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Immigration and Social Solidarity in a Time of Crisis: The Welfare State and Integration

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A dozen years ago, a major conference on “Integrating Immigrants in Liberal States” could open with the following optimistic assessment of both immigrants and liberal states:

“We are all multiculturalists now,” admits Nathan Glazer… Why? In post-fordist economies that thrive on flexible specialization, and in post-national, liberal states that bind their members through a commitment to procedural rules rather than shared life forms, the fear of difference has dissipated…. [There is instead] a plurality of cultures and the toleration, even celebration, of difference.1

The years since then have seen both “liberalization” and “backlash” in Europe and America in the areas of immigration, immigrant absorption, and citizenship acquisition. On the liberalization side, there have been three main developments. Almost everywhere in Europe there is now a legal entitlement to citizenship for second generation migrants through jus soli (birth on the soil) principles. It is no longer a matter of exception or grace. Second, naturalization is generally possible after a shorter period of time and with fewer behavioral requirements. Third, the U.S. and most European states (though not Germany) have come to accept dual citizenship.2

But there has also been a backlash. Its central elements have been the following: First, there has been talk on both sides of the Atlantic of limiting jus soli benefits

1 Opening remarks by Christian Joppke, Integrating Immigrants in Liberal States, European Forum Centre for Advanced Studies, European University Institute, 8 May 1998 (on file).
to children born to mothers legally in the country or enjoying “genuine” ties to the country. Second, there has been an effort, in Germany but also elsewhere, to make more difficult access to migration and citizenship through marriage. Despite that Constitution’s strong commitment to family rights, the importation of “country girl” wives from the old country is widely seen as setting back integration and especially language acquisition. Third is what Joppke describes as “the attempt by states to tie citizenship more firmly to shared identities, civic competence,” thereby combating the “centrifugal tendencies” of increasingly diverse societies through means such as citizenship tests, integration courses, and the like.

New citizens (unlike born citizens) are called upon to consent to a contractual conception of membership; they are joining an already existing association, one with specific rules, a specific history, and maybe specific political and cultural norms and values.

These contradictory tendencies have contributed to immigration’s becoming a very difficult and painful topic for both liberal social theory and liberal and left political actors in the rich countries of the North. In effect, two paired questions have

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When Peter Schuck and Rogers Smith 25 years ago very tentatively proposed the possibility that birthright jus soli citizenship might be withheld from the children of those illegally present in the US, they were virtually run out of Bienpensantville: see Citizenship without Consent: Illegal Aliens in the American Polity (Yale UP 1985), pp.116-18. Yet almost overnight in the Summer of 2010 the issue of birthright citizenship exploded onto the US political scene. Aggravating matters is the fact that the 3.8% of the population that is in the US illegally has 7% of the nation’s children, 79% of them birthright citizens; Pew Hispanic Center, “Unauthorized Immigrants and Their US Born Children,” (Aug 11, 2010) http://pewhispanic.org/reports/report.php?ReportID=125. For an explanation of the various European jus soli/jus sanguinis rules, see http://eudocitizenship.eu/index.php?option=com_content&view=article&id=190&Itemid=33&search=1&country=&idmode=A02&page=1
risen to near the top of legal and political agendas in the immigrant-receiving countries: (1) who belongs to the national political and social community of the “we”; and (2) what does belonging entail in the way of rights and obligations. Under the impact of unprecedented free mobility for both capital and labor and the crises of the social welfare state, the borders and bonds of citizenship have been changing and mostly weakening—to the detriment of both citizenship and democracy. At the same time, there remains considerable connection between the intensity or thickness of belonging, of being a citizen of a particular country, and the intensity of the process of incorporating newcomers into that country. The “container” of citizenship and its “contents,” rights and obligations, have somehow diverged and both have come into question.

These unsettling times have awakened the always-latent worry over social solidarity or social cohesion that has troubled social theory and liberal political action since Durkeim. The advent of the welfare state—with its simultaneous construction by elite statecraft from above and by mass mobilization from below—put an additional premium on social integration because, as we know, schemes of economic redistribution do not come easily within capitalist economies. The social cohesion—welfare state—immigration—integration argument is built on the following logic, which, for argument’s sake, I put here in bald and unsympathetic terms. The argument is more pertinent to Europe than to the U.S., but, as we shall see, it has relevance for all.

4 As the always-prescient Charles Tilly observed years ago, “To the extent that it undermines the capacity of states to deliver on their commitments to citizens, globalization of the world economy and polity will weaken both citizenship and democracy.” Charles Tilly, “Citizenship, Identity, and Social History,” Center for Studies of Social Change, Working Paper #205 (Dec 1994), p. 12.
immigrant societies, including our own, as well as direct relevance to various “multi-
culturalism” debates:

(1) Immigration increases ethnic and cultural diversity in European nation
states. (2) Publically sanctioned and institutionalized diversity puts social co-
hesion at risk. (3) A significant level of social cohesion is required for the level
of solidarity necessary for a welfare state. (4) Therefore, immigration risks un-
dermining (but is not certain to undermine) the welfare state. (5) The welfare
state is a condition for equality and a functional democracy. (6) Therefore im-
migration may risk undermining the level of equality achieved in Europe’s so-
cial liberal societies. (7) Democratic states should act to create and extend
equality. (8) Therefore democratic welfare states must deal with the impact of
immigration by restricting immigration—or accelerating integration.

Very roughly speaking, we may say that there was long an inverse relationship
between the ease of access to citizenship and what citizenship offers. Citizenship is
easiest to acquire in the United States but of less social and economic value and offer-
ing less of a premium over mere legal residence. “Hyphenated Americanism” has
offered a relatively viable integration strategy for most groups and fits into a domi-
nant ideology of a weak state and pluralistic society (unlike, say, France). Germany,
in turn, has until very recently had a very restrictive immigration regime, offering per-
manent admission and prospective citizenship on only a very selective (largely ethnic)
basis and has had a difficult time integrating its non-EU foreign-born residents. Nei-
ther multiculturalism nor explicit integrationism has been especially successful. On

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6 The roots of this argument certainly go back to Brian Barry, Culture and Inequality: An Egalitarian Cri-
tique of Multiculturalism (Polity 2001). This particular version of the syllogism is ruthlessly borrowed
7 Nonetheless, during the “transnationalism/globalization” of the 1990s, naturalization rates in the
US among those eligible dropped significantly: as low as the 35% among eligible Mexican-Americans. Rates remained very high among other groups, however: for example, over 80% among Korean-
Americans. For an assortment of reasons, rates are rising again. Naturalization rates in Germany
remained flat during this period as well, despite dramatic legal liberalization.
8 See, for example, the classic view, Dominique Schnapper, La France de l’Integration (Gallimard 1991).
the other hand, entrance into most European social-market societies offers panoply of social and economic rights not contemplated in America’s free-market liberal individualist society.

Liberal democracies today are based on and offer three kinds of rights: civil, political, and social. “Toleration” creates civil rights that limit the sovereign's power and reduce fear of the ruler while, however, sparking anxieties about what one's fellows may be up to. This is the problematic of liberalism. To move onward from civil to political rights requires the establishment of “trust,” namely the confidence that one's fellow citizens will not use their rights to promote ignorance or evil. This is the problematic of democracy. Finally, social rights demand social “solidarity,” the willingness to engage with and assume duties on behalf of others, fellow citizens who may or may not contribute as much or need as much as they draw out of the system. This is the problematic of the welfare state or of social democracy.9

Social rights famously demand more of a society and its members than do civil and political rights. As Bowles formulates it, “Individually costly voluntary contribution to a public good to be shared with strangers is surely a measure of the civic virtues,” which in turn are enhanced by “the rule of law… cultural standardization, and mobility.”10 Of course, all rights carry with them enablement costs—costs required for the exercise of rights (such as the provision of free legal counsel to indigents) and their enforcement. But as Ferrera has stressed,

resting as they do on material transfers and services, social rights give rise to “substance” costs as well. They require the availability of significant amounts of material resources that are not easy to extract from society, and of moral commitments to “sharing with others” that are not easy to activate at the individual and primary group levels.\(^\text{11}\)

The social rights of the welfare state are thus difficult both to establish and to maintain. Even once established, commitment to the principles of justice that justify the redistributive policies of the welfare state is often tenuous, as is sometimes even any common identification with society’s institutions. Identity may bolster trust, in turn encouraging patience in demands for reciprocity.

