MoveS seminar Italy

Social integration in EU law: Contents, limits and functions of an elusive notion

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Turin, 25 May 2018

University campus Luigi Einaudi

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Social integration: The different paradigms for EU citizens and third country nationals

Alessandra Lang
Torino, 25-5-2018

Research question

The paper analyzes whether and how integration considerations are incorporated into three sets of secondary legislation:

- Rules applicable to TCNs
- Rules on international protection
- Rules on EU citizens

taking due account of the case-law of the Court of Justice.

The aim is to compare the different legal regimes under this particular perspective, in order to highlight similarities and differences.

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Rules applicable to TCNs

- References to integration:
  - Short-stay visas (reg. 810/2009)
  - Family reunification (dir. 2003/86)
  - Long-term residents (dir. 2003/109)
- Why no reference to integration in the other acts?
- Dir. 2003/109
  - Instrument for the integration of third-country nationals who are settled on a long-term basis
  - Integration conditions (art. 5, para. 2)
- Dir. 2003/86
  - Instrument for the integration of the sponsor
  - Presumptions about the family members' capacity for integration
  - Integration measures/conditions (art. 7, para. 2)

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International Protection (CEAS)

- Dublin Regulation: no consideration given to the applicant's integration prospects
- Qualification Directive (dir. 2011/95)
  - Integration programmes
  - May the MSs take account of integration requirements in granting the treatment provided for in the Dir.? *Alo and Osso* [2016] C-443/14 and C-444/14

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EU citizens

- Old legislation: integration as tool to improve the treatment of EU citizens and their family members
- Directive 2004/38: its letter
- Case-law: slipping integration considerations into
  - Right of permanent residence
  - Protection against expulsion

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Concluding remarks

- Integration: two-faced and indeterminate
- Common thread: integration as object and interpretative criteria
- Differences: integration as conditions

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Bocconi

ECONOMICALLY INACTIVE UNION CITIZENS: LESSONS FROM THE DRAFT EU-UK WITHDRAWAL AGREEMENT

MOVES SEMINAR – TURIN 25TH MAY 2018

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DWA –state of play for EU citizens

- Up to end of transition (31 Dec 2020) = no change
- Brexit residence conditional upon **ec. activity/ independence**
- **Families** protected; children in education protected
- **Right** to equal treatment + work + entry / exit
- **Excluded**: those resident pursuant to nat. law (if no perm. res) and own citizens

Economic inactive citizens: the (known) problems

- Directive 2004/38 → residence rights for ec. inactive citizens conditional upon:
  - Sufficient resources
  - Comprehensive Health Insurance
- De facto CHI requirement not necessarily respected or even known about
- Risk that many ec. inactive citiz (even long term resident) would be excluded from Brexit process

Unequal citizenship

- Problem stems from unequal Union citizenship → also particularly punitive for carers (mainly women) and impossible for less healthy
- Initially → Court of Justice mediates this problem (space between Dirs and Treaty):
  - Sala → resident pursuant to national law protected
  - Grzelcyck → ET applies to lawfully resident
  - Baumbast → no CHI, yet proportionality applies

(consider also less anxiety about immigration)

Directive 2004/38

Supposed to be codification of existing caselaw but:

- CJ slowly reduces the space between 2004/38 and Treaty:
  - *Dano* → no space left → enjoyment of (some?) Treaty rights conditional upon black letter interpretation of conditions
  - Not clear whether this applies to CHI/ whether *Dano* overrules *Baumbast*, i.e. whether it applies to residence or only eq. treat.
  - *Ziolkowski* → residence pursuant to national law relevant for perm. residence only insofar as condition for residence satisfied (and what about Sala?)

Why does DWA leave gaps in protection?

- DWA simply codifies existing inequalities, especially punishing for those who do not and cannot have CHI (of whom many might be women) as well as spouses of own citizens whose residence is a mix of nat. / EU law
- It negates the reality of semi-statuses (which were endorsed in *Buambast*) → EU nationals not subject to migration control (not 'illegal') even when residence not wholly legal
- Overall → DWA is further evidence of the lack of value of social integration through non economic means

Solutions: EU citizens in UK

- UK has undertaken:
  - Not to check CHI or compliance with Treaty for periods before Brexit
  - CHI + Treaty rights for future
- This amounts to an '**amnesty**' which would see all UC residing in UK at least 4 months before referendum being given indefinite leave to remain (NB lots of problems remain – esp criminality etc)

But what about EU?

Tension between:

- Safeguarding rights of UK citizens as EU citizens (when they had moved)
- Not undermining viability of Dir 2004/38 + legal problems in relation to equal treatment
- NB additional problem of UK nationals in Ireland

Conclusions

- Overall DWA demonstrates limits of Union citizenship
- Need to ensure equitable treatment of soon to be ex-Union citizens not enough to challenge will to exclude economically inactive Union citiz. from host communities
- Problem is not UK citizens but the rest → Union citizenship ends up as a straight jacket rather than an empowering tool

Recent developments at EU level in social security coordination

MoveS Seminar
Turin, Italy
25 May 2018

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Overivew

1. *Proposal for a European Labour Authority*
2. *European Social Security Number*
3. *Revision of the Social Security Coordination rules*
4. *Work of the Administrative Commission*
5. *Electronic Exchange of Social Security Information*

1. European Labour Authority - Towards fair and effective labour mobility

"We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way"

European Commission President Juncker, State of the Union Address, 13 September 2017

Employment, Social Affairs and Inclusion

Objectives of the European Labour Authority

Easier access to information and labour mobility services for individuals and employers

Strengthened cooperation between national authorities in cross-border enforcement, including inspections

Mediation between national authorities or in case of labour market disruptions

The Tasks of the Authority (1 to 3)

