national rules in the field of integration of third country nationals. This is firstly the case with the adoption of two directives on the right to family reunification [10] and on long-term residence permits [11]. The right to live with one's family constitutes an important step towards integration, and the possibility of being granted a long-term residence status with more secured rights enhances the integration of migrants into society. Secondly, a series of regulations adopted in the field of immigration and asylum plan for the possibility of access to the labour market, healthcare and social rights which all contribute to better integration of third country nationals in the host State (Groenendijk 2005).

In the end, the action of the EU is more important than initially expected and provides for the harmonization of national rules to a certain extent.

This movement is complemented by another one which is less visible but may have very important effects on the migrants' situation. To be specific, from the mid-2000s integration topics have progressively become linked with migration issues. This means that the capacity or willingness of migrants to integrate into the host society has become an element taken into consideration for the granting of secure status i.e. the granting or renewal of a residence permit. This movement initiated in some Member States was echoed at EU level and led to the idea that it could extend and become widespread over a larger number of Member States.

This move towards linking immigration and integration more closely underlay the family reunification directive and the long-term residents directive. In both cases, the rights enshrined in the texts could be conditional on the fulfilment of integration measures or conditions. Here, Member States could take advantage of the transposition process of enacting EU legislation to introduce integration-related rules into their domestic legislation. The phenomenon has also been taken on board in the different

[8] The network of National Contact Points on Integration was set up by the Commission as a follow-up to the Justice and Home Affairs Council conclusions of October 2002. The main objective of the network is to create a forum for the exchange of information and good practice between Member States at EU level, with the purpose of finding successful solutions for integration of immigrants in all Member States and to ensure policy co-ordination and coherence at national level and with EU initiatives.

[9] The European Integration Forum provides an opportunity for civil society organisations to express their views on migrant integration issues and to discuss with the European institutions challenges and priorities. The development of the European Integration Forum is undertaken in co-operation with the European Economic and Social Committee and financed by the European Fund for the Integration of Third-country nationals. The Common Basic Principles on Integration, agreed by the Council in 2004, serve as reference for the activities of the Forum.

[10] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ*, L 251/12, 03.10.2003.

[11] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *OJ*, L 16/44, 23.01.2004.

places where integration is discussed in order to coordinate national policies. The development of discussions on this topic created the potential for the extension of the linkage between integration and immigration.

In this general context, it was considered timely and appropriate to launch a large-scale research project to investigate integration requirements developed in the EU Member States. Integration requirements are for the purposes of this research defined as duties third country nationals are requested to fulfil in order to obtain or continue to benefit from a right. These duties are particularly focused on language and civic knowledge.

This research seeks to find out which of the 23 States [12] covered have introduced requirements of this kind. It offers a snapshot of the legislation existing in 2014 [13]. While this area of policy is characterised by rapid changes, the present analysis shows the general tendencies in Europe. This research aims to investigate the use of integration schemes applicable to third country nationals in the broadest possible terms. It therefore takes three steps of the migration process into account.

The first step is when third country nationals are asked to fulfil integration duties before accessing Member States' territory. The second step covers integration measures and conditions to be fulfilled in the host Member State during the first years of residence or for the acquisition of a long-term or permanent residence permit. Finally, the third step is linked with access to citizenship. In several Member States access to citizenship is conditional upon completion by applicants of different types of tests of language and/or civic knowledge.

As regards the general results from the research, two main findings should be highlighted. Firstly, there is a common trend among EU Member States towards using integration requirements. This phenomenon is fuelled by two main forces. The first is based on restrictive national policies developed in several Member States such as the Netherlands, France, Germany and the United Kingdom. These States develop integration requirements in their migration-related policies in order, in the large majority of cases, to make migrants' statuses dependent on the completion of integration duties. Consequently, rules are stricter and legal statuses of migrants become more fragile. The second driving force is based on the Europeanization of migration and integration issues. Here, the development of common rules and the exchange of information between the Member States give such schemes a Europe-wide coverage. As a consequence, they are becoming widespread among Member States.

Secondly, this phenomenon is not accompanied by common rules. It is striking to note that Europeanization of these issues is limited to the development of common trends and has not reached the harmonization stage. Regulations established in each of the EU Member States are generally very different from those of other Member States even though they concern the same situation and pursue identical objectives.

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[12] Member States covered by the survey are: Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the United Kingdom and Norway.

[13] For an updated version "Measures and rules developed in the EU member States regarding integration of third country nationals", 2016, www.epc.eu

These differences among national regulations and schemes, which can be explained by political, economic, historical or sociological constraints, are in some cases very substantial. This raises the question as to whether harmonization of national rules is possible, legally [14] and politically [15], in the near future.

This article aims to offer some insight into the two findings mentioned above. It aims to highlight trends taking place in EU Member States and seeks to demonstrate on the basis of selected examples how different national regulations and schemes are.

The article will firstly tackle the issue of integration requirements established by Member States in foreigners' country of origin (1). It will then describe integration measures and conditions applicable to third country nationals legally residing in the host Member State. This part deals with rules applicable during the first years of legal residence and for the acquisition of a permanent/long-term residence permit (2). Finally, the article covers integration requirements for the acquisition of citizenship (3).

1. Integration Measures in the Country of Origin

1.1 Member States Implementing Such Mechanisms

The implementation of integration measures in the migrant's country of origin is a new phenomenon. Two main factors made the development of such measures possible.

The first factor is Directive 2003/86/EC on the right to family reunification [16]. By stating in Article 7, paragraph 2 that "Member States may require third country nationals to comply with integration measures, in accordance with national law. With regard to the refugees and/or family members of refugees (...) the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification", the directive opens the possibility of establishing integration measures in the migrant's country of origin (Pascouau 2011).

Legislation passed in the Netherlands is the second factor. The Netherlands was the first Member State to introduce such a mechanism into its domestic law in 2006. This Member State is a precursor in this matter and has inspired other States such as Germany (Michalowski 2010; Wiesbrock 2010), France (Pascouau 2010) and Denmark (Ersbøll 2010).

At the time of writing, Austria has implemented pre-departure language testing. Thus, 5 out of the 27 Member States have introduced integration mechanisms applicable in the country of origin, mainly in the framework of family reunification.

It must be emphasized that in the future this phenomenon could involve a larger number of Member States. On the one hand, the directive on the right to family reunification does not contain any standstill clause. On the other hand, the question

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[14] Notwithstanding the limit set up by Article 79.4 TFEU.

[15] This covers the question of the willingness and necessity recognised at political level to harmonise national legislations on integration.

[16] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ*, L 251/12, 03.10.2003.

of establishing such measures is or has been discussed in some States such as Spain during general elections in 2008 (Ferrero-Turrión & Pinyol-Jiménez 2009) and the United Kingdom.

1.2 Important Differences between Member States

Among the Member States implementing integration regulations abroad [17], it must be underlined that the content of the schemes is different from one State to another. In other words, none of the mechanisms established are similar.

Whereas one Member State has opted for very strict rules, others have implemented a more flexible system. The Dutch and the French examples are classically put forward to illustrate the contrast between restrictive and flexible regulations (Strik, Böcker, Luiten & van Oers 2011).

In the Dutch case, applicants for family reunification need to pass a language test in order to receive the required visa. Applicants have to give answers over the phone to questions asked by a computer based in the United States of America. At the end of the test, the computer indicates whether or not the applicant has passed the test. If the applicant fails, the visa is not issued and the applicant has to take the test again. The right to family reunification is therefore conditional on passing the test.

French regulations do not follow the same approach. Applicants for family reunification are requested to take a language evaluation in order to assess their level of French language knowledge. If the evaluation shows that language knowledge is insufficient, applicants are invited to attend language courses which last no more than two months. At the end of the course, applicants receive the visa for family reunification. According to these rules, applicants may be invited to attend language classes but after attendance, regardless of how much progress they have made, the visa for family reunification is issued.

To sum up, one system makes the right to family reunification conditional on a successful test result, whereas the other one requires the applicant to take part in a process leading to the unconditional issuance of the visa.

1.3 Conformity of these Rules with EU Law in Question

While these two examples are typical of the differences that exist between national approaches with regard to integration mechanisms abroad, they raise another question regarding their compatibility with the directive on the right to family reunification. In this regard, it is necessary to take two different approaches based on the directive, on the one hand, and on jurisprudence, on the other.

As regards Directive 2003/86/EC: Article 7, paragraph 2, allows Member States to adopt integration "measures". It entitles Member States to adopt rules imposing obligations of means but does not allow them to implement obligations of results. In other words, Member States can request applicants for family reunification to engage in a process leading to the granting of the necessary visa but cannot make the granting of the visa conditional on positive results to a test.

[17] This sub-section does not take into account the rules applicable in Austria.

Therefore, according to the Commission's interpretation [18], it is highly questionable whether the Dutch case is compatible with EU Law. A similar assessment may be applicable to the German system where the granting of the visa is conditional on the applicant providing proof of sufficient language skills. Such proof is attested by a certificate delivered by appointed institutes on the basis of a language test (Michalowski 2010). On the other hand, the French system complies with EU Law as the applicant is subject to an obligation of means, attendance at language courses, which does not hamper the granting of the requested visa to join the sponsor. One mechanism is compatible with the directive whereas the other is not.

However, and since the ECJ *Chakroun* case law [19], the compatibility of the French system with EU regulations is under question. Indeed, the Court of Justice has given the family reunification directive an unforeseen objective which might have a major impact on the establishment of integration schemes abroad.

Asked to interpret provisions regarding income conditions for family reunification the Court stated:

> Furthermore, the margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner which would undermine the objective of the Directive, which is to promote family reunification and the effectiveness thereof [20].

Consequently, Member States are entitled to adopt national regulations defining conditions for family reunification, but such regulations must not run contrary to the objective of the directive which is to promote family reunification. Member States are not allowed to adopt regulations which aim to limit family reunification. As a result, if Member States wish to establish integration measures abroad, such mechanisms must, on the one hand, pursue integration purposes and, on the other hand, promote family reunification.

We would argue, however, that the interpretation of the reasoning of the Court should not be limited to the purpose of national regulations. It must also address and be linked with their effects. Regulations might be officially adopted in order to enhance integration, through knowledge of the language, and consequently to promote family reunification because once in the host Member State the spouse will be able to integrate more easily into society. However, behind such a positive objective another one might be hiding, namely to deter family members from applying for family reunification. For instance, family members may be prevented from making an application for family reunification because of the existence of additional requirements such as attendance

[18] "The objective of such measures is to facilitate the integration of family members. Their admissibility under the Directive depends on whether they serve this purpose and whether they respect the principle of proportionality", Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610 final, 08.10.2008, p. 7-8.

[19] European Court of Justice, 4 March 2010, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, Case C-578/08.

[20] Id., Point 43.

at language courses. In this case, integration measures abroad do not contribute to the promotion of family reunification.

Moreover, it is sometimes possible to demonstrate that rules adopted by a Member State pursue another purpose aimed at limiting some form of migration such as family migration. Regarding the French case, examination of official reports and political statements indicate that the establishment of the language evaluation abroad mechanism aimed at the reduction in applications for family reunification and succeeded in this regard as the number of visa applications for family reunification has dropped up to 26% since its inception (Pascouau 2011). When the purpose and the effects of the regulations are considered together, their compatibility with EU law becomes doubtful.

To sum up, the possibility for Member States to adopt integration requirements applicable in the country of origin in the context of family reunification is now framed by EU legislation and jurisprudence. Such regulations must pursue an integration purpose and not run counter to the objective of the directive either in terms of political objectives or in terms of practical effects. While the French mechanism should now be closely monitored, any new national regulations will have to take these legal limits duly into account.

One can therefore question whether such mechanisms, which automatically have an impact on the number of visa applications, are as such compatible with EU Law and whether Member States are now able to develop them. Two answers may be put forward. A nuanced answer – which we agree with – would consider that Member States still have the possibility of introducing integration abroad mechanisms as long as they pursue a real integration purpose and do not have any major and long-standing effects on the number of visa applications. A more straightforward answer based on a strict interpretation of the directive and the Court of Justice's jurisprudence would argue that the adoption of such mechanisms has been rendered impossible because they will always have an impact on the number of applications for family reunification and therefore do not promote family reunification. If this latter interpretation is followed, EU Law may have seriously limited the possibility of establishing integration measures abroad.

The development of integration measures abroad in the framework of family reunification is a recent phenomenon which has not been widely implemented in EU Member States. The situation is different when looking at mandatory integration schemes applicable in the host Member States.

2. Integration Requirements within the Member States

Mandatory integration schemes within the Member States are schemes whereby third country nationals are asked to fulfil integration measures or conditions while they are already legally present in the territory of a Member State.

This question is one of the most complicated to deal with. On the one hand, it involves a large number of Member States and covers a wide range of situations. On the other hand, this type of integration scheme is influenced by different sources among which the Europeanization of policy plays an important role. In 1999, Germany was the only Member State requiring third country nationals to prove language knowledge

for the granting of a permanent residence permit (Groenendijk, Guild & Barzilay 2001). More than 10 years later, 17 out of the 23 States covered by the research ask for such requirement to be fulfilled for the granting or renewal of residence permits. In this context, it is hard to ignore the impact of benchmarking national policies and of EU directives such as the family reunification directive and long-term residence directive.

17 Member States apply mandatory integration schemes. However, rules applicable in these Member States may be very different from one to another either in terms of content or in terms of objectives. Given the limited scope of the present article, and notwithstanding the vast variety of national schemes, these schemes will be approached and classified under two different categories. The first category deals with national schemes where integration requirements have to be fulfilled from the beginning of the stay and which may have an effect on the renewal of the temporary residence permit and/or the granting of the long-term/permanent residence permit. The second category comprises Member States where integration requirements in the form of a test are demanded only for the granting of a permanent/long-term residence permit.

2.1 Integration Requirements Applicable from the Moment of Entry into the Territory

Integration requirements may take various forms among Member States that apply them. Two sub-categories may however be identified in this group of States: those which ask third country nationals to enter into an integration contract and those where integration requirements are framed by law.

2.1.1 Integration Requirements Included in Integration Contracts

The first category comprises Member States that have established formal integration contracts. It must first be underlined that the term 'contract' is misleading. In most cases, third country nationals are obliged to sign the contract and to fulfil obligations enshrined in it. If they do not, sanctions may be applicable. In that sense, the idea conveyed by the term 'contract' of a shared commitment between the foreigner and the State does not apply here.

Six Member States make use of integration contracts. These Member States are Austria, Denmark, France, Italy, Luxembourg and Belgium. However, among them, regulations established and schemes implemented are diverse and show very important differences. In broad terms, sub-categories may be identified and distinguished between Member States that have opted for 'short-style' integration contracts, Member States that implement 'long-style' integration contract and Member States that cannot be put into those two categories because of their specific situation.

Two Member States, France and Italy, have developed what can be called 'short-style' integration contracts. This refers to the length and effects of integration contracts applied in these States. As for the length, these integration contracts last normally one year and can in certain circumstances be extended by a further year. As for the effects, they mainly come into play at the moment of the renewal of the residence permit. Completion of obligations enshrined in the contract are taken into account

and assessed when third country nationals apply for the renewal of their temporary residence permit, generally after the first year of legal residence in the Member State. However, fulfilment of the contract may also be taken into account at a later stage. In France for instance, the Law states that fulfilment of the integration contract may also be taken into consideration when examining an application for a long-term residence permit.

In contrast to the 'short-style' integration contract, two Member States, Austria and Denmark, have opted for 'long-style' integration contracts. These contracts last almost three years for the Danish one and five for the Austrian one. In both cases, third country nationals are compelled to participate in mandatory integration classes, mainly language courses, and fulfilment of these obligations is required for the granting of a permanent/long-term residence permit. Here, the contract runs for several years and is directly linked with the long-term residence procedure. As the introductory phase is longer and comprises several steps (2 modules to be completed within 5 years in Austria and 3 successive yearly courses ended by exams in Denmark) the level of language knowledge required at the end of the process is higher than in 'short-style' contracts.

Finally, Luxembourg and Belgium deserve special attention. While models implemented in these States are based on an integration contract, there are important differences in the legal arrangements. In Luxembourg, a Law adopted in 2008 introduced a voluntary integration contract which third country nationals may wish to engage in. At first sight, such contract is voluntary and should not fall within the scope of integration requirements. But when looking more closely at the legal arrangements, it appears that involvement in the contract has a significant impact on the situation of migrants. Firstly, people engaged in the integration contract are given priority in programs set up as part of the National Integration Action Plan. Second, completion of the integration contract is one element that might be taken into account when examining an application for a long-term residence permit. In the end, there is a huge incentive, not to say obligation, to engage in an integration contract.

In Belgium, the situation is different. An integration contract exists, based on the 'short-term style' and comprising language and civic courses, but it is only applicable for people falling within the scope of Flemish regulations. For instance, people falling within the ambit of Wallonia's regulations will not be obliged to engage in an integration contract (Foblets & Yanasmayan 2010). These two examples demonstrate how varied the specific solutions adopted in the Member States are.

To sum up, the research shows that only five Member States and one region implement mandatory integration contracts. This is a small number of Member States, one of which, Luxembourg, does even not recognize the mandatory nature of the contract. Other States require integration duties to be fulfilled on the basis of the Law without having recourse to a contract.

2.1.2 Integration Requirements Framed by the Law

The second category concerns States where integration requirements are laid down by the Law but not framed into a formal contract. In these States, attendance at mandatory courses, and in specific situations passing a test, is a condition for the

renewal of the residence permit and granting of the permanent residence permit. The States concerned are Germany, Norway, Slovakia and Spain.

In Germany, third country nationals arriving in the country and not possessing skills in the German language have to attend almost 600 hours of language and civic classes. At the end of these classes, foreigners have to take a test in order to assess their level of language knowledge. This system aims at providing foreigners with language and civic knowledge. It is also used in the administrative procedure regarding the granting of residence permits. The residence permit is renewed when third country nationals show the intention to reach the level of language required and show they are participating regularly in courses. To be granted a permanent residence permit, applicants have to show the appropriate level of language knowledge.

The Norwegian system is close to the German one, except that there is no test at the end of language and civic training. In Norway, third country nationals have to attend 300 hours of language and civic courses. Attendance at those courses is mandatory and failure to fulfil obligations leads to the refusal to grant a permanent residence permit.

As regards the situation of Slovakia and Spain, it is not very clear whether these countries have established mandatory integration courses. In Slovakia, the Law does not formally provide for a mandatory system as such. However, it allows a police department to request a third country national to provide a document confirming completion of a Slovak language course when applying for long-term residence status. It is possible to interpret the rule in such a way that the long-term residence permit will not be issued unless the applicant has attended language courses. In Spain, the new Aliens Law opens the possibility of making renewal of the residence permit conditional on participation in formative actions regarding language and civic learning.

2.2 Integration Test Applicable for the Granting of a Long-term/Permanent Residence Permit

A second category is composed of States which organize a test for the granting of a permanent/long-term residence permit. The difference from the previous categories is that the question of integration duties is focused on the granting of long-term/permanent residence permits which are granted if a test is passed.

This is the situation in six Member States, namely the Czech Republic, Greece, Lithuania, Latvia, the Netherlands and Portugal. However, although all these states use an integration test in the application procedure for a long-term/permanent residence permit, there are considerable differences between these six Member States in the way the regulations are applied.

Without entering in too many details, some broad differences may be outlined. Firstly, there are differences with regard to the scope of the test. Some of these states require a language test (Czech Republic, Latvia, Portugal) whereas others require both a language and a civic knowledge test (Greece, Lithuania, the Netherlands, United Kingdom). These tests may also be very different regarding their content. This is the case for instance regarding the level of language knowledge required which may differ from level A1 to level B1 of the Common European Framework of Reference.

Other differences also exist with regard to the preparation for the test. In some Member States attendance at the classes is mandatory whereas in others it is not. Also, the question of the cost of mandatory classes demonstrates differences between those states where such courses are free and those where applicants have to pay.

These differences show that beyond a common willingness to make the granting of the long-term/permanent residence permit conditional on a test, Member States implement this objective in different ways. The definition of common regulations and practices might then be difficult to establish in the framework of the emerging EU policy on integration.

This overview of integration requirements demonstrates the wide variety of rules and solutions implemented in the Member States. In short, there are differences, sometimes huge, between for example the types of schemes proposed to migrants, types of knowledge required, levels of language knowledge required, lengths of courses, and costs of courses.

Despite the wide diversity between the regulations and models of different states, some conclusions are possible regarding integration requirements established in the Member States.

Firstly, the use of "integration contracts" is not a significant difference. Migrants are obliged to engage in contracts without having the freedom to choose. In this regard, contracts are anything but contracts in the usual sense, reflecting the free will of partners. While a small number of Member States use these contracts, other States require third country nationals to fulfil similar obligations without using the format of a formal contract.

Secondly, integration requirements are now widespread in the Member States. In 1999 Germany was the only Member State which required language knowledge for the granting of a permanent residence permit. Today, 17 do so. The impact of the long-term residence directive may not be ignored in this respect as well as the development of tools and bodies at EU level addressing integration issues. This constitutes a first step of convergence. The second step should now address the content of integration duties which remain very different between the Member States.

In this regard, the development of a European integration policy aiming at coordinating national policies will probably remain high on the agenda and be of great impact. For instance, introduction modules [21] currently discussed by the Commission and National contact points [22] will certainly help to further coordinate national rules

[21] European Integration Modules are designed to become established but flexible reference frameworks that can be adapted to the different contexts of Member States in order to contribute to successful integration policies and practices across Europe. Different modules will focus on different aspects of the integration process. Pilot modules are currently being prepared by the European Commission, in dialogue with representatives of Member States governments and civil society organisations. Proposals for modules will be presented in the areas of 1) introductory courses and language classes; 2) a strong commitment by the host society; and 3) the active participation of migrants in all aspects of community life.

[22] The network of National Contact Points on Integration was set up by the Commission. The main objective of the network is to create a forum for the exchange of information and good practice between Member States at EU level, with the purpose of finding successful

and practices regarding language knowledge requirements. Furthermore, exchange of good practice between different bodies and on the basis of different tools should help in sketching appropriate and workable forms of integration requirements and therefore enhance better coordination.

Finally, the use of integration requirements should be further evaluated in order to define more precisely the purpose for which such requirements are established. The crux of the matter relates to the aim pursued by such mechanisms. In some Member States the regulations relating to integration do not pursue the aim of enhancing the social inclusion of third country nationals but rather that of strengthening immigration rules in order to make them stricter. In other words, such rules make the stay dependent on integration skills and/or commitment and are used to back up restrictive immigration policies. Such a phenomenon needs to be further analysed in order to avoid integration policy being used as a tool of immigration policy.

3. Integration Requirements and Access to Nationality

The research demonstrates that 18 Member States, including Estonia[23] and Norway, ask applicants for naturalization to demonstrate integration skills. This represents almost 75% of the Member States covered by the research. Belgium, Ireland, Italy and Sweden have not established integration requirements. But this does not prevent some of them from doing so in the future. This is the case for instance for Belgium where the issue of reintroducing language requirements into the naturalization procedure, abandoned in a law adopted in 2000, is under discussion (Foblets & Yanasmayan 2010).

All of the Member States requesting third country nationals applying for citizenship to prove integration skills, ask them to provide evidence of language knowledge. In some Member States this requirement was introduced a very long time ago whereas in others it is very new. On the other hand, the number of Member States requiring civic knowledge, such as knowledge of institutions and history, is less significant. In both cases, there are differences between Member States. Due to limited space, we will principally concentrate on language knowledge requirements which show how diverse national regulations can be.

3.1 Language Knowledge Requirements

All of the Member States imposing integration requirements in the naturalization procedure ask applicants to demonstrate knowledge of the host country's language. But differences exist between these States.

A first type of difference is to be found between Member States which organize a formal examination and those which do not. Austria, Denmark, Germany, the Netherlands and Norway do not organize a formal examination. These States ask applicants for naturalization to prove they have already passed adequate language exams. Such proof may be provided in different ways according to national regulations.

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solutions for integration of immigrants in all Member States and to ensure policy co-ordination and coherence at national level and with EU initiatives.

[23] Estonia is not covered by the research but information provided by the EUDO project website has made it possible to take this Member State into account.

For instance, applicants may provide an official diploma attesting their level of knowledge or a certificate to show that they have taken prior language tests required in the framework of their migration route in the host Member State. However, most of the Member States organize a formal examination as part of the naturalization procedure.

Among those states which organize a formal examination of language level knowledge during the naturalization procedure, there are various differences in the form of the assessment. Some Member States organize a simple oral assessment; others require applicants to take a written test while a larger number organize oral and written tests to evaluate language proficiency.

The Czech Republic, France and Spain evaluate the level of language knowledge on the basis of an oral test. As a general rule, these States are not very demanding regarding the level of language required and the test takes the form of a rather informal interview. In these States, language requirement does not constitute the most important element of the naturalization procedure.

In three other Member States, Bulgaria, Portugal and the United Kingdom, language ability is assessed on the basis of a written test. The latter may be replaced in Portugal and Bulgaria by the production of a certificate of language proficiency. In these two States, the level of language required is not very high.