Toleration, trust, and solidarity are not simply institutional and not simply a matter between ruler and ruled. A political culture that creates a nation of compatriots is needed as well to construct a “we.” Shared and overarching identities are more difficult to construct or maintain in today’s world of multiplied identities. It seems now that liberal philosophical efforts like those of John Rawls to establish an overarching or “overlapping consensus” of political liberalism or of Jürgen Habermas to propagate a “constitutional patriotism” grounded in ahistorical and largely legal-procedural values, have proven problematic, particularly in countries with significant ethnic and cultural divides. Deliberative procedures and an inclusive conception of voice in decision-making are essential but maybe not enough. Although he rejects the argument, Arash Abizadeh states it rather well:

…if values such as democracy and freedom are to be sufficiently realized, citizens must be situated within an affective or cultural horizon they could realis-

tically call their own. While the ethnic nationalist answer is too thick, neo-Kantian constitutional patriotism is too thin: The fact that we find the principles embodied by political institutions rationally defensible is simply not enough to ground our identification with them.\(^\text{12}\)

Creating cultures of solidarity and integrating immigrants into such a culture are two difficult tasks, approached differently by each country. When it comes to incorporating new immigrants, historic and crowded places like Europe are at a distinct disadvantage compared to America. American law is libertarian and values toleration and some trust but it is no friend to social solidarity and puts little special premium on citizenship. To the extent, then, that democratic citizenship “involves the sovereign self-determination of a people, and the will to act in its name and to make sacrifices,” a demos, a “we” to which members belong and “in whose deliberations they have a voice” and “feel a sense of shared fate and solidarity,”\(^\text{13}\) American citizenship is indeed weak. Shared affective identities are minimal. But to the extent that the American demos is experienced in civic and political-institutional rather than ethnocultural terms, it is open and egalitarian. The combination of easy entry for newcomers, decentralized labor markets, modest social transfers, and weak democratic self-rule has prevented American citizenship from thickening culturally. Most ascriptive, unchosen, heavily-embedded, prepolitical and exclusionary elements are now mar-

\(^\text{12}\) Arash Abizadeh, “Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments,” 96 American Political Science Review 3 (2002), p. 496. He goes on to add that it is claimed that “justice (and particularly distributive justice) and democratic legitimation presuppose a thicker sort of shared affective community.” Abizadeh labels this view “communitarian” and associates it with the Sandelian critique of Rawls’s “difference principle”: to wit, before there can be a contractarian agreement for social cooperation, there must be a community, a motivating common identity, in order for individuals to be willing to treat resources as assets undeserved by individuals and to be willing to share them.

ginal compared to other times and other places. “Common sympathies” and a proper patriotism” are not hard for newcomers to come by in the US while current “civic identity” myths remain effective.¹⁴

American-style civic nationalism, a public philosophy that has included “a confident faith in the natural, easy melting of many peoples into one,” may thus have the potential to create a “level playing field” for free individuals, but it is unsuited for the “solidarity” of social justice. Most American rights are negative liberties, and they are accorded to all persons rather than just to citizens.¹⁵ Human-rights liberalism in its current form makes few social demands and so works well as an adjunct to the reigning liberal ethos of the country. Ideologically, if not in perfect reality, America gives everyone a level playing field, but not a ladder. Certainly it does not fix the social floor: mobility comes with self-responsibility, and those who decry the welfare state almost always enjoy the ideological advantage.

Some thicker sense of affinity, similarity, shared identity or social cohesion

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¹⁵The 14th Amendment defines citizens without empowering them and then proceeds to accord rights to all persons. See *San Antonio Independent School District v. Rodriguez* 411 U.S. 1 (1973) and *Jackson v City of Joliet* 715 F2d 1200 (1983). Those rights are negative, uninfluenced by material circumstances, and exist mainly to protect individuals from the state.
may be necessary for social-rights citizenship,\textsuperscript{16} and Germany has over the years stood for that.\textsuperscript{17} Acceptance of the multicultural, or at least pluralist and more diverse, composition of German society has been gaining ground in theory as well as in practice. 1999/2005 saw the first German Citizenship Laws embodying jus soli principles, and 2003 then saw the formulation of the first immigrant-attracting immigration law in modern German history (a \textit{Zuwanderungsgesetz}). Given these two concerns—citizenship and immigration—a Red/Green coalition government focused first on introducing the \textit{jus soli} principle and easier naturalization requirements.

The central goal of the reformers was to ease access into German society for all those born in Germany. Legally, that meant introducing birthright citizenship to the children of long-term resident aliens and easing the naturalization process for those residents not born in Germany. By thus distancing, if not divorcing, citizenship and membership from ethnicity, the reformers sought to facilitate integration into a more capacious German identity and society. Immigrants would more easily and more willingly become German while “German” itself would come to mean something broader. Naturalization provisions and citizenship criteria were, symbolically, moved from the Aliens Act (now renamed the Residence Act) to the Citizenship and Nationality Act. The chief object of the new legislation was to institute jus soli, naturalization as a matter of right, and a language-centered Constitution-affirming integra-

\textsuperscript{16}Keith Banting and Will Kymlicka, \textit{Multiculturalism and the Welfare State: Recognition and Redistribution in Contemporary Democracies} (2006) reject this proposition, which will be discussed at greater length, below.

\textsuperscript{17} In declaring the neo-liberal Hartz IV welfare reforms unconstitutional, the German Constitutional Court recently declared that the German Constitution provides “a fundamental right to the guarantee of a decent humane standard of living,” literally “menschenwürdigen Existensminimums.” \textit{Sud Deutsche Zeitung} 10 Feb. 2010, p. 1., xx BVerfG xx (2010).
tion commitment. Herewith Germany legislated a civic national identity open to all, including the over 10% of the population classified as foreigners (and of whom 1/5 were German-born.)

Even civic national identities are culturally inherited artifacts, however, developing as they pass from generation to generation. National belonging is more than rational attachment; it encompasses “the contingent inheritance of distinctive experiences and cultural memories that is an inseparable part” of every national identity. It assumes some measure of shared pre-political community arching over any agreement on legal-procedural rules and making a nation more than a political community organized around voluntary association. Perhaps it demands integration, not just mutual respect. German administrators may have been naively optimistic when they wrote in 2000 that “the acquisition of nationality marks the beginning of social integration” whatever it is integration might mean. Legal status and full access to legal and social rights may facilitate but cannot, it now appears, be the actual driver of social integration.

Here Germany has had problems, reflected in the continued poor educational and socio-economic performance of immigrants and increased tensions between Muslim self-assertion and enlightened European secular liberalism --caricatured by

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18 Bundesministerium des Innerns, “Policy and Law Concerning Foreigners in Germany,” (BMI 2000), p. 54. “Integration” is rarely defined, but we may assume that it is marked by immigrant autonomy and participation under conditions of equal opportunity. Integration would include hard facts like labor market participation, education, income, residential patterns, and health and welfare, as well as socio-cultural indicators like language, family and gender models, identification with constitutional values, and civic participation. See Werner Haug, “Lässt sich Integration messen?” Terra Cognita 9/2006, pp. 68-69; Ines Michalowski et al, “What About National Models of Citizenship?” 40 Perspectives on Europe 2 (2010), p. 36; see fn 34, infra.
some, and praised by others, as “secularized Christianity,” “Catho-laïque,” or Christianity modernized by Enlightenment, “complementary intellectual formations”. Inadequate integration, in turn, threatens Germany’s high collective social wage and-solidarity principles. Social policies in the welfare state operationalized citizenship and provided a domain where it was constituted-- albeit not equally for everyone--through a political economy. A much more individualized, neo-liberal “thinner” society would perhaps be in a better position to pursue integration around civic, constitutional and civic-cultural principles leading newcomers to become adherents of the society in which they now find themselves.