1) Facilitate **access to information by individuals and employers** on rights and obligations and **to relevant services** in cross-border labour mobility situations

2) Facilitate **cooperation and exchange of information** between national authorities → through National Liaison Officers within ELA

3) Coordinate and support **concerted and joint inspections** by national authorities (governed under law of MS concerned, possible presence of ELA staff)

The Tasks of the Authority (4 to 7)

4) Carry out **analyses and risk assessments** on issues of cross-border labour mobility

5) Support **capacity building national authorities** through guidance, mutual learning and training

6) Mediate in disputes between Member States on the application of EU law concerning labour mobility

7) Facilitate **cooperation between relevant stakeholders for cross-border labour market disruptions**, e.g. large scale restructuring

Functioning and governance

- Established as a new EU Agency (cf 2012 common approach EP, Council and Commission)
- EU-level social partners represented in Stakeholders Group
- Size at cruising speed:
  - ✓ Staff of 144 (incl. national liaison officers and other seconded national experts)
  - ✓ Budget of 51M€

Procedural steps

ELA Regulation

- Adoption by Commission 13 March 2018
- Discussion within the Council
- Discussion within the European Parliament
- Adoption by co-legislators end 2018
- Authority up and running in 2019

Laying the ground for ELA's set up

- Commission Decision establishing Advisory Group for ELA: in place until ELA's set up
- Composed of MS, EU-level social partners, existing agencies

2. European Social Security Number (ESSN)

- ***Backgound***
  - EP Resolution on the European pillar social rights: for a ‘social security card’
  - State of the Union address of President Juncker and 2018 Commission Work programme
  - Reflected in ‘Social Fairness Package’ of 13 March

- ***Problem definition:***
  - Cumbersome interaction mobile persons – administrations with reliance on paper documents for the verification of social security coverage
  - A multitude of national identifiers used for the establishment of social security entitlements of mobile persons

ESSN – Objectives and requirements

- ***Objectives:***
  - Facilitate interactions between mobile persons and national administrations/health care providers
  - Reduce the length, costs and administrative complexity for national authorities and third parties (e.g. health care providers) to verify the social security coverage in cross-border cases

- ***Key requirements***
  - Interoperability national systems
  - Real-time
  - Information agnostic
  - Data protection

ESSN – Ongoing analysis

- ***Options for technical solutions (unique identifier)***
- ***National implementation and experiences***
- ***Cost – benefits***

3. Revision of Social Security Coordination rules

- Based on Commission proposal of December 2016:
  - **The Council agreed on a partial General Approach on chapters covering inactive persons, applicable legislation, long-term care and family benefits.**
  - **Negotiations ongoing on unemployment benefits and miscellaneous amendments (including date of application of new rules).**
- Final Council General Approach and vote in the European Parliament's EMPL Committee planned before summer break
- Trilogues expected to start in the second half of 2018 under Austrian Presidency, with aim to conclude before the end of the year.

4. Work of the Administrative Commission

✓ **New Decisions and Recommendations:**

- **Decision No E5** of 16 March 2017 concerning the **practical arrangements for the transitional period for the data exchange via electronic means** referred to in Article 4 of Regulation (EC) No 987/2009.

- **Decision No E6** of 19 October 2017 concerning the **determination of when an electronic message is considered legally delivered EESSI**.

- **Recommendation A1** of 18 October 2017 concerning the **issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 (Portable Document A1)**.

Work of the Administrative Commission

✓ **Statistical data collection and reporting:**

- Reports finalised in 2017 (for **reference year 2016**) are available on the DG EMPL website, assessing the functioning of the social security coordination rules in:
  - **applicable social security legislation,**
  - **cross-border healthcare,**
  - **unemployment benefits,**
  - **family benefits,**
  - **cross-border old age, survivors' and invalidity pensions,**
  - **collection of outstanding contributions and recovery of unduly paid social security benefits,**
  - **measures to tackle fraud and error.**