Table 1. Tests Managed in the Member States

States	No examination (requested before)	Oral Testing	Written testing	Oral and written testing
Austria	X			
Denmark	X			
Germany	X			
The Netherlands	X			
Norway	X			
Czech Republic		X		
France		X		
Spain		X		
Bulgaria			X	
Portugal			X	
United Kingdom			X	
Estonia				X
Finland				X
Latvia				X
Lithuania				X
Luxembourg				X
Slovakia				X
Slovenia				X

In the United Kingdom, language knowledge may be proved either by completing a computer based test, at level B1, or by attendance at citizenship courses. If the applicant for naturalization has opted for citizenship courses, he/she needs to prove that he/she has reached the next step of language knowledge. For instance, where the applicant possesses a language knowledge equivalent to level A1 at the beginning of the course, he/she has to prove he/she has acquired a level A2 at the end of the course.

Finally, seven Member States assess the level of language skills through a combination of oral and written testing. These Member States are Estonia, Finland, Latvia, Lithuania, Luxembourg, Slovakia and Slovenia. In these states, tests are mainly managed by specialized bodies or Commissions. Double testing, oral and written, and management by specialized bodies demonstrate that language knowledge is regarded as a significant element in the naturalization procedure.

The examination of language requirements should also address the level of language knowledge required in order to have access to citizenship. Here again, differences may be important.

The level of language skills required for the acquisition of the citizenship of a Member State ranges from elementary level to advanced speaker. As reproduced below, and according to the Common European Framework of Reference, level of knowledge required goes from level A2 to level B2. Nine Member States ask applicants to master language up to level A2. The same number, nine States, require level B1. One Member State requires applicants to have language knowledge up to level B2.

Table 2. Level of Language Knowledge Required in the Member States

Level A2	Austria*, Bulgaria, France*, Lithuania*, Luxembourg, the Netherlands, Portugal, Slovakia, Spain
Level B1	Czech Republic, Estonia, Finland, Germany, Latvia, Luxembourg, Slovenia, United Kingdom,
Level B2	Denmark

However, the table above may change in the near future. Some Member States (marked by an asterisk in the table) have voiced their intention to increase the level of knowledge required. As a consequence, level B1, which corresponds to the level of independent speaker, might become the most commonly used level among Member States.

In these circumstances, language knowledge will gain greater importance in the naturalization procedure and become a ground for refusal. But analysing the level of language knowledge does not do justice to the complexity of the issue. Indeed, the capacity to learn the language and to acquire the required skills depends on the possibility given to third country nationals to attend language classes. Here again, the differences between States show a picture full of contrasts.

Four Member States, Bulgaria, Lithuania, Latvia and Slovakia do not organize any language courses in order to help third country nationals to acquire the knowledge required for the acquisition of nationality.

In seven Member States – the Czech Republic, Estonia, Luxembourg, the Netherlands, Portugal, Slovenia and Spain – third country nationals may attend courses

but do so on a voluntary basis. In some States, such as Portugal, these voluntary courses are free, whereas they are not in others such as the Netherlands.

The last category of Member States is composed of those which provide courses. The majority organize language classes in the framework of prior procedures, such as integration contracts or the granting of long-term residence permits. This is the case for Austria, Denmark, France, Germany, Greece and Norway. In the United Kingdom, language classes are organized in the framework of the citizenship procedure. In this category, language courses are provided for free in some Member States and cost money in others. Prices may vary considerably between the Member States. However, such variation has to be compared with the length of courses provided. Where States provide a generous number of hours of teaching they may consider that they are entitled to ask foreigners to cover some part of the costs.

The question of language evaluation for the acquisition of citizenship demonstrates that numerous and sometimes important differences exist between the rules of different Member States. Without entering into too many details, the same can be said of civic knowledge requirements.

3.2 Civic Knowledge Requirements

Fourteen Member States require applicants for citizenship to prove civic knowledge. Among these fourteen States, the requirements are very diverse. The great majority of Member States require applicants for citizenship to demonstrate knowledge of political institutions, history and values of the host Member State. A smaller number of States ask applicants to show knowledge of the values of the EU.

As regards the type of questions asked, they may vary considerably between Member States. This is particularly the case when it comes to history as some Member States ask questions that even natives would find difficult to answer.

Examination of civic knowledge also differs widely among the States. Some Member States do not frame the evaluation in a particular format and evaluate knowledge on the basis of an oral evaluation. Others have established written tests which generally take the form of a multiple choice test. These latter may vary widely – in terms of number of questions, duration of the test, number of correct answers required... – and lead to huge differences in terms of the level of difficulty.

Integration requirements for the acquisition of nationality are used in a large majority of Member States but actual practice varies considerably. In this regard, language and civic knowledge could be considered as a formal element of the citizenship procedure or constitute a real obstacle to the acquisition of nationality.

4. Conclusion

The research conducted under the ARC-MAM project found that integration requirements are implemented in the vast majority of Member States. While only a few states have implemented integration measures to be fulfilled in the country of origin, many more have implemented measures which apply once third country nationals are in the territory of Member States, i.e. for the renewal/acquisition of residence permits or the acquisition of citizenship.

The tendency to implement integration requirements is not accompanied with a tendency to implement similar rules. Indeed, schemes and requirements differ widely between the States and it is sometimes very hard to find common points of convergence. Ultimately, the result looks more like a patchwork.

However, this reflects the fact that the use of integration requirements is in the first stage of development. Member States are experimenting with these new possibilities before taking the further step which would aim at coordinating national policies consistently. From this point of view the development of an EU integration policy could help Member States to share practice and identify better ways to make use of integration requirements.

This coordination process should however avoid a dangerous pitfall which would consist of using integration requirements in order to limit or manage immigration flows. In some Member States, current political discourse focuses on integration-related issues in order to justify restrictive immigration policies. More precisely, the theme of "failed integration" policy is used in order to introduce integration requirements into immigration regulations.

In this regard, Member States have good reason to require third country nationals to fulfil integration requirements in order to enhance their integration into society and consequently avoid further integration 'problems'. This takes the form of requiring migrants to prove language or civic knowledge. Failure to fulfil such requirements may have an impact on the migrant's rights and status as visa and residence permits may not be issued or may be withdrawn. In acting in this way, Member States make immigration regulations more restrictive, rights more difficult to acquire and migrants' status more fragile.

This shows how narrow the border between immigration and integration policies may be. It should be recalled that each policy pursues a specific aim. Immigration policies seek to define who is entitled to enter and reside in the territory and for which purposes. Integration policies seek to help social inclusion of third country nationals into the host society. Where Member States are tempted to use integration requirements in order to implement stricter immigration controls, this leads to a reversal of integration policies which act as a tool of exclusion rather than of inclusion.

In developing EU integration policy, each actor involved should be aware of this possible drift, especially in times of rising xenophobic discourse. Integration is a long process that is not only based on migrants' efforts and commitments but that also requires the involvement of the host State and the participation of the host society.

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Testing the Limits of the Liberal Constraint: the Evolution of Civic Integration Policy in Austria

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Introduction

In the early 2000s, civic integration policy emerged as a new strategy to deal with the perceived 'lack of integration' of immigrants in several European countries. Civic integration policies require that immigrants comply with requirements such as passing a language or knowledge-of-society test as a precondition for the acquisition of socio-economic and residence/mobility rights. In the meantime, civic integration has become one of the oldest and most widespread integration policies in Europe. The first EU Member States to introduce such policies – Austria, Germany and the Netherlands – did so over ten years ago. Since then, the policy has spread rapidly throughout Europe. By 2013 there are 17 countries, that is, over half of all 28 EU Member States that adopt integration conditions within the framework of their immigration legislation [1].

Within the last ten years, civic integration policies have changed considerably: they have been debated, amended and sometimes even thoroughly reformulated. Yet, the focus of the recent literature has been on cross-national comparisons (Goodman 2010), neglecting to a certain extent the evolution of the policy over time. Cross-country comparisons are extremely relevant to find out how national variables affect

[1] In its report on the application of the Long-Term Residents' Directive (COM(2011) 585 final), the European Commission identifies 14 Member States that make use of the possibility foreseen in Article 5(2) to impose integration conditions. These Member States are: AT, CZ, DE, EE, EL, FR, IT, LT, LU, LV, MT, NL, PT and RO. The newest Member States in the European Union, Croatia, also introduced integration requirements when it amended its foreigners act to implement the Long-Term Residents' Directive (see Article 96 of the alien's act, available at: http://www.mup.hr/UserDocsImages/Dokumenti/stranci/2013/Zakon_o_strancima_2011._engl.pdf). In addition, UK and DK who are not bound by the Directive also adopt integration conditions in their national legislations (IOM 2008).

the formulation and implementation of civic integration policies. Nevertheless, the evolution of a policy over time can also be revealing, especially since most analysts agree that when it comes to integration policies the influence of national models is waning as we experience a trend towards convergence (Joppke 2007). Part of this convergence takes place through exchange of information and mimicking effects. In that context, the states that first introduced civic integration serve as models for others (Block & Bonjour 2013). This situation justifies a closer look at the evolution of civic integration requirements in the countries that have first adopted the policy, since developments there are likely to influence other countries.

The aim of this paper is to assess the development of civic integration requirements in Austria from 2002 to 2013. Civic integration requirements were first introduced in Austrian legislation in 2002, within the framework of a policy called *Integrationsvereinbarung* (Integration Agreement). According to this policy, certain categories of immigrants from outside the EU who wish to settle in Austria are required to prove knowledge of the German language. Since then, the policy has been amended twice, in 2005 and 2011. With each amendment, the categories of immigrants subject to the requirement, the conditions for fulfilling it, the consequences attached to non-fulfilment, and the language level demanded have all been significantly altered.

The analysis centres both on the actual provisions of the law and its implementation, as well as the political and material effects of the policy more broadly. The rationale for the introduction of integration requirements is that language competence and knowledge of the values and culture of the country of destination are two indispensable elements for integration into the labour market and into society as a whole. In addition, certain authors see the introduction of integration requirements as reflecting a renewed emphasis on communitarian values, and the belief that, in order to achieve successful integration, it is legitimate of the state to demand of immigrants to prove "their commitment and identification with the society in which they live" (Entzinger 2003: 82). Further, integration requirements are also the result of a shift in the understanding of integration, and the idea that secure status and socio-economic rights should be conceived of as a reward for successful integration, rather than a stepping-stone in the integration process (Groenendijk 2004). However, civic integration policies have been severely criticized in the academic literature and by defenders of migrants' rights, who argue that the policy constitutes a *mechanism of exclusion.* In particular, it has been argued that integration requirements function as a hidden tool for immigration control, curtail the rights of immigrants, and disrespect cultural diversity (Carrera and Wiesbrock 2009; Guild et al. 2009; Joppke 2007; Jacobs and Rea 2007).

From an empirical perspective, the article seeks to assess the validity of these critiques for the Austrian case taking into consideration the different variants of the *Integrationsvereinbarung* as it has evolved over time. The main research questions are: Do the integration requirements as applied in Austria constitute an exclusionary tool, in the sense of being a hidden mechanism of immigration control or social selection of immigrants, an instrument for cultural inculcation, or for curtailing immigrants' entitlements to rights? Has the policy become more or less exclusionary

as it evolved over time? In order to answer the questions above, the article examines the emergence, development and outcomes of the *Integrationsvereinbarung*.

Theoretically, the article engages with the long-standing debate within citizenship studies about how immigration and immigrant integration policies are transforming the criteria for membership in democratic polities. Since the 1990s, scholars have been debating whether Europe is experiencing a shift to a postnational model of citizenship in which membership rights are no longer derived from nationality but from universal norms of equal human worth (Soysal 1994; Bauböck 1994; Benhabib 2006). According to these authors, the reasons for this shift are the liberal norms embedded in domestic constitutions of liberal democratic regimes and in international human rights commitments which, when upheld by national and international courts, effectively constrain the autonomy of sovereign states to adopt restrictive policies on the rights of non-citizens. Based on the work of Hollifield (1992) this restraining effect of liberal norms on the sovereignty of national governments has become known as 'the liberal constraint'.

The shift from a national to a postnational model of citizenship identified in the literature is threatened by the adoption of civic integration measures. If civic integration requirements are culturally laden, and most immigrants do not manage to fulfil these requirements, then the postnational hypothesis does not hold. In this case there would be no real expansion of rights and no change in the normative justification for citizenship. Rather, we would be experiencing a mere shift of the procedure and criteria that have always been used for naturalization to earlier periods in the immigration history. In order to assess the nature of changes in membership it is therefore essential to analyse the role of culture within civic integration policies and the material effect of civic integration measures on the acquisition of rights.

In terms of methods, the findings presented in this chapter are the outcome of a policy analysis which focused on policy content and comprised three (broadly defined) phases of the policy cycle – agenda setting and problem framing; policy formulation and implementation; enforcement and policy output (Parsons 1995). Furthermore, my approach is influenced by the constructivist/ideational turn in policy analysis, and is particularly attentive to the role of frames in policy making (Fischer 2003). Frames are understood here as an interpretative framework or scheme that people use to make sense of the world. The way problems are framed impacts the perception of political actors of a policy issue, and influences the way they act upon it (Entman 1993: 52). Similarly, the way policies are perceived by the public can be a crucial factor determining the preferences of political actors, for whom certain political issues might be of high symbolic importance.

The data used in the empirical research consists of legislative documents, official publications from the government and statistical material provided by the Austrian Integration Fund or the Austrian Ministry of Interior. In addition, the examination of these documents and statistics has been coupled with an analysis of parliamentary debates in the lower chamber of the Austrian Parliament on the occasion of the adoption of the legislative packages that introduced integration conditions. The analysis of the parliamentary debates was useful in order to gain insight into the framing by the government of the problem being addressed and the policy being proposed. The written

materials were subject to a qualitative content analysis. Moreover, semi-structured expert interviews were conducted to gather information on the policy process and complement the data collected through content analysis of primary documents.

The article shows that over time civic integration requirements have become increasingly exclusionary. The first versions of the *Integrationsvereinbarung* could be interpreted as an instance of symbolic politics as defined by Edelman (1964). In other words, the actual aim of imposing new conditions on the acquisition of rights was not to achieve a certain material effect, but rather a symbolic effect – namely to send an exclusionary message that the government is tough on immigrants in response to the predominantly anti-immigrant public opinion (Mourão Permoser 2012). However, in the absence of a strong liberal constraint, this type of symbolic politics has paved the way for more material forms of exclusion. With every reform, the Austrian government has gradually increased the requirements for civic integration and reduced the safeguards aimed to prevent that the policy have a negative effect on immigrants' rights, thus testing the limits of the liberal constraint. The most recent version of the integration requirements adopted since 2011 has, together with other restrictive criteria, effectively curtailed immigrants' access to membership rights. Nevertheless, whereas integration requirements purport to be about culture and civics, it turns out that the most exclusionary aspects of the policy are the message it sends out and the indirect costs it generates, which, in the context of an already selective policy has strong negative effects on the capacity of low-income immigrants to access membership rights. Symbolic politics is therefore coupled with economic 'othering' in a policy that, while not abolishing membership rights for immigrants altogether, moves further and further away from the postnational ideal of egalitarian and inclusionary citizenship beyond the confines of national belonging.

1. Civic Integration and the Boundaries of Membership: A Few Theoretical Considerations

According to Stephen Castles, rising migration and globalization have "disrupted the nexus between power and place upon which the concept of nation-state citizenship was based" (Castles 2007: 21). He argues that modern industrial society was premised on the narrative that the political, economic, social and cultural spheres were all congruent with the nation state, but this is no longer the case. By disrupting this assumed coincidence, globalization and immigration have important consequences for our understanding of citizenship. As Seyla Benhabib argues:

> We are at a point in the political evolution of human communities when the unitary model of citizenship that bundled together residency on a single territory with subjection to a common bureaucratic administration representing a people perceived to be a more or less cohesive entity is at an end. We are facing today the 'disaggregation of citizenship' (Benhabib 2006: 45).

One important aspect of the 'disaggregation of citizenship" is the decouplement of entitlement to membership rights from the possession of citizenship status. Yasemin Soysal contends that the high level of social, economic and civil rights granted to non-citizens in Europe reflects "the changing structure and meaning of citizenship in the contemporary world" (Soysal 1994: 136). Policies that grant membership rights to

foreign residents blur the boundaries between citizens and aliens, thus undermining the very foundations of the idea of national citizenship.

By redefining the criteria for who is entitled to membership rights, civic integration policies influence the lines of inclusion and exclusion within a polity and contribute to the transformation of citizenship. Earlier studies on the transformation of citizenship have identified a general trend towards the expansion of migrants' rights in several liberal immigration countries and in the European Union (Hammar 1990; Soysal 1994). In the case of European nation-states, the most influential explanation given to this phenomenon focused on the role of norms. Thus, a number of authors have argued that commitments to human rights norms and liberal norms ingrained in national constitutions constrain the discretion of states in regulating the rights of migrants and lead to the adoption of policies that expand membership rights to non-citizens (Soysal 1994; Hollifield 1992; Joppke 2001). Particularly important in this context is the role of national and international courts of justice, whose interpretation of the liberal norms contained in the legislation generally favours an expansion of migrants' rights (Joppke 2001). Given this 'liberal constraint' (Hollified 1992), the ability of national governments to adopt measures tying membership to cultural or national criteria is significantly reduced, leading to the gradual expansion of non-citizens' rights.

However, a second strand of literature argues that the expansion of migrants' rights does not always progress linearly in the direction of ever-greater entitlements, as suggested by the explanation based on norms. On the contrary, migrants' rights have become highly politicized and contested, and in several countries restrictive trends can be observed (Schierup et al. 2006). Important studies have shown that the expansion of rights to non-citizens is not taking place equally for all categories of immigrants, and not for all types of rights, which results in a system of civic stratification (Morris 2002). In particular, civic integration policies emerged, according to which immigrants were required to prove integration as precondition for the acquisition of a number of rights. This seems as direct contradiction to the postnational idea that culture, ethnicity and nationality would be losing ground as the basis for decisions about rights.

The imposition of integration conditions on the acquisition of rights is therefore one of the mechanisms through which civic stratification may emerge and the boundaries of membership may be redrawn, in this case away from the postnational and back to a national understanding of belonging as grounded on shared language and culture. All legislations on membership have always admitted a certain degree of civic stratification, but the classificatory scheme that governs eligibility for rights and the mechanisms of inclusion and exclusion used to sort immigrants into the different positions within the hierarchical scheme or rights change over time. Civic integration represents a particular mechanism for organizing immigrants into the hierarchical scheme of rights – a mechanism that purports to be about culture or 'civics', rather than purpose of stay, economic status or time of residence. Understanding the precise role of culture within integration requirements and assessing the extent to which integration conditions function as a mechanism of exclusion can therefore bring some insight to the controversy between the two strands of literature on the transformation of citizenship. In order to do so for the Austrian case, the next section develops an

analytical framework and defines conditions under which civic integration policies can be deemed exclusionary.

2. Civic Integration as a Mechanism of Exclusion: An Analytical Framework [2]

In order to assess whether the Austrian civic integration policy functions as a mechanism of exclusion, it is necessary to operationalize the concept of exclusion and determine where the exclusionary potential of civic integration lies. For this purpose, this section identifies three main dimensions of exclusion that can potentially apply to integration requirements: (1) rights and access to the territory; (2) values, culture and respect for diversity; (3) discourse and framing. It then identifies the conditions under which integration requirements can be labelled exclusionary. The operationalization is based on an extensive review of the literature and on inductive thinking. The set of conditions identified in the following have been developed through an inductive process which takes the critique posed in the literature with reference to specific cases as its starting point and tries to infer the conditions that would make this critique hold true for all cases, thus generating an original framework.

2.1 Rights and Access to the Territory

Several authors criticize civic integration policies for having the hidden aim of excluding low-income and low-educated immigrants from rights. According to Guild et al. (2009) integration conditions potentially infringe the liberal principle of fairness if low-income immigrants with little education are required to take the same test as wealthy and highly-educated immigrants. Unless the state provides for facilitated access to learning facilities, low-educated immigrants will be at a clear disadvantage. Moreover, the authors suggest that governments are not interested in resolving this social injustice since integration and learning are not the actual goals of integration conditions. Rather, they claim that such policies are mainly aimed at reducing the number of immigrants allowed to enter or stay in the territory and restricting immigrants' access to security of residence and nationality (Guild et al. 2009). The same argument is made forcefully by Joppke who claims, based on a study of integration tests in the Netherlands, France and Germany: "this national 'integration' policy has transmuted into a tool of migration control, helping states to restrict especially the entry of unskilled and non-adaptable family migrants" (Joppke 2007: 5). A similar critique has been raised with reference to the costs of fulfilling integration requirements, such as language courses and tests. It is argued that the high costs of complying with integration conditions betray the aim of social selection, as only wealthy immigrants will be able to fulfil the requirements (Human Rights Watch 2008). In other words, according to these authors, integration tests are actually being used as an excuse to deport people, deny them entry into the territory, or prevent them from acquiring permanent residence rights.

Given this criticism, a number of conditions can be identified for integration requirements to have exclusionary effects on the dimension of rights and access to the territory. These are: (a) if there are no facilities provided by the state for language

[2] This and the following section are partially drawn from Mourão Permoser 2012.

learning; (b) if there are no special arrangements for immigrants who have had little or no schooling; (c) if the costs of fulfilling the requirements are prohibitively high; (d) if it leads to a reduction in the number of immigrants that are allowed to enter or stay in the country; and finally (e) if it leads to less immigrants being able to acquire long-term residence rights. Points (a) to (c) derive directly from the critique discussed above. Points (d) and (e) are logical conclusions from the fact that a policy only works as a restrictive tool of immigration control or to restrict rights if it does in fact lead to lower numbers of immigrants in the territory or having access to rights.

2.2 Values, Culture and Respect for Diversity

Civic integration policies are often also accused of being a tool to impose the culture and values of the majority society upon immigrant minorities (Carrera 2009). For Carrera and Wiesbrock, civic integration and the respect for diversity are 'opposing concepts', since civic integration tests work as a way for the host state "to promote national identity and nationalism within and beyond its territorial borders" (Carrera and Wiesbrock 2009: 4). Not only would such conditions disrespect the right of immigrant minorities to maintain their own culture and values, it would also artificially construct the majority culture as a homogeneous one, thereby perpetuating structures of dominance within the host society. Moreover, these measures disproportionately affect immigrants from certain developing countries, giving rise to the claim that they constitute indirect discrimination on the grounds of nationality and ethnic origin (Human Rights Watch 2008). In some cases, it has been argued that the contents of integration tests specifically target Muslim immigrants (see Joppke 2007: 15), which would also amount to indirect discrimination on the ground of religion.

It is not easy to ascertain the conditions under which integration requirements would be exclusionary when turning to the dimension of values, culture and respect for diversity. After all, when learning a foreign language one is arguably always also confronted with information about the foreign culture(s). Nevertheless, there is a difference between informing someone about the way of life in the host country and actually 'testing' the values and attitudes of immigrants or designing information materials in such a way as to tackle a specific group, such as for instance Muslims. Thus, it can be argued that integration requirements are discriminatory and serve the purpose of forcing cultural assimilation if: (a) the tests and/or courses required include heavily culturally-laden contents, in particular if this cultural content is not presented only informatively but portrays certain values or a given culture as superior to others; (b) passing the requirement involves answering questions about one's attitude towards certain value issues or cultural issues; (c) the contents of the courses and tests are defined by the government and there is no option on the part of the immigrant in terms of choosing freely which test or course to take; (d) the test or the courses target a specific immigrant group, or certain immigrant groups are excluded on a non-objective ground (i.e. for allegedly having a similar culture or sharing the same 'Western' values). Points (a), (b) and (d) are self-evident, whereas the rationale behind point (c) deserves further explanation. The idea is that if the government's goal is to impose a particular culture or set of values on immigrants, it will need to control the contents of the courses and of the tests in order to ensure that they actually fulfil this

end. The more choices immigrants have, the easier they may avoid contents they find morally offensive or disrespectful of their culture.

2.3 Discourse and Framing

To these potential exclusionary effects derived from the literature, a fourth dimension of exclusion shall be added. It has not been a direct focus of academic discussions so far, but I believe it to be no less important: the symbolic or discursive dimension. This dimension refers to the fact that not only the contents, but also the framing of the policy might have exclusionary effects. As mentioned in the introduction, a whole strand within policy analysis calls attention to the role played by ideational and discursive factors, with a particular emphasis on the role of frames. Frames "promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation" for a given policy issue (Entman 1993: 52). Frame analysis thus aims to explain the process of "negotiation and (re)construction of reality by social/political actors through the use of symbolic tools" (Triandafyllidou and Fotiou 1998: 1-2) and the impacts of this process on policy. As Yanow (2003: 6ff.) points out, the aim of policies often does not lie in their actual implementation, as an instrumental-rational approach would assume, but rather in their capacity to send a message or shape a particular narrative.

Against this background integration requirements can also be categorized as exclusionary if they are embedded in an exclusionary discourse or frame. The conditions for integration requirements would have this symbolic exclusionary effect: (a) if they are part of a narrative that constructs the immigrant or immigration as a problem and sees the causes of this problem as lying exclusively with the immigrant, thus, a narrative calling for more restrictive measures; (b) if they are discursively constructed so as to send an exclusionary message, for example that immigrants are not welcome and that migration and/or cultural diversity are detrimental to society.