Surveying a wide swath of evidence, Kurthen and Schmitter Heisler hypothesize that in the market sector there has been less integration over time in Germany than in the U.S., “reflecting Germany’s more controlled and less flexible labour market structures and highly institutionalized credentialism [apprenticeships, e.g.]” compared to the US’s “more flexible labor market, especially in the low wage sector, low degree of unionization and lower degree of credentialism.” Contrariwise, they find “more integration in the welfare [benefits] sector in Germany, reflecting the more generous and more inclusive German welfare state, potentially compensating for the lower degree of labour market integration.”

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19 Cécile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy* (OUP 2008) examines the problem of status quo bias inherent in neutral and secular laïcité—excessively anti-religious while also discriminating among religions to the detriment of minority faiths.
22 It must be noted, as Kurthen and Heisler do, that above-parity levels of welfare receipts may be a
standing a variety of barriers, Mexicans are “comparatively more integrated than (Muslim) Turks,” suffer less exclusion and express more positive identification with their new country, though both groups continue to show poor school and language performance. In all cases, the effects of low human, social, and economic capital are hard to overcome.

From Werner Sombart to the present, there has been a long tradition of explaining America’s inequality and lack of redistribution by pointing to its diversity, above all racial but also immigrant (along with slavery and racism, the absence of feudalism, immigration itself, and the size and wealth of the continent). Yet ethnic and cultural diversity may well have the same type of negative impact in Europe. Over a decade’s worth of survey research, ethnographic investigation, and policy analysis research has produced some troubling findings--troubling for those who support the welfare state and who would value also liberalism’s equal simultaneous desire to accept difference in its multiple forms. “Social capital” research on trust, networks, and reciprocity as well as “social cohesion” research on inter-group cooperation and commonality have reached similar conclusions.

__sign of either strong integration—knowing one’s rights and vindicating them—or weak integration—being especially poor and needing help more.__

23 Recent figures for Germany show 7% of Turkish immigrant-family youth attaining the Abitur (A-levels, bac, university-qualifying high school diploma) compared to 31% of native German youth. In the U.S., the high school dropout rates of legally-present Mexican immigrants and their children remain frightening: nearly 70% in the first generation, 51% in the second generation, and 33% in the third generation. 6 Migration und Bevölkerung 10 (July 2010), p. 4.

24 The Sombartian argument has most recently been reformulated by S.M. Lipset, American Exceptionalism: A Double-Edged Sword (WW Norton 1996).

25 By no means is all of this research marked by the same worry: See, e.g., Alejandro Portes’s classic, “Social Capital: Its Origins and Applications in Modern Sociology,” 24 Annual Review of Sociology 1 (1998). The concept plays a largely positive role in Portes and Ruben Rumbaut, Immigrant America: A Portrait (U Cal Press 3d ed 2006), less so in Roger Waldinger and Michael Lichter, How the Other Half...
Among the unwelcome findings are those of the very careful work by Alberto Alesina and colleagues: if those who are “different” are concentrated among the poor, then programs that support the poor become the objects of transposed hostility—and this is true internationally.\textsuperscript{26} In addition, half the gap between welfare spending in the US and Europe is explained by American heterogeneity, something they fear bodes ill for Europe.\textsuperscript{27} Arguably, it is at least possible that “social capital” or generalized trust and even the readiness for reciprocity, civic and political engagement, and loyalty is negatively related to the public diversity of communities, as argued by Putnam --especially when coupled with residential segregation.\textsuperscript{28}

Trust seems to suffer the same fate in Europe.\textsuperscript{29} Further, flows of foreigners are negatively related to spending on welfare state programs. Even some of the staunchest defenders of the multicultural immigration model have concluded that the typical industrial society would be spending 15-20\% more than it now does on social services had it kept its foreign-born percentage where it was in 1970.\textsuperscript{30}

\textit{Works: Ethnicity and the Social Organization of Labor} (U Cal Press 2003). Since their focus is immigration to the United States, problems of the welfare state play a less significant role in their analyses.


\textsuperscript{28} Robert Putnam’s recent statement of the argument appears in 30 \textit{Scandinavian Political Studies} 137 (2007). Brian Barry made the argument years ago that “there is a strong causal link between cultural similarity and trust”; \textit{Democracy and Power} (Clarendon Press 1991), p. 177. This does not make immigration a bad thing, but it does underscore the need for integration, Putnam, p. 138; Holtug, p 442.


\textsuperscript{30} As noted earlier, Banting and his colleagues in the “Canadian School” disagree with much of this,
Geneity and the fact that newcomers, more often than not poorer than the resident population, are easily seen as exploiting social benefits undermine those programs. Of course, by no means are all immigrants in the U.S. or Europe short on human and social capital, but for redistributive issues these are the populations that matter.

Political and social psychologists have long concerned themselves with issues of in-group/out-group behaviors and what we now call “othering.” Opponents of discrimination and exclusion have argued that contact with difference can create tolerance and that humans have a cosmopolitan as well as a parochial potential. Indeed, the welfare state attempts to further this possibility by creating institutions of reciprocity. Let us help each other through each of our tough times. Such altruism may be calculated over repeated encounters—game theory style—or predicted on the basis of a broader empathy. In any event, if I am “my brother’s keeper,” I want to be confident of either reciprocity or familial resemblance. I want to avoid risk and be able, most of the time, through trust-inducing shared values, to predict the (good) behavior of others, preferably without risking much should I be proven wrong.


31 Empirical evidence on whether they do or don’t “overuse” benefits is mixed and inconclusive. See, e.g., Kurthen and Schmitter Heisler, op. cit. p. 155.


34 Belief that contact with difference will create trust has been a staple of American liberal optimism since at least Brown. For a calculus of distrust, including its usefulness, see Russell Hardin, “Distrust,” 81 Boston Univ L Rev 495 (2001) and Trust (Polity Press 2006). Miami driving is, in significant measure, an immigration-related matter.
Distrust, especially of the unfamiliar, can, however, be highly rational.\footnote{Driving in Miami may exemplify the quintessential triumph of rational distrust. Social norms supporting traffic laws are weak and unravel almost completely in the absence of state sanctioning. Even should one somehow establish some predictability, the relationship still contains no trust and remains one of structured antagonism, along the lines of American labor law or foreign relations law. Under such circumstances, though mutual cooperation would be better for everyone, defection is the best response to the defection of others. Here strangers, even within a framework of liberal institutions, represent danger rather than opportunity. See Samuel Bowles, supra fn 10, p. 73.}

Ideally, the welfare state creates virtuous circles of reciprocity and builds the trust that would fight off political entrepreneurs who would use “weak family resemblance” to divide the people. The creation of social solidarity and trust is an outcome of a successful welfare state while the welfare state is the product of and dependent upon a society with a considerable degree of social solidarity.\footnote{Neil Gilbert, \textit{Transformation of the Welfare State} (Oxford UP 2002), pp. 157, 161-62. Gilbert points out that Los Angeles alone, a blend of Hispanics, non-Hispanic Caucasians, Asians, Native Americans, and African-Americans, many or all of whom are first-generation immigrants, is twice the size of homogenous, isolated, stable, Finland and hence a more difficult place to make social capital.} The feedback is such that the social rights of citizenship constitute expectations, the satisfaction of which strengthens trust in the state and the sense of social belonging that then augments trust. To most Europeans, this seems obvious. Either way, “the welfare state,” as Gary Freeman observed long ago, “rests on a moral and political consensus binding members of the national community in a set of reciprocal relationships”\footnote{See Freeman, op cit, fn .18, p.} directed toward equality on the bordered inside.