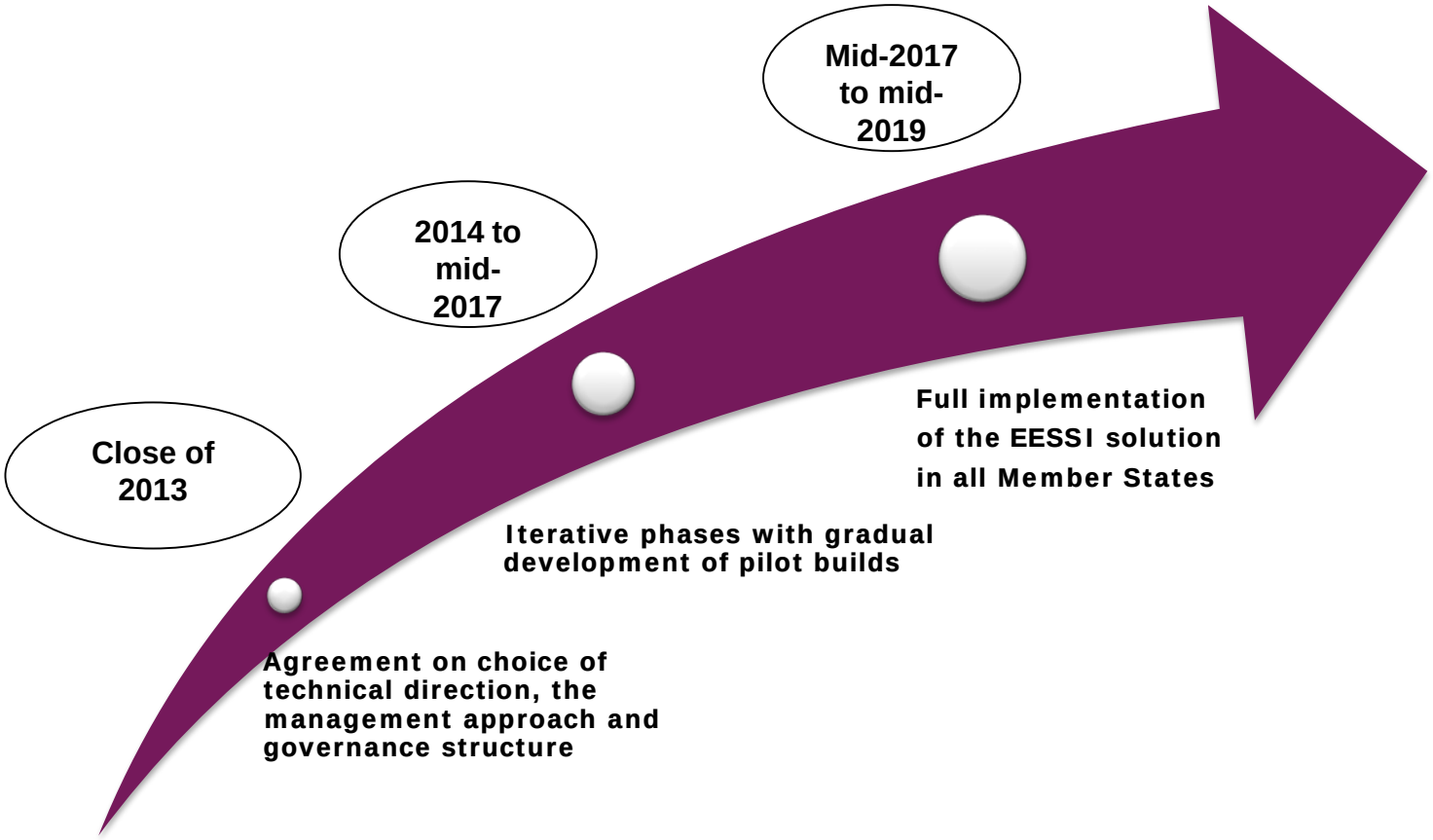
5. Electronic Exchange of Social Security Information – EESSI

- *EESSI is a key innovation of the modernised rules on social security coordination – Article 4 of Regulation (EC) No 987/2009 introduces the requirement for electronic exchange.*

- *EESSI is an IT system that will help social security bodies across the EU exchange information more rapidly and securely. All communication between national bodies on cross-border social security files will take place using structured electronic documents (SEDs), which will replace E-forms.*

- *EESSI covers all branches of social security listed in Article 3 of Regulation (EC) No 883/2004, and it will connect all EU Member States, as well as Iceland, Lichtenstein, Norway, and Switzerland.*

EESSI - high level steps towards delivery



Latest developments and next steps for national implementation of EESSI

- *The central EESSI system was delivered on 3 July 2017 to Member States.*

- *Member States have 2 years to implement and connect their national institutions – by July 2019.*

- *National implementation follows a common plan agreed by the AC, gradually introducing electronic procedures across the EU and across various sectors of social security.*

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The notion of social integration in the EU law and CJEU case-law

Kristina Koldinská

MoveS visiting expert

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Social integration – notion in EU law

- Not mentioned in primary law
- Scarce in secondary law
- Some CJEU case law

- In several official documents connected with:
  - Third country nationals
  - Roma
  - Elderly
  - People with disabilities

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Social integration in official documents - examples

- Resolution of EP 2010/2041(INI) on social integration of women from ethnic minorities:
  - Social integration connected with **access to**
    - education,
    - labour market,
    - social security,
    - health system and
    - Housing
- Council Recommendation on effective Roma integration measures
    - + Fight against discrimination and segregation
- European Parliament resolution on refugees: social inclusion and integration into the labour market (2015/2321(INI))
    - + sport
    - + culture, including language

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Social integration in secondary EU law

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Dir 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

- no word on social integration, but material scope (art. 2):
  - access to employment
  - conditions of employment and work
  - access to social and tax advantages
  - membership of trade unions and eligibility for workers' representative bodies
  - access to training;
  - access to housing
  - Access to education;
  - equal treatment of Union workers and members of their family without discrimination on grounds of nationality, unjustified restrictions or obstacles to their right to free movement

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No case law yet but

- C-401-403/15 Depesme
- Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child. The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount.

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Dir. 2004/38 – residence directive

- Preamble (18) In order to be a genuine vehicle for **integration** into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions.
- Art. 28 Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, **social and cultural integration into the host Member State** and the extent of his/her links with the country of origin.

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C-165/14 Rendon Marín

- Article 20 and 21 TFEU and Directive 2004/38 - must be interpreted as precluding national legislation which requires a third-country national to be automatically refused the grant of a residence permit on the sole ground that he has a criminal record where he is the parent of a minor child who is a Union citizen and a national of a Member State other than the host Member State and who is his dependant and resides with him in the host Member State and precluding the same national legislation which requires a third-country national who is a parent of minor children who are Union citizens in his sole care to be automatically refused the grant of a residence permit on the sole ground that he has a criminal record, where that refusal has the consequence of requiring those children to leave the territory of the European Union.

