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Immigrants and the State in Britain

The Demise of a Multicultural Model?

Contents

1. Introduction

How to 'integrate immigrants'? This most slippery of topics has been the subject of no little academic hot air, political instrumentalisation and confusion. The twin questions how and under what conditions European states should offer individuals of immigrant origin access to social, economic, legal and political structures are nevertheless of very real political significance to the governments of all EU member states. One trigger for the latest round of introspection in many states has been the growing awareness of the problem of discontent and radicalisation amongst Muslim populations in Europe.

This group—whether measured according to official definitions or self-classification—makes up a significant minority population in France, the Netherlands, Denmark, Austria, Germany, Belgium, Sweden and the UK.[1] Growing interdependence between the EU-27 means that the failure to accommodate this segment of the population can have adverse economic, social and even internal security implications for the other member states. Spurred, then, by problems associated with highly visible Muslim minorities, the western and northern member states in particular, and the EU as a whole, are casting around for new means to integrate immigrants. In this context, British responses have become the subject of considerable international scrutiny not to mention navel-gazing at home.

What utility do the latest British policies hold for the other member states? Whilst this paper does not offer an assessment of these policies, it does offer a broad evaluation of the British response. In so doing, we draw on theories of the process by which solutions are matched to problems in the political process. Many of these theories are based on the idea that solutions seldom constitute a logical response to specific problems. Instead, the emergence and application of certain solutions may depend to no small degree upon the institutional position and material interests of their proponents, and even upon the subsequent occurrence of problems that justify them. Awareness of the arbitrary nature of policy-making provides an important lesson for those seeking to learn from the British response, since it relativises the rationale and utility of the policies adopted (***part 2***).

The British model of immigrant policy bears the hallmarks of the main political battles underpinning the emergence of the British state and state-societal relations. These policies consciously and self-reflectively build upon liberal traditions, notions of the primacy of society over the state, and recognition that British society is not culturally homogeneous.[2] Indeed, one of the principal challenges to the model over the years has been to foster via state intervention such liberal traditions. This mode of immigrant policy, which sought to ensure individuals their cultural freedom—albeit so long as they belonged to one of a number of state-recognised groups—appears to be undergoing something of a change of direction.

Although policies are still being drawn up in line with preceding tenets of immigrant policy (***part 3***), there is a parallel trend in a rather different direction

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[1] On the difficulties associated with measuring the Muslim population, as well as a statistical picture see: Charles Westoff and Thomas Frejka, "Fertility and Religiousness among European Muslims", paper presented at the Population Association of America, New York, 2007; Ceri Peach, "Muslim Population of Europe: A Brief Overview of Demographic Trends and Socioeconomic Integration, with Particular Reference to Britain", *Muslim Integration: Challenging Conventional Wisdom in Europe and the United States*, CSIS Report, 2007, pp.7-33.

[2] For historical perspectives, albeit ones which stress different factors see: Rogers Brubaker, *Citizenship and Nationhood in France and Germany*, (Cambridge, MA: Harvard University Press,1992); Panikos Panayi, "the Evolution of Multiculturalism in Britain and Germany: An Historical Survey", Journal of Multilingual and Multicultural Development, 2004, 25/5, pp. 466-480; Adrian Favell, *Philosophies of Integration: Immigration and the Idea of Citizenship in France and Britain*, London: Macmillan/New York: St.Martin's Press, 1998. Christian Joppke, *Immigration and the Nation State: The United States, Germany and Great Britain*, Oxford: Oxford University Press, 1999. For a critique of some of these ideas see: Erik Bleich, "The legacies of history? Colonization and immigrant integration in Britain and France", *Theory & Society*, 2005, 34/2.

(*part 4*). 'Cultural gateways'—although in the European context, exceedingly weak ones—have been placed on immigrants' access to rights, increasingly obliging immigrants to adopt a certain kind of behaviour if they are to exercise them. We suggest that the emergence of these new policies is not merely to be put down to the fact that policy-makers have now come across problems of a nature not previously encountered: these developments point as well to the influence over immigrant policy of *immigration* policy-makers. Strengthened by political resources gained through international immigration policy cooperation, actors most concerned with immigrants' access to the territory have been able to increase their influence over the regulation of integration policy. Their amenable institutional position in the international sphere leaves these actors not only better able to promote their preferred solutions, but also to seek out European-wide problems that justify their application.