In this regard, we are impelled toward a rather unattractive conclusion. The US is more successful in integrating immigrants, and immigrants are more successful in the US, precisely because the US is marked by low levels of solidarity and a weak welfare state. Immigrants are on their own—along with everyone else. In social...
democratic Europe, where social bonds and the welfare state are thicker, more thorough-going integration is and will remain necessary to preserve social solidarity and maintain the welfare state with immigrants as functioning participants in it. The “sink or swim” of America may, perversely, be good for immigrant absorption while impoverishing nearly everyone.38

II

Unfortunately, one of the key supports for redistributive politics has been the mythic universalism of “class” which reduced the salience of, for example, cultural identities, especially when such identities were cabined as private rather than public matters.39 But with the decentering of identities and the demise of grand socialist alternatives, “culture” has taken much of the place of “class” and various “identity” claims have displaced broad economic categories.40 As long as there was a balance of class forces in western capitalist societies, political economy was a virtuous way to organize conflict. In distributional matters, compromise was generally possible. For a number of reasons, including but not limited to the overweening power today of


40 The fundamentals of this debate were captured by Nancy Fraser and Axel Honneth, Redistribution or Recognition? (Verso 2003); see also Seyla Benhabib, The Claims of Culture: Equality and Diversity in the Global Era (Princeton UP 2002).
capital, many societies have arrived at a dreaded culturalization of social conflict.

Let me thus make clear that a frightening intolerance and politics of exclusion can follow from any insistence on the cultural foundations of national unity and any serious departure from constitutionalism as the integument of a pluralist, let alone immigrant society. Problems of immigrant integration, rooted nearly everywhere in social and human capital deficiencies, should not be culturalized, whether in opposition to Islam, Hispanicization, or the like. Membership in the polity and constitutional commitment are what matters, not cultural difference or private ethical postures. The currently-other belongs and is not just to be tolerated on condition.

But the horse has escaped from the barn; the genie is out of the bottle, and issues of culture and identity are not to be denied or returned to a private sphere separated successfully from a public one. Multiculturalists and nationalists alike have succeeded in this regard. So if, as so many say we must, we leave the world of Marx and secularism behind for the world of identity and values, and post-secularism, then we must return to Max Weber and others who have wrestled with the importance of pre-political and non-economic values in underpinning socio-economic systems. Let us, however, begin not with Weber but with the important 1960s German Catholic jurist and sometimes-bogeyman, Ernst-Wolfgang Böckenförde, author of the so-called “Böckenförde Paradox.” The paradox is that our state,

\[\text{the liberal, secularized state is nourished by presuppositions that it cannot itself guarantee. That is the great gamble that it has made for liberty’s sake. On the one hand, it can only survive as a liberal state if the liberty it has allowed}\]

\[\text{This is the absolutely essential point made by Ulrich Preuss, “Kein Ort, nirgends: Die vergebliche Suche nach der deutschen Leitkultur,” 6 Blätter für deutsche und internationale Politik 2010, pp. 67-79.}\]
its citizens regulates itself from within, on the basis of the moral substance of the individual and the homogeneity of society. On the other hand, it cannot attempt to guarantee those internal regulatory forces by its own efforts—that is to say with the instruments of legal coercion and authoritative command—without thereby abandoning its liberalness and… lapsing into that pretension to totality… of the denominational civil wars.  

The liberality of the liberal state is, in other words, nourished by and dependent on a certain value consensus, generally left undiscussed, except perhaps in times of revolution or constitution writing. In order to be able to dispute and fight democratically and stably over a certain range of matters, there needs to be a background consensus on numerous other matters, a consensus that goes sometimes to pre-political as well as political values and not just rules, to justice and not just fairness. In order to enjoy the pacific and tolerant liberalism of Montaigne and Montesquieu, we need to agree on much beforehand. And that agreement cannot be limited to procedures or legality but must, pace both Rawls’s overlapping or overarching consensus and Habermas’s “constitutional patriotism,” implicate historically and


44 Standing in contrast to this vision of how liberalism works is, for example, John Gray’s view of a liberalism that is always ready to be (perhaps even always already is) illiberal in compelling people to be liberal; see The Two Faces of Liberalism (New Press 2000).

45 Jan-Werner Müller, Constitutional Patriotism (Princeton UP 2007) defends the adequacy of the con-
locally-produced sets of values, visions of justice, and a core of ethics.

The reality of pluralism, the fact that consensus may be more an “overlapping” of different views than a single capacious “overarching” view, a fortiori commits the state itself to remain agnostic or neutral in its worldview and conceptions of dignity or justice. For Habermas, Rawls, and Müller, the democratic constitutional state is self-sufficient, able by itself, without “pre-political” foundations, to supply normative justifications for loyalty and legitimacy. It is the democratic constitution and rational-discursive way of life itself that engenders legitimacy without metaphysics. This response to the Böckenförde Paradox is arguably persuasive insofar as the political arena is concerned—“trust” and toleration” are generated through democratic constitutionalism. But it is more problematic in the social arena where legality alone may not be sufficient to generate legitimacy. While the “existence of a democratic constitutional state make[s] higher demands” of citizens than the rule of law alone might do, a redistributive social state “demands a more costly commitment and motivation, and these cannot simply be imposed by law” but rather are “embedded in a civil society that is nourished by springs that well forth spontaneously—springs that one may term pre-political.”


46 See supra p. 4 and fns. 7, 8.
47 Jürgen Habermas and Josef Ratzinger, op. cit. fn. 39, pp. 30-31;
Although the recent revival of Carl Schmitt is generally associated with states of exception, guerrilla war and terrorism, claims of executive authority, etc.\textsuperscript{48} it should be remembered that Schmitt’s visceral critique of parliamentarism was fundamentally animated by hostility towards its materialism, logrolling, superficiality, egalitarianism and secularism. What Max Weber called the process of “disenchantment,” begun in science, had created polities and societies in which only contingent functional rules and consequences and not moral values or their grounds mattered: the “metaphysical dignity” of immanence and virtue in law had given way to a “technical means of… compromis[ing] between conflicting interests.” Largely disgraced by Nazism, however, Schmitt’s critique of disenchantment in constitutional law and politics generally was long marginalized, and, in the West, the claims of religion and ultimate values diluted or trivialized through positivist rationalization. Schmittian “political theology” was largely unwelcome even in the Catholic Church. Yet the tide may be turning.\textsuperscript{49}

Böckenförde, with his Schmittian echoes notwithstanding, and even the Pope do seem cautiously to agree with, or at least accept, the fundamental principle of constitutional self-sufficiency. Perhaps a polity composed of members of any ethical or cultural views could constitute a successful constitutional democracy—or even a mul-


\textsuperscript{49}There are at least some grounds for believing that the tide is turning, and not just in or because of the Muslim world. See, Yishai Blank, “The Reenchantment of Law,” 96 Cornell Law Review 633 (2011); Jose Casanova, Public Religions in the Modern World (U Chicago Press 1994); Olivier Roy, Holy Ignorance (Columbia UP 2010). Weber’s original statement appears in Economy and Society (Guenther Roth and Claus Wittich eds.) (U Cal Press 1978 ed), pp. 874-75, 889. At times, Weber feared that rational disenchantment sat on top of a volcano—from which the “routinization of charisma” might not offer adequate protection. Unsatisfied by fairness, claims of justice and transcendental authority could not forever be repressed. Not for naught is Schmitt also Weber’s student.
nationl EU —so long as discourse, deliberation, and fundamental rights are in place. Habermas insists, and the Pope does not later contradict, that legal regimes can be legitimated only in a self-referential manner, that is, on the basis of legal procedures born of democratic procedures. If one sees them as a method whereby legitimacy is generated by legality, there is no ‘deficit of validity’ that would need to be filled by the ethical dimension.50

For his part, however, Habermas nonetheless recognizes that “pre-political” civil society energies are what motivate citizens to go beyond their selfish interests to seek a common good and practice the solidarity and political virtue essential to a democracy: “liberal societal structures are dependent on the solidarity of their citizens.”51 Further, “not only in their abstract substance, but very specifically out of the historical context” of each nation is anything like constitutional patriotism possible.