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Dir 2003/109 concerning the status of third-country nationals who are long-term residents

- Preamble (4) The **integration** of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.
- Art. 5(2) Member States may require third-country nationals to comply with **integration conditions**, in accordance with national law.
- Art. 11(1) Long-term residents shall enjoy equal treatment with nationals as regards:
  - (a) access to employment and self-employed activity and conditions of employment and working conditions
  - (b) education and vocational training
  - (c) recognition of professional diplomas, certificates and other qualifications;
  - (d) social security, social assistance and social protection as defined by national law;
  - (e) tax benefits;
  - (f) access to goods and services and to procedures for obtaining housing;
  - (g) freedom of association of workers or employers;
  - (h) free access to the entire territory of the Member State concerned

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C-579/13 P@S

- P and S - third-country nationals with long-term residence permits of indefinite duration. They were respectively required to fulfil a civic integration obligation and pass examination, according to national law. P started a civic integration programme, then temporarily interrupted due to sickness. Subsequently she did not continue with that programme. S in almost identic situation.
- Both brought action against the decisions obliging them to pass the civic integration examination. The dutch Higher Social Security Court expressed doubts as to whether the civic integration obligation complies with Directive 2003/109, especially whether, after the grant of long-term resident status, Member States may subsequently impose integration conditions in the form of a civic integration examination, with penalties in the form of a system of fines.
- The civic integration obligation may in fact be covered by Article 11(1)(a) and (b) of Directive 2003/109. If that is the case, since that obligation is not imposed on nationals, it should not be imposed on third-country nationals who are long-term residents either, if the principle of equal treatment referred to in that provision is not to be infringed.
- although integration conditions may indeed be laid down in national law, they cannot however be such that they render impossible or excessively difficult the acquisition or maintenance of long-term resident status. The referring court does not exclude that the civic integration obligation does not comply with that criterion.
- Is the fact, that a third-country national is informed, after obtaining long-term resident status, that a civic integration obligation must be fulfilled subsequently, relevant to the assessment of whether that obligation complies with Directive 2003/109.

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Legal questions

- it must be established whether imposing an integration obligation on a long-term resident is compatible with his/her long-term resident status in the light of Directive 2003/109 and
- if the answer to the first question is in the affirmative, it must be established to what extent EU law limits the freedom of Member States to determine the content of that integration obligation.

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C-579/13 P@S – CJEU answer

- Directive 2003/109/EC does not preclude national legislation, which imposes on third-country nationals who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive
- Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant

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Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

- The single permit allows non-EU country beneficiaries to enjoy a set of rights, including:
- the right to work, reside and move freely in the issuing EU country,
- the same conditions as nationals of the issuing country as regards working conditions (such as pay and dismissal, health and safety, working time and leave), education and training, recognition of qualifications, certain aspects of social security, tax benefits, access to goods and services including housing and employment advice services.
- The directive sets specific criteria, based on which EU countries can restrict equal treatment on certain issues (access to education/training, social security benefits such as family benefit or housing).

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Single permit directive

- Preamble (2) European Union should ensure fair treatment of third-country nationals who are legally residing in the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the Union
- Preamble (24) The provisions on equal treatment concerning social security in this Directive should also apply to workers admitted to a Member State directly from a third country.
- Art. 12 Third-country workers shall enjoy equal treatment with nationals of the Member State where they reside with regard to: working conditions, freedom of association, education, recognition of diplomas, social security covered by CSS, tax benefits, access to goods and services, employment advice services

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C-449/16 Martinez Silva

- Mrs Martinez Silva, a third-country national, resides in the municipality of Genoa and is the holder of a single work permit valid for longer than six months. Since she is the mother of three children under 18 and her income was below the limit laid down by Law No 448/1998, she applied in 2014 to be granted ANF, which was refused her on the ground that she did not have a long-term resident's EC residence permit.
- The Corte d'appello di Genova (Court of Appeal, Genoa, Italy), before which an appeal was brought, states that it entertains doubts as to the compatibility of Article 65 of Law No 448/1998 with EU law, as that provision does not allow a third-country national who holds a single permit to receive ANF, contrary to the principle of equal treatment set out in Article 12 of Directive 2011/98.
- That court explains, first, that ANF is a cash benefit intended to meet family expenses which is granted to families in particular need of it in view of the number of their children and their economic circumstances. It appears to the court to be one of the benefits referred to in Article 3(1)(j) of Regulation No 883/2004, not being an advance of maintenance or a benefit referred to in Annex I to the regulation.
- Citing the judgment of 24 April 2012, *Kamberaj* (C-571/10, EU:C:2012:233), the referring court considers, next, that none of the limitations of the principle of equal treatment provided for in Article 12(2)(b) of Directive 2011/98 applies in the main proceedings, since the Italian Republic did not intend to exercise the option under that provision of restricting the application of that principle and, moreover, Mrs Martinez Silva is not in any of the situations mentioned in the second indent of that provision, as she is the holder of a single work permit valid for longer than six months. It considers that she is therefore among the persons to whom the principle of equal treatment applies.

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C-449/16 Martinez Silva – CJEU answer

- The Court has explained that the method by which a benefit is financed, in particular the fact that its grant is not subject to any contribution requirement, is immaterial for its classification as a social security benefit
- the fact that a benefit is granted or refused by reference to income and the number of children does not mean that its grant is dependent on an individual assessment of the claimant's personal needs, which is a characteristic feature of social assistance, in so far as the criteria applied are objective, legally defined criteria which, if met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances. Benefits that are granted automatically to families meeting objective criteria relating in particular to their size, income and capital resources, without any individual and discretionary assessment of personal needs, and are intended to meet family expenses must thus be regarded as social security benefits
- Italian Republic did not intend to exercise the option of restricting equal treatment by having recourse to the derogations provided for in Article 12(2)(b) of Directive 2011/98, as it did not demonstrate any such intention. The provisions of the Italian legislation limiting ANF, in the case of third-country nationals, to holders of a long term residence permit and to families of EU nationals, which were moreover adopted before that directive was transposed into national law, cannot therefore be regarded as introducing the restrictions of the right of equal treatment which Member States have the option of introducing under that directive.
- Article 12 of Directive 2011/98/EU must be interpreted as precluding national legislation, under which a third-country national holding a single permit within the meaning of Article 2(c) of that directive cannot receive a benefit such as the benefit for households having at least three minor children established by Legge n. 448 — Misure di finanza pubblica per la stabilizzazione e lo sviluppo (Law No 448 on public finance measures for stabilisation and development) of 23 December 1998.