3. Civic Integration Requirements in Detail: Framing, Implementation and Outcomes

Having identified the conditions under which civic integration requirements can be deemed exclusionary, we can now move to a concrete investigation of the Austrian case. The data will be presented following a simplified version of the policy-cycle including only three phases – policy formulation and framing, transposition and implementation, and enforcement and policy output (Parsons 1995: 77ff.).

3.1 Agenda Setting and Problem Framing

The broader political context in which the idea of obliging immigrants to comply with integration requirements entered the political agenda in Austria indicates that the policy was embedded within an exclusionary discourse. The first proposal was developed in 2001, during a period in which the field of immigrant integration was subject to intense politicization by anti-immigrant actors. Mostly, it was the Austrian Freedom Party (*Freiheitliche Partei Österreichs*, hereafter FPÖ) that lobbied for the introduction of the new policy. It was the junior partner in a coalition government with the Austrian People's Party at the time (*Österreichische Volkspartei*, hereafter ÖVP).

The idea can be traced back to M. Peter Westenthaler, who was FPÖ floor leader and speaker in immigration and security matters back then. His proposal to oblige immigrants to comply with an 'integration contract' was eventually agreed upon by the government and adopted as part of the legislative package of 2002 and entered into force in 2003 under the name *Integrationsvereinbarung* (Rohsmann 2003: 72ff.; Interview 1 [3]). The core of the policy was that certain categories of immigrants would be required by law to attend a German course in order to achieve a basic level of German language. In the case of non-compliance, gradually increasing sanctions would follow, ranging from financial penalties all the way to expulsion from the territory.

An analysis of the parliamentary debates surrounding the adoption of the legislative package that contained also the *Integrationsvereinbarung* shows that these measures were primarily framed as a further tool in the pursuit of a more restrictive immigration and integration policy – both concepts being very strongly linked in the discourse. As with previous reforms, integration was used as a 'buzzword' to justify more restrictive legislation. In this context, integration was framed primarily in a negative way, that is, with reference to the 'integration problem'. Despite the statistically evident socio-economic marginalization of immigrants, the problem of integration was seen mainly as an issue of cultural estrangement, lack of social cohesion and abuse of Austrian institutions by immigrants 'unwilling' to integrate. In the parliamentary debates, representatives of the two governing parties stressed that Austria was not a country of immigration, and that therefore it was legitimate to ask immigrants to learn the language and adapt to the culture (Österreichisches Parlament 2002). The FPÖ heralded the introduction of this measure as a major achievement of the party, which finally would pave the way for a restrictive shift in immigration policy. M. Westenthaler, for example, stated: "With this law we make one thing clear: Austria is not an immigration country and it will never be one. We will make sure of that!" (Österreichisches Parlament 2002) The floor leader of the ÖVP argued that the *Integrationsvereinbarung* sent "an important signal" regarding the topic of integration and claimed that those who criticized the new legislative package were "ignoring the fears and interests of the population" (Österreichisches Parlament 2002).

In sum, the agenda-setting phase supports the hypothesis of integration requirements being exclusionary for the following reasons: the policy was proposed by an anti-immigrant party in the context of negative politicization of immigration; it was part of a broader narrative that portrayed immigrants as the source of a problem (unwilling to integrate, abusing the Austrian welfare state, etc.); and the framing of the problem suggested that it could only be solved by the adoption of more restrictive measures of migration control.

3.2 Policy Formulation and Implementation

The previous section demonstrated that the *Integrationsvereinbarung* was meant to be understood as exclusionary. But the question remains whether it was also legally

[3] Interview 1: Congressman Peter Westenthaler, Vienna, September 2011.

formulated, designed and implemented so as to reduce immigration, curtail rights and produce cultural assimilation [4].

Concerning the goal of the policy, the legal provisions differ significantly from the political discourse. Perhaps surprisingly, the legal definition of the *Integrationsvereinbarung* stresses an inclusionary goal, namely the goal of promoting the autonomy of immigrants and increasing their capacity to participate in society. The law states:

> (...) the purpose of the Integrationsvereinbarung is to promote the integration of third-country nationals who are legal residents with a long-term perspective or permanent residents. Its aim is that third-country nationals acquire sufficient knowledge of the German language, in particular the capacity to read and write, in order to be able to participate in social, economic and cultural life in Austria (NAG §14[1]).

With regards to the dimensions of 'rights and access to the territory' and 'values, culture and respect for diversity', the evidence is mixed. From 2002 to 2005, the requirement was of proving language knowledge at the level A1. The government also provided infrastructure in the form of certified German/Integration courses, which were sponsored with up to 50% for persons coming to Austria through family reunification. Attendance of the government certified German/Integration course was sufficient to fulfil the requirement (no test required). There were also other ways of fulfilling the requirement, notably by completing compulsory education in Austria, which serves to exclude the second generation. Family members of Austrian citizens were excluded from the requirements together with a number of other categories of immigrants. The high number of exceptions meant that only a small minority of third-country nationals resident in Austria was required to fulfil the *Integrationsvereinbarung*, namely the family members of third-country nationals.

After the 2005 amendment, the framework for fulfilling the *Integrationsvereinbarung* remained largely the same. It is worth stressing here that despite the rhetoric of values and cultural adaptation, the requirement actually consists in proving language competence, which could be done in a wide variety of ways. Exceptions were put in place to protect the second generation and vulnerable persons, such as fully subsidized literacy course for the illiterate. All of these factors minimize exclusion. Nevertheless, the personal scope of the requirement was significantly extended, notably also to cover third-country nationals who are family members of Austrian citizens. Also, the language level was raised from A1 to A2, but so was the amount of government-sponsored course-hours and the time frame for completion of the requirement. In fact, the maximum time frame for completion was changed to 5 years and thus made to coincide with the acquisition of long-term residence. Finally, the policy was made stricter, as a test was now required and the mere attendance of a government-sponsored course was no longer enough. In other words, the 2005 amendment extended the existing requirement to new groups, shifted the focus from 'willingness' to learn to actual learning, and raised the language level. At the same time, it fully kept in place

[4] The following assessment is based on an analysis of the following legal documents: FrG, IV-V 2002, IV-V 2005, FrÄG 2011, NAG.

and even extended the framework established in 2002 to assist the fulfilment of the requirement in the form of partially subsidized government-certified courses.

The 2011 amendment represented a major modification in the structure of the policy. The existing framework remained in place for the residence requirement which was just slightly modified. Notably, the language level remained at A2, but the time frame for completion was shortened to a maximum of 2 years and the literacy courses were terminated. This became Module 1 of the new *Integrationsvereinbarung*. The big change is that two new civic integration requirements were introduced: a pre-entry requirement at the level A1 (*Deutsch vor Zuzug*) and a separate language requirement at the level B1 for the acquisition of long-term residence after five years (Module 2 of the new *Integrationsvereinbarung*). Austrian legislation makes a distinction between residence permits for short stays (*Aufenthalt*) and residence permits issued with the intention of long-term settlement (*Niederlassung*) [5]. The new Module 1 of the *Integrationsvereinbarung* is required of all persons applying for a first-time residence permit intended for long-term settlement. In the Austrian context, these are almost exclusively family immigrants.

For both of the new requirements, the law does not foresee any assistance by the government: no obligation to assure the availability of courses, no quality control, no subsidies, and also no exceptions for low-income or low-educated persons. A comparison of the main provisions of the different versions of the Austrian civic integration policy is presented schematically in Table 1.

Given the lack of obligation to provide any infrastructure for the fulfilment of the two new civic integration requirements, the following discussion of the *implementation* of the policy will focus on the residence requirement and the discussion will concentrate on the implementation of government-sponsored German/Integration courses. We shall come back to the other two requirements in the next section when discussing *enforcement and outcomes*.

The government-sponsored courses are provided by a range of different institutions and the choice of materials is very diverse, thus weakening the claim that the courses are used to impose cultural assimilation. Free to structure their courses as they wish, the relevant institutions may also choose the method, contents, and learning materials, administer the tests themselves and are entitled to select from a number of government-recognized language certificates. Four kinds of institutions are allowed to offer German/Integration and literacy courses within the framework of the *Integrationsvereinbarung*, if certified by the AIF: Language schools; publicly funded institutions of adult education; private or humanitarian institutions with experience in advising and supporting immigrants as well as in teaching German; and officially recognized religious institutions with experience in advising and

[5] Note that this is a formal definition based on what the law assumes is the presumed intention of the immigrant. Family members are presumed by the law to be long-term settlers; therefore they are entitled to a settlement permit. Artists, workers filling a specific demand in a particular industry, etc. are presumed to be temporary immigrants and therefore do not qualify for a settlement permit. In practice, short-term permits can be renewed indefinitely and many immigrants stay in Austria for extended periods of time on the basis of these short-term permits despite the low level of entitlements associated with these statuses.

supporting immigrants. As this list illustrates, these institutions are not biased in the sense of promoting cultural assimilation, but rather focused on language learning and immigrant counselling. According to interviews conducted for the purpose of this study, the course landscape is in fact characterized by great diversity, and there is no preferred textbook or structure to which most institutions resort (Interview 2 [6]).

Table 1. Requirements and Conditions – Comparing Different Versions of the Integration Agreement

	2002	2005	2011		
			Pre-entry	Residence	Long-term residence
Language level required	A1	A2	A1	A2	B1
How to prove?	language certificate or language course attendance	language certificate or language test	language certificate or language test	language certificate or language test	language certificate or language test
Government sponsored course available	yes	yes	no	yes	no
Time frame – min (no penalty)	1,5 year	2 years	n.a.	1,5 year	5 years
Time frame – max (if no extension)	4 years	5 years	n.a.	2 years	none
Extension possible?	yes (2 years)	yes (2 years)	n.a.	yes (up to 1 year)	n.a.
Subsidies by federal government?	up to 50%	up to 50%	none	up to 50%	none
Courses organized by the government (hours)?	yes (100 hours)	yes (300 hours)	no courses	yes (300 hours)	no courses
Test can be repeated?	yes	yes	yes	yes	yes
Remedial measures for low educated?	no	75 units fully subsidized literacy course	no	no	no
Quality control?	yes – ÖIF	yes – ÖIF	no	yes – ÖIF	no

Source: Own compilation on the basis of FrG 1997 (idF 2002), IV-V 2002, NAG 2005, IV-V 2005, FrÄG 2011, IV-V 2011.

Nevertheless, the government monitors the quality of the courses; these must comply with pre-determined guidelines. It is the responsibility of the AIF to certify the respective institutes and to carry out regular quality controls. The AIF is an agency of the Ministry of Interior that was initially founded in 1960 by the UNHCR and the Ministry of Interior under the name 'United Nations Refugee Fund' as a federal agency focused on the integration of refugees. Since the entry into force of the *Integrationsvereinbarung*, this agency was renamed into AIF. It was given the additional task of organizing the supply of German/Integration and literacy courses and managing the subsidies of the federal government for timely completion of the *Integrationsvereinbarung*. Thus we see that the adoption of the

[6] Interview 2: Representative of Österreichischer *Integrationsfonds*, Vienna, November 2009.

Integrationsvereinbarung has been accompanied by the creation of new structures to deal with integration where there were previously none.

The guidelines were developed by the government and stipulate the content that the language and integration courses ought to cover. Their formulation suggests a comparatively pro-immigrant and praxis-oriented curriculum aimed at helping to know one's way around in Austria, rather than an exclusionary instrument or a mechanism for cultural assimilation. The law establishes that the German/Integration courses must convey:

> (...) knowledge of the German language in order to communicate and to read everyday texts, as well as topics related to everyday life which contain civic elements [staatsbürgerschaftliche Elemente], and topics that convey European values and core democratic values, and which enable participation in the social, economic and cultural life in Austria (IV-V 2005).

However, despite the emphasis on civic elements in the legislation, the learning goals formulated by the AIF are essentially focused on language skills. It is stressed throughout the document that the immigrants should be able to communicate in everyday situations, and that the topics and materials must have practical relevance and be related to daily life. It is also mentioned that one of the objectives of the course should be that the immigrant acquires the capacity to "integrate into Austrian society while at the same time maintaining his or her own identity". Learning goals related to knowledge of civics are hardly mentioned at all. The pragmatic character of the curriculum was confirmed by an interview with a representative of the AIF, who stated that 'values' did not really play a role in the selection and evaluation of the courses (Interview 1). Rather, it was stressed that the AIF was more concerned with whether the courses included relevant practical information for immigrants such as filling out a form, or going to a post office, etc.

An analysis of a sample test confirms the information provided by the AIF representative concerning the absence of value-laden questions. Interestingly, this is the same language test that applicants for Austrian citizenship must also pass. However, the latter must additionally pass a test of civic knowledge comprising detailed questions about the history, geography, political system, and culture both of Austria and of the applicant's province of residence[7]. The absence of such a test for the fulfilment of the *Integrationsvereinbarung* provides a clear indication that it is not being applied as a tool of forced cultural assimilation. The findings of a recent study consisting of interviews with immigrants and teachers participating in integration courses further weaken the claim of cultural assimilation. Instead, the results indicate that immigrants have generally positive attitudes towards the courses (Perchinig 2010).

[7] Sample questions and learning materials available at: http://www.bmi.gv.at/cms/bmi%5Fstaatsbuergerschaft/.

3.3 Enforcement and Policy Outcomes

The enforcement of the *Integrationsvereinbarung* includes the distribution of subsidies and the application of sanctions in the case of non-fulfilment. These sanctions range from financial fines all the way to deportation. As for the two additional civic integration requirements introduced in 2011, the sanctions for non-compliance consist in not getting a first-time entry and residence permit or a long-term residence permit. We will therefore first look at the enforcement and outcomes of the *Integrationsvereinbarung* through statistics on subsidies, rates of completion and punitive sanctions. After that, we seek to assess the effects of the new requirements on the numbers of entry and long-term residence permits.

As mentioned before, the subsidies for fulfilling the integration requirements are only available for family immigrants, a provision that could potentially have strong exclusionary effects on other categories of immigrants. In the earlier versions of the policy, the overwhelming majority of persons who fulfilled the *Integrationsvereinbarung* cashed in a government voucher. For instance, in the year 2008, out of 4,655 persons who fulfilled the *Integrationsvereinbarung*, 4,008 had received subsidies from the government (Österreichisches Parlament 2009; Interview 2). Considering that some people are deemed to have fulfilled the agreement automatically, for instance by having completed their education in Austria, one can deduce that in the year 2008 practically everybody who took an integration course received a voucher. This was possible because almost all third-country nationals entering Austria with a non-temporary or humanitarian permit are family immigrants, and the vouchers are available to family migrants who comply with the requirement within the minimal period of time (Statistik Austria 2012). However, the recent reforms of 2005 (higher language level) and 2011 (lower time for completion, new requirements) had a negative effect in immigrants' ability to make use of the government subsidies. In 2011, of 12,607 third-country nationals who fulfilled the *Integrationsvereinbarung*, only 2,716 cashed in a language voucher (Integrationsfonds, pers. comm. 20.11.2013).

A further problematic aspect of the *Integrationsvereinbarung* regards the very strong sanctions attached to non-compliance. Even though the time limit allotted for compliance with the *Integrationsvereinbarung* was relatively generous until 2011, it must be taken into account that some family immigrants (especially older persons) might have little schooling and no familiarity with taking a standardized test. Although the issue of proportionality is indeed a very pressing one that should not be minimized, in practice very few people must face deportation for having failed to pass a German/Integration test. In a number of interpellations in parliament, the Ministry of Interior was asked how many people have been issued a deportation order on the grounds of non-fulfilment of the *Integrationsvereinbarung*. At the time of writing, four persons received an order to leave the country (*Ausweisung*) since the first version entered into force. Among these, one was able to catch up with the course, one appealed the decision, and two persons effectively left the country, one in 2009 and one in 2011 (Österreichisches Parlament 2010). This stands in contrast to the 55,642 persons who have fulfilled the *Integrationsvereinbarung* between 2003 and 2012 (see Table 2).

Table 2. Fulfillment of Integration Agreement in Austria between 2003-2012

	Required	Of which exempted on medical grounds	Fulfilled	Cummulative fulfilled
2003	9,114		364	364
2004	5,540		1,668	2,032
2005	3,758		1,683	3,715
2006	22,958	220	5,795	9,510
2007	16,690	181	5,485	14,995
2008	15,147	183	4,655	19,650
2009	13,911	203	5,219	24,869
2010	12,695	264	6,841	31,710
2011	10,761	212	11,325	43,035
2012	16,791	274	12,607	55,642

Source: Own compilation on the basis of data provided by the Austrian Integration Fund and from the response to parliamentary inquiries by the Ministry of Interior (Österreichisches Parlament 2002, 2009, 2010, 2011, 2013).

However, deportation is only the most extreme form of sanction applicable to non-compliance. Other forms of sanctions include administrative fines that can be issued by the province administrations, which range from €50 to €250. According to the Ministry of Interior, 272 persons were faced with financial penalties for having missed to fulfil the *Integrationsvereinbarung* on time in the year 2010 (Österreichisches Parlament 2011), 425 persons were fined in 2011, and 369 in 2012 (Österreichisches Parlament 2013).

Immigrants can also be sanctioned for failing to comply with civic integration requirements through the denial of a long-term residence permit. If people who fail to fulfil integration requirements are denied a long-term residence permit, but nevertheless allowed to stay in the country on the basis of renewable temporary permits, this amounts to a precarisation of immigrants' legal status. It would lead to a situation in which *de facto* long-term immigrants are only granted short-term visas, thus being denied the security of status and equal treatment rights usually attached to a long-term residence permit.

Between 2006 and 2011, the issuing of a long-term residence permit was conditioned upon achieving level A2 within the framework of the *Integrationsvereinbarung* and non-fulfilment within five years automatically led to the issuing of a deportation order, so there was no legal possibility of staying on with temporary permits (Interview 3 [8]). From 2011 onwards, with the introduction of the additional requirement at the level B1, the precarization of immigrants' legal status became reality. The law does not formulate the language test at the level B1 as a legal obligation of every immigrant, but rather as a condition for acquiring a different status. This legal definition approximates long-term residence to citizenship, where acquisition is also considered

[8] Interview 3: Mag. Tamara Völker, *Bundesministeirum für Inneres*, Vienna, October 2011.

facultative. As a consequence, the state abdicates any responsibility for ensuring that the conditions can be reasonably met and for monitoring implementation. Just as it has always been possible for a third-country national to live his/her whole life in Austria without acquiring citizenship, so it has become possible since 2011 for a person to live permanently in Austria without acquiring long-term residence and therefore without most 'denizenship' rights such as enhanced protection against expulsion and full access to welfare benefits. Here we see how civic integration does in fact contribute to civic stratification by preventing status changes and legitimizing the long-term permanence of certain immigrants under temporary statuses.

One way to assess the enforcement and the actual outcomes of the new requirements is by looking at the number of permits issued. Table 3 below shows the evolution of the number of first-time residence permits issued in Austria. This number includes all categories of immigrants applying for a first-time residence permit, independent of the purpose and type of residence permit granted. It therefore also includes categories of immigrants that are not required to pass a language test before entry in Austria, such as for example those who have visa-free entry and were already in the country as tourists at the time of application for a resident permit or the highly qualified. Any negative effects of the legal amendments visible here should hence be even stronger for the specific group of those affected by the new pre-entry language requirement known as *Deutsch vor Zuzug*. Table 4 shows the number of persons possessing a valid EU long-term residence permit in Austria.

Table 3. Existing EU Long-Term Resident (LTR) Permits in Austria 2003-2012

Year	All valid LTR permits	Change to previous year	Year	All valid LTR permits	Change to previous year
2006	136,146		2010	185,450	22,004
2007	137,929	1,783	2011	195,546	10,096
2008	147,659	9,730	2012	199,973	4,427
2009	163,446	15,787			

Source: Austrian Ministry of Interior (Bundes Ministerium für Inneres 2006, 2007, 2008, 2009, 2010, 2011, 2012).

Table 4. First-time Entry Permits Issued by Austria 2006-2012

Year	First-time permits issued	Change to previous year	Year	First-time permits issued	Change to previous year
2006	41,893		2010	50,342	4,271
2007	46,767	4,784	2011	34,365	-15,997
2008	48,774	2,007	2012	38,999	4,634
2009	46,071	-2,703			

Source: Austrian Ministry of Interior (Bundes Ministerium für Inneres 2006, 2007, 2008, 2009, 2010, 2011, 2012).

As we can see, there has been a sharp decrease in first-time residence permits after 2010, from 50,342 to 34,365 newly issued permits. Similarly, the increase in the number of valid long-term residence permits in comparison to the previous year dropped by half between 2010 and 2011 and again between 2011 and 2012. We must be careful when analysing these statistics because they give no information on the effects of civic integration requirements per se. The decrease in the number of permits issued could be due to other factors, such as the introduction of restrictive income requirements for long-term residence, age limits for family reunification, and a general decrease in immigration to Austria over time. Nevertheless, the numbers provide a very strong indication that the evolution of the Austrian legislation as a whole had a significant exclusionary effect with regards to the acquisition of rights.

4. Conclusion

The findings presented in this article concerning the legal framework, implementation and enforcement of civic integration requirements in Austria from 2003-2013 show that the policy has become increasingly exclusionary. Table 5 summarizes the findings from application of the analytical framework developed in section three of this paper to the Austrian case.

In its original formulation, the integration agreement could be interpreted as an instance of 'symbolic politics' (Edeleman 1964; Mourão Permoser 2012). The main aim of the policy was to send an exclusionary message that the government is taking measures to promote cultural assimilation and increase migration control. While highly exclusionary on the dimension of discourse and framing, the outcomes of the policy on access to rights and respect for diversity were mild. Until 2006, the hurdle was relatively low, as mere attendance of a course was sufficient to comply with the requirement. No persons were prevented from staying in Austria for not fulfilling civic integration requirements during this time. From 2006 to 2011, as the requirement became stricter through the introduction of a test, four persons received a deportation order and two had to leave the country. Civic integration started to have real consequences for immigration status, but given the small number of immigrants faced with sanctions, it cannot be argued that civic integration requirements were used as a tool of immigration control to reduce the size of the immigrant population in the country.

One of the main reasons why integration requirements did not have major exclusionary effects on rights until 2011 is the infrastructure provided by the government. In this early period, it was the legal responsibility of the state to ensure that there is an adequate supply of German/Integration courses, that these courses are offered by qualified institutions with experience in migrant counselling, that they fulfil minimum standards, and that they are financially accessible for immigrants. When the language level required was raised in 2006, so were the amount of course-hours refunded by the federal government and the time frame for completing the requirement. Moreover, the government also put in place remedial measures in the form of fully subsidized literacy courses that further minimized exclusionary effects. By reducing the comparative disadvantage of the low educated, these literacy courses ensured that civic integration requirements did not turn into mechanisms of social

Table 5. Do the Exclusionary Conditions Apply to the Integration Requirements in Austria Before and After 2011?

Dimensions	Exclusionary conditions	Until 2011	Since 2011
Rights and access to the territory	there are no facilities for language learning provided by the state	no	partially yes
	there are no special arrangements for the illiterate	no	yes
	fees are exorbitantly high; there are no subsidies	no	partially yes
	led to reduction in the number of immigrants allowed to enter the country	no	yes**
	led to reduction in the number of immigrants allowed to stay in the country	no	no
	led to reduction in number of immigrants entitled to long-term residence	no	yes**
Values and respect for diversity	tests include heavily culturally-laden contents	no	no
	tests ask migrants to answer questions about their attitudes/values	no	no
	courses and tests are highly centralized and only administered by the state	no	no
	the requirement tackles specific groups of immigrants along ehtnic/national/cultural lines	no	partially yes
Discourse and framing	the requirement is embedded in an anti-immigrant narrative	yes	yes
	responsability for "integration failure" is attributed exclusively to the migrant	yes	yes
	the requirement is portrayed and perceived as sending an exclusionary message	yes	yes

Source: Own compilation on the basis of legal data, analysis of sample tests, government documents, statistical material, expert interviews and parliamentary speeches.

The conditions are explained in detail in Section 2 of this chapter. Fields marked with "yes" mean that the conditions for being considered exclusionary have been fulfilled. Fields marked with "no" indicate that the conditions do not hold. Fields marked with "partially yes" indicate that the conditions aplly in some cases -- notably in the cases where the integration/language test is administred abroad and in the case of the test required for the acquisition of long-term residence -- but do not apply in others. ** refers to the effects of the law as a whole on the number of permits. As discussed in the section above, it is not possible to isolate the effects of the civic integration requirements from the effects of other restrictive conditions with the available data.

selection. After 2011, the situation changed significantly due to the introduction of two new requirements for which there is no infrastructure in the form of subsidized courses – level A1 before entry and B1 for long-term residence – and the reduction of the time-frame for completion of the A2 requirement. As a consequence, the policy has become exclusionary on the dimension of rights and access to the territory.