In the end, concedes Habermas, “the cognitive process on its own does not suffice,”

An abstract solidarity, mediated by the law, arises among citizens only when the principles of justice have penetrated more deeply into the complex of ethical orientations in a given culture.52

Rejecting the explicitly religious “uniting bond” that both Böckenförde and Ratzinger wish, Habermas nonetheless elides something critical to cohesion when he concludes that rational conviction has it so easily over sentiment:

The uniting bond...is the democratic process itself—a communicative praxis that can be exercised only in common and that has as its ultimate theme the correct understanding of the constitution.53

It is simply difficult to imagine a circle of the “we” united by a search for the correct

50Habermas and Ratzinger, pp. 27-28. Habermas, ever aware of the Schmittian threat, declares Böckenförde’s wish for a religious “sustaining force,” a grounding in “pre-political ethical convictions of religious or national communities,” mistaken; p. 27.
51Id. pp. 30-31; 22.
52Id., pp. 33, 34; see Yack, fn. 11 supra.
53Id., p. 32.
understanding of our Constitution. Later, Habermas finally grants that it is “cultural sources that nourish citizens’ consciousness of norms and their solidarity.” In turn, it is the search for the proper role of a common culture and identity that fuels much of the current contention over immigration and integration.

The power of Ratzinger’s critique was perhaps reflected in a recent European Court of Human Rights opinion, which held that crucifixes in Italian classrooms were a manifestation of an “historical and cultural” identity representing “liberty and freedom” for all, the rights of man, and indeed “the modern secular state”—and not an exclusionary religious symbol. The crucifix, concluded the Court, is “the universal sign of the acceptance of and respect for every human being as such,” and though it may have a religious meaning, “the crucifix symbolized the principles and values which formed the foundation of democracy and western civilization.” The instabil-

ity and perhaps disingenuousness of the disenchantment perspective becomes clear.

Enter here “the nation” with its dual constructions of public/private and what Weber called “the feeling of belonging together”—Zusammengehörigkeitsgefühl. Weber offered only some brief comments on what he called “ethnic communities,” but he hinted strongly at what today we would call “social constructivism” when discussing “identity” issues. To enable a liberal state to work, to enjoy an overarching con-

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54 Id., p. 46. Here we are on territory similar to Sandel’s criticism of Rawls, namely that my community, toward which I am partial, precedes my contracts; Michael Sandel, Liberalism and the Limits of Justice (Cambridge UP 1982), pp. 77ff.; Charles Taylor, Philosophical Arguments (Harvard UP 1995), p. 184. This was one reason for Taylor’s support of Québecois separatism.

55 ECHR, Case of Lautsi et al v. Italy, Application 30814/06, Judgment of 18 March 2011. Take away these highly-dubious assertions, and the Court’s 15-2 opinion is an absurd piece of hypocrisy. See Laborde, op cit fn.17 and the “Catho-laïque” synthesis.

sensus, or to be true over time to a set of liberal constitutional rules, requires, I have argued, the privatization, if not secularization, of key value commitments. And it requires, as Weber argued, a sense of social and perhaps national solidarity, the “feeling of belonging together,” Zeitgefühl or having critical things in common (Gemeinsamkeitsgefühl).

Essentially, Weber argued that ethnic identity was artificial (künstlich) what we now call a social construct based on a socially and politically-created “we.” Further, groups created the belief in shared community; there was no pre-existing belief in a “we” that created the boundaries of the group. Finally, Weber believed that drives for power and status led to group formation. In other words, the boundaries of the “we” define the group, not what the boundary encloses. Actors want economic and social privileges for themselves and their allies and use language, religion, customs, memories and whatever else to create Zeitgefühl. Such sentiment, despite, or perhaps indeed because of, its artificiality, at the same fits well with modern industrial and bureaucratic society’s need for efficient instrumental rationality, inclusion, and consistency.

“The belief in group affinity,” Weber wrote, “regardless of whether it has any objective foundation, can have important consequences especially for the formation of a political community.” In turn, the potentially-democratic civic creates the ethnic: “it is primarily the political community, no matter how artificially organized, that inspires the belief in common ethnicity.”57 Mass culture and a particular shared lan-

57 Ibid. p. 389.
guage make mutual understanding possible and helps engender sentiments of likeness. In a manner quite pertinent to contemporary immigrant integration difficulties, Weber saw as potentially problematic, “perceptible differences in the conduct of everyday life.” “Precisely those items which may otherwise seem to be of small social relevance” can be significantly disruptive because “it is always the conspicuous differences that come into play.”

A subjective feeling of shared identity, a “shared affective identity” such as should very much interest immigrant advocates and welfare state advocates alike, could emerge from common activities, whether taking place in civil society or directed by the state. In the France of Weber’s and Durkheim’s time, sports leagues, the boulevard press, road construction, the highly centralized educational system, the levee en masse, trade union involvement in elections, civil service recruitment, and party competition all contributed to turning provincial peasants, Alsatians, and eastern European immigrants into the privileged status of Frenchmen. With that status came a claim on one’s fellows, a fundamental prerequisite for a redistributional welfare system. Indeed, not only in the French case did the state produce the nation and ethnic identity and Zusammengehörigkeitsgefühl. Such insider status could be de-

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58 Ibid. p. 390
59 In this sense, immigrants and provincial peasants were both turned French by the institutions of the secular Third Republic. See Eugen Weber, Peasants into Frenchmen: The Modernization of Rural France (Stanford UP 1976). I do not consider here the misbegotten idea that this might have been a terrible thing; see James Scott, Seeing Like a State (Yale UP 1998).
61 Of course while excluding others. There is an “us” there is also a “not us,” a “them,” and there is sometimes occasionally something Schmittian about the us/them boundedness. See Linda Bosniak, The Citizen and the Alien: Dilemmas of Contemporary Membership (Princeton UP 2006); David Abraham,
noted as “citizenship,” and some states, including the US, France, and India have succeeded in creating non- or multiethnic civic nations, while others, like Prussia and many one could name today, failed because they did not make citizens of their subjects, and still others failed because other identities were allowed to win out.\[62\]

Some of the difficulties experienced recently writing a Preamble for the ill-fated Constitution for Europe may be traced back to such software deficiencies—as may problems like “democratic deficit,” “lack of popular legitimacy,” and “failed European identity.”\[63\] Alternatively, as the German Constitutional Court has recently found in criticizing the 2009 Lisbon Treaty, the “political formation of economic, cultural, and social living conditions,” needs be left to member States because these matters “rely especially on cultural, historical, and linguistic perceptions and which develop within public discourse in the party political and parliamentary sphere of public politics.”\[64\]

In short, the invented or “imagined” political community is a constructed community created around shared attributes or commonality, relational ties that link members to each other facilitating “connectedness,” and the sense of groupness, of together belonging to something distinctive.\[65\] The community has a hardware of in-

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\[62\] One could here construct a long list of nation building successes and failures, where states constructed nations and where they “failed.” Suffice it here to say that Weber was strikingly prescient in his discussion of the Hapsburg lands, Yugoslavia, Ireland, Poland, and the Baltic.

\[63\] One can envisage the components of such an identity: Enlightenment and secularized Christianity (again!), a deliberative public sphere, a pacific and mediating role in international affairs, and a social version of capitalism—much like West Germany, 1968-90. See Abraham, supra fn.41 and Müller, pp. 93-139.


\[65\] “Imagined community” is, of course, the term made famous by Benedict Anderson, *Imagined Com-*
stitutions and a software of a culture of collective memory, often involving common and particularly salient political and social experiences. These include or are supplemented by “the deliberate creation of memorials, museums, flags, songs, patriotic symbols, standardized languages, educational systems, national histories, and popular justifications for… homogeniz[ing] national cultures.” At the same time, these symbols and themes may be sufficiently indeterminate or capacious as to permit considerable compatibility and the achievement of trust amongst those who also have much that divides them.