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Conclusion

- Social integration – notion not very clear
- No definitions in the EU law – do we actually need one?
- Social integration – right - access to …
- Social integration – obligation – in order to remain in a MS
- Connected with: equality, immigration, ethnic diversity, disability, age…

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Thank you for your attention

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The quest for integrating migrants and the local authorities' response. The urban sanctuaries.

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https://edition.cnn.com/2017/11/21/politics/trump-sanctuary-cities-executive-order-blocked/index.html

https://www.washingtonpost.com/news/politics/wp/2017/11/21/federal-judge-blocks-trumps-executive-order-on-denying-funding-to-sanctuary-cities/?utm_term=.cc35193742dd

https://www.nytimes.com/2018/03/06/us/politics/justice-department-california-sanctuary-cities.html

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SANCTUARIES

SANCTUARY CITIES

URBAN SANCTUARY

They are cities in US, UK, Canada aimed at accomodating illegalized migrants and refugees in their communities.

They could be intendend as policies and administrative practicies serving the purpose of receiveing foreigners/third country nationals.

«Sanctuary City is as much a process as a goal» (Walia, 2014; Bauder, 2016).

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ASYLUM

1) From the ancient greek word ἄσυλον (asulon) ιερόν (ieron): a temple aimed at defending from seizure
It's the very original basis of the *habeas corpus*

HOLINESS (of a place and, as a consequence, of the individual)

2) ασιλία (asilia): personal privilege (athlete, πρόξενος, public officials)

TERRITORIALITY

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ASYLUM

3) Religious origin:
Islam: Hâram: a holy place (TERRITORIALITY)

- It may be taken over from some pre-existing Abrahamic piety:

Koran: Verse 14:35-37: My Lord, / make this land secure (...) Our Lord, I have made some of my seed to dwell in a valley where is no sown land / by Thy Holy House
Koran: Verse 9:6: And if anyone of the idolaters (Mushrikin) ask protection of thee, grant him protection so that he may hear the word of Allah; then convey him to his place of security.

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ASYLUM

3) Religious origin:
Judaism: asylum is a holy place

Israeli people are aliens themselves: the land is the Land of God.

The Bible could be considered as an apology (defense) of a duty of hospitality.

(Counterbalance: not everyone is entitled to be a host).

The Bible mentions «**six cities of refuge**» which offer protection to people who have accidentaly killed another person (it articulates sanctuary at the urban scale).

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ASYLUM

3) Religious origin:
Christianity: charitas

"Love thy neighbour as thyself"
MT, 10: 40.42: "Whoever receives you receives me, and whoever receives me receives him who sent me. 41 The one who receives a prophet because he is a prophet will receive a prophet's reward, and the one who receives a righteous person because he is a righteous person will receive a righteous person's reward. 42 And whoever gives one of these little ones even a cup of cold water because he is a disciple, truly, I say to you, he will by no means lose his reward."

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ASYLUM

3) Religious origin:

The aliens is not one similar to you; he is truly “the other”

Protection comes from penance and atonement and it turns into piety: ad misericordiam ecclesiae confugere (Canon Law)

Again: the idea is a sacred place to protect. Namely: **churches**.

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ASYLUM

4) Churches.

In the 2nd half of the 20th Century churches in Denmark, France, Finland, Germany, Norway, Sweden, US and other countries began to offer sanctuary to rejected refugee claimants, to asylum seekers, to illegalized migrants.

The focus population of sanctuaries shifted from criminals to illegalized migrants and refugees (Bauder, 2016).

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URBAN SANCTUARIES MODELS

1) The US model

2) The UK model

3) The Canada model

THE US MODEL

1) Resolutions adopted by cities to specifically prohibit the use of city funds and resources to assist federal immigration enforcement, to cooperate with investigations by or surveillance request from foreign Governments**: "City of Refuge Ordinances"** (Cade, 2017).

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URBAN SANCTUARIES MODELS

THE US MODEL

2) They are practices promoted by local authorities focussing on migrants who are irregular (undocumented) who have been present for a long period in US and seek to maintain the life they built as being DE FACTO member of the local community.

3) A local legislation was developed in order to specifically protect those migrants by settling different legal measures, such as: **prohibition** to municipal police forces and city services agencies from requesting, recording, or disseminating status information, and **denial** of cooperation with federal immigration authorities.

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URBAN SANCTUARIES MODELS

THE US MODEL

4) Some Sanctuary Cities issued **“local identification card”,** namely: **MUNICIPAL IDENTIFICATION CARDS** independently of the possession of federal status documents; other are accepting as means of identification certain “matriculas” issued by the State of origin (i.e. Mexico: matriculas consulares).

OUTCOME: these administrative practices do not eliminate illegalization; they are aimed at enabling people to live in the local community under the official condition of irregularity.

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URBAN SANCTUARIES MODELS

THE UK MODEL

1) It's more a movement promoted by certain organizations or local groups (i.e. voluntary basis initiative) and supported by City Councils to promote the involvement of refugees and asylum seekers in order to shift hostile inhabitants attitude towards that category of migrants. They promote everyday encounters between refugees and citizens (Sheffield achieved officially the status of "City of Sanctuary").

Funded by the European Commission

THE UK MODEL

2) There isn't any official involvement of the municipality, unlike the US.

The Cities **are not creating a legal shelter** from national immigration-law enforcement.