2. Structure and Methodology

2.1 Conceiving of Integration Policy: Three Indicators

In the following sections, the principle aspects of the British model for regulating immigrants' access to social, economic and political structures will be elaborated upon, with specific focus on Muslim immigrants. It is suggested that, until recently, developments reflected the key political battles that have characterised the development of the British state and state-societal relations. Ideas of limited state intervention, liberalism and cultural tolerance have been stressed. The current change of direction in policy—or more precisely the enlargement of the repertoire of acceptable policy tools, as may rather be the case—is then examined. It is suggested that a more restrictive and control-oriented tack has been taken, with cultural gateways being erected around immigrants' access to social and economic structures.

These restrictive tendencies derive at least in part from the influence of related policy areas – above all immigration policy. Instead of conceiving of resident immigrants as members of British society to be treated according to established principles of state-societal relations, they are increasingly viewed in terms of their links to further 'waves' of immigration. Their social treatment is thus conceptually linked to the treatment meted out to non-members of British society. Border controls have subsequently been extended throughout society.

Whilst this trend has been noticeable for some years, with immigrants' access to social, economic and political structures reduced as a means of reducing the 'pull factors' of 'unwanted immigration', these restrictions previously took place on the basis of immigrants' nationality and legal status. Cultural distinctions remained taboo. It is only with the growing support for these kinds of solutions throughout the EU, coupled with the emergence of high-profile problems of Muslim integration and transnational criminality—not only in Britain but also in Spain, Germany and other member states—, that their British supporters have been able to assert them.

Although tempting given its apparently assimilationist and exclusionist bent, making sense of this turn in British policy by placing it in the context of the other models of immigrant integration in the EU-27 (notably, the assimilationist model [Fr] and differential exclusion [De; At][3]) would merely disguise its underlying links with immigration policy: it would be to view British policy through the culturalist lens central to all three models, and blend out prior, non-cultural restrictions. Today's culture-based restrictions would thus appear as a caesura with past practice, rather than located in the long-term trend of the subordination of immigrant policy to immigration policy.

For our purposes, the most important facets of British immigrant policy can instead be captured by reference to the following three non-cultural indicators:

- *the balance between, on the one hand, the rights afforded to members of officially recognised minority groups and, on the other, the duties to the 'national community' demanded in return:*

- *the permissible locus of the state-sponsored exclusion of members of minority groups (at the border, or within the social system, the economy and society).*

- *the legitimate bounds of state intervention in the private sphere.*

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[3] See for example: Steffen Angenendt, „Muslims, Integration and Security in Europe", in: *Muslim Integration: Challenging the Conventional Wisdom in Europe and the United States*, CSIS Report, 2007, pp.45-52.

The above scheme may also help us to gauge the changes to executive power resulting from European cooperation—a preoccupation of many analysts of EU Justice and Home Affairs cooperation.[4]

The resulting reduction of the salient facets of immigrant policy to just three indicators has other advantages, given that the thematic scope of the inquiry is broad. British political culture has not laid emphasis on the rigorous intellectualisation of policy and policy-making. Although it has traditionally been led by a strong vision of the society to be achieved, as well as the relations between immigration and integration policy[5], in many ways it appears to lack a coherent guiding philosophy in dealing with immigrants comparable with the French model. This means that the overview must consider provisions individually, rather than selecting one or two as indicative of a cogent system.

It is also worth acknowledging at this stage that, although thematically broad, the focus here is *geographically* restricted, with emphasis on England and Wales. Given our special interest in Muslim immigrants, this narrowness is logical due to the geographic dispersal of Muslims in Britain, with their concentrations in England's urban areas. The emphasis is also expedient: Scotland's particular legal and religious history, and Northern Ireland's fiendishly complex religious politics, set them apart from England and Wales in many ways. They merit separate inquiry.

2.2 Conceptualising the Political Process: Insights from Organisational Anarchy Theory

One way of evaluating the usefulness of British policies for the other member states is to ask whether the best suited solution has always been fitted to the problem at hand. In such efforts, a critical understanding of the political process by which solutions are matched to solutions is useful.