These in turn strengthen the sense of Zusammengehörigkeitsgefühl that undergirds the civic and political action-core of shared identity and powers the state in many of the tasks it undertakes, including redistribution. The motivation and coordination necessary for social integration thus come to be based on more than mere calculation. As Ernest Gellner has put it, “A mere category of persons (say occupants of a given territory)… becomes a nation if and when the members of the category firmly recognize certain rights and duties to each other in virtue of their shared membership of it.” There is a place here for culture as well, as the voluntaristic construction of mutuality can be facilitated by a shared “system of ideas and signs and associations and ways of behaving and associating.”

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68 Ernest Gellner, Nations and Nationalism (Cornell UP 1983), pp. 6-7. See also E.J. Hobsbawm, Nations and Nationalism since 1780 (Cambridge UP 1990), who suggests that Marxist views are quite similar.
Against post-national and other tendencies that see these insights as demystifications of obfuscatory nationalist ideology and unrelated to redistributional issues, it is worth recalling, as Anderson does, that invention here is not fabrication or falsity but imagination and creation. The machinery and the integument imagined and created remain essential and unrivalled and do not preclude internationalism or extended solidarity. The ability of a society to integrate immigrants and to maintain a system of social transfers and redistribution depends, in no small part, on its members maintaining and learning “the rich legacy of memories,” “the long past of endeavors” good and bad, sharing a “heritage and regrets,” (slavery; Nazism) and together using the “social capital” of the past to test through “daily plebiscite” whether there is “consent, the clearly expressed desire to continue a common life.”

Alternatively, David Miller offers five criteria for identifying something like a “nation”: “a community (1) constituted by shared belief and mutual commitment, (2) extended in history, (3) active in character, (4) connected to a particular territory, and (5) marked off from other communities by its distinctive public culture.” Here a common identity and a “common public culture,” shared values and sentiments, provided they are the right ones—explicitly facilitate motivating people to trust, to par-

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69 Anderson supra fn. 38., p. 5; see also Rogers Brubaker and Frederick Cooper, “Beyond ‘Identity,’” 29 Theory and Society 1, 20 (2000)
70 As Marx put the matter in the Communist Manifesto: “Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.”
71 Despite its alleged mawkishness, Ernest Renan’s 1882 address “What Is a Nation” retains considerable force; see fn. 9 supra.
73 Holtug, p. 441, correctly observes that “a common identity of intolerance, egotism, pessimism,
ticipate, to share, to reciprocate. From this perspective, shared norms and beliefs emerge from a combination of a cultural and territorial civic nationalism with a civic republicanism that stresses institutions and history. Newcomers are initiated into the traditions of that culture. Together these enable political institutions based on Kantian rationally defensible principles, such as constitutional patriotism, to operate and, especially, to weather difficulty.\textsuperscript{74}

Thus established, “national identity” becomes a category of practice, an emic category, whether or not it is an adequate category of analysis, etc. As Adam Przeworski insisted, battles between identities (class, race, religion, tribe) are first battles to construct those identities, whose existence is surely a political as well as sociological matter, relational as well as categorical.\textsuperscript{75} The “us/them” conflict inevitably takes place simultaneously with the “who are we” struggle. Consider the resentments of residents of New Orleans after Hurricane Katrina that they were not being treated as Americans but rather as refugees and the equally problematic assertion, by thinkers such as Richard Rorty, that being American is itself an adequate basis for solidarity.\textsuperscript{76}

inequality and lack of faith in dialogue and democracy will probably not” generate trust but rather a world of amoral familialism.
\textsuperscript{74} See, for example, Dominique Schnapper, \textit{Community of Citizens: On the Modern Idea of Nationality} (Transaction Press 1998), who, in the Jacobin and Durkeimian traditions, stresses the internalization of common public norms.


\textsuperscript{76} Rorty’s assertion, \textit{Contingency, Irony, and Solidarity} (Cambridge UP 1989), p. 181 seems at once obvious and problematic while bespeaking the crisis of the politics it describes: \textquoteleft\textquoteleft Consider . . . the attitude of contemporary American liberals to the unending hopelessness and misery of the lives of the young blacks in American cities. Do we say that these people must be helped because they are our fellow human beings? We may, but it is much more persuasive, morally as well as politically, to describe them as our fellow Americans-- to insist that it is outrageous that an American should live without hope. . . . [O]ur sense of solidarity
This collective understanding is forged by and in the state and a raft of its institutions, most densely in the welfare state. Ways of thinking, talking, praying, making sense of the world etc are shared unthinkingly, as local knowledge, as a national vernacular, even when they are the objects of contestation and struggle. Self-identification, self-representation, and even self-understanding are linked together here. Like all identity politics, all politics probably, the politics of the welfare state creates the categories it invokes. We can, of course, deconstruct them, but only because they have been made to exist. The fact that nations are imagined and contingent does not mean that nation building does not take place and that immigration and the welfare state have not been and are not part of that.

III

Commonality and connectedness, including the rights and obligations of a welfare state, create the groupness, the relations and the networks that are at the root of social solidarity. Identification, categorization, and representation are not only part of the feeling of belonging together. They are also regularly repeated aspects of governing and being governed in a welfare state. The welfare state “rests on a moral and political consensus binding members of this community into various reciprocal relationships.” This binding and reciprocation means that the welfare state can actually

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77 Classic discussions of how the welfare state creates the categories that make it work while also exposing the contradictions that its participants struggle over appear in Claus Offe, *Contradictions of the Welfare State* (MIT Press 1984) and *Disorganized Capitalism: Contemporary Transformation of Work and Politics* (MIT Press 1985). It is fundamentally through the aegis and institutions of the nation state that markets may be at all regulated or tamed; Gosta Esping-Andersen, *Politics against Markets* (Princeton UP 1985).
help further immigrant integration—and yet integration is a prerequisite for effective participation in and even first acceptance into it.

Implicitly at least, the lesson from Weber and the emphasis on political nation building has been taken on board even by those who profess to advocate multiculturalism. Thus, Keith Banting and Will Kymlicka acknowledge that multicultural immigration and integration policies must do what many of them actually do not do:

nurture identification with the larger political community. In the absence of appropriate nation-building policies, a particular MCP may reduce solidarity and trust, by focusing exclusively on the minority’s difference. But in the presence of such nation-building policies, the same MCP may in fact enhance solidarity and trust, by reassuring members of the minority group that the larger identity promoted by nation-building policies is an inclusive one that will fairly accommodate them.78

Furthermore, if they are correct that the relative size of the immigrant minority is not critical to social spending, then it is indeed the fullness of integration that matters.

Unsettled is the matter of how far “outreach” and “accommodation” should go and in what direction. The integration anxieties referred to at the start of this essay are palpable. Citizenship tests—testing cultural as well as historical and practical knowledge-- are springing up in countries that have never had them as part of their naturalization requirements.79 France and others are requiring immigrants to sign on to “integration contracts,” the breach of which would presumably have consequences. The Dutch now test suitability for coming to the Netherlands before grant-


79 For a sampling of the recent debates on the new wave of citizenship tests in Europe, see “How Liberal Are Citizenship Tests?” http://eudo-citizenship.eu/citizenship-forum/2552start=10 sponsored by the European University Institute’s Robert Schuman Centre.
ing admission and, in an effort doubtlessly aimed at discouraging Muslims, require applicants’ cinematic consideration of gay couples and of semi-nude women. Denmark now requires explicit renunciation of prior loyalties and seeks a subjective “attachment” requirement as well as an “active participation” pledge from prospective naturalizers. Even the UK seems to be searching for (if not to have found) “Britishness” and now requires a “Life in the UK Test” of long-term residents.80