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URBAN SANCTUARIES MODELS

THE CANADA MODEL

1) Sanctuary Cities began as local groups initiative who advocated sanctuary-cities by-laws. In 2013 a Sanctuary City by-laws were passed.

2) They are devoted to protect illegal/undocumented migrants and to provide them with access to municipal services: emergency medical services, public health programs, emergency shelters, recreational programmes, access to libraries.

3) Similarly to US there are acts of defiance against federal immigration policies ("Access to City Services without Fear Policy").

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URBAN SANCTUARIES MODELS

THE CANADA MODEL

4) They are also aimed **at re-scale belonging**.

They distinguish between:

Local community

Nation State andNational Government

The basic idea is to promote a form of “regularization from below”

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URBAN SANCTUARIES MODELS

THE COMMON TRAIT

Is the legal nature of such initiatives:

1) A urban sanctuary is supported by the municipal legislative body (City Council)

2) There are often official commitments (legal orders) to non-cooperation with the enforcement of national immigration law

3) The local law makers are at least committed to nurture an environment of hospitality by supporting with local funds projects aimed at – generally speaking - promoting awareness and integration

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URBAN SANCTUARIES MODELS

What about Italy?

Is a a 4th model possible?

Italy has at least four different level of reception centres devoted to asylum seekers, refugees and undocumented migrants:

- emergency centres (pre-admittance detention)

- “first level” reception centres (processing centres)

- pre-removal detention centres

- “second level” reception centres

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Thank you!

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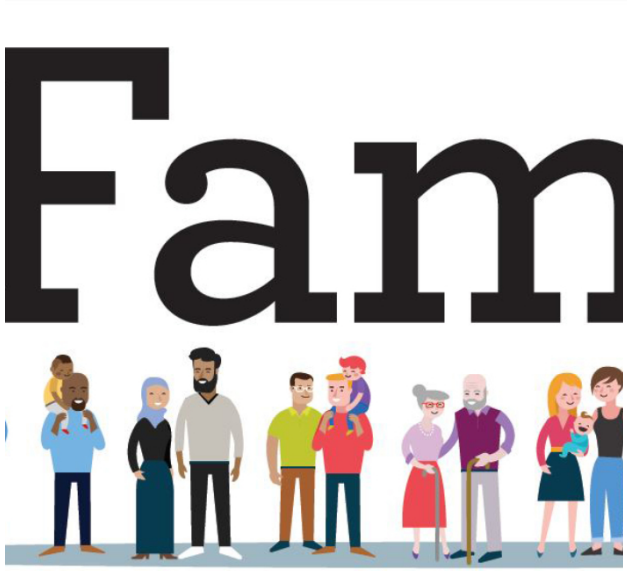
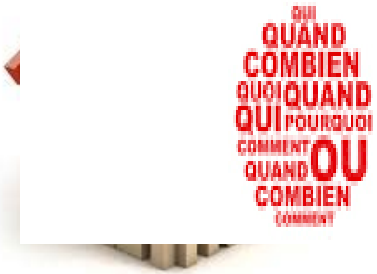
Family Migration and European Union Law

Dr Moritz Jesse, May 2018, Europa Institute, Leiden

Universiteit Leiden
The Netherlands

The Story of Family Migration





Immigrant Integration & the Law

$$\int_{-1}^{2} x\mathbf{e}^{6x}\,dx = \frac{x}{6}\mathbf{e}^{6x}\Big|_{-1}^{2} - \frac{1}{6}\int_{-1}^{2}\mathbf{e}^{6x}\,dx$$

$$= \frac{x}{6}\mathbf{e}^{6x}\Big|_{-1}^{2} - \frac{1}{36}\mathbf{e}^{6x}\Big|_{-1}^{2}$$

$$= \frac{11}{36}\mathbf{e}^{12} + \frac{7}{36}\mathbf{e}^{-6}$$

EU Citizens v TCNs

Judgment of the Court (Grand Chamber) of 21 December 2011. Joined cases C-424/10 and C-425/10 Tomasz Ziolkowski (C-424/10) and Barbara Szeja and Others (C-425/10) v Land]

DIRECTIVE 2004/38 on the right *of citizens of the Union and their family members* to move and reside freely within the territory of the Member States amending…

COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003 on the right to family reunification

Judgment of the Court (Grand Chamber) of 27 June 2006.European Parliament v Council of the European Union. Case C-540/03: Right to family reunification.

Case C-153/14, Minister van Buitenlandse Zaken v. K and A, judgment of the Court (Second Chamber) of 9 July 2015: Integration conditions are integration measures. Objective and purpose is family reunification, *effet utile*, proportionality: individual circumstances, costs (including travels)

Hypocrisy?

• *Article 15 Directive 2009/50 – European Blue Card*

Family members

1. Directive 2003/86/EC shall apply with the derogations laid down in this Article.

2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

3. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted, where the conditions for family reunification are fulfilled, at the latest within six months from the date on which the application was lodged.

5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the residence permits issued to the EU Blue Card holder insofar as the period of validity of their travel documents allows it.

6. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.

This paragraph is applicable from 19 December 2011.