By contrast, the exclusionary effects on the dimension of culture and values remained negligible throughout the period under study. The claim that integration conditions are a tool of forceful acculturation was not supported by the empirical data on implementation. Although the national law establishes that the German/Integration course should have an element of civic education, this is in practice not implemented in an assimilatory way. Rather, the contents of the German/Integration courses tackle issues that potentially help immigrants cope with bureaucracy, resolve everyday issues, and be informed about the institutions of the host-country, such as the welfare and educational systems. In addition, the fact that highly qualified workers and EU citizens are not even encouraged to voluntarily comply with similar integration measures indicates that the roots of this policy are not simply nationalism and cultural intolerance, but rather linked to problems of the structural integration of socially and economically disadvantaged immigrants. However, it is important to note that despite its relevance for integration, the structural dimension of wealth and education is rarely addressed in the political debate at the national level. Instead, the national debate in Austria continues to be focused on cultural aspects of integration, reflecting and contributing to mutual estrangement, and to the rise of xenophobic sentiments among the majority population (Mourão Permoser and Rosenberger 2012).

In sum, concerning the effect of civic integration policy on the rights of immigrants, there are strong indicators that there has been a change of 'symbolic politics' to 'exclusionary politics'. Even though the available data does not allow us to isolate the effects of the language tests from those of other criteria, the reduction of the number of entry and long-term residence permits granted since the implementation of the new law are likely to be due at least in part to the new tests. It is important to note, however, that it is not the 'civic' side of the policy that brings about this exclusionary turn. The negative effects of the policy on immigrants' rights are not due to the tests having become more culturally-laden and discriminatory or focused on the selection of immigrants based on values. Nevertheless, the rhetoric of cultural protection is used theatrically to stage a performance of control and exclusion in order to keep the notion of national sovereignty alive. In the context of a very negative public opinion on immigration, it can be quite positive to be seen as a government that adopts exclusionary policies – especially if this is justified by the idea of protecting national culture. In this regard, civic integration policies in Austria remain a matter of 'symbolic politics'.

How then, can we explain the shift from symbolic to exclusionary politics on the dimension of rights? The policy analysis conducted here was more strongly focused on what Parsons (1995: 55) calls 'policy content' rather than on 'policy determination', and therefore cannot give a final answer to this question. Nevertheless, the findings do allow for some hypotheses. According to Hollified (1992), the expansion of membership to immigrants in the 1990s was premised on the so-called 'liberal constraint' – that is,

the existence of constitutional norms and procedures that thwart restrictionist policies thus limiting state autonomy to manage immigration and immigrants' rights. In the case of civic integration, after ten years of experience with this policy, despite much controversy, there have been no decisive judgments on the compatibility of the policy with the Constitution, European legislation or human rights. Civil rights movements, international organizations and opposition parties have also not been able to generate a political reaction that would act as a real constraint.

At the European level, the relative absence of liberal constraints in the last decades has been premised upon an institutional setup of partial communautarisation with limited powers for the European Parliament and the European Court of Justice. Since the entry into force of the Treaty of Lisbon, however, the balance of powers have changed, with the Court starting to play a bigger constraining role (Acosta Arcarazo & Geddes 2013), whereas the influence of the Parliament remains limited (Ripoll-Servent & Trauner 2012). For the future of civic integration policies, the ability of these two actors to use their new powers to impose real constraints on national and European executives is likely to play a decisive role. Recent moves by supranational institutions point in this direction. On the one hand, the European Court of Justice has ruled on three individual cases in a way that partially exempts Turkish nationals from the pre-entry requirement (provided they show intention to work) on the basis of the 1963 Association Agreement (C-300/09, C-301/09, C-286/11; Der Standard 2012). On the other hand, the European Commission has started infringement procedures against Germany for its pre-entry test within the realm of family reunification (Zeit Online 2013). If the long and cumbersome procedure is in fact carried out until the end, it will be finally up to the European Court of Justice to give a judgement on the compatibility of civic integration policies with European legislation and European liberal norms.

Until then, with every reform, the Austrian government tests the limits of the liberal constraint a bit further. Whereas at the beginning one could sense on the part of the authorities a fear of the reaction that this policy would trigger if it was really exclusionary, after 10 years without major political scandals or negative judgements, this fear hardly persists. The interviews conducted for this research and the way the Ministry of Interior manages this policy demonstrate a total lack of interest in assessing the effects of the policy (no demographic or socio-economic statistics on the groups of immigrants subject to the test, no knowledge of what percentage is successful or not, no data collection on the tests made abroad whatsoever, etc.)[9]. The impression given is that the exclusionary effects, whereas not necessarily intended, are not unwelcome either. The fact that other Member States have adopted similar policies and have not faced major constraints either provides a further incentive to push forward. With time, the use of sanctions pertaining to the domain of immigration policy within integration policy has become normalized.

In order to fully understand the impact of the new amendments on civic integration introduced in 2011, it is important to contextualize them within the broader framework

[9] See Interviews 2 and 3; Integrationsfonds, pers. comm. 08.11.2013; Bundesministerium für Inneres, pers. comm. 14.11.2013.

of Austrian immigration law. The tightening up of the language requirements have been accompanied by other restrictive measures that were implemented at the same time. Particularly severe are the high income requirements. Since 2005, residence permits can only be granted for persons who can prove regular and stable income above the minimum pension without having recourse to any social benefits (NAG §11[5]). Since 2009, a new rule was introduced according to which any regular expenses such as rent, loan instalments, alimony payments etc. exceeding a certain level shall be considered as a reduction of the income (FrÄG 2009). The exclusionary effects of this rule are made evident by a recent study according to which one third of all male and over half of all female blue-collar workers in Austria earn less than the amount that is required of immigrants for the acquisition of citizenship or long-term residence (Stern 2011). Immigrants wishing to establish residence in Austria are therefore faced with highly selective financial hurdles.

The new integration requirements represent an additional burden in the process of acquisition of rights that is likely to disproportionally affect people of lower income and with little formal education. For the wealthy and well educated, who can afford private German courses, the requirement of achieving level A1 of language knowledge before entry or B1 after 5 years of residence is unlikely to prove an insurmountable obstacle. The same cannot be said for lower income persons or families, for whom attending private language courses and travelling might be financially out of reach. Not to mention that those on a highly skilled resident permit are exempted from the requirement of proving A1 before entry, and those coming from high-income countries are generally allowed visa-free entry and are thus in a privileged position.

The Austrian policy as a whole can therefore be characterized as one of '*immigration choisie*', in which the selection criterion is primarily socio-economic status. From the civic or cultural perspective, integration requirements remain 'symbolic politics'. Overall, however, civic integration requirements are part and parcel of a larger policy that has concrete material effects of an exclusionary nature on the acquisition of rights, particularly on persons of lower socio-economic status. This raises serious normative questions concerning the transformation of citizenship in the context of migration and globalization. The introduction of selective income requirements for the acquisition of citizenship status and substantive citizenship rights reintroduces wealth as a criterion for membership and political participation – an inverse movement to the democratizing changes brought about in the 19th century that abolished tax and property requirements for voting, thus emancipating the working class and eliminating economic status as a foundation for citizenship.

These findings are also relevant for the theoretical debate on postnational membership. Family reunification and denizenship rights are paradigmatic post-national rights, for which the justification lies in human rights commitments and liberal principles rather than on nationality or on economic considerations. It turns out that the new civic integration requirements in Austria principally affect these groups, thus putting into question the postnational hypothesis. Although supranational and national legislation establish a high level of rights for denizens and family migrants, these rights are made subject to increasingly restrictive criteria. By facilitating the support of national governments to international commitments that open-up membership

rights to immigrants in principle, these criteria at the same time enable and contain the expansion of rights beyond the confines of nationality – a phenomenon I have theorized elsewhere under the concept of 'restrictive rights' (Mourão Permoser 2010). Whereas the imposition of restrictive conditions on the acquisition of 'postnational' rights is not a new phenomenon, this article has shown that – in the absence of strong liberal constraints – the tendency is for these conditions to become progressively more exclusionary.

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The Role of the State and the Image of Migrants Debating Dutch Civic Integration Policies, 2003-2011

Saskia Bonjour

The mushrooming of civic integration policies is one of the most remarkable trends in migration and integration policies in Europe today. While language and integration requirements have long been part of many European naturalization procedures, formalised civic integration programs made their appearance in Europe in the 1990s. In recent years, a growing number of EU countries have made entry and residence rights conditional on participation in or successful completion of civic integration courses.

Civic integration policies are one of the ways in which contemporary European states strive to protect the cohesion and regulate the diversity of their societies. They reflect the assumption that a certain degree of homogeneity among the population is necessary for society to function, and that state intervention is necessary to safeguard this homogeneity. As Inez Michalowski (2009a: 23) rightly argues, these policies reveal "the competence that a state attributes itself in the management of cultural and religious diversity". Studying debates and policies of civic integration allows us to identify different conceptions of the role of the state in ensuring order and cohesion in society.

There is a lively ongoing debate in the literature as to whether or not these new policies of integration and citizenship should be considered 'liberal' (Joppke 2007a, 2007b; Guild, Groenendijk & Carrera 2009; Michalowski 2009a; Joppke & Baubock 2010). This debate is primarily normative in nature. Emphasis has mostly been put on the *content* of civic integration policies and tests, investigating *what* migrants are supposed to learn and whether these requirements transgress the liberal dictum that the state respect citizens' private lives, thoughts and opinions. This paper takes a different angle, inquiring *how* migrants are expected to learn, i.e. which roles and responsibilities are ascribed to the state, to migrants, and to other actors in the process

of acquiring the required knowledge and skills. This paper aims to show that if we wish to understand and assess the different conceptions of the role of the state inscribed in civic integration policies, the question of *how* is at least as important as the question of *what*. It also argues that the role ascribed to the state is intrinsically related to the way in which migrants as a policy target group are portrayed.

In order to do so, this paper investigates the role and responsibilities attributed to the state in political debates and policies of civic integration in the Netherlands between 2004 and 2011. In recent years, the Netherlands has embarked upon reforms which redistributed the responsibility for civic integration among individual, state, and social actors in more radical and innovative ways than any other European country. This paper analyses the political debates in which this reform was shaped, i.e. the parliamentary history of the Law on Civic Integration (*Wet Inburgering*), which Dutch parliamentarians have been debating from 2003 until the present day. The data consists of 345 documents from the parliamentary records, including government memoranda, legislative proposals, records of commission meetings and plenary debates, as well as parliamentary motions, questions and amendments [1].

1. A Short History of Dutch Civic Integration Policies

In the early 1990s, the Netherlands started to move away from the 'ethnic minorities policies' that had given rise to its reputation of a multicultural country. The government opted for an 'integration policy' that aimed primarily at individual socio-economic independence, rather than at emancipation of groups. Cultural matters were considered a private rather than a government concern. The neoliberal ideology of 'individual responsibility' that had started to shape the reforms of the Dutch welfare state since the mid-1980s was now also applied to the field of migrant incorporation, leading to a new emphasis on the duties that should accompany rights (Scholten 2007: 82-85; Bonjour 2009: 192-198).

As part of this shift, the first civic integration policies for newcomers were introduced in 1996 and laid down in the Law on Civic Integration of Newcomers (*Wet Inburgering Nieuwkomers*) of 1998. Foreigners – other than labour migrants – coming to the Netherlands for non-temporary purposes were obliged to participate in a Dutch language course as well as in societal and professional orientation programs. The municipalities contracted the semi-governmental Regional Education Centres (*ROCs*) to provide the courses, which were free of charge for the participants. Failure to participate was sanctioned with a fine. In parallel to this obligatory program for newcomers, a voluntary program was set up for so-called 'oldcomers' (*oudkomers*), i.e. people of migrant origin who had been living in the Netherlands for some time (Commissie Blok 2004: 118-124).

While it is important to note that the introduction of obligatory civic integration policies predates the turn of the century, current Dutch civic integration policies can only be understood as part of the political response to electoral successes of the anti-immigrant far-Right, i.e. of the *Lijst Pim Fortuyn* which obtained 26 out of 150 Lower

[1] These documents were selected from the online archives of the Dutch Parliament under Kamerstuknummers 29543, 30308, and 31143, and through complementary keyword search.

House seats in 2002, and of Geert Wilders' Freedom Party which obtained 24 seats in 2010. Their success was interpreted as a vote of no-confidence against the entire political establishment. This is why all political parties have adopted a much more restrictive line on migration and integration, so as to let their electorate know that their discontent had been heard and understood (Bonjour 2009: 243-244).

In the second Balkenende government – consisting of Christian Democrats, Conservative Liberals and Liberal Democrats – which entered office in 2003, the task of responding to what was interpreted as the electorate's call for radical change in the domain of migrant integration was entrusted to Rita Verdonk, Conservative Liberal minister of Foreign Affairs and Integration. She first presented her plans for a fundamental revision of civic integration policies to Parliament in April 2004[2]. The legislative proposal for the Law on Civic Integration followed in September 2005[3]. It was adopted in November 2006 and entered into force on 1 January 2007.

The new Law brought about a number of fundamental changes. First, the obligation to participate in the course was replaced by an obligation to pass the exam. Failure to pass the exam within five years – three and a half years for newcomers who had passed the civic integration test abroad[4] – was sanctioned with a fine. In addition, the granting of a permanent residence permit was conditional upon passing the exam. Second, the target group of obligatory civic integration was expanded from newcomers to 'oldcomers'. All foreigners were obliged to pass the exam, regardless of their length of residence in the Netherlands, except if they had followed at least eight years of primary or secondary education in the Netherlands or disposed of a diploma or certificate from a Dutch educational institute. An estimated number of 250,000 'oldcomers' would be subject to the obligation of civic integration[5]. Most importantly in the context of this paper, the Law on Civic Integration brought major changes to the role and responsibility attributed to the state in implementing civic integration policies.

The provision of courses was opened up to the 'free market': the monopoly of the semi-public Regional Education Centres was abolished, so that any organisation or company was allowed to provide civic integration courses. In addition, 'personal responsibility' was to be a leading principle. This implied that as a rule, individual participants were to decide for themselves how to prepare for the exam – e.g. in which institution to follow courses – and to pay for the courses themselves. Those who could not afford to do so could borrow money from the government. Part of the costs (70% with a maximum of €3,000) would be reimbursed if the exam was passed within three years. Thus, as a general rule, the role of the state would henceforth be limited to drafting and administering the exams, and providing certain financial facilities. Only

[2] Tweede Kamer (further: TK) 29543 (2), 23 April 2004.

[3] TK 30308 (1-3), 21 September 2009.

[4] The obligation to pass a civic integration test as a condition for family migrants and religious ministers to be admitted to the Netherlands was introduced by the Wet Inburgering in het Buitenland of 2005 (Bonjour 2010).

[5] TK 30308 (3), 21 September 2009; EK 30308 (F): 7-8, 27 October 2006.

for specific groups – unemployed, housewives[6], religious ministers and newcomers admitted on asylum grounds – were municipalities allowed to select and finance the course program. Even these groups were to pay a contribution of €270 to the costs of the course.

In the House of Representatives, there was broad and warm support for fundamental reform of civic integration policies, and no political party questioned the need of obligatory courses about Dutch language and society for both newcomers and 'oldcomers'. However, the left-wing opposition was concerned about the financial burden imposed on participants, about the obligation to pass the test, and most of all about the limited involvement of the state in the preparation process leading up to the exam. The Social Democrats proposed that municipalities be allowed to offer a civic integration provision to everyone, instead of only to specific vulnerable groups[7]. Notwithstanding such differences of opinion, *all* the 150 members of the House of Representatives eventually voted in favour of the government proposal, except for one member of the Liberal Democrat party[8].

It should therefore not come as a surprise that the change of government in 2007 did not lead to a radical reversal of the changes introduced by the Law on Civic Integration. The centre-Left cabinet Balkenende IV[9], composed of Christian Democrats, Social Democrats and the small reformed ChristenUnie, maintained the obligation for newcomers and oldcomers to pass the exam, even lowering the time allowed to pass the exam before a fine is imposed from five to three and a half years for all participants. It also kept the principle of a free market for civic integration course providers. However, the Social-Democrat minister Ella Vogelaar, who replaced Rita Verdonk, significantly softened the interpretation of 'personal responsibility'. Thus, municipalities were given the possibility to offer the courses for free, i.e. not to oblige participants to pay the €270 contribution. Moreover, municipalities could offer a civic integration provision – implying the municipality would select the course program and pay for (most of) it – to all participants, instead of only to vulnerable groups[10]. Although in principle, municipalities still have the possibility to oblige migrants to prepare for the exam through their own means, in practice municipalities provide and finance the civic integration program for almost everyone. Between 2007 and 2009,

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[6] The official definition of this category was persons "not entitled to unemployed benefits and without paid labour", i.e. according to the government "mostly women in a disadvantaged position". TK 29543 (4): 11, 7 December 2004.

[7] TK 27083/29543 (53), 6 June 2004; TK 30308 (37), 9 June 2006.

[8] The sole dissenting member was the Liberal Democrat Koser Kaya. TK 30308 plenary debate: 6084, 7 July 2006. In the indirectly elected Senate, the Liberal Democrats, Greens and Socialist Party voted against the legislative proposal. Eerste Kamer (further: EK) 30308 plenary debate: 407, 28 November 2006.

[9] The cabinet Balkenende III was a transition cabinet, in office from June 2006 until February 2007, composed of Christian Democrats and Conservative Liberals and mainly responsible for organising elections.

[10] TK 31143 (1) appendix: 15-16, 7 September 2007; VROM 'Nieuwsbrief Deltaplan Inburgering, No. 17, december 2009', http://www.vrom.nl/pagina.html?id=4590, consulted on 1 June 2010.

more than 100,000 newcomers and oldcomers embarked upon a civic integration program offered by their municipality, while less than 8,000 persons prepared for the exam on their own, making use of the loan and reimbursement facilities available to this effect [11]. Thus, the role of the municipality in implementing civic integration policies has been restored to its old state. This might have been temporary however, since the current Conservative Rutte government, which entered office in 2010, has announced its intention to restore migrants' responsibility for "reaching the required level of knowledge of Dutch language and society. Migrants who need a course will have to pay for it themselves" [12].

2. Theoretical Analyses of Conceptions of the Role of the State in Dutch Civic Integration Policies

Because of the emphasis put on 'individual responsibility', Dutch civic integration policies have been interpreted as 'neo-liberal' policies (Joppke 2007b: 248; Schinkel & Van Houdt 2010: 700). Neoliberalism is generally associated with a withdrawal of the state. Thus Michalowski (2009b), who investigated the Dutch privatization of civic integration courses from a historical perspective, argues that the Law on Civic Integration was no less than an attempt by the second Balkenende government at fundamental change in policy paradigm, as it "questioned the previously valid paradigm that integration was a task of the state" (2009b: 273). The image here is one of the state disengaging from civic integration.

This same image is presented and complicated by Joppke (2007a: 7-8) who states that "the Dutch state has engaged in a paradoxical double move of withdrawal from and increased presence in the integration process". The "withdrawal", according to Joppke, is visible in the "farming out" of course provision to private actors and in pushing the financial burden towards the individual migrant. The "increased presence" on the other hand pertains to Joppke's observation that "coercive state involvement has massively increased", most notably through making entry and residence rights dependent on meeting civic integration requirements.

In my view, the image of "withdrawal" of the state, so common in political and analytical discussions of neo-liberalism, is not the most insightful metaphor to understand the change in the conception of the role of the state underlying recent Dutch reforms of civic integration policy. Michalowski is entirely justified in labelling this a paradigmatic change: however, what the second Balkenende government proposed is not *less* state involvement, but a *different* state involvement.

This resonates with the arguments of scholars inspired by the writings of Michel Foucault who investigate the workings of 'neo-liberal' forms of government. Analysing 'neo-liberalism' not as an ideology but as a technique of government, they show that neo-liberal governing – even if it is ideologically geared towards limiting the state and maximizing individual autonomy – is still governing. Thus Burchell (1993: 271) explains that the liberal "principle of government requires of the governed that they freely conduct themselves in a certain way". In neo-liberalism, this "rational self-

[11] TK 31143 (84) appendix: 24, 12 August 2010.
[12] TK 32824 (1): 11, 16 June 2011.

conduct of the governed" is conceived "not so much a given of human nature as a consciously contrived form of conduct". There is a task here for the government, to ensure that the optimal conditions for liberal rule to function are present in society, in the market, and in the individual citizen. Thus, governments which have been "presented as being engaged in a project of 'rolling back the state'" have "nonetheless been very inventive in the models of action constructed for different areas of social life" (Burchell 1993: 274). The forms of government which Burchell (1993: 275-276) calls "responsibilisation" or "autonomization" may be new and different, but they are "still a technology of government" (cf. Dean 2002: 42-43, Rose 2007: 144).

Joppke (2007a, 2007b) and Schinkel and Van Houdt (2010) have drawn inspiration from this literature, sometimes subsumed under the heading of 'governmentality', in analyzing Dutch civic integration policies. Thus Joppke (2007a: 16) refers to this literature to explain that "the repressive impulse" in civic integration policies "stems from liberalism itself". Joppke seeks an explanation for the paradox that liberal policies may strive to coerce individuals into being autonomous, a paradox that has been addressed in the governmentality literature. Dean (2002: 38, 40) for instance argues that liberalism is not incompatible with authoritarian mentalities or practices, indeed that liberal government necessarily has an "authoritarian dimension". Dean (2002: 46-49) states that – as post-colonial and feminist scholars have shown – liberal government necessarily identifies different categories of people "according to their capacities for autonomy", amongst whom "subject or dependent populations who cannot, or cannot yet, be governed through freedom". For the latter category – which may range from chronic welfare dependents to drug addicts, elderly, people in developing countries or teenage mothers – "coercion might be a condition of acting in their best interest". Likewise, Joppke (2007b: 268) quotes John Stuart Mill stating that "Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually effecting that end". Schinkel and Van Houdt (2010) describe Dutch citizenship policies since 2000 as an example of "repressive responsibilization" which "involves the moral education of citizens deemed unable to assume responsibility".

Clearly, the civic integration policies designed by the second Balkenende government were coercive in nature, since migrants were obliged not only to make the effort of learning about Dutch language and society, but actually to pass the exam. Clearly also, these policies were aimed at turning migrants into autonomous citizens. The paradox explored by the scholars quoted above then, was certainly present in these reforms. However, as I shall argue below, the solution they propose only fits half of the Dutch political spectrum. State coercion is entwined with representation of migrants as a weak group, inapt to shoulder responsibilities, in the discourse of the political Left, but *not* in the discourse of the political Right. The analyses of Joppke as well as Schinkel and Van Houdt suffer from a weakness that is not uncommon in the 'governmentality' literature: a neglect of the party politics through which policies are shaped. A closer look at Dutch political debates about civic integration abroad shows that conceptions of the state and portrayals of migrants relate to each other in very different ways in the discourses of different political parties.

3. The Role of the State and the Image of Migrants: Views from the Right

In the view of the second Balkenende government, as expressed by Conservative Liberal minister Rita Verdonk, the migrant integration policies conducted in the past had failed, mostly due to the perverse effects of the role which the state had adopted in past decades. On the one hand, the government had done too little: past policies had been too "non-committal", instead of imposing unambiguous obligations. On the other hand, the government had done too much, treating migrants as "care categories that need to be taken by the hand by the government" [13].

First, the government decided to entrust the responsibility for providing civic integration courses to the free market, rather than to the semi-public Regional Education Centres. Doing away with this monopoly and opening the market was expected to enhance the diversity and the quality of the courses and to lower the prices. As a Conservative Liberal MP argued: "People are different and may have different demands. (…) If the market is good at anything, it is at making supply meet demand. (…) This will probably lower the costs too" [14]. Upon insistence from Parliament, including the Christian Democratic coalition party, the government eventually agreed that "some form of consumer protection" was necessary. It opted for a non-compulsory quality mark developed by business itself, since this offered the best "balance between consumer protection and free access to the market" [15].

'Individual responsibility' had been a mantra in Dutch migrant incorporation policies since the early 1990s. However, the second Balkenende government pushed for a more radical interpretation of this 'individual responsibility', in which migrants would be expected to prepare for the civic integration exam on their own, with only limited financial state assistance. Asking migrants to make this effort was thought legitimate because it was the consequence of their own choice to move to the Netherlands and because it was primarily in their own interest to "invest in their future in the Netherlands" [16]. Moreover, as Minister Verdonk argued, "personal responsibility yields the best results. It stimulates people to get busy themselves and to find the best way to prepare for the civic integration exam" [17].

Importantly, this argumentation is based on a representation of the target group as strong and able persons, in contrast to past policies and present opponents who are said to reduce migrants to "care categories", whereas minister Verdonk objected that "coming to the Netherlands from another country does not all of a sudden turn people into poor wretches" [18]. She argued:

> We let people take responsibility for obtaining a drivers licence, getting married, having children, why should we take charge of civic integration? (…) Why not put our faith in people's strength? They are perfectly able of taking their own responsibility [19].

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[13] EK 30308 Plenary: 353; 21 November 2006.

[14] TK 27083 (44): 22; 21 June 2004.

[15] TK 27083 (47), 30 June 2004; TK 30308 (3): 9, 21 September 2005.

[16] TK 29200 VI (21): 24, 12 October 2003; TK 29543 (4): 4, 7 December 2004; TK 30308 (7): 56, 23 December 2005.

[17] TK 27083 (44): 24, 21 June 2004.

[18] EK 30308 Plenary: 353, 21 November 2006.

[19] TK 30308 (63): 40, 12 June 2006.