It is doubtful whether any of these measures can (let alone should) accomplish Bökenförde’s goal of a self-restrained and homogenous culture or whether they will undermine rather than secure and reinforce the conservative leaderships of immigrant groups in multicultural societies. Certainly any insistence on the preservation of putatively distinct cultures cannot help but entrench purist conceptions of that culture and foster group separatism.81 Is the moral panic one sees today throughout Europe (and increasingly and with sudden viciousness in the US) entirely without either foundation or purpose? Both the data and the meaning of the panic are unclear. Some days it appears that fundamental distinctions like public/private or legal/moral are being challenged by Europe’s new, especially Muslim, immigrants while at other moments nothing seems to be at work beyond the normal pressures of poverty and exclusion weighing on anxious newcomers. At other times still, the integration clamor—as in the recent “what is French” debate—seems to mask simple restriction-

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ism and to be directed, like the mosque construction debates in Switzerland and the US, or the harassment of Roma/Gypsies in France or Chinese in Florence, primarily at agitating the natives rather than integrating the immigrants. Perhaps immigrants from “further” away are harder to integrate.82

Illiberal practices like female circumcision, honor killings, forced marriages of youngsters and the like garner a great deal of attention, whether merited or not—not to mention the wearing of headscarves and other coverings by students (in France, where schools are secular), by teachers (in Germany, where teachers are supposed to be neutral civil servants), and by others.83 Indeed, the headscarf debate may be seen at the terrain on which the two liberalisms collide—the liberalism of hard-fought religious tolerance and personal freedom and the liberalism of progress and indispensable secular enlightenment.84 (Madisonian “perfect separation” of ends, institutions, and laws between state and church mitigates this problem a bit in the U.S., but even it is better suited to individualistic than community-oriented religions.)

Under either version of liberalism, however, some kind of shared public culture—to be sure, always hybridizing and non-essentialist—facilitates participation and

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82 Ibrahim Baylan, the Turkish-born national secretary of Sweden’s Social Democrats maintains that “it is harder to integrate immigrants than it once was.” Today’s immigrants are poorer and more illiterate and “less skilled than in the 1970s and 1980s.” His assessment is perhaps ironic, but perhaps also true; Castle op cit, fn 24.

83 It is certainly the case that the French government’s attention to the burqa goes far beyond the miniscule number of women in France who wear it. On the other hand, if the burqa or other dress masks individuals so as to remove them from society or threatens other individuals (like a Klan uniform), then suppression may be in order. On the great headscarf debate, see John Bowen, *Why the French Don’t Like Headscarves: Islam, the State, and Public Space* (Princeton UP 2007); Joan Scott. *The Politics of the Veil* (Princeton UP 2007).

redistribution. The inter-subjective communication necessary for Habermasian con-
stitutional patriotism, for example, is difficult to imagine without the transparency of
a common national public culture and language. Absent such commonality and
citizens communicating with each other and having access to the same fora, social
integration weakens and separate bodies of public opinion are generated and then
made subject to elite negotiations. In such negotiations, neither democracy nor social
redistribution tends to win. This may be why politicians and the public have been
moving away from multiculturalism, even as it retains its hold in normative political
theory. In the end, even a multicultural democracy of overlapping, crisscrossing, po-
rous public spheres will need some unified overarching sphere that reflects at least a
minimum of Rawlsian overlapping consensus and sense of fair play. And it is not
etirely clear where in a post-secular, post-constitutional-patriotic world, that might
come from.

There may therefore be reason to worry about the deep conflict of values and
lifestyles that is reported in Europe by both the boulevard press and serious social
science. Nearly half of Germany’s Muslims hold that the Koran’s injunctions are
more important than democracy and legislation, but then again one-third of Ameri-

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85 Language policy has been distinctly understudied in the US and has been prisoner to multicultural
(2004), pp. 279-314; Alejandro Portes and Richard Schlauffer, “Language and the Second Genera-
86 Abizadeh op. cit. p. 502, here summarizing the arguments of Miller, Barry, and Schnapper. Elite
negotiated policy outcomes are an unfortunate outcome of “enclave” immigrant cultures, Miami be-
ing a prime example in the U.S. Again, conservative community elites are bolstered in such regimes.
88 See, for example, the disturbing reports on modernity, democracy, suicide bombing, etc. “The
Great Divide: How Westerners and Muslims View Each Other,” *The Pew Global Attitudes Project* (June
2006).
cans thinks the words of the Bible are literally true. The real political and social implications of such views are not easy to discern. A majority of Muslim school pupils in the Netherlands believes that, in the event of conflict, loyalty to God comes ahead of the Constitution, and not long ago over 60% of British Muslims wanted to be governed by religious sharia rather than state secular law, perhaps because half thought there was a natural conflict between being a “good Muslim and living in a modern society.” Finally, an EU population that goes from today’s 5% Muslim to 20% within the next forty years frightens many, for reasons of all sorts. Declining naturalization rates are in some countries also a source of concern, especially where the requirements have actually been eased through the liberal campaigns and reforms of the previous decade.

Demagogic anti-integration interventions by sending-country heads of state have done little to calm the waters. When the President of Mexico called for homeland patriotism and three generations of reentry rights (for those whom his own policies of free-trade immiseration had driven off), or the Prime Minister of Turkey characterizes assimilation as a crime against humanity and calls for Turkish-as-first-

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91 See, for example, “Immer weniger Türken lassen sich einbürgern,” Sud Deutsche Zeitung 16 June 2010, p. 2. Whether this is a sign in Germany as elsewhere of the declining marginal utility of formal citizenship, of immigrant disaffection, of the demands of former sovereigns, or of popular cosmopolitanism and diasporaism has long been a subject of dispute. See Peter Schuck, Citizens, Strangers and In-Betweens (Westview Press1998), pp. 161-205; Peter Spiro Beyond Citizenship: American Identity after Globalization (OUP 2008). See also fn. 7 supra.
language schools in Germany,\textsuperscript{92} they may score points at home but do not make the lives of those who have emigrated to the US or Germany any easier or more comfortable. Nor, generally, are the emigrants able to do much for the home country.

Quite the opposite: their emerging vision of emigrants as assets and agents deployed abroad (and not only for the sake of remittances, at $26 billion or $2300 per migrant annually, Mexico’s second large source of income)\textsuperscript{93} inhibits the latter’s integration in their new countries and creates resentment among natives whose efforts at building solidarity and trust in a shared public culture are undermined, all while providing only minimal psychic benefits, if any, to the immigrants. The immigrants, in turn, and despite their best intentions and remittances, are not much able to assist in real development back home. “Migrant associations” simply “have limited capacity and power to overcome structural economic problems and to compensate for the failure or absence of national development policies.” In turn, the “home” governments’ role in migrant initiatives is “ambiguous, contested, and not necessarily desirable” with inequalities exacerbated, development distorted, and elites more rather than less entrenched.\textsuperscript{94}

\textsuperscript{92} Erdogan’s comments on “crimes against humanity” at a rally in Cologne on 11 Feb 2008; on the desirability of Turkish language schools in Germany, 25 Mar 2010. Mexican policy in this regard is perhaps even more cynical since the highly-deliberate policies of the Mexican elite (including NAFTA) have created the mass poverty and rural immiseration that have sent millions over the border. Former President Vincente Fox went so far as to brag that Mexico had gifted the US workers who would do work “that not even Blacks want to do” and for less; Abraham op cit, fn. 34, pp. 973, 980. Unlike the US, apparently, Mexico does not spoil its lower classes. Turkey is, at least, mercantilist about its people.

\textsuperscript{93} Hein de Haas and Simona Vezzoli, “Time to Temper the Faith: Comparing the Migration and Development Experiences of Mexico and Morocco,” Migration Policy Institute, July 29, 2010, p. 6.

\textsuperscript{94} Id. p. 9. de Haas and Vezzoli see the same disappointing failures in Morocco as in Mexico. “[P]hilanthropic projects do not appear to trigger development,” “migrants are not willing or able to become entrepreneurs or ‘development workers,’” and “migrant projects do not necessarily support
The principles of equal citizenship and democratic self-governance, which are fundamental to citizenship in the democratic welfare states, preclude simply leaving immigrants to their own devices. As presumed “citizens in the making” immigrants are entitled to a broad range of rights, including social rights and cannot anymore be headed for mere metic or denizen status—notwithstanding the popularity of the latter in the 1990s. Even the exclusion nearly everywhere of permanent resident non-citizens from voting and serious civil service positions, the “core” of sovereignty however defined, is now justified and must be, at least in part, by reference to the possibility of naturalization.