7. By way of derogation to Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States may be cumulated.

8. If Member States have recourse to the option provided for in paragraph 7, the provisions set out in Article 16 of this Directive in respect of accumulation of periods of residence in different Member States by the EU Blue Card holder shall apply *mutatis mutandis*.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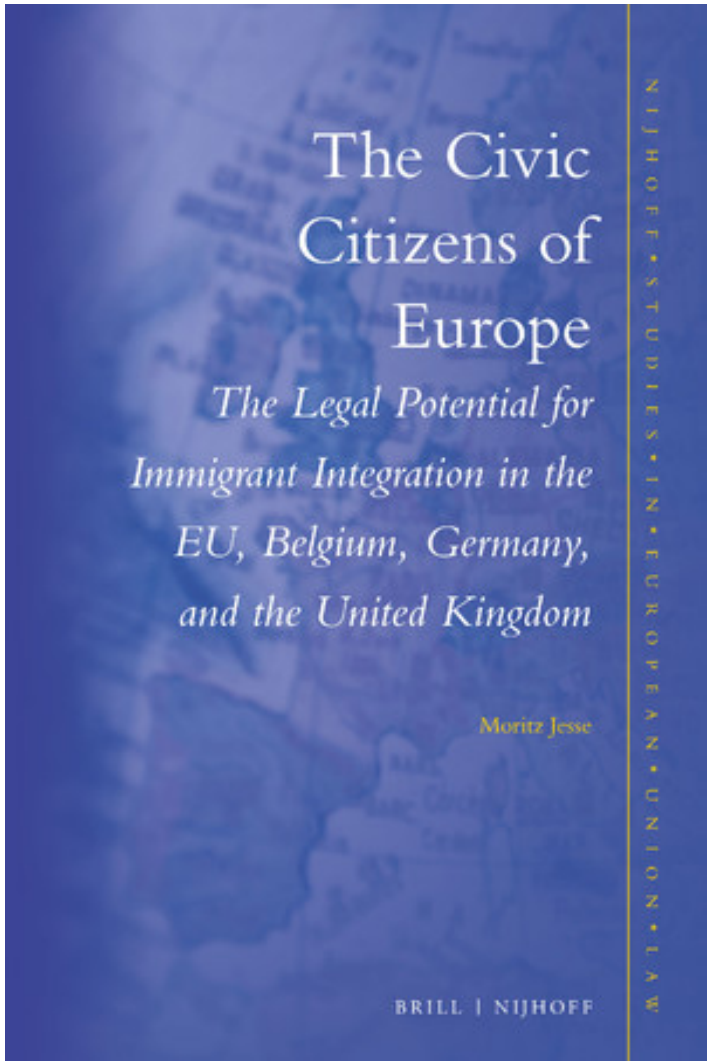
Intrigued?



Thank you!

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Social Integration in EU Law:
Content, limits and functions of an elusive notion

(Torino, May 2018)

Aim and Duty; Sword and Shield:
Analysing the Cause and Effects of the Malleability of 'Social Integration' in EU Law

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Presentation Structure

Overview: *Non-linear, historical analysis of the different types of 'social integration' operating within Union law, all shaped by the economic/social dichotomy formed at Rome.*

1) Social integration as a **'by-product'** of the internal market

2) Social integration as an **independent Union aim** pursued through **concrete policy-making**

3) Social integration as **equal access to existing domestic social space** via negative processes of free movement

4) Social integration as an **individual duty** imposed on Union citizens

5) Social integration and economic integration as **reciprocally influential** objectives

1. Social integration as a 'by-product'

- EEC was always about more than economic integration
- BUT…Rome Treaty nonetheless created an economic framework for the European project
- 'Social integration' understood as a general 'raising of the standard of living'…
- …achieved **by** the creation of a common market
- More concrete social policymaking was to be left to the Member States
- Rome Treaty rested on an economic/social dichotomy:

'The original constitutional deal was premised upon a transfer of responsibilities for economic integration to EU institutions while domestic institutions retained their fundamental role in defending social solidarity'
(Armstrong, 2010)

1. Social integration as a 'by-product'

- However, ultimate success of internal market is largely the result of the judicial expansion of the market freedoms
- This meant more frequent interaction between free movement and domestic social policy
- Focus on creating the 'internal market' left social rules structurally disadvantaged when they clashed with free movement
- This exposed the economic/social dichotomy as a myth…
- …and arguably contributed to question marks over the Union's legitimacy.

2. Social integration as an independent Union aim / EU social policy-making

- Recognition that economic/social distinction was unfit for purpose
- Emergence of 'social Europe' as a counter-balance
- Incremental expansion of Union's social goals generally follows same pattern:

- EU strengthens its recognition of its social objectives
- Presents these as a crucial factor in establishing Union's legitimacy
- New tasks, powers and decision-making efficiencies are introduced
- BUT…accompanied by reassurances about domestic social sovereignty. The economic/social dichotomy continues to hold sway

2. Social integration as an independent Union aim / EU social policy-making

➢ Legacy of the economic/social dichotomy:

- potential for EU-level social activity to be viewed as 'further interference' rather than as a necessary counter-balance

➢ Paradoxical legitimacy problem:

- lacking the legitimacy to introduce the social and political mechanisms that might enhance its legitimacy?

➢ Union's formal capacity to pursue social integration is constrained

➢ CRUCIALLY, economic and social integration remain functionally distinct

- Free movement largely unchanged
- Social issues remain a *derogation* from Union law in this context
- Attributed competence has less impact on the Union's judicial branch

3. Social integration via equal access to domestic social space

- Potential for replicating/using negative processes that had been so successful in internal market context to pursue social integration
- Early recognition that free movement of labour as a pillar of the internal market required recognition of human being behind the worker
- Revealed free movement as a tool for achieving wider form of integration
- Expansion of concept of 'economic activity'
- Formal recognition of 'Union citizenship'

- Strengthened opportunity to use free movement to pursue social integration
- Both FM and SI become 'twin swords' for Union citizens to realise their rights: 'fundamental status' of Union citizenship status; need for a 'certain amount of financial solidarity' between the Member States

3. Social integration via equal access to domestic social space

- HOWEVER, this form of social integration is inherently limited by its economic foundations - *Trojani*

- Introduction of 'integration requirements' – *Collins; Bidar*
- But 'economic activity' remained principal route to integration in host State – *Dias; Commission v Netherlands*