Likewise, Conservative Liberal parliamentarians pleaded for breaking with the policies of the past, when "civic integration was in the hands of social workers and as long as civic integration remains a matter of social assistance, continuous failure (…) is rewarded with extra attention" [20]. No longer should migrants be treated as weaklings: "Newcomers have chosen the Netherlands. In the jungle that this world is, they found their way to the Netherlands. It would be condescending to assume that they need the government to take them by the hand" [21]. In a discussion with a Socialist parliamentarian, a Conservative Liberal MP emphatically professed his creed: "I do not see people as patients. On the contrary, I see people as adults and independent and that is how the government should treat people" [22].

In the election program which won them the elections of June 2009, the Conservative Liberals wrote:

> Allochthons are not pitiful. They can be called upon to take their responsibility, just like any other Dutch person. That does not fit with a government (…) which takes the responsibility from their shoulders. It seems sympathetic to do so. But underneath lies a deeply condescending, stigmatizing attitude of pity [23].

The Christian Democrats agreed wholeheartedly, stating that "our party considers newcomers as adults who make conscious choices and are aware of the consequences of their choices for themselves and for Dutch society" [24].

The second Balkenende government initially proposed three exceptions to the rule that migrants should be expected to be able to prepare for the civic integration exam by themselves: unemployed, housewives, and spiritual leaders. At the request of Christian Democrat MPs, refugees were added as a fourth category [25]. Municipalities would offer people in these four categories the possibility to follow a civic integration program selected for them, in return for a relatively modest financial contribution of €275. With the exception of spiritual leaders who were offered a program because of "the major societal importance of their integration" [26], increased state involvement was deemed necessary for these 'special groups', because unlike the rest of the target group, they were not considered strong enough to carry 'personal responsibility' for their own integration. While these groups were consistently presented as 'exceptions' to the general rule of 'individual responsibility', the numbers revealed a different picture. Minister Verdonk aimed for 74,000 migrants per year doing their civic integration, out of which 47,000 – more than 60% – would be offered a course by their municipality [27].

Nevertheless, in the second Balkenende government's rhetoric representation of civic integration policies, the state withdrew from the process of selecting and

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[20] TK 27083 (44): 20, 21 June 2004.
[21] TK 29200 VI (94): 36, 30 October 2003.
[22] TK 27083 (44): 20, 21 June 2004.
[23] VVD Verkiezingsprogramma 2010-2014, 'Orde op Zaken. Zeker Nu': 34.
[24] TK 28198 (5): 6-7, 4 October 2002.
[25] TK 30308 (12): 11, 27 February 2006.
[26] TK 30308 (3): 24, 21 September 2005.
[27] EK 30307 Plenary: 359, 21 November 2006.

providing civic integration courses, entrusting these tasks to the market and to migrants. This did not mean however, that the state was to be an irrelevant actor in the policies introduced by the Law on Civic Integration. As minister Verdonk put it, "individual responsibility of the citizen for civic integration (…) does not mean just throwing everything on the citizen's plate"[28]. In fact, nothing could be further from the Dutch debates and policies of civic integration since the turn of the century than a *laissez-faire* approach to migrant incorporation. Government and parliamentary discourse is punctuated with references to the 'ambition' and 'decisiveness' that state policies should reflect. The political Right did not want *less* state involvement: it wanted a *different* state involvement.

What the Dutch right-wing politicians' new conception of the role of the state in civic integration policies was, and how it related to their representation of migrants as a policy target group, was formulated most explicitly by the Christian Democrats:

> Our party lives with the inspiration and the mission to give room to people's talents. Our goal with this Law [on Civic Integration] is to place people in their strength by teaching them to find their own way and place in society and thus to become its citizen[29].

The Christian Democrats want a policy that challenges people and poses demands. In English we would talk of a '*demanding*'[30] policy, a policy that equips people for carrying responsibility. That is where integration policies have fallen short these last years[31].

This relation between starting from people's strength and formulating demands runs as a red threat through the discourse of the Christian Democrats, who argued that "we do not take people seriously if we do not couple [civic integration courses] to a proper exam"[32] and who summarized their views on the Law on Civic Integration thus: "This cabinet has opted for a demanding integration policy, where people are not seen as victims but as responsible individuals who are capable of shaping their existence and are not victims of circumstances"[33]. In the words of Minister Verdonk, the role of the government would be "to formulate the standards that the migrant must meet to be able to function in Dutch society" and to "enable people to realize their own responsibility" through "positive and negative stimuli"[34].

The minimum standards of skills and knowledge that migrants need to be able to "function in Dutch society", as formulated by the second Balkenende, are not insignificant. They include speaking and writing Dutch at level A2 ECFR, to be demonstrated not only in an exam, but also in practical situations. This "practical examination" involves either a series of four assessments, or assembling a portfolio

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[28] TK 29200 VI (95): 14, 3 November 2003.

[29] TK 30308 Plenary: 58427, 27 June 2006.

[30] In English in the original text.

[31] TK 29200 VI (94): 14, 30 October 2003.

[32] TK 27083 (44): 10, 21 June 2004.

[33] TK 30308 (63): 9, 21 June 2006.

[34] TK 30308 (16): 12, 27 April 2006; TK 27083 (44): 24, 6 June 2004; TK 30308 (7): 108, 23 December 2005.

of 20 "proofs" which establish that the applicant has in fact used Dutch to obtain a driver's license, look for a job, or speak to his medical practitioner[35]. In addition, the applicant has to demonstrate knowledge of Dutch society. The curriculum was significantly expanded in comparison to the civic integration program that had been in place since the 1990s, most notably with "knowledge about how people interact with each other in Dutch society"[36]. The terms of the exam on Knowledge of Dutch Society included the requirement that the migrant be able to "understand and employ different Dutch manners, deal with unusual or conflicting habits, values and norms, participate in social networks, and engage in and maintain everyday social contacts". This includes being able to cope with direct criticism, making appointments before visiting acquaintances, and knowing how to use a shopping trolley[37]. Both Christian Democrats and Conservative Liberals pleaded consistently for a high level of language requirements. The Conservative Liberals in particular also felt strongly that civic integration should cover not only legal prescriptions but also "other guidelines that citizens must keep to": "civic integration is ensuring that newcomers know what the prevailing rules of the game, values, norms and social etiquette so that they can stand on their own feet as soon as possible"[38].

The role attributed to the state in civic integration policies by the Dutch political Right was far from a small or insignificant one. The state is no longer to care and to provide, as it previously did. Instead, the state is to define the minimum common standards required for the preservation of the cohesion of Dutch society, and to make sure that migrants meet these standards. The enforcement instruments put at the state's disposal – positive and negative 'stimuli', i.e. financial loan and refund facilities, and sanctions in the shape of fines or limited entry and residence rights – are far from negligible. This confirms the argument of scholars of intergovernmentality, that to govern through 'individual responsibility' is not to govern less, but to govern differently.

However, the governmentalist solution for the paradoxical fact that liberal governments recurrently use illiberal policy instruments does not fit here. The Christian Democrats and Conservative Liberals did not present the target group of civic integration as a 'weak' group, as 'unable to assume responsibility'. To the contrary, a core element of their argument was the rejection of the 'victimization' of migrants by their political opponents. They emphatically refused to consider migrants as a 'vulnerable' group, unable to look out for their own interest. In the discourse of the Dutch political Right, migrants were construed as strong, able citizens, capable of taking care of themselves just like other Dutch citizens.

4. The Role of the State and the Image of Migrants: Views from the Left

From the first debates on the Law on Civic Integration, the Social Democrats had criticized Minister Verdonk's plans for "marginalizing the responsibility of the

[35] DUO/IB-Groep, Inburgeringsexamen: Praktijkexamen, retrieved 7 April 2011 from www.inburgering.nl.

[36] TK 30308 (7): 65, 23 December 2005.

[37] TK 30308 (25) Appendix: 7, 11, 14-15, 2 June 2006.

[38] TK 29800 VI (101): 13, 13 December 2004.

government. The newcomer is left to find his way between legal obligation and market mechanisms. Individual responsibility is primary in our vision too, but as new citizens of our country they must also be enabled to participate"[39]. In a similar vein, the Greens argued that "the obligation to learn must be met by the right to education"[40]. The Liberal Democrats stated that "considering the efforts that people make, [the state] has a duty to provide"[41]. Likewise, the Socialist Party argued that "if you introduce an obligation, the migrant (…) at least has a right to a good and fitting [civic integration] provision"[42]. This criticism increased as the first results of the Law on Civic Integration proved severely disappointing. Before the Law entered into force, some 30,000 persons per year started a civic integration course. While the aim of the Law was to double this number, it actually dropped below 10,000 in 2007[43]. This drop was partly attributed to severe start-up problems in the municipalities, but it was also interpreted as a result of flaws in the original design of the Law on Civic Integration.

Seven months after entering office, the Social Democrat minister Ella Vogelaar, responsible for civic integration policies in the fourth Balkenende government, announced that municipalities would henceforth be allowed to offer a course to any member of the target group, not just to the 'special' categories. In explaining why she chose to "shift the responsibility for providing a course to municipalities", Minister Vogelaar wrote: "the personal responsibility of applicants remains fully valid on a number of points, but what is at stake is finding the proper balance between this personal responsibility and the societal interest of having as many people as possible doing civic integration. In the Law on Civic Integration, this balance was insufficiently found"[44]. Although in principle, the possibility remained for individual migrants to select and finance their civic integration program themselves with the help of loan- and reimbursement facilities, in practice the focus both of local implementation and of political debate came to lie almost exclusively on courses selected and financed for migrants by the municipalities. While the original Law stipulated that with the exception of asylum seekers, migrants were free to reject the offer if they preferred to prepare for the civic integration program on their own, in May 2008 it was decided that all migrants could be obliged to participate in the civic integration program selected by the municipality[45]. Thus, the role of the municipalities in the provision of civic integration courses was fully restored. No formal changes were made to the free market provision of courses, but in practice the municipalities became almost the only buyer on the market[46]. The state may no longer have had a monopoly on the offer, but it had a virtual monopoly of the demand, thereby retrieving significant control over the market.

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[39] TK 27083 (44): 6, 21 June 2004.
[40] EK 303087 Plenary: 349, 20 November 2006.
[41] TK 30308 (63): 44, 12 June 2006.
[42] TK 31318 Plenary: 6098, 21 May 2008.
[43] EK 30307 Plenary: 359, 21 November 2006; TK 31143 (25): 3, 3 October 2008.
[44] TK 31143 (9): 6, 18 October 2007.
[45] TK 31318 (7): 4, 21 May 2008.
[46] TK 31143 (84) appendix: 24, 12 August 2010.

The conviction of Minister Vogelaar and the left-wing parties that the state should play a more caring and providing role in civic integration policies was closely related to the way in which these politicians – especially the Social Democrats and Socialist Party – perceived the target group of civic integration. Minister Vogelaar wrote:

> If the government gives the impression that it will take care of everything, citizens will not feel called upon to do much themselves. On the other hand, if the government leaves everything to citizens, it is likely that only those with the necessary competences will manage to get things well organized [47].

When asked about the possibilities for individual migrants to organize their own civic integration trajectory, Minister Vogelaar answered that "this is an entirely practicable road for certain applicants, especially for the well-educated" [48]. In other words, this government thought only a very specific part of the target group fitted the profile of able and autonomous citizens that underlay the original Law on Civic Integration. For the rest of the target group, state provisions were deemed necessary. The fourth Balkenende government still sought to distance itself from a 'victimisation' approach: "People in a disadvantaged position easily tend to consider themselves victims of circumstances they cannot control. An activating government challenges citizens to give up their role of victim and take control" [49]. Victims or not, migrants were once again described as 'in a disadvantaged position'. The Social Democrats stated that "responsibility must be placed where it can factually be carried; this involves capacities and financial resources", arguing that they knew "from experience that these target groups in particular need some guidance to be able to carry this responsibility" [50]. Similarly, the Socialists claimed that "the target group of this law is one that needs good guidance to be able to carry personal responsibility" [51]. They wondered how "newcomers and oldcomers will be able to find and choose a civic integration course on their own", since "the reason they are going to follow the course in the first place is that they cannot find their way around in the Netherlands on their own yet" [52].

If these parties favoured a more important role for the municipalities in selecting and financing the civic integration programs, it is because they did not think migrants would or could prepare for the civic integration exams by themselves. The Social Democrats thought the system as it existed before Verdonk's 2006 reform, where "municipalities take people by the hand from day one and send them on a course, remains attractive and simple": "patronizing perhaps, but very practical for people who just arrived in the Netherlands" [53]. The Socialist Party was equally in favour of the previous system, where "new citizens are collared and sent to a course right upon

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[47] TK 31268 (2): 20-21, 13 November 2007.
[48] TK 31318 Plenary: 6108, 21 May 2008.
[49] TK 31268 (2): 21, 13 November 2007.
[50] TK 29200 VI (95): 4, 3 November 2003; TK 30308 Plenary: 5862, 27 June 2006.
[51] TK 30308 (6): 23-24, 29 November 2005.
[52] TK 30308 (63): 17, 12 June 2006.
[53] TK 29800 VI (101): 5, 13 December 2004; TK 27083 (44): 8, 21 June 2004.

arrival"[54]. They argued that "we could tell people who come here: it is nice to have you, you can stay, there is the school and that is where you will get an education, because you need that to participate here". To the Socialist Party, this was "paternalism in the positive sense of the term. This is how we position ourselves towards our own children too"[55]. The metaphor of 'children' was commonly used in the 19th and early 20th century to explain why women and people of colour were granted limited civil and political rights. This then is exactly the liberal justification of illiberal measures identified in the literature: certain categories of people are thought unable to look out for their own best interest (Dean 2002: 46-49; Joppke 2007b: 268; Schinkel & Van Houdt 2010: 708-709).

The fourth Balkenende government never tired of repeating that "the personal responsibility (…) laid down in the Law on Civic Integration remains the starting point"[56]. However, this 'starting point' was interpreted differently. To the previous government, 'personal responsibility' had meant that migrants were to get by without state help. In contrast, the new government wrote that the "the personal responsibility of the migrant for his or her civic integration in the Netherlands remains intact. Concretely, this implies the legal obligation to pass the civic integration exam on time".[57] Thus, responsibility becomes an obligation, a requirement to make a certain effort:

> We expect new Dutch to make an effort to participate in our society and to take the chance that we offer. That is important not only for themselves and for their surroundings, but most of all for the raising of their children. (…) Civic integration is nothing more or less than a moral responsibility[58].

Because "immigrants have chosen to build their lives in the Netherlands", they have a "moral obligation to make an extra effort"[59]. They "may be expected to accept the support offered [for their civic integration] as a welcome gift, and to seize it with both hands. After all, it is an investment in their own future"[60]. In this left-wing discourse; 'responsibility' is disconnected from notions of autonomy or capability, to be reinterpreted as a (moral) obligation. This interpretation of 'personal responsibility' and representation of the target group is much closer to the "repressive responsibilization" defined by Schinkel and Van Houdt (2010: 708-709) as "the moral education of citizens deemed unable to assume responsibility", than the discourse of the Dutch political Right.

5. Conclusion

Civic integration policies are based on the assumption that the diversity produced by past and present immigration puts a strain on social cohesion, to the extent that state

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[54] TK 30308 (63): 14, 12 June 2006.
[55] EK 30308 Plenary: 386, 21 November 2006.
[56] TK 31143 (1) appendix: 6, 7 September 2007.
[57] TK 31318 (3): 2, 24 December 2007.
[58] TK 31143 (67): 4, 25 August 2009.
[59] TK 31268 (25): 4-5, 17 November 2007.
[60] TK 31268 (25): 6, 17 November 2007.

intervention is necessary. Policies and debates on civic integration reveal different conceptions of the role attributed to the state in managing diversity.

The civic integration policies conducted in the Netherlands since the turn of the century may be characterised as neoliberal, in that they start from the principle of individual responsibility of the migrant. Even though the role of the state in providing courses was drastically reduced, Dutch civic integration policies illustrate scholars of governmentality's arguments that governing neoliberally means governing *differently* rather than governing *less*, and that governing neoliberally does not exclude governing through coercion. However, because the governmentality literature tends to neglect party politics, it has overlooked the very significant differences between the positions adopted by political parties on the role of the state in civic integration policies.

Political parties on the Left of the political spectrum want the state to play both a coercive and a providing role. Civic integration courses should be obligatory and they should be organised and financed by the state, because migrants as a policy target group are perceived as vulnerable and weak, unable to acquire the required knowledge and skills through their own means. This combination of coercion and care fits well with the governmentalist explanation of the paradox of repression by liberal regimes: state coercion is deemed justified for groups deemed unable to look out for their own best interest.

This explanation does not fit the right-wing parties' conception of the role of the state in civic integration policies however. The Dutch political Right wants the state to play a demanding and facilitating role. Whereas the obligation favoured by the Left focuses on input, i.e. on making an effort and participating, the obligation favoured by the Right is about output, i.e. about standards to be met. The state should define high standards for migrants to meet, but intervene as little as possible in *how* migrants do so, because migrants are portrayed as autonomous persons who are able to take care of themselves. Coercion is deemed justified because the general interest is thought to require that all members of Dutch society share a basic set of values, knowledge and skills. In addition, coercion is framed as a way of 'placing people in their strength'. Migrants are assumed to have considerable resources and 'demanding' policies are considered a legitimate means to stimulate them to make full use of these resources, rather than smothering their initiative and resourcefulness by too much state care.

The way politicians speak about migrants has a direct impact on their public image and thereby on their life circumstances and opportunities. The migrant population in the Netherlands appears to be stuck between the political Left which represents them as weak and vulnerable, thus setting them apart from the rest of the population and contributing to their 'Othering', and the political Right which poses high demands and offers minimal provisions because it represents them as strong and able. While the literature on citizenship policies is currently dominated by the question of liberal limits to state intervention, the search for a third way out of this dilemma is a no less complex and pressing question.

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Civic Integration as Symbolic Policy? The Case of the Integration Agreement in Italy

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In comparison to Northern and Central European countries, Italy is a latecomer to the process of diffusion of civic integration policies that has been taking place throughout the 2000s among EU member states. The Integration Agreement (IA), which obliges newly arrived immigrants to acquire basic knowledge of Italian language, history and institutions in order to get renewal of their residence permits, was introduced in 2009 in the context of the Security Law, and came into force only in March 2012. This new policy would seem to have introduced a radical change in the Italian approach to immigrant integration, which has traditionally been characterized by the prevalence of informal processes of *de facto* inclusion in the labor market (Ambrosini 2001), and by an extremely localized, fragmented system of integration policies.

The main goal of this chapter is to assess whether and to what extent a radical change, from local to national, is actually taking place within Italian immigrant integration policies, or whether continuity prevails notwithstanding the alignment to European civic integration policy. To this end, we undertake an in-depth analysis of the policymaking process that led to the adoption of the IA, to the definition of the implementation rules and to its recent enforcement.

According to several authors, civic integration policies have two goals, namely integration intended as acculturation on the one hand, and immigrant selection on the other. With regard to Austrian civic integration policies, Mourão Permoser (2012) challenges the prevailing interpretation of civic integration policies as restrictive and exclusionary. Beyond the rhetoric, the introduction of integration requirements in Austria would not have engendered real forms of exclusion or imposition of the dominant culture on migrants. Thus, according to Mourão Permoser, Austrian civic integration policies can be better interpreted as symbolic politics.

In the case of the Italian IA, the link between residence and integration means that immigrants who have not fulfilled the established integration requirements can be expelled from the country. At the same time, the emphasis on individual commitment and the fact that migrants are held responsible for their own integration echoes the discourses underlying civic integration policies in other European countries. Does the introduction of the IA represent another example of the neo-assimilationist policy direction (Joppke 2007) supposedly taking place all over Europe? Or does it rather indicate an Italian approach to civic integration policy?

In other words, this chapter intends to give an answer to two sets of questions: on the one hand, to show whether the IA represents a discontinuity in Italian integration policies, or whether elements of continuity can also be identified; on the other hand, to investigate whether the IA really indicates a convergence of Italy towards the European civic integration policy direction, or whether a specifically Italian path can be distinguished.

The chapter is structured as follows. The first section reconstructs the development of immigrant integration policies since the late 1990s, when the 'reasonable integration policy' was introduced by the Turco-Napolitano Law and a regionalized system of policy intervention was implemented. In the second section, the policymaking process of the IA is analyzed, from its introduction to the definition of the implementation regulations. The third section focuses on the recent phase of enforcement of this new policy. In the conclusion we attempt to answer the main questions underlying the chapter and figure out if and to what extent the IA can be regarded as a sub-species of European civic integration policy.

1. The Context. A Fragmented and Regionalized System of Integration Policies

Throughout the 1980s and early 1990s, the integration of immigrants was hardly mentioned in the public debate on immigration in Italy, which focused on border control, illegal immigration and criminality (Sciortino & Colombo 2004). Yet at a public policy level, the first Immigration Law approved in 1986 did not completely neglect the issue: the law assigned the regions and local authorities the task of promoting cultural programs and social inclusion measures, even though no specific funding was provided to this end.

Immigrant integration policies received some political attention during the second half of the 1990s, when the first, center-left, Prodi government, elected in 1996, undertook a profound revision of the existing legislation on immigration. The main result was the 1998 Immigration Law, which had the ambition of establishing a distinctive Italian approach towards integration, the so-called 'reasonable integration model', aiming for both nationals' and immigrants' physical and psychological well-being on the one hand, and positive interaction between different groups on the other (Zincone 2000). On the basis of these two principles, policies aimed at fostering individual equality and at promoting intercultural relations were devised in all the crucial spheres of immigrant incorporation, i.e. employment, health, education and professional training, housing and civic participation. In more concrete terms, the new law envisaged three kinds of initiatives: 1) Italian language courses both for foreign

children at school and for regular adult migrants seeking vocational training or access to the labor market; 2) special projects aimed at valorizing and protecting immigrants' cultures and languages of origin; 3) cultural mediation in access to social and health services, through the employment of 'community link-workers', and intercultural education programs to strengthen immigrant children's integration at school.

These measures were actually not completely new in Italy, since they had been already developed at a local level during the late 1980s and early 1990s especially in the main reception cities of the North (e.g., Milan, Turin and Bologna), often in collaboration with NGOs, the trade unions and – in some cases – also immigrant associations (Caponio 2010; Campomori 2008; Ponzo 2008). In this respect, the main goal of the 1998 Law was overcoming the extreme territorial fragmentation of immigrant integration policy. To this end, a National Fund for Immigrant Policy was introduced and allocated to the regions on the basis of specific immigrant integration programs that had to be agreed with the municipalities [1]. Moreover, three *ad hoc* institutions were established at a national level to monitor the implementation of the law and provide inputs for possible improvements: the National Agency for Coordination (*Comitato di coordinamento*), charged with the task of promoting coordination between national, regional and local administrations together with these latter and civil society associations and NGOs; the Consultative Committee for the Problems of Immigrants and their Families (*Consulta per I problemi degli immigrati e delle loro famiglie*), which included the representatives of immigrant associations, as well as of the trade unions, employers organizations, NGOs, etc.; the Commission for the Integration of Immigrants (*Commissione per l'integrazione degli immigrati*), mostly made up of academic experts and technical staff of the ministries. These two latter institutions were incorporated into the Social Affairs Department of the Presidency of the Council, which was formally assigned competence over immigrant integration policy, indicating a conception of integration as a multidimensional challenge, which could not be dealt with simply by one dedicated ministry but needed a strong coordinating effort under the direct supervision of the Prime Minister.

Notwithstanding some confusion and overlapping of tasks between the above mentioned institutions, Law 40/1998 set out a clear division of competence for the first time between national and regional levels on matters of integration. The regions emerged as crucial actors in the planning and defining of concrete interventions: in 1999 all 21 Italian regions started to develop and approve immigrant integration programs in order to have access to national funding (Zincone 2000).

This emerging system of 'coordinated' territorial differentiation was to be challenged by the approval of the new federalist reform. In May 2001 the center-left Amato government assigned the regions full autonomy on matters of social policy, immigrant integration included. The National Fund for Immigrant Policy merged into a broader Social Policy Fund assigned to the regions that, still today, have full responsibility for the definition of social policy priorities and the allocation of these resources. In this new federalist framework, it is entirely up to the regions to decide

[1] In order to get funding, regional programs had to be approved by the national government and to secure 20% co-funding.

whether and to what extent to pursue immigrant integration policies. Hence, starting from 2003, when the reform entered into force, the regions are no longer obliged to undertake specific programs for the integration of immigrants. Whereas the 1998 Immigration Law intended to encourage the spread of a minimum framework of immigrant integration policies throughout the country, in the new federalist scenario fragmentation and differentiation seem to become the rule. In fact, throughout the 2000s only 8 regions – i.e., Piedmont, Veneto, Emilia-Romagna, Umbria, Marche, Abruzzo, Basilicata and Calabria – have continued regularly to approve annual programs on immigrant integration policies (Campomori & Caponio 2013).

This trend towards regional devolution in matters of migration has been somewhat reinforced by the 2002 Bossi-Fini Law, named after the two center-right Ministers who undertook the initiative. According to Article 19, the regions and the autonomous provinces, like the Ministry of Education and the Ministry of Labor and Social Policy, are empowered to promote vocational training programs in the countries of origin in order to answer the specific needs of local labor markets.