Nor could European welfare states (unlike the US) simply announce policies of benign neglect and exclusion for immigrants and immigrants alone. One reason guest worker programs today arouse widespread (though not universal) hostility is precisely because they take people, even though not citizens-in-the-making, but still people inside the country, and exclude them from the prospect of insider rights and status. The democratic welfare state must be about inclusion of all who are inside.


97 But see note 7, supra; Bosniak, op cit, pp. 57-63 on alienage discrimination in the US. Under Mathews v Diaz 426 US 67 (1976) the federal government may exclude recent legal and non-long-term aliens from most welfare programs.

98 There are a few very serious-minded exceptions; in the US, for example, Alejandro Portes and Ruben Rumbault, Immigrant America, op. cit. pp. 366-69; in Europe, Patrick Weil, who, perhaps fol-
Promising people that they can come again so long as they go now is generally implausible in a free society and is unwelcome to both capitalist and democratic ideals.\textsuperscript{99} Yet liberal principles of toleration make promoting a common national identity problematic, in both theory and practice. Personal freedom makes it difficult to strictly separate private culture from public (for example, in the matter of language); demands for recognition and accommodation may not be turned away, particularly when adherence to universalist human rights itself has become a touchstone of legitimacy for liberal states.\textsuperscript{100} Raison d’état, even protection of social welfare systems may not trump such freedoms. Over the last generation, The Declaration of the Rights of Man (now Person) have largely trumped the Rights of the Citizen, as reflected in EU requirements as well as in efforts to describe a “minimal universal morality” that executes such rights and might include life, liberty, basic education and health, due process, and non-discrimination. Perhaps, however, both the preferred rules and the citizens themselves emerge from a cultural context.\textsuperscript{101} But even this universalist system of principles adopted in most politically liberal states creates op-

\begin{footnotesize}
\textsuperscript{99}In Weil’s version, in exchange for granting seasonal passage to some of its worker citizens, Mexico would “control its southern and northern borders,” something that seems quite unlikely. Weil also seems to assume the efficacy of holding spouses and children hostage (“remaining at home”) while taking for granted the celibacy of circular migrants, at least while they are circulating, p. 7. To the extent that Weil’s proposal resembles the US H2A agricultural labor visas, that program only works in areas like sugar plantations where workers can be isolated and kept away from the general population.


\textsuperscript{101}The 1993 Copenhagen EU Accession requirements reflect this as well: democracy, rule of law, human rights, protection of minorities, and a market economy are prerequisites. On minimal universal moralities, see Veit Bader, \textit{Secularism or Democracy? Associational Governance of Religious Diversity} (Amsterdam UP 2007), pp. 70-88.
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tions and freedoms that have more to do with culture and conceptions of the good than we have wanted to admit. The current crises of the welfare state and of immigrant integration compel us to confront this unsettling possibility.

Simple readings of public opinion on both sides of the Atlantic, from Arizona and Pennsylvania to Britain and Holland, as well as sophisticated analyses of American census and European Social Survey data, demonstrate that immigration and integration issues have created widespread concern about political and social community and identities. Politicians and institutions that are supposed to protect the national community are seen to have failed in the face of both global economic and identity challenges, undermining political trust. McClaren, for example, concludes that:

the relationship between concern about immigration and political distrust exists regardless of the presence or absence of... right-wing parties... Europeans generally have fears about the impact of immigration on their national communities and that, in many cases, weakens their feelings of connectedness to their political systems and elites.

Whether the assumptions of recent years will now change is at yet unclear.

There are on both sides of the Atlantic plenty of advocates of a weak welfare state combined with loose or relaxed immigrant integration policies—sometimes expressed in terms of “global justice” concerns. There are also some advocates of a weak

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103 Lauren McLaren, “Cause for Concern? The impact of immigration on political trust,” (Sept 2010), [http://www.policy-network.net](http://www.policy-network.net) People in countries with effective political institutions worry the *most* about immigration and losing trust in their institutions(p. 17). Ominously, “in countries where the policies toward immigrants are immigrant-friendly, the impact of concern about immigration is stronger than in countries where migrant policies make it harder for immigrants.”

104 This category certainly includes most of the American political class, which today cares little for the welfare state or labor regulation and, perversely, a goodly portion of academia, which today believes in “global” justice. A recent variant is offered by Ryan Pevnick, “Social Trust and the Ethics
welfare state combined with strong or intensive integration policies, a free market plus Jacobin direction.\textsuperscript{105} There are as well many who endorse a strong welfare state but have given little thought to this aspect of immigrant integration policies or who see little if anything problematic in the relationship between the two.\textsuperscript{106}

The future may require us, however, to consider a fourth possibility: how we may best strongly integrate immigrants into and for the sake of the European, or even American, redistributive welfare state so essential for maintaining even a minimal level of democracy and individual freedom.\textsuperscript{107} Whatever specification or refinement of “trust” one might introduce, it is needed to promote solidarity, and trust in an integrated society may even broaden itself over time, reducing its own simply strategic qualities.\textsuperscript{108} In the course of integration, trust is built in much the same way social and human capital is acquired: through personal encounters and civil-society institutions, through public institutions, and through the acceptance and transmission of cultural norms in families and neighborhoods. Immigrants, like domestic minorities, if they are to accept integration, must be able to count on the “perceived fairness of Immigration Policy,” 17 Journal of Political Philosophy 146 (2009). Pevnick claims that it would be a positive global justice policy to admit more immigrants while dealing with the trust-solidarity problem by restricting welfare benefits to citizens along with access to citizenship itself.

\textsuperscript{105} Randall Hansen, for one, summarizes this position for Europe going forward: “If Europe is to cope with a new century of immigration, it needs labor market policies à l’américaine and integration policies à la française.” “The Free Economy and the Jacobin State, or How Europe Can Cope,” in Carol Swain ed., Debating Immigration (Cambridge UP 2007), pp. 223-236. Koopmans op cit fn.27 may also fit into this school McClaren, supra fn 97, writes that “countries that adopt less immigrant-friendly policies appear to be able to temper the effects of concern about immigration,” p. 18.\textsuperscript{106} This category certainly includes most American immigration scholars and quite a few Europeans as well. Readers are invited to visit the immigration professors’ website and associated blogs.\textsuperscript{107} Holtug op. cit p. p. 437 assumes throughout that the social cohesion and integration argument must be restrictionist as to immigration numbers. Much experience suggests that this need not be the case.\textsuperscript{108} See Eric Uslaner, The Moral Foundations of Trust (Cambridge UP 2002).
and impartiality of the institutions responsible for the implementation of public policies,” including having redistributive policies undertaken without corruption or discrimination.109

Immigrants join a sailing ship, whose future course they will help determine. Immigrants thereby “come to share a common national identity, to which they may contribute their own distinctive ingredients.”110 That ship, it has to be remembered, is a historic and civic community, a “contingent historical formation [that] is also the history of particular people… with their contingent array of practices, affiliations, customs, values, ideals, and allegiances” shaping and enforcing social, political, and legal institutions and cultures.111 It is, then, a particular state and not just a liberal state. It is already well under way and sails through rough waters bearing a fragile cargo. Under these circumstances, the task of creating an open and more capacious “we” requires the very social equality whose foundations and mechanisms immigration itself challenges --on both sides of the Atlantic.112

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110 Miller, op cit fn. 72, p. 26.


112 For a serious discussion of what this might require in the schools, for example, see Steven Macedo, Diversity and Distrust: Civic Education in a Multicultural Democracy (Harvard UP 2003), which should be read together with idem, “Moral Dilemma,” op cit fn. 34 and “When and Why Should Liberal Democracies Restrict Immigration,” in Rogers Smith, ed., Citizenship, Borders, and Human Needs (Univ. of Penn Press 2011), pp. 301-23.