'The link of integration arises from the fact that, through the taxes which he pays in the host Member State by virtue of his employment, the migrant worker also contributes to the financing of the social policies of that State'

- These limitations are also rooted in the economic/social dichotomy

'So long as social security systems have not been harmonised…there remains a risk of social tourism… And that is certainly not the intention of the EC Treaty, which to a considerable extent leaves responsibility for social policy in the hands of the Member States (AG, *Trojani)*

4. Social integration as an individual duty

- Paved the way for the conversion of social integration from 'Union aim' to 'individual duty' as political winds changed

- This individual duty acts as a 'shield' used by Member States to re-close their domestic social spaces

- *Dano* et al establish social integration as an individual duty in three ways:

1) Flipping the aim of Directive 2004/38

- 'facilitating and strengthening' primary free movement rights ⇨ avoiding 'unreasonable burden' on host State

2) Primary Union law facilitating social integration ⇨ EU secondary legislation as 'constitutive' of rights

3) Overlooking wider coordination of social issues within European economic space – Reg 883/2004 'vs' Directive 2004/38

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4. Social integration as an individual duty

- Inherently exclusionary method of social integration

- Fails to achieve social integration on its own terms:
  - Nationality still matters in the European social space

- Undermines explicit Union objectives and tasks:
  - Combatting social exclusion (Art 3(3) TEU)
  - Promotion of equality between women and men (Art 3(3) TEU)

- Compartmentalises the Treaties and overlooks wider policy approaches
  - *Jessy Saint Prix*

- CRUCIALLY, *Dano* et al seem unlikely to address EU's 'popularity crisis'
  - Placatory limitations undermine Union aims and are not visible to static EU citizens
  - Reinforce 'oppositional' relationship and do not make static Union citizens feel any more involved in Union project

5. Economic and social integration as reciprocally influential concepts

- Re-evaluation of free movement too narrow
- Wider approach needed that reflects contemporary constitutional framework:

- Art 2 TEU – Union values inc. equality, non-discrimination, solidarity, equality between women and men
- Art 3(3) TEU – Union's tasks – 'highly competitive social market economy'; combatting social exclusion and promoting social justice
- Art 7 TFEU – Non-compartmentalisation of Treaties
- Arts 8-12 TFEU – Horizontal clauses
- Art 6 TEU – primary legal status of Charter

- Must apply to CJEU as an institutional actor

- FM/national social policy interactions no longer conflictual but contribute to shared constitutional space through reciprocal proportionality assessment

5. Economic and social integration as reciprocally influential concepts

- Not to be understood as a 'catch-all solution'

- But potential advantages include:

1) Relationship between domestic social policies and EU law no longer conceptualised solely as conflictual

2) Could ease the Union's legitimacy headache – supranational activity less likely to be seen as encroaching on domestic sovereignty if all working together towards same goals

3) Lessens pressure on free movement of persons, which currently risks scapegoating already marginalised EU citizens while undermining broader Union endeavours

- Evidence of an emerging acceptance of a broader approach:

- AG Cruz Villalón, *Santos Palhota*
- AG Trstenjak, *Commission v Germany*

- Overall, however, 'individual duty' line of case-law remains more prevalent

Thank you

Immigrant integration.

A post crisis asessment

Tiziana Caponio

University of Turin, Collegio Carlo Alberto and FIERI

Perspectives on integration

- The American perspective
  - Classical Assimilation Theory (Chicago school)
  - Increasing cultural assimilation leading to increasing social mobility
  - Key research focus: individual path of entrance in the American middle-class

- The European perspective
  - Social system appraoch (Durkheim)
  - Migrantion as an exogenous challenge to social systems' stability and capacity of social systems to re-establish their equilibrium
  - Key research focus: states' integration policy

Perspectives on integration

- Signs of convergence. Integration as…
  - A multidimensional process
    - Socio-economic dimension
    - Cultural dimension
    - Legal and political dimension
  - A Diachronic process
  - Open-end outcomes
  - Transnational dimension

Towars a (comphensive) typology?

- Ewa Moravska multidimensional approach
  - Socio-economic dimension: middle- vs working-class
  - Cultural dimension: natives vs ethnic community
  - Sense of identity and political alliagence
    - transnationalims

Towards a (comprehensive) typology?

Socio Economic Dimension	Cultural and identificational dimension		
	Up-ward mainstream	Up-ward ethnic	Up-ward transnational
	Down-ward mainstream	Down-ward ethnic	Down-ward transnational

The 2008 economic crisis and beyond. The case of Southern Europe

- A deteriorated socio-economic context for both migrants and natives
- Increasing risks of blacklash and hostility
- **Declining cultural integration?**
- **Which ways forward?**

Unemployment in 2007 and 2011

	Natives	Foreigners	Natives	Foreigners
Italy	6.0	7.9	8.0	11.7
Spain	7.9	10.3	19.8	30.5
Portugal	8.4	9.6	13.0	16.9
Greece	8.4	8.7	17.4	22.2

Increasing blacklash?

- German Marshall Fund TTI:

Generally speaking, how well do you think that immigrants are integrating into (name of each surveyed country) society?

Answer: Well, very well

Italy: 37% in 2010; 60% in 2013 (+23)

Spain: 54% in 2010; 63% in 2013 (+9)

Portugal: 79% in 2013

Ways forward.
Copying with down-ward socio-economic integration

- Migrants' new mobilities and activation of transnational ties
  - High education, legal status
- Strategic citizenship
  - Co-ethninc communties
- But also 'wait and see' in-situ strategies
  - Increasing reliance on ethnic networks, labour-market niches especially in ethnic enterpreneural networks

Thank you for your attention

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