Migrants enrolled in these programs are accorded a priority right to enter in Italy for work purposes. However, the regions that have taken advantage of this opportunity are few and the number of entries allowed negligible. According to available data, in 2006 only Emilia Romagna and Umbria promoted such programs for a total of 279 allowed entries, while in 2007 Veneto applied for 330 entries, Lombardy for 50 and Marche for another 60, and in 2008 Apulia for another 20[2].

However, and in contrast with this trend towards regionalization, since 2005 a series of special agreements have been signed between the Ministry of Labor and Social Policy and the regions on specific policy priorities, and in particular on civic culture and Italian language courses (Stuppini 2012: 242). In other words, the devolution of competence to the regions has run parallel to a process of re-centralization of immigrant integration policy priorities pursued particularly through the leverage of budget: on the one hand, starting from 2005, the National Social Policy Fund has undergone considerable cuts, leading the regions to reduce, if not to altogether eliminate, immigrant integration programs; on the other hand, the national government has provided *ad hoc* resources for realizing the above mentioned policy goals. In any case, it should also be born in mind that these kinds of programs have always been very well established at a local level. Local administrations, especially in the Centre-North of the country and often in collaboration with NGOs, or NGOs working alone, were already offering language courses in the 1990s (Caponio 2007), because these were regarded as a crucial resource in order to strengthen immigrants' access to labor market and welfare provisions more generally. Rather than as an instrument to enforce cultural assimilation, the introduction to Italian language and culture was offered in the context of a broader approach to integration that, consistent with the

[2] For 2006: Caponio 2007: 45; for 2007 and 2008: Immigration General Direction, Ministry of Labour and Social Policy, Elenco programmi approvati dal Comitato di valutazione anni 2007-2008, http://www.lavoro.gov.it/NR/rdonlyres/3D4A9498-7674-4AA7-9A36-58C9721462AC/0/elencocompletoprogrammiapprovati.pdf (last access 24/02/2013).

'reasonable integration model', was to pursue immigrant socio-economic integration and intercultural relations at the same time.

In this context of incomplete and somewhat contradictory regionalization of immigrant integration policy, a process of gradual redefinition of immigrant integration, in a culturalist sense, was already beginning during the 2nd Prodi government (May 2006-2008). In August 2006, a controversy around Islam emerged because of an initiative of the UCOII (Union of Islamic Communities in Italy), a confederation of some 104 local Muslim associations regarded as rather extremist. They published an advertisement in the main Italian newspapers comparing Israeli repression in the Palestinian territories to the Nazi Holocaust. The protests of the Union of Jewish Communities, echoed by center-right MPs, unlocked a debate about the potential disloyalty of Islam to democratic values. To downplay the politicization of the issue, the then Minister of the Interior Giuliano Amato announced his intention to promote the drafting of a Charter of the Values of Citizenship and Integration, intended initially as a set of principles to be signed by new religious organizations in Italy.

An investigating committee made up of experts on religious matters was appointed, that, together with the Minister, engaged in a process of redefinition of the goal of the Charter. According to the committee, the Charter aimed at establishing "a clear integration path leading to citizenship (...) similar to the French *Contract d'Accueil*", requiring "the learning of the Italian language, of basic notions of Italian history and culture, as well as the sharing of the principles regulating our society" [3]. Contrary to the 'reasonable integration model', the new culturalist approach clearly put Italian civic culture first, and required some degree of assimilation into the host society.

Such a cultural definition of integration can be found also in the Veneto region 2007 Integration Program [4], which for the first time in Italy explicitly introduced the idea of establishing a 'Welcome and Integration Agreement'. The Agreement demanded regular foreign workers' active engagement in Italian language and civic culture courses, with a particular emphasis on labor market legislation and rules on safety in the workplace. Immigrants were also required to respect local culture and traditions, while access to services and other social resources was prioritized for foreign immigrants of a Venetian origin, i.e. the descendants of past emigrants from the region primarily to Brazil and Argentina (Campomori and Caponio 2013). In fact, the center-right majority governing the Veneto Region, and including the Northern League party, in re-defining integration as subordinated to acculturation, sanctioned the definitive cancellation of the 'reasonable integration model'.

2. The introduction of the Integration Agreement. An Analysis of the Policymaking Process

In this section we analyze the phases of the IA policymaking process, from the formulation of the Security Law that introduced it in 2009 to the definition of the

[3] Carta dei valori della cittadinanza e dell'integrazione – Introduzione: 1-2.

[4] Deliberazione del Consiglio regionale No. 57, 12 July 2007, Piano triennale di massima 2007-2009 degli interventi nel settore immigrazione.

implementation regulations. The goal is to identify the main actors involved in the two phases and to show how the policy design has undergone a process of gradual redefinition, from an approach essentially linked to security and control towards a greater emphasis on matters of social and labor market participation, especially during the process of formulation of the implementation regulations.

2.1 The Political Debate in 2008-2009: Framing Immigration and Integration Issues

In the following we focus on the political framing of the IA during the parliamentary debates that led to its adoption in 2009, in the context of the Security Law. As its name suggests, the bill – one of the first initiatives of the 4th Berlusconi government (8 May 2008 – 16 November 2011) – dealt with several topics linked with security issues: criminal organizations, road safety, stalking etc. After an electoral campaign which was marked by the urban security debate, the law-and-order discourse of the new Berlusconi coalition, and the framing of immigration issues in terms of potential problems for citizens' safety, the bill was presented by the newly-appointed Minister of Interior, Roberto Maroni (Lega Nord-LN), as a response to the "countless requests for security"[5] made by Italian citizens. The aim was clearly to distance the new coalition from the previous government: "Finally, from today, we have a completely changed approach to security. We have left behind the "good feelings": from now on, a fearless struggle will be declared against illegal immigration and criminality"[6].

Undocumented immigration had been on the national policy agenda since the early 1990s, essentially driven by the political discourse of the LN. At the beginning of the new decade, while this party was assuming an increasingly aggressive stance, some dramatic events, such as the rape and murder of an Italian woman by a Romanian citizen, contributed to putting the urban security issue on the political agenda and to linking it with immigration.

In this context, an intense debate around the government Security Bill took place, concerning in particular the introduction of the crime of illegal entry and stay, and the obligation on doctors to report on undocumented immigrants. From the analysis of Parliamentary records, it emerges that the IA was not present in the first draft of the bill, but was introduced during the debate in the Justice and Constitutional Affairs Committee, following an amendment proposed by Senator Bricolo and other LN Senators (7th October 2008). Fitting into the security framework, the IA was presented as an instrument combining observance of the law and consideration of Italian cultural identity: "We ask them to respect our rules, our history, our culture, our tradition, our way of life"[7]. In typically clear-cut LN rhetoric, the fulfilment of language and cultural requirements became a tool to distinguish between migrants who show 'good attitudes'[8] and all the others. As evidence of compliance with national law and culture, the IA was therefore presented as an instrument fostering successful integration.

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[5] Senato, Resoconto sommario, stenografico e allegati Assemblea No. 90: 26, 12/11/2008.

[6] Senato, Resoconto sommario, stenografico e allegati Assemblea No. 144: 353, 05/02/2009.

[7] Id.

[8] Senato, Resoconto sommario, stenografico e allegati Assemblea No. 88: 6, 11/11/2008.

In both the Parliament Chambers, the opposition fiercely attacked this approach and the debate centered on the risks of administrative discretion in the implementation of the IA and on the lack of more long-term perspectives. The IA was accused of being just another hurdle aimed at transforming the residence permit into an 'obstacle course'[9]. Some attempts to abolish the IA or to extend the exempted categories were undertaken by opposition MPs during the Parliamentary debate. Despite an initially positive negotiation between the government and the opposition, the Security Law was approved in the end with a *voto di fiducia* (confidence vote).

According to Article 1.25 of the Security Law, the IA has to be signed at the granting of the first residence permit, and it commits the migrant to fulfill certain integration requirements before the residence permit expires. The fulfillment of the IA is evaluated on the basis of a credit system. If the applicant loses all his/her credits, the renewal of the residence permit will be denied leading to expulsion from the country, even though this condition does not apply to some categories specified by the same law, i.e.: refugees, asylum seekers, foreigners holding a temporary residence permit for humanitarian reasons or for family reunion, long-term residents and their family members. Finally, no specific funding is set aside by the law for the implementation of the policy.

2.2 The Definition of the Implementation Regulations

Once the parliamentary phase came to an end, the IA almost disappeared from the public debate, even though an important step had still to be accomplished, i.e. the definition of implementation regulations, which are crucial in order really to set any policy in motion. However, this phase turned out to be much more complicated than initially expected. According to the law, the implementation regulations were expected to be approved in a time span of 180 days maximum. Nevertheless these were adopted only on 14 September 2011, more than two years after the approval of the law, and came into force on 9 March 2012, i.e. with a delay of another 6 months.

The starting document for the formulation of the implementation regulations consisted of a series of detailed indications provided by the LN Senators who had introduced the IA during the Parliamentary debate. This document was actually the initial draft of the amendment introducing the IA. It provided a series of specifications left aside during the debate and omitted in the final text of the Law. According to this document, endorsed by the government during the Council of ministers of the 20 May 2010 (Order of the day G45.100), the signing of the IA and the assignment of the initial credits was to be subject to the following requirements: a suitable knowledge of Italian language, according to Council of Europe standards; a basic knowledge of the Italian juridical system and main laws; and the acceptance of the Charter of the Values of Citizenship and Integration (see above §1). At the renewal of the residence permit, the foreign citizen was to be accorded the possibility of increasing the initial number of credits by: showing evidence of not having broken the law; passing a social and cultural integration test providing evidence that the stated integration goals had been accomplished; showing evidence of an active social and economic involvement

[9] Senato, Resoconto sommario, stenografico e allegati Assemblea No. 94: 43, 19/11/2008.

in society. Any violation of the law (penal, administrative or fiscal law) would lead to a loss of credits in proportion to the seriousness of the offense. In the case of loss of more than half of the initial credits, the immigrant would be required to attend an integration course aimed at involving the immigrant in "socially useful activities", even though it was not specified what was meant by this expression.

Once approved by the government, these guidelines were given to the team charged with drafting the implementation regulations. This team was made up of functionaries of the Department of Public Security and of the Legislative Office of the Ministry of the Interior. In this task they were supported by the functionaries of the Ministry of Education, the Ministry of Justice and the Ministry of Labor and Social Policy. In the final stage of the process, relevant input was provided by the Minister of Labor and Social Policy, Maurizio Sacconi (*Popolo delle libertà*, the party of the Prime Minister Berlusconi) and his personal staff (Caponio & Zincone 2011).

According to our interviews, at the start of the process, unofficial contact was made with representatives of the pro-immigrants advocacy coalition (Zincone 2011), i.e. primarily NGOs, unions and employers organizations (see also: Caponio & Zincone 2011). The main goal of the functionaries was to strengthen the integration objectives pursued by the IA: it "looked like a tool of social control, aimed at monitoring who is entering, rather than like an instrument to achieve integration. It was one of our tasks to soften this approach" [10]. Thus, a more reward-based approach was proposed: it was stated that immigrants could ask for credits in acknowledgment of various activities, such as participation in vocational training courses, enrollment in secondary school or university programs, public merit and honors, voluntary work with NGOs etc.

During the formulation of the implementation regulations, one incident in particular drew new attention to the issue of integration: in January 2010 a group of African immigrants, working illegally in agriculture in Rosarno (Calabria) with the complicity of local criminal organizations, started a series of riots to protest over their extremely exploitative working conditions. According to a consultant of the Minister of Labor and Social Policy in charge of monitoring the IA implementation, the dramatic events of Rosarno, even though framed in terms of a problem of criminality and illegality, gave a boost to the decision-making process regarding the IA implementation regulations. Further consultations with experts, NGOs and the trade unions were carried out (Caponio & Zincone 2011).

The first draft of the implementation regulations was announced by the Minister of the Interior and the Minister of Labor and Social Policy during the presentation of the "Integration and Security Program – Identity and Encounter" (*Piano per l'integrazione nella sicurezza – Identità e Incontro*), on 10 June 2010. This document, drafted by Ministries of the Interior, Labor and Social Policy and Education Ministries, represented the official point of view of the then center-right majority on the issue of immigrant integration. Making reference to the European debate on the failure of multicultural integration strategies, the "Open Identity" model emphasized the integration and security nexus. In the press conference, the connection between the IA and the Program was particularly stressed. Minister Maroni talked about "the two

[10] A.C. functionary, Minister of Interior, Interview 28/11/2012.

faces of immigration", i.e. security and integration; while Minister Sacconi stressed the relevance of this measure in order to encourage integration: "This is not a punitive policy, since it is aimed at acknowledging good behaviors and supporting virtuous migrants" [11].

Once ratified by the government (20 June 2010), the implementation regulations had still to receive the advice of the Unified Conference of Regional and Local Authorities (*Conferenza Unificata Stato-Regioni*, 10 November 2010), of the Ministry of Education (12 January 2011) and of the State Council (19 May 2011). The first, an advisory body composed by the representatives of the Regions, the Provinces and the Municipalities, analyzed the feasibility of the implementation regulations from point of view of local institutions. Given that the regions are responsible for education and social policies, their consent was an important step. In the Unified Conference advice note, several criticisms were formulated, e.g. that the IA was not included in a national integration plan and no specific funding was committed for its implementation, with the risk of increasing the burden on local administration budgets.

As regards the Ministry of Education [12], its advice note highlighted the necessity to better match the IA apparatus with the regional education system, and notably with the Territorial Centre for Continuing Adult Education, responsible for immigrant language education since 1997 (Ministry of Education decree 455/1997). Finally, the State Council just checked the formal consistency of the implementation regulations with existing legislation on immigration and other related fields [13].

The IA implementation regulations were finally adopted by the Council of Ministries on 28 July 2011 and promulgated on 14 September 2011. In answer to the Unified Conference budgetary concerns, the explanatory note announced the allocation of part of the European Integration Fund (EIF) together with funding drawn from a new tax imposed by the Security Law for residence permit renewal.

According to the approved implementation regulations, all newly-arrived non-EU immigrants above the age of 16 years and applying for a residence permit of at least one year are obliged to sign the IA. For minors between the age of 16 and 18 years old, the agreement will be undersigned by the parents. Exempted categories are also specified, namely: immigrants applying for a residence permit of less than one year; foreigners with disabilities or pathologies that undermine their capacity for cultural and language learning; unaccompanied minors and victims of women trafficking, who are beneficiaries of a protection program.

The IA has to be signed at the Police Headquarters or the Prefectures; it is translated into the language requested by the applicant, or, if this is not possible, into English, French, Spanish, Arabic, Chinese, Albanian, Russian or Filipino according to his/her preferences. The agreement commits the subscriber to: 1) acquire an adequate

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[11] Minister Roberto Maroni and Minister Maurizio Sacconi, press conference of the Council of Ministers No. 96, 10/06/2010, http://www.sitiarcheologici.palazzochigi.it/www.governo.it/novembre%202011/www.governo.it/Governo/ConsiglioMinistri/Audiovisivi/dettagliob4cd.html?d=58233 (last access: 28/02/2013).

[12] A.C. functionary, Ministry of Education, Interview 23/11/2012.

[13] Consiglio di Stato, Sezione Consultiva per gli Atti Normativi, Adunanza di Sezione del 13/01/2011, No. affare 05599/2010.

level of knowledge of the spoken Italian language, corresponding to level A2 of the Common European Framework of Reference for Languages; 2) acquire a sufficient knowledge of the fundamental principles and institutions of the Italian Constitution; 3) become acquainted with Italian civic life and in particular with the healthcare and education systems, social services sector, labor market and related fiscal obligations; 4) fulfill his/her obligation to enroll his/her children in public education. Immigrants have also to adhere to the principles of the Charter of the Values of Citizenship and Integration (§1).

The IA has two years' validity, and can be extended for one more year in case of insufficient compliance with the requirements. A credit system was established and at enrollment, 16 credits are assigned to the immigrant. Within three months, the enrolled immigrant is invited to attend an Italian civic culture session held at the Prefecture (between 5 and 10 hours maximum). During the session, the immigrant is also informed about the integration initiatives and opportunities available in his/her province of residence. In case of unjustified non-attendance, 15 of the initial 16 credits are curtailed.

In order to fulfill the requirements of the agreement, during the two years of its validity the immigrant has to score 30 credits. Credits can be acquired by taking part in Italian language courses, Italian history and civic culture courses and other education programs (e.g., professional and vocational training, university courses etc.). Furthermore, the applicant can ask for the acknowledgment of a range of activities, such as voluntary work in NGOs, public honors etc. However, it has to be pointed out that the satisfaction of requirements 1 and 2 is considered essential in order to obtain residence permit renewal, i.e. the immigrant has to show at least A2 level knowledge of spoken Italian (20 credits) and sufficient knowledge of the Italian Constitution (6 credits).

Credits can also be curtailed. This can happen in three ways, namely: criminal convictions, even if not definitive, leading to jail (from a minimum of three months up to more than three years) or to a fine of above €10,000 (from 2 up to 25 credits); other kind of personal restrictions sentences, even if not definitive (10 credits); administrative fines for fiscal or administrative offences above €10,000 (from 2 up to 8 credits). If the applicant loses all credits, the residence permit can be denied, thus leading to expulsion from the country. On the other hand, if he/she collects more than 40 credits, the migrant can have access to additional training and cultural opportunities. According to our interviews, this generic reference was preferred to more concrete rewards, such as the extension of the terms of validity of the residence permit, suggested among others by the trade unions[14]. Finally, a National Civil Registry of the IA applicants has been instituted.

Initially conceived essentially within a security framework, during the implementation process outlined above the IA was confronted with the ideas and interests of the different actors operating in the integration and education policy field, i.e. primarily NGOs and the trade unions. The result was a complex system linking

[14] A.C. functionary, Minister of Interior, Interview 28/11/2012. See also: Caponio & Zincone 2011.

integration and immigration which, in order to be enforced, required the coordination of several actors with different, if not contrasting, perspectives. In what follows we analyze how this system has taken shape in the first year of implementation of this policy.

2.3 The Policy Comes into Force: Recent Developments

After the adoption of the implementation regulations, a new inter-ministerial working group was created for the enforcement of the IA. Almost all its functionaries, coming from the Department of Civil Liberties and Immigration (Ministry of Interior) and from the Department of Immigration (Ministry of Labor and Social Policy), were either representing Italy in the EU Network of National Contact Points for Integration (NCPI), or were involved in the management of the European Integration Fund. It must be pointed out that, as a national authority responsible for the EIF, the Department of Civil Liberties and Immigration enjoys a measure of autonomy in the allocation of these funds. Since the introduction of the IA, the Department chose to reserve a growing part of EIF for civic and language education, as an analysis of Italian EIF Annual Programs (from 2007 to 2012) reveals [15]. It is not a surprise that the EIF has been used for financing the IA, since civic orientation and language courses were explicitly envisaged among the eligible actions (2007/435/EC). Furthermore, these same functionaries have also taken part in information exchanges and working visits with foreign partners, in order to boost the introduction of the IA, especially the civic integration courses [16].

After the IA entered into force, an institutional innovation was promoted by new Prime Minister Mario Monti (November 2012), namely the institution of a Ministry for Cooperation and Integration. Although without portfolio, no such ad hoc Ministry on immigration issues had ever been established before. The decision to appoint Andrea Riccardi as Minister, an expert in the cooperation and immigrant integration field, founder of the Community of Sant'Egidio (an NGO working in this policy sector), has been perceived as a change in the approach to integration by the new government. According to one of our interviewees [17], initially there were doubts about whether the Minister really intended to enforce the IA. However, in fact, not only was a new impetus given to the concrete implementation of the policy, but the organization and the enrollment of the IA were established as priorities for the Single Desk for Immigration of the Prefectures (Interior and Education Ministers joint circular letter 1542, 2 March 2012). Moreover, the integration functions of the policy were particularly stressed

[15] So far, a comparison among annual programs cannot be performed because the scheduled actions (and their labels) change from year to year. Anyway it can be observed that in 2010 the percentage of funding allocated for language civic education and employment services was 27% of the total amount. In 2011 the percentage allocated for the sole language and civic integration education reached 47%, decreasing to 45% in 2012, http://www1.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0167_2009_07_03_programmi.html.

[16] S.C. functionary Minister of Labour, Interview 06/09/2012 and D.P., Functionary II Ministry of Interior, Interview 18/09/2012.

[17] E.C. functionary Minister of Interior, Interview 18/09/2012.

as State responsibilities. In order to fulfill these responsibilities, the development of a more user-friendly service was favored (e.g., enlarging the number of languages into which the IA is translated) and two EIF calls for tender aimed at improving the provision of Italian language courses were announced [18].

Given the peculiarity of the IA, it being a measure intended to achieve both integration and immigration goals, the implementation of the policy entailed close inter-ministerial cooperation. Several mutual adjustments were necessary between three different systems: the system for issuing and renewing residence permits, the adult education system and the juridical system. For example, one of the first tasks was to build up a dedicated IT network between the Ministry of Justice and the Ministry of Interior, in order to exchange sensitive information on migrants' criminal records (circular letter 1583, 5 March 2012). Another important step was the signing of an agreement between the Education and Interior Ministries (7 August 2012). According to this agreement, the Prefectures were replaced by the Territorial Centers for Continuing Adult Education for the organization of civic integration courses. Pilot projects of language and civic integration teaching were planned, financed by the EIF and provided by the Territorial Centers. Italian language tests have been scheduled to take place not before 2014.

Thus, the on-going implementation phase of the policy has been characterized by the crucial cooperation of the Ministry of Education, making concrete arrangements to involve the adult education system in the provision of Italian language and civic integration courses.

As regards the impact of the IA, given that the policy only came into force in March 2012, an analysis cannot be carried out yet. Nevertheless, according to available data, we can assume that few of the 68,050 newly arrived migrants who have signed the IA up to this time (15 January 2013, data provided by the Interior Minister) had a work permit. There are two main pieces of evidence for this. Following the enactment of the EU directive 2009/52/EC on minimum standards and sanctions against employers of undocumented third country nationals, the Italian government decided to launch an amnesty to regularize illegal migrants. These latter were not asked to sign the IA (Decree 109/2012), but just to show evidence of having been resident in Italy continuously since 31 December 2011, i.e. since before the implementation of the IA. Therefore they have been exempted, even though the decree introducing the amnesty was actually approved on 9 August 2012, i.e. after the implementation of the IA.

Furthermore, limited immigration inflows were scheduled in 2012. Along with 4,000 immigrants who had completed education and vocational training programs in their countries of origin [19], the inflow decree of 7 December 2012 admitted only 13,850 third country nationals. This decree reserved 11,750 of the 13,850 new permits to foreign workers already resident in Italy and seeking to convert their temporary residence permit for study or other reasons into a work permit. As a matter of fact, the only immigrants who have been subject to the obligation of signing the IA, so far, are those applying for family reunion.

[18] Ministry of the Interior circular letter 1583, 5/03/2012.

[19] Decreto del Presidente del Consiglio dei Ministri del 13 marzo 2012.

3. Conclusion

The analysis of the IA policymaking process from the initial formulation in the Security Law (October 2008) to its coming into force (March 2012) has revealed a discrepancy between the policy framing at a parliamentary level and the policy output as emerging from the implementation regulations and the actions undertaken so far to put it into practice.

According to the initial policy design, elaborated by some LN Senators and later endorsed by the then-Berlusconi government, the IA was outlined more as immigration than as integration policy. For newcomers, the signing of the IA was set as a condition for obtaining a residence permit and the fulfillment of the IA requirements were a necessary condition for renewal of the permit. Along with this residence-integration link, the emphasis on credits curtailment in case of criminal convictions evidenced a clearly restrictive and control-oriented approach. By the time the IA entered into force, a balance between the two competing goals of immigration control and immigrant integration had occurred. The restrictive approach had partially been softened, while the educational and integration potentialities of the IA had been emphasized. How can this silent policy change be explained?

An interpretation in terms of 'symbolic politics', proposed by Mourão Permoser in her analysis of the Austrian case, could be considered. According to Edelman (1964), symbolic politics, while apparently centered on tangible outcomes, are actually just aimed at providing symbolic reassurance to the general public. Some elements of the Italian IA point in this direction. The first and most relevant is the inclusion of this policy in a law tellingly called Security Law, that seems to imply a link between immigrant integration and public security, which is further reinforced by the emphasis on expulsion in case of loss of credit. Furthermore, the credit-based system, which has been compared in the public debate to the analogous system introduced for driving licenses by the 2nd Berlusconi government in 2003, features the IA as an instrument to reward the 'good' immigrants and punish the 'bad' ones, i.e. those who do not want or are not able to get integrated into Italian society. Lastly, the considerable delay before bringing the IA into force seems to show the primacy of the symbolic message vis-à-vis other, more tangible, policy outputs.

However, the discrepancy between rhetoric and policy output cannot be interpreted without reference to the interaction between the interests and perspectives of the various actors involved in the policy-making process. In fact, during the drafting of the implementation regulations, the initial restrictive formulation was confronted with different interpretations of the IA. Mutual adjustments between different actors' logic, perceptions of the problem, and interpretation of the possible solutions triggered a process of policy redefinition (Teisman 2000). Therefore, along with the restrictive interpretation initially promoted by LN politicians, the IA was also intended by pro-migrant NGOs, trade unions and many local level administrations as an opportunity for offering immigrants a minimum set of integration services and for fostering their inclusion in Italian society. As a result, two innovations were introduced: a more rewards-based approach, granting additional credits to those immigrants able to demonstrate positive experiences of social participation (see §2.2); and the planning of civic integration courses free of charge for immigrants. In fact, whereas the law

only mentioned the obligation for the immigrant to demonstrate that they had acquired certain Italian language and cultural skills, in the implementation regulations not only is it explicitly stated that courses must be provided to this end, but also that this is a responsibility of the State.

In the process of policy implementation, the immigration and integration elements of the IA became evident. In fact, along with the creation of a dedicated IT network to exchange sensitive information on immigrants' criminal records, we observe the replacement of the Prefectures with the Territorial Centers for Continuing Adult Education in the organization of the civic integration courses. As pointed out above, these latter are the local branches of the Education Ministry – and not of the Interior Ministry as in the case of the Prefectures – and have always played a relevant role in the social and labor market integration of immigrants. Their involvement in the implementation of the IA reveals its gradual redefinition into an instrument aimed at fostering immigrant integration more than control.

We started this analysis by formulating two sets of questions concerning the elements of continuity and discontinuity within the traditional Italian approach to integration and the degree of convergence of the IA to the more general European civic integration policy trend. As regards the first point, i.e. continuity/discontinuity, the introduction of the IA has represented an element of innovation, since for the first time a national minimum integration policy has been created. Moreover it indicates the emergence of a cultural definition of immigrant integration, diverging from the traditional perspective characterized by the prevalence of informal processes of *de facto* inclusion at a local level in the labor market (Ambrosini 2001). This cultural definition had already appeared in 2006 in the Charter of Values and Integration (§1), but with the introduction of the IA it became more and more relevant to Italian integration policy, emphasizing respect and conformity to the rules as the key to successful integration.

Despite these elements of innovation, a clear continuity with the past can also be observed. Such continuity is particularly evident in the practices established during the implementation phase, which indicate the crucial importance of regional and local level administrations. In more concrete terms, the regions have been involved in the promotion of pilot civic integration projects funded with EIF financial resources, therefore in continuity with previous special agreements between the State and the regions for the provision of Italian language courses (see §1). Furthermore, the collaboration with the Education Ministry and the involvement of the Territorial Permanent Education Centers in the organization of language and civic integration courses represents another important element of continuity, given the importance of these institutions in providing services to build immigrants' literacy skills in Italian since the late 1990s.

With regard to the second set of questions, i.e. convergence towards the European neo-assimilationist trend, it must first of all be pointed out that the very existence of such a trend has been challenged by recent research (Jacobs & Rea 2007; Perchinig et al. 2012). Civic integration policies in different countries are likely to reflect different logics and rationales, ranging from cultural assimilation to labor market activation. Although perhaps one cannot speak of 'national models of civic integration',

nevertheless national particularities can be identified. Thus, in the case of Italy, while the introduction of the IA clearly constitutes evidence of the influence of the civic integration policy direction in Europe as evinced also by the EU Common Principles on Integration (Council of the European Union 2004), a more specific Italian style can be also pointed out. This study has clearly highlighted an emphasis, especially at a political and symbolic level, on establishing an integration-security link, whereby integration is intended as "respect for our laws". The signing of the IA is regarded as a proof of the willingness to conform to such laws and as an instrument to distinguish the 'virtuous' and 'good' immigrants from the potentially 'dangerous' ones, i.e. those who do not want to integrate. Strictly neo-assimilationist or identitarian concerns appear to be marginal. In fact, the IA can be regarded as a peculiar *ex-post* migration selection mechanism, combining cultural requirements with a particular emphasis on sanctions in the case of criminal convictions. For a country where the regulation of migration flows and border controls have always appeared to be ineffective, it does not seems inappropriate to regard this new policy as a functional substitute: by restricting the rights of regularized residents and increasing the requirements for legal residence, the goal is that of sending the message that immigration into Italy is somehow under control.

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Regional Divergence in the Integration Policy in Belgium
One Country, Three Integration Programs, One Citizenship Law

Ilke Adam, Marco Martiniello, Andrea Rea

Introduction

Since the beginning of the 1990s, there has been a debate in the comparative literature about the effect of national traditions on the divergence of integration policies in Western states. The comparative historical research of Brubaker (1992) on the concepts of nation and citizenship in France and Germany shows that citizenship policies are conditioned by the 'cultural idioms' of the nation. The difference between citizenship policy in France and in Germany can be explained by the divergent concepts of nation in the two countries: statist and assimilationist in France, and ethno-cultural and differentialist in Germany. Although this analysis has been much criticized for its static conception and its lack of attention to human agency, it has the merit of having launched an academic debate (Bertossi and Duyvendak 2009; Freeman 2004; Joppke 2007; Koopmans, Michalowski and Waibel 2012). This debate opposes theories insisting on path dependency (Pierson 2000) to those promoting international factors, and Europeanization in particular (Featherstone & Radealli 2003).

From the beginning of the debate, Belgian researchers (Rea 1994; Martiniello 1995) have shown the difficulty of applying the concept of 'national model of integration' in a multinational state (Kymlicka 1995) such as Belgium. It would seem that 'different philosophies' (Martiniello 1995) inspire the discourse on integration in Flanders and in Wallonia. The discourse in the French-speaking part of the country would tend to be more assimilationist and the one in the Dutch-speaking part more multiculturalist. Although this categorization needs revision considering recent changes in integration policy, the idea that integration policies in Belgium are inspired by 'different philosophies' of the nation remains valid (Adam 2013a, 2013b).

The following analysis is principally concerned with the domestic factors which explain the divergence between integration policies in Belgium. The process

of convergence linked to the Europeanization of this policy is not discussed. While Europeanization may play a role in the emergence of policy on the francophone side, it does not explain the divergence between the three integration policies in Belgium. In this article, we first present the institutional structure of Belgium and its effect on integration policy. We then analyze, on the one hand, the different policies for the integration of new immigrants and, on the other hand, the development of citizenship policy in relationship to the political definition of integration. Finally, we propose three arguments to explain the differences in immigrant integration policies in Belgium.

1. Belgian Federalism and Regional Powers with Respect to Integration Policy

1.1 Belgian Federalism

Belgium is a culturally divided country. Nevertheless, as Lijphart writes (1981: 1), "what is remarkable in Belgium is not that it is a country that is culturally divided, but that two cultural communities live together peacefully in a democratic society". Although the opposition between the Flemish and the francophones has a very long history, there has so far always been a will to find a consensus between the different political forces of the country to ensure the stable continuance of the Belgian state. In this context, highly complex institutional mechanisms created through intense political negotiation have been put in place to control the centrifugal forces in order to maintain the 'Belgian settlement' (Huyse 1970; Lijphart 1981). Traditionally beset by internal conflict, especially between the two principal national groups (Kymlicka 1995), Belgium has so far succeeded in maintaining lasting agreements between the different collective actors regarding critical societal issues (Martiniello 1993).

Voices demanding autonomy have always been present among the two national groups, but they are noticeably stronger in Flanders than in francophone Belgium (Erk 2003). In 1830, Belgium was constituted as a francophone country. It took a long time for Dutch to be recognized as one of the official languages of Belgium and the only official language in Flanders (Swenden and Jans 2006). The Flemish Movement, closely linked with Flemish Catholicism, played a decisive role in achieving this recognition. The 'language laws' of 1962 confirmed the division of the country into two mono-linguistic zones: Dutch-speaking in the North, French-speaking in the South, and bilingual Brussels in the middle. In 1970, the process of federalization of the State began. Belgium was recognized as a Federal State in the Constitution of 1993 (Delwit 2012). Unlike most traditional federations, Belgium's Constitution is thus the result of a federalism of disunion rather than of union, of entities joining to form a federation (Swenden and Jans 2006).

At the end of the 1960s, because of the growing importance of the linguistic divide, the traditional political parties (Christian Democrats, Liberals and Socialists) separated into francophone and Flemish parties. From then onwards, Belgium has had two party systems, which exhibit different characteristics regarding their numbers and their respective electoral strength (De Winter, Swyngedouw and Dumont 2006). Moreover, apart from in Brussels, the electorate of a language community is not able to vote for the political parties of the other community even though the Federal Government is made up of the political parties of both linguistic communities.

The first article of the Constitution states that Belgium is a Federal State made up of Communities and Regions. Between the federal laws and regional laws, there is no hierarchy of norms. Belgian federalism is constructed to avoid cooperation between different levels of power as far as possible. The federal and regional authorities have legislative and executive powers for the policy areas which have been assigned to them. The Regions – Flanders, Wallonia and Brussels Capital Region – are socio-economic entities. The Communities – Francophone, Flemish and German-speaking – are cultural and linguistic entities. In Flanders, unlike in the South of the country, the Community and the Region are completely coterminous. The Flemish and Walloon Regions were created in 1970 and the Brussels Capital Region in 1989.

1.2 Federalization of Immigrant Integration Policy

After 1945, Belgium intensively recruited foreign workers who were regarded as a supplementary labor force (Martens 1976). These immigrant workers were regarded as guest-workers (Castles and Kosack 1973) staying temporarily in Belgium. For a long time, the immigrants themselves also regarded their migration as temporary. During the years 1950 – 1960 there was no such thing as integration policy. Belgium put forward a 'reception policy' oriented towards 'immigrant workers', aiming to guarantee their social and economic well-being. After the ending of labor immigration in 1974, the myth that the immigrant presence was temporary collapsed, thus forcing the gradual acceptance, albeit driven more by necessity than by choice, of the long-term presence of immigrants.

The federalization of the Belgian state has an impact on the public management of immigration (Rea 1999). While the laws regulating immigration (residence and citizenship) are a Federal responsibility, jurisdiction over integration policy was transferred to the federated entities: firstly, the Regions, then to the Communities, and then back to the Regions. Until 1974, the Employment Minister was responsible for the reception of immigrants. In 1974, jurisdiction over 'reception of immigrant workers' was transferred to regional level, without modification of the designation, the content, or the target population. More significant changes took place during the 1980s. The first change was in the name of the policy: 'reception of immigrant workers' became 'reception and integration of immigrants' (Carlier and Rea 2001).

Although the policy of immigrant integration is not a major source of conflict between the language communities, the French-speaking and Dutch-speaking political parties have often adopted divergent positions on these questions. These differences concern the degree of centralization of integration policy and recognition of cultural minorities. Since the first law on integration was passed by the Flemish Community in 1984, Flemish policy has been more centralized and institutionalized than francophone policy (Adam 2013a). The law recognized some of the associations working for integration as 'immigrant assistance services' and set up a regional organization to coordinate them. In Wallonia and Brussels, integration policy consisted of funding the many small associations which organize activities to promote the social inclusion of immigrants, without any kind of regional coordination. The difference in centralization has become more marked as time has passed. At the end of the 1990s, the second difference appeared. In Wallonia and in Brussels, the

funding for cultural activities which promoted the culture of origin of immigrants was abandoned in favor of activities aimed at social inclusion (Rea 1999). The recognition of cultural particularities is seen by francophone politicians as a hindrance to integration. In Flanders, in contrast, the recognition of cultural differences, which is expressed particularly by public funding for immigrant organizations which promote their cultures of origin, is regarded as encouraging 'emancipation'. This concept, imported from the Netherlands, is completely absent from the francophone debate. In the public debate in Flanders, the beneficial role attributed to immigrant organizations is related to the central role played by cultural organizations in the Flemish movement for emancipation from cultural domination by francophones (Jacobs & Rea, 2012; Jeram and Adam 2014).

During the nineties, there was a distinct integration policy framework (Adam 2013a) for each of the three Regions (Flanders, Wallonia and Brussels). Since 1998, Flanders has been promoting a policy of recognition, which supports immigrant associations organized around an ethnic identity ('*Minderhedenbeleid*'). The policy covers three objectives: emancipation, reception and aid. The emancipation policy is aimed at foreign-born citizens legally established in Belgium and also at the Roma. This public policy supports ethnic associations. Meanwhile in Wallonia, since 1996 there has been a policy of integration, which mainly supports social activities such as literacy classes, vocational training, and activities involving intercultural encounters. Fighting against the social disadvantages experienced by immigrants and their descendants is a more important focus than promoting cultural activities. A similar approach has been followed in Brussels with the 2004 policy whose aim is to promote social cohesion.

2. Integration Programs in Flanders, Brussels and Wallonia

2.1 Integration Policy in Flanders

From the end of the 1990s, there were claims in Flanders to introduce a compulsory integration program for new immigrants similar to that put into action in the Netherlands. The Flemish Liberal party (VLD), which was then in opposition, demanded the introduction of such a program. The parties of Government in the Flemish Region (Christian Democrats and Socialists) hesitated to make such a program compulsory, believing that this would bear too close a resemblance to solutions urged by the extreme right (Adam 2013a). However, for the first half of the 1990s, the Flemish Government had already been organizing non-compulsory integration programs modeled on the Dutch system.

The 1999 elections were marked by a very strong vote for the extreme right and a drop in support for the Christian Democrats. The new coalition was made up of Liberals, Socialists and Greens. During the negotiations to form a government, the VLD conducted itself as a political entrepreneur (Kingdon 1995), taking a stand in favor of putting a compulsory civic integration program in place (Adam 2013b). The Law on Flemish Civic Integration Policy (*Vlaamse inburgeringsbeleid*) was passed on 12 February 2003 [1]. It makes participation in the integration program compulsory

[1] Law of 28 February 2003 on Flemish Integration Policy (*Moniteur belge*, 5 May 2003).

for some adult immigrants recently registered in the Flemish Region. In Brussels, the Flemish Community is not able to impose obligations on Brussels residents[2]; however newcomers who wish to do so can follow the Flemish integration program.

Failure to fulfill the obligation to follow the civic integration program is punished by a fine of up to €5,000. Autonomy (*zelfredzaamheid*) is described in the law as the objective of the first part of the program; full participation (*volwaardige participatie*) is the objective of the second part. The first part of the program offers three courses: a course in the Dutch language, a social orientation course and career coaching. The social orientation courses are given in the native languages of the immigrants or in contact languages, i.e. English. The objective of this course is the general program objective of autonomy, but in particular it offers "a knowledge of current rights and duties, a knowledge of the functioning of society and of its fundamental values" (Article 13). The Reception Offices are the central providers of the program although they cooperate with municipalities, job centers and the 'Houses of Dutch', which coordinate the organization of the language courses. Civic integration policy has developed into a very centralized, professionalized and monitored policy.

The public debate on the failure of integration policy was taking place while the law was being drafted, and it had a very strong influence on its approach. Just as in the Netherlands, the policy of compulsory civic integration was presented as a new public policy based on lessons learned from past mistakes. The consensus within the Government coalition was based on the shared feeling, although variously interpreted, that previous policies had failed, that it was necessary to find a new direction, and that the civic integration policy introduced in the Netherlands presented the solution. After the 2004 elections, the Flemish Liberal party (VLD) obtained the post of Minister for Integration and gave integration policy a more assimilationist and restrictive direction. In 2006, the Law on Civic Integration Policy was revised for the first time. The most important modification was the expansion of the target population for the compulsory program to include other categories of new immigrants (foreigners from outside the EU married to Belgians, and ministers of religion) and long-established immigrants who are in receipt of benefits (welfare payments or unemployment benefits) or social housing, including some Belgians with immigrant parents. In 2011, evaluation of the impact of the law (De Cuyper et al. 2010) led to a new revision. Asylum seekers were no longer included in the target population and foreigners who were active in the labor market could benefit from an exemption from the obligation to follow the integration program. In June 2013[3], a new modification raised the level of language performance (A2 of the Common European Framework of Reference for Languages), provided for the possibility of obligatory attainment (rather than participation) and strengthened the programs in the Flemish communities around Brussels. The Flemish parties feared that newcomers living in Flanders but working in Brussels would not learn Dutch. However, in January 2016, the new government introduced mandatory integration tests including the obligation to pass the level A2 in Dutch. In case of failure, the

[2] Article 128 §2 of the Constitution forbids the Language Communities to impose obligations on Brussels residents.

[3] Law of 7 June 2013 on Flemish integration policy (*Moniteur belge*, 26 July 2013).

certificate of integration is not delivered although no sanction (administrative or welfare benefits) is foreseen. However, without the certificate of integration the migrant could not apply for the Belgian citizenship.

2.2 Reception Policy in Brussels[4]

At the start of the 2000s, the francophone parties (Socialists, Christian Democrats and Greens) members of the government in Wallonia and in Brussels were urgently seeking to distance themselves from the new direction of immigrant integration policy in Flanders which was perceived as assimilationist and as driven by political pressure from the extreme right. However, in the beginning of 2003, there were widespread claims in French-speaking part of the country for a policy approach in line with the Flemish philosophy. In 2003, a law proposal to introduce a non-compulsory program was put forward by the francophone Liberal party (MR), although it would not be taken up by the Government majority. MR is the only francophone party to defend the merits of *inburgeringbeleid*. Liberal members of parliament put forward a new proposed Law on 23 February 2011 aiming to create an integration and participation contract[5].

The arrival of new migrants during the 2000s (family reunification, refugees, regularized foreigners, etc.) led the Governments of Wallonia and francophone Brussels (Socialists, Christian Democrats and Greens) to revise their integration policy. The policy changes were minor, but were integrated in new 'integration Laws' (the Brussels Law of 2004 and the Walloon Law of 2009). These legislative changes were not preceded by an extensive parliamentary or public debate. The new Walloon Law of 2009 gave more attention to newcomers, particularly by proposing language courses to be provided by organizations already established in the sector and by funding local initiatives for the reception of newcomers (Van Puymbroeck, Adam and Goeman 2011).

At the start of their new term of office (2009-2014), the programs of the Regional Governments (still made up of Socialists, Christian Democrats and Greens) made a commitment to introduce a 'reception and integration program' in Brussels and in Wallonia. To avoid policy divergence between the two Regions, the Governments of Wallonia, Brussels and the Francophone Community formalized an agreement, on 12 May 2011, on the main lines of policy for the reception of new migrants and on the definition of a 'newcomer'. Nevertheless, the introduction of a civic integration program remains very controversial among the actors implementing integration policy (Torrekens et al. 2014). However, some associations (de Wergifosse 2007; CRAcs 2009) support the idea of developing integration programs, relying also on applications for financial support from the European Integration Fund.

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[4] For the sake of clarity, when we speak of Brussels, we are referring to the francophone policy. Institutionally, Brussels has a Flemish policy and a francophone policy on immigrants. However, the Flemish policy is the same as that of Flanders whereas the francophone policy is autonomous and different from that of Wallonia. Also, the French-speakers are in the majority in Brussels (+/-85% of the population).

[5] Proposed Law on the creation of a Brussels integration and participation contract, Francophone Brussels Parliament, Doc 38 (2010-2011) No. 1.

On 5 July 2013, the Brussels Francophone Parliament adopted a Law on the Reception Program for New Migrants in the Brussels Capital Region, which passed with a very large majority [6]. The enforcement of the law reform started in September 2015. Inspired by the Flemish model, the Brussels francophone program foresaw a harmonization of the reception offices (BAPA). These offices deal with the reception, orientation and guidance of new migrants. By 'new migrant', the Law referred to foreigners legally resident in Belgium for less than three years and registered in a Brussels municipality. The Reception office organized the first stage of the integration program during which the new migrants received information relating to the rights and duties of all those resident in Belgium, and also information about the integration program and the organizations involved in it. In addition, the office drew up a social and language assessment for the new migrants, checking their needs and their social, economic and language assets as well as their knowledge of the host country. The second stage of the program was organized when the social and language assessment has determined the need for an individualized program: this could include help in dealing with official administrative procedures, advice on the possibilities for vocational training and language classes, and/or following a citizenship course. The Brussels francophone reception program was free and non-compulsory because a unilingual Francophone authority (COCOF) was not allowed to render the program compulsory [7]. The Flemish Civic Integration Policy also existed in Brussels but was not compulsory for the same reason. The migrants could choose between the Flemish and the Francophone programs. However, already in April 2017 the Common Community Commission, which can legislate on the matters outside the competence of single linguistic communities [8], approved a further reform making the integration program compulsory also in Brussels. At the moment of writing the details of the implementation of the reform have still to be officialized.

2.3 The Reception Program in Wallonia

In the Walloon Region, the Law instituting a reception program for new migrants was passed on 27 March 2014 [9]. Unlike in Flanders and Brussels, it was not a new Law but a reform of the 1996 Law. The target population of this policy were foreigners who had lived in Belgium for less than three years and had a residence permit valid for more than three months, with the exception of citizens of states which are members of the EU or are in the European Economic Area. However, the reception program was

[6] Law of 19 July 2013 on the reception program for new migrants in Brussels Capital Region (*Moniteur belge*, 18 September 2013).

[7] Article 128 §2 of the Constitution forbids the Language Communities to impose obligations on Brussels residents.

[8] The Common Community Commission is an institution specifically competent for Brussels which has jurisdiction over personal and health matters which cannot be assigned to one or the other Community.

[9] Law of 27 March 2014 replacing Book II of the Walloon Code of Social Action and Health relating to the integration of foreigners and people of foreign origin (*Moniteur belge*, 18 April 2014).

also open, on a voluntary basis, to all foreigners resident in Wallonia for more than three years.

The Law provided that the new migrants should follow a reception program in one of the eight Regional Integration Centers within three months from their first registration in the municipality. The program consists of a personal interview with the following objectives: giving information on the rights and duties of all those resident in Belgium; making a social assessment of the needs and assets of the new migrant; and offering advice on the help available with official administrative procedures. This stage of the reception program was compulsory. According to the needs of the new migrant, the center then committed to an agreement offering free of charge a French language course, a citizenship course (functioning of society, social relationships in Belgium, functioning of public institutions) and social and job seeking assistance. The contract was agreed upon on a voluntary basis. The contract lasted for two years, but could be terminated if the new migrants did not attend the classes. A certificate of attendance for the personal interview was issued to new migrants by the Regional Integration Center. They had then to hand in the certificate to the municipality in which they are registered, within six months of their registration. If they failed to respect the obligations to participate in the personal interview they could be fined from €50 to €2,500.

The Law was supported by the coalition of Socialists, Christian Democrats and Greens; the Liberal party opposed it. As in Brussels, the MR put forward a law proposal that was closer to the Flemish approach, aiming for the creation of a 'reception and civic integration program'[10]. Their proposal would have made the whole integration program compulsory whereas in the Law which was passed, but only the personal interview remained compulsory. Moreover, the terms used in the MR proposal were closer to those in the Flemish legislation. Thus, there was a central concept of emancipation and autonomy, as well as a more assimilationist touch by insistence on the immigrants learning of 'common norms and values' in the host society. The objective of this proposal was thus "the emancipation of all through the sharing of a language, a common foundation of norms and values, and full social integration". In April 2016[11], the new government (Socialists and Christian Democrats) decided to change the name of the policy; it became an integration program rather than a reception program. Moreover, the integration program is now compulsory for all newcomers. The new migrant must sign the agreement of the program (120 hours of languages courses, 20 hours of citizenship courses and a job or training seeking assistance) when he applies for a long residence permit. He has 18 months to obtain the certificate of integration. Fines are foreseen whether the newcomer do not sign the agreement. The government justified the change with the need to improve the integration, the social cohesion and especially the integration on the labor market of the newcomers.

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[10] Proposed Law introducing a program of reception and civic integration, M. Borsus & Co., Walloon Parliament, Doc 620 (2011-2012), No. 1.

[11] Law of 28 April 2016 replacing Book II of the Walloon Code of Social Action and Health relating to the integration of foreigners and people of foreign origin (*Moniteur belge*, 9 May 2016).

2.4 Regional Differences

The various integration programs put in place in Europe vary from one another in their objectives, the groups targeted, the content of the programs, whether there is a test at the end of the program, whether the programs are compulsory, and what sanctions are applied in the case of non-participation. The evaluation of these characteristics leads us to classify the programs in two ways. Firstly, the attendance and/or success in the program may or may not constitute a condition of access to residence rights and/or social rights (Jacobs and Rea 2007). In the case of Belgium, attendance still has no impact on access to residence rights or welfare. On the other hand, it does have an impact on access to citizenship as we shall see. Secondly, it is possible to locate whether the content of the program emphasizes the social dimension of integration or rather the cultural dimension.

On this second point, differences appear between the three regional policies. This divergence testifies to the absence of a national model. Even though Wallonia adopted recently the same denomination 'mandatory integration program' along the line of the EU communications and recommendations, the objectives of those policies are not completely the same. A difference between the emphasis on the cultural dimension and the emphasis on the social dimension appears when comparing the three policies.

The introduction of civic integration programs in Europe has been described as a change towards a more assimilationist approach to integration (Joppke 2007; Goodman 2010; Van Oers et al. 2010). An assimilationist policy has the objective that new migrants should adopt the cultural standards of the dominant culture. According to this way of thinking, cultural assimilation promotes the socio-economic participation of the newcomers. Similarly, it is considered that social cohesion can be threatened by too much cultural diversity. In this vein many countries insist on the necessary acquisition of the 'dominant norms and values of the host country'.

In all the parliamentary debates on this policy in Flanders, there has been an insistence on 'integration'. The objective of this policy is to promote integration and evaluate its effectiveness. In Flanders, the insistence on cultural questions of integration appeared in essence at the time of the first revision of the Integration Law in 2006 [12] on the initiative of the Flemish Liberal party. In the 2003 Law, the 'social orientation course' was essentially intended to promote knowledge of the institutions and of everyday life in Belgium. In 2006, this course was supposed to teach the functioning of the host society together with the principal norms and values "which are the basis of Flemish society" [13]. The more assimilationist character of this Law was particularly evident in the addition of a new 'cultural', rather than socio-economic, objective to the definition of integration. One of the goals of this public policy is to arrive at "a shared citizenship (sharing a certain number of values and norms) and to

[12] Law of 14 July 2006 revising the Law of 28 February 2003 on Flemish civic integration policy (*Moniteur belge*, 9 November 2006).

[13] Flemish Government (2006), Final report of the Commission on the content of the social orientation course (Eindverslag Commissie ter invulling van de cursus maatschappelijke oriëntatie) delivered to the Flemish Minister of Home Affairs, Urban Policy, Housing and Civic Integration: 7.

obtain sufficient social cohesion" (Article 1 §1 1°). In the European states insisting on the cultural or moral dimension of integration policy, the population targeted by this determination to teach the 'norms and values of the host society' is principally Muslim (Joppke 2007; Michalowski 2011). Moreover, the countries insisting on the cultural dimension of integration are all confronted with a strong politicization of immigration, and most often this is due to the strong growth of an extreme right party (Adam 2013a).

In Wallonia and in Brussels for the Francophones, at the beginning this policy was referred to as the 'reception program'. Although the change in 2016 with the adoption of the mainstream name (integration program) and of the compulsory dimension could be understood as a Belgian convergence, the philosophy (aims, sanctions, test, organization) of those policies is different from the Flemish one. It is less a matter of seeking cultural conformity on completion of the program than of furnishing the resources to allow new migrants to adapt better to their new environment. In comparison with other integration policies in Europe, the policies proposed in Wallonia and Brussels are designed more as a tool of social inclusion rather than of cultural compliance. Thus, the preamble of the law does not formulate any necessity of transmitting the norms and values of the host country to the new migrants, at the most the aim is to increase social cohesion. However, this statement should be qualified by consideration of the left-right political divide. In fact, in the law proposal of the Walloon liberals, it was indicated that the participation of all in Walloon society presupposed "the emancipation of all through the sharing of a language, a common foundation of norms and values, and full social integration". In contrast, the first sentence explaining the scope of the law in 2014 specifies that "Wallonia has chosen the intercultural model as the mode of integration of new migrants. This model advocates harmonious relationships between cultures, founded on intensive exchange and centered on an approach to integration which does not attempt to abolish differences" [14]. In the reform of 2016, the minister in charge considered that the aims of this new reform were to "strengthen the values of humanity, dignity, respect that Wallonia defends" [15].

The priority attributed to the social dimension is also demonstrated in Brussels and Wallonia by the emphasis on assistance to find a job or a vocational training rather than on the cultural dimension of norms and values. During the Brussels Parliamentary debate, there was even an explicit reference to the danger that this policy might be used to target 'the cultural practices of Muslims'. Referring to the possibility that the program might be made compulsory, a Socialist representative said: "If the hidden intention of the obligatory system of reception is negative, with the desire to give the feeling of fear of the other to the host population or the wish to 'civilize the sub-

[14] Proposed Law of 27 February 2014 replacing Book II of the Walloon Code of Social Action and Health relating to the integration of foreigners and people of foreign origin, Walloon Parliament, No. 992/1 (2013-2014): 2.

[15] Scope of the Law, Proposed Law of 29 February 2016 replacing Book II of the Walloon Code of Social Action and Health relating to the integration of foreigners and people of foreign origin, Walloon Parliament, No. 417/1 (2015-2016): 3.

citizens', as has been transparent in some media statements, my group will never support this type of step or text" [16].

Two last element testify to the divergence between the Laws of Wallonia and Flanders. In the two policies, sanctions in the form of official fines are laid down to punish non-participation of people in the target populations. However, the fines escalate more quickly in Flanders and the maximum fine is also higher (€5,000 rather than €2,500 in Wallonia). Moreover, in Wallonia the fine cannot be imposed if the authorities are held responsible for failing to organize a sufficient number of courses. Although the first round of legislation in Flanders created a program which was provided free of charge, the 2006 revision introduced the principle of financial contributions [17] on the part of the target population. Moreover, to obtain the certificate of integration, migrants need to succeed the language test (level A2) in Flanders when only the participation to the courses is asked in Wallonia and in Brussels.

Having established the differences between the three policies, the next step is to look for causes. Before formulating explanations for this regional divergence, it is necessary to examine the link between this debate and that concerning the law on citizenship. The modification in 2012 of the law on citizenship was not without effect on the passing in Brussels and in Wallonia of the Laws on civic integration programs. Besides, the debates on citizenship also reveal a difference between the two language communities.

2.5 Access to Citizenship and Integration

The Belgian political debate about the citizenship law is inextricably linked to debate about voting rights for foreigners in municipal elections and about immigration policy (Rea 1999). The 1984 Citizenship Law introduced three fundamental changes: the transmission of Belgian citizenship by the mother, the introduction of the principle of the double *jus soli* (third generation) and the relaxing of conditions for acquiring Belgian citizenship. There are three ways of acquiring Belgian citizenship: option, marriage and naturalization. These modes of access to citizenship were subject to an investigation by the Department of Public Prosecution which checked that the candidate had not committed 'serious offenses' (criminal convictions) and that he or she showed a 'sufficient will to integrate'. This last was established on the basis of the responses given by the candidate to a questionnaire administered by a police officer at the request of the Department of Public Prosecution. Naturalization presupposed residence in the territory for at least five years. Until the year 2000, the conditions were systematically relaxed but they became more restrictive after the law of 2012.

For almost 15 years (Foblets et al. 2002; Rea and Bietlot 2007) before the law of 2000 there has been a debate separating political parties according to the divides of politics (left-right) and language (Flemish-francophone) on the content of the condition that candidates should manifest 'sufficient will to integrate'. The questionnaire used to establish the 'will to integrate' has been the object of numerous

[16] Brussels Francophone Parliament, Record of Proceedings, No. 53 (Session 2012-2013), Full session Friday 5 July 2013, p. 9.

[17] Law of 14 July 2006 revising the Law of 28 February 2003 on Flemish civic integration policy (*Moniteur belge*, 9 November 2006).

criticisms. It covered the knowledge of one of the national languages, contact with Belgians, the reason for applying, customs or attitudes regarding religion or culture of the country of origin, and political attitudes regarding the country of origin. The quest for cultural conformity was one of its objectives. The analysis of parliamentary debates of the time reveals two interpretations of the inclusion of foreigners in the nation. The first, defended essentially by right-wing parties (Liberals, Flemish Christian Democrats and the extreme right), stated that the development of communitarianism constitutes the major cultural obstacle to integration and that integration requires an allegiance, not only to Belgium and Belgian citizenship but also to its customs and its way of life. The second interpretation, often supported by more left-wing parties (Socialists, Greens, and francophone Christian Democrats), gave more importance to the declaration of allegiance to Belgian citizenship than to the search for a proof of cultural conformity. The national allegiance was then to be expressed by respect for the laws and regulations of the Belgian State. This difference illustrates a contrast in the objective ascribed to the acquisition of Belgian citizenship: integration can be either a condition to fulfill or a goal to reach (Verwilghen 1985: 173).

One element external to the domestic situation has affected the debates over the definition of 'sufficient will to integrate'. The creation of Citizenship of the European Union by the Treaty of Maastricht partially decouples citizenship from nationality. The enactment of Directive 94/80 setting up the conditions to exercise rights to participate in local elections imposed a revision of the Constitution. This re-launched the debate on the appropriateness of offering this right to non-European foreigners resident in Belgium. After a lengthy political debate (Rea 1999), the Constitution was revised in 1997 in order to permit that a law could be passed to give non-European foreigners the vote in local elections. This compromise, an example of Belgian consociational democracy in action, was obtained with the support of the francophone Liberals, then in opposition, in exchange for the passing of a law giving voting rights to Belgians living abroad, and a revision of the law on citizenship privileging access to citizenship by naturalization rather than by the granting of voting rights.

The law of 1 March 2000 brought in a significant liberalization of the routes to acquiring Belgian citizenship. At the level of required conditions, Article 12bis 3° allowed all persons legally resident on the territory for seven years without interruption to become Belgian by a simple declaration, if the Department of Public Prosecution had no 'serious personal offenses' to bring forward in opposition. The length of residence required for naturalization was reduced to three years. Moreover, the criterion of 'will to integrate' was removed, along with the questionnaire which was used to establish it. This will was assumed on the basis of the simple fact of the application to become Belgian. The number of applications for Belgian citizenship exploded.

The right-wing Flemish parties (Christian Democrats and Liberals) felt that their hands had been forced and from 2001 onwards they called the principles of this law into question. The law was labeled the '*snel-Belg-wet*' ('quick Belgian law') in Flanders, which shows the low regard in which it was held. Meanwhile, Flemish political discourse became more assimilationist. As mentioned, from the end of the 1990s, the Liberal party, influenced by electoral competition from the party of the

extreme right, Vlaams Belang (Flemish Interest), demanded the introduction of a compulsory integration course, which was voted in 2003. However, the changes in the 2000 law on citizenship did not prevent the eventual adoption in February 2004 of a law expanding voting rights, but not the eligibility, for non-European nationals. This law was supported by all the francophone parties (PS, MR, CDH and Ecolo) and the Flemish Socialists (SP.a) against the majority of the Flemish parties (CD&V, VLD, VB and N-VA). The divergence cannot be interpreted purely on the basis of the language divide. In fact it also reflects a left-right political divide: in Flanders, the center-left is weak (+/- 25%) whereas it is strong in francophone Belgium (+/- 60%). From 2010 onwards, the electoral growth of the Flemish Nationalist party (N-VA) has led to an emphasis on the more restrictive approach towards immigration and integration. The restrictive revision of the law on citizenship in 2012, like that on family reunification in 2011, seems to have opened a new political phase in which the political agenda on immigration is above all set by the Flemish parties (Christian Democrats, Liberals and Nationalists) with the support of francophone Liberals.

Because of the strong criticisms of the 2000 law, a reform strengthening the requirements and restoring the proofs of integration was put on the agenda. In 2010, just before the elections, the CD&V Minister of Justice drew up a proposal that was not debated because of the lack of consensus within the Government. The majority of the revisions proposed were revived in 2011 by Liberal and Flemish Nationalist Members of Parliament, joined by the traditional parties (Christian Democrats and Socialists) and leading to the law of 2012. Simultaneously, just as the reform of the law on citizenship was put on the agenda, the already mentioned political debate in Brussels and Wallonia over the integration program began. The central point in relation to our analysis is the restoration of the condition that the candidate should integrate before obtaining Belgian citizenship. Thus, the short procedure for the declaration of citizenship (Article 9 2°), applicable after five years of legal residence, requires a test of integration. The new law established three objective criteria: knowledge of one of the three national languages, social integration (following an integration program) and integration in the labor market (465 days in the course of 5 years). At the time of the parliamentary debate, only Flanders had an integration program, a situation which was considered to be potentially unconstitutional by the Council of State [18]. The problem was that the absence of an integration program in francophone Belgium was potentially discriminatory for candidates for Belgian citizenship resident in Wallonia or Brussels. This encouraged the Regions of Wallonia and Brussels to accelerate the political debate on the law drafts and finally legislate on a mandatory integration program.

3. Understanding the Differences

How can the differences in integration policies in Belgium be explained? Besides the categorization of integration policies in terms of 'national models' (Koopmans and Statham 2005), the comparative literature on the politics of integration offers various explanations of differences in national integration policies. Differences in concepts of

[18] Council of State, judgment No. 49.941/AG/2/V of 16 and 21 August 2011.

the nation (Brubaker 1992) or in philosophies of integration (Favell 1998) have been put forward to interpret differences in integration policies and access to citizenship. Others have made reference to historical factors (such as the colonial past) (Howard, 2009; Janoski 2010), institutional factors (such as the political decision-making process) (Guiraudon 2000), demographic factors (the numbers of immigrants) or the strength of different political parties and the mobilization of interest groups (Kriesi et al. 1995; Jacobs 1998). Most of these studies are only concerned with national policies, but some explanatory factors can be applied at regional level. However, a new explanatory variable must be taken into account in the study of regional integration policies in multinational States (i.e. Scotland, Catalonia, Quebec and Flanders): the rapid growth of sub-state nationalism. The establishment of integration policies confronts regional elites, engaged in a process of construction of a nation, with a specific dilemma: inclusion of newcomers reduces the cultural homogeneity that is a focus for the construction of nationhood; excluding newcomers reduces the legitimacy of the sub-state national project. This complex relationship between sub-state nationalism and the integration of immigrants has recently been the object of some major studies in political science (Adam 2013b; Barker 2010; Hepburn and Zapata 2014; Jeram and Adam 2014; Kymlicka 2001; Zapata Barrero 2009).

In Belgium, many authors have shown the importance of giving due consideration to minority nationalism (Adam 2013a; Adam and Jacobs 2014) or to 'multinational politics' (Jacobs 2000; Martiniello 2012), a larger theoretical category which includes the reactions of the francophones to this Flemish nationalism, in order to explain the many distinctive characteristics of integration policies. We propose three complementary and related interpretations to understand the differences between integration policies in Belgium. The first factor stems from the differentiated politicization of immigration and integration in Flanders and francophone Belgium, the second concerns the force of Flemish minority nationalism and the third is the instrumental use of immigration in the conflict between the two national minorities ('multinational politics').

3.1 The Different Politicization of Immigration and Integration

Since the separation of the traditional political parties during the 1960s and 1970s (Delwit 2003), Belgium has had a communitarian party system with a Flemish and a francophone variant of each party. In recent decades, the two political landscapes, Flemish and francophone, have evolved differently. Researchers have shown the reduction in the left-right socio-economic divide in Flanders (Swyngedouw et al. 1993, 2007), and conversely its continuing importance in francophone Belgium (Frognier and Aish 1994, 2003). Following the appearance of the extreme right party (Vlaams Blok) and the Greens (Agalev) in Flanders, the traditional cleavages are no longer sufficient to describe Flemish electoral space after 1991. These researchers have shown that the position of voters regarding immigrants and the question of immigration, in Flanders more than in francophone Belgium, has become a key determinant of their voting behavior (Swyngedouw 1995). The problem of integration has become an issue which structures the divides between political parties; in this respect the situation fits the definition of the politicization of a problem (Hermet et al. 1998) more markedly in the

north of the country than in francophone Belgium. This interpretation is confirmed by the analysis of the decision-making processes for the laws on immigrant integration in the different federated entities, and of the way they were reported in the media (Adam 2013b). In comparison to Flanders, the parliamentary debates on these laws in francophone Belgium were shorter, the decision-making was more consensual, especially in Brussels, and the debate received little media attention. Although the assimilationist attitude is equally present among a large number of francophone political representatives, the need to intervene actively to attain a certain level of cultural homogeneity has always been considered less important.

With a greater politicization of immigration and integration in Flanders, the Flemish political parties have established their standpoints more quickly and firmly than the francophone parties. The references in debate to the electoral climate during the development of the Flemish integration program allow us to establish a link between the politicization and the adoption of the compulsory integration program. In other words, the stronger politicization of immigration and integration in Flanders explains the compulsory nature of the integration program.

From 1991 onwards, the first proposals from the Flemish Liberal party to introduce a policy obliging immigrants to follow language courses were put forward in the context of electoral competition from the extreme right, which, according to the Liberal party leader at the time, seemed very preoccupied with 'people's real problems' such as 'the troubling contacts with immigrants'[19] that the traditional political parties were ignoring (Blommaert 2005). On the francophone side, the Liberal party, due to the almost complete absence of anti-immigrant pressure from the extreme right of the political spectrum, always seemed to have more to lose than to gain by demanding a stricter integration policy. However, since it has been in opposition (2004), the attitude of the Liberal party has changed, despite still being in a political context marked by the absence of a powerful extreme right-wing party. Since 2010, the Liberals have no longer hesitated to politicize immigration and integration, particularly through proposed legislation on the compulsory integration program, but also through laws they have supported tightening family reunification policy, banning the wearing of the face veil (niqab), and changing the law on citizenship. With this change of attitude they aim to occupy the position, in the francophone political space, of defender of Belgian 'norms and values' and defender of secularism against the demands of Muslim Belgian citizens, a position that was already theirs before 1995.

3.2 The Divergent Processes of Nation-Building

The stronger politicization of immigration in Flanders, in comparison to francophone Belgium, linked to the presence of an extreme right anti-immigrant party, cannot be isolated from the process of construction of the sub-state Flemish nation. Thus, it has been demonstrated that the success of the extreme right in Flanders, in comparison to its weakness in francophone Belgium, stems partly from the strong organization of the Flemish extreme right party, which was able to rely on the radical right wing at the heart of Flemish nationalism and that from its inception already had

[19] Verhofstadt G. (1992), *Tweede Burgermanifest*.

a base of support and of ideologically trained militants (Coffé 2005). The nationalism of the Flemish community and the near absence of nationalism on the francophone side are responsible for many differences between the policies of French-speakers and Dutch-speakers, particularly the greater centralization (and professionalization) of Flemish policy in comparison to francophone policy.

Among the different federated entities created by successive reforms of the State, it is Flanders that can be considered to have truly embarked on a process of nation-building (Swenden and Jans 2006; Billiet et al. 2006). In francophone Belgium, the project of forming a sub-state national identity is in fact present in Wallonia although it is very marginal politically. The political elites remain divided between asserting the fact of the separation between the Regions of Wallonia and Brussels, and maintaining the unity of Wallonia-Brussels, to present a stronger united front to Flanders. Moreover, the stronger allegiance to the federal State, on the part of francophone elites and of the Belgian francophone population, leaves no room for sub-nationalism (Billiet et al. 2006). In Flanders, the fusion of the Region and the Community, which has allowed the creation of a Flemish Government and Flemish Parliament representing a sub-national entity, facilitates this process of nation-building. Furthermore, it has been demonstrated that the Flemish media contribute equally strongly to this process of formation of the Flemish nation, unlike the francophone media in which reference to Belgium remains central (Sinardet 2000; Kerremans 1997). In addition, the creation of a national identity is necessary to legitimate the continuing demand for ever more autonomy on the part of the Flemish Government (Kerremans 1997). As in other multi-national States, the process of (sub-)national identity formation in Flanders can be explained by the interests of the newly formed institutions and the agents who personify them, specifically their interest in legitimating their existence (Billiet et al. 2006; Kerremans 1997; Karmis and Gaignon 1996). The implementation of public policies considered to be better than those of the federal State can thus be credited to sub-national authorities. This need for internal legitimacy for the project of constructing a Flemish nation and the absence of a corresponding project in francophone Belgium should not be neglected as an interpretative key to the different levels of centralization and professionalization of integration policies. The process of nation-building requires that public policies should, on the one hand, be more centralized and implemented by the authority demanding autonomy; and, on the other hand, should be considered as ‘better’ than those of the authorities from which the nation wishes to be distanced. In francophone Belgium, where the political elites are more divided in their national identity due in particular to the deep-rooted sub-regionalism of Wallonia, this quest for legitimacy through the development of centralized public policies is less present. Therefore, Flemish sub-state nationalism and the near absence of a nationalism of francophone Belgium explains the difference in the degree of centralization of integration policies north and south of the language border.

3.3 Multinational Politics and Electoral Competition

The civic integration programs reflect a reversal over time in the attitudes of the Flemish and the francophones towards immigrants and inevitably also the descendants of immigrants. While the recognition of cultural minorities was valued by the Flemish in the unitary State, nation-building has reversed this tendency. The appreciation of the 'norms and values' of Flemish society is currently dominant and is affirmed politically by all parties. It is an essential ingredient in the reinforcement of sub-national identity and can, at times, be accompanied by xenophobic discourse (Wallerstein and Balibar 1992). In Brussels and in Wallonia, the attitude is more complex. For one thing, the francophones want to distance themselves from the Flemish nationalist discourse, and for another, being in the minority they try to avoid alienating immigrants and descendants of immigrants in order to have allies in their conflicts with the Flemish. In Belgium, the descendants of immigrants who have become Belgian cannot come together to form a specific ethnic minority (Martiniello and Rea 2004). In the three Regions, they are destined to dissolve their identity into that of the region (Flemish, Brussels and Walloon) in which they live.

Indeed, for francophones the naturalization of immigrants represents a way to limit their numerical minority. While in Wallonia the electoral significance of descendants of immigrants is too small to directly explain the reluctance to introduce a compulsory assimilationist integration program, it is a different story in Brussels. In Brussels, descendants of immigrants make up almost 50% of the population (Deboosere, Eggerickx, Van Hecke, and Wayens 2009). The fear of the instrumental use of changes of citizenship was already formulated in 1971 (Rea 1999) when the Volksunie, ancestor of the Nationalist party N-VA, opposed a first legislative proposal relaxing the conditions of citizenship, which was not passed. They were motivated by fear that the new Belgians would mostly be francophones, and would consequently play a role in the balance of political power between the two politico-linguistic blocks. In Brussels, this has played an essential role. More than 250,000 people in Brussels acquired Belgian citizenship between 1984 and 2007. The vast majority of these new voters became francophone Belgians, reducing still further the representation of the Flemish in Brussels (+/- 12%).

In Brussels, the spatial concentration of descendants of immigrants in certain districts and the characteristics of Belgian electoral law (Jacobs, Martiniello, Rea 2002) have led to rapid growth in the presence of Belgian descendants of immigrants on the electoral register. Political parties have to take them into account and avoid stigmatizing these potential voters.

Besides the ideological differences separating the political parties, the competition for votes in this context also explains the content of public policy, and in particular that of the Brussels reception policy. In Brussels, the political representation of Belgians of foreign origin, and in particular of the most stigmatized minorities (of Moroccan, Turkish and Congolese origin), is particularly strong within the municipalities and the Regional Parliament (+/- 25% of elected representatives). While the Liberal Party has dominated the political arena since the 1960s, the Socialists have become the largest political party in the Brussels Region since the end of the 1990s, which corresponds to the biggest wave of changes of citizenship. Research has also shown (Jacobs et al.

2010) that the Socialist Party is heavily dependent on the ethnic vote, and especially the vote of Belgians of Moroccan origin. The presence of these representatives in Parliament contributes likewise to the exclusion of any policies that could be characterized by a tendency to oppress or belittle immigrants, thus explaining the reluctance to introduce a compulsory integration program.

4. Conclusion

This article clearly demonstrates the absence of a 'Belgian model of immigrant integration'. Immigration into Belgium after the end of the Second World War was at first a matter of the industrial regions, mostly located in francophone Belgium. But the debate around the politics of integration did not emerge until much later, essentially under pressure from the Flemish party of the extreme right, Vlaams Blok (later Vlaams Belang). Flanders became aware of also having become an immigration region at a time when its project of nation-building was gathering new momentum. The role of the European institutions in the debate on immigrant integration is not to be ignored (Adam and Martiniello 2013; Van Puymbroeck, Adam and Goeman 2011). By means of the European Integration Fund, the Union has encouraged Member States to set up integration programs, despite not having a mandate to oblige them to do so. In addition, exchanges between Member States in the context of European immigration policy have promoted the establishment of compulsory programs in the host countries but also in the countries of origin[20], with emphasis on a notion of 'achieving the cultural conformity of immigrants'. For a long time, francophone Belgium ignored these European proposals, but now the movement is too strong to ignore. Moreover, recent changes in Belgian citizenship law[21] have encouraged the Regions of Brussels and Wallonia to promote programs of this kind. There has therefore been a convergence, not only in the existence of these programs but also in their typical content (language learning, civic integration courses and social assistance). Nevertheless, the integration policies of Wallonia and Brussels are, at present, different from the Flemish policy, which is more characterized by the search for proofs of integration and the cultural conformity of newcomers. Internal factors, rather than the process of public policy transfer at the European level, explain the differences. However, it cannot be ruled out that, as in other European countries, once these policies have been introduced they may become more restrictive, progressing from social to cultural objectives, as has happened in Flanders, and even that they begin to be used to control access to permanent residence rights or welfare, as has happened in many European countries. Whether to keep the program compulsory is not only a matter of principle but also of budgetary constraints. Can Wallonia, which is much less prosperous than Flanders, continue to finance such a program at a time of high public deficits? One possible solution to this problem, which would be questionable in more ways than one, in Europe, as much in Wallonia as in Brussels and Flanders, would be to privatize the integration program, passing on a larger part of the costs to the immigrants themselves. In any case, if the integration policies put

[20] See the contribution of Yves Pascouau in this book.

[21] Law of 4 December 2012 (*Moniteur belge*, 14 December 2012).

in place in Flanders and in francophone Belgium should converge, this will be more due to the process of Europeanization of integration policies than due to consultation at national level between the Regions and Communities of Belgium.

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