One strand of analysis has identified four 'streams' within the political process: a problem stream, a solution stream, an actor stream and an opportunity stream.[6] Outcomes reflect the makeup of these streams at any given time. In its simplest form, this line of analysis describes the idea that, depending upon the political opportunities available to them, actors will succeed or fail to match their preferred solutions to certain problems. This line of analysis also allows for the conceptualisation of more complex ideas and, although British policy-making may not conform to all the traits of an organisational anarchy[7], this line of analysis throws up useful insights:

- a particular problem may arise but the policy response will depend upon which actors dominate the policy process at that time and which particular solution they favour. Actors seek to exploit windows of opportunity to match their preferred solution to a particular problem. The best-suited solution will not always be matched to the problem.

- problems will not always predate solutions. Rather than elaborating a policy preference in response to a particular problem, actors will be guided by their own material interests. They will then set off on an active search for problems that justify the policy.

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[4] For example: Sandra Lavenex and Wolfgang Wagner, "Which European Public Order? Sources of Imbalance in the European Area of Freedom, Security and Justice", DVPW Sektionstagung Internationale Politik, Mannheim, 2005.
[5] Parkes, "Immigrant Integration meets European Integration".
[6] For various conceptions of these ideas see: Michael Cohen, James March and Johan Olsen, " A Garbage Can Model of Organizational Choice", *Administrative Science Quarterly*, 1972, 17/1, pp. 1-25; Nikolaos Zahariadis, "Ambiguity, Time, and Multiple Streams" in: Paul Sabatier, ed., *Theories of the Policy Process* (Boulder, CO: Westview Press, 1999), pp. 73-93; John Kingdon, *Agendas, Alternatives, and Public Policies* 2nd ed. (New York: Longman 1995).
[7] These traits have been described as: "problematic preferences, unclear technology, and fluid participation" (Cohen, March, and Olsen, 1972).

- changes in the problem or solution streams can, meanwhile, facilitate changes in the actor stream, as actors seize on new problems or solutions in order to argue for an increase in their policy-making role.

Scholars who conceptually distinguish between these constituent elements of the policy process - problems, actors, solutions and opportunities – have used terms such as 'organisational anarchy', 'garbage can' or 'multiple streams' in order to describe the apparent randomness and irrationality that characterise some policy outcomes. However, the fluidity of these streams, and thus the potential for arbitrariness in the policy response, can be mitigated: by institutionalising the opportunity stream, formalising the policy process and giving a particular set of actors a stable and dominant position in the policy-making process, there will likely be greater continuity in the kinds of problem dealt with and the sorts of solution offered. This may, however, lead to policies becoming skewed.

The amenable institutional position that immigration policy-makers enjoy at the European level gives them precisely this kind of dominance not only in immigration policy, but also immigrant integration affairs.[8] It is indeed clear that these actors are better placed not only to legitimise their preferred solutions, but also to identify and publicise problems that justify their application at the national level.

It has been suggested elsewhere that participating in European cooperation, and in particular EU Justice and Home Affairs policy-making, can afford domestic actors new political resources with which to legitimise their preferred solutions at the national level[9]:

- by uploading questions for treatment at the international level, governments can take advantage of agenda-setting and legislative powers under foreign policy procedures which they would not enjoy if anti-terrorism was treated as a purely domestic theme.

- home affairs policy-making at the international level can bring together various sections and levels of the government with like-minded counterparts in other countries, and sidelines certain "rival" actors at the national level (parliaments, the judiciary, NGOs, national ministries with rival priorities). Officials and ministers have sometimes found that they have more in common with their counterparts in other states than with actors at the national level, thus encountering new allies not present in a domestic setting.

- this sectoral, as opposed to national, mode of policy-making can facilitate the formulation of agreements which are then downloaded to the national level. When formal agreements have been concluded, Parliament's power to force changes under ratification procedures is small. Furthermore, governments can present themselves as having been "pushed" into accepting a proposal that they actually secretly favour, by strategically citing the international pressure to which they were subject.

In these formal policy-making fora, governments also gain "cognitive" resources and informational advantages:

- idea exchange between governments is difficult to monitor. Governments can therefore diffuse responsibility for policy ideas when presenting them at

[8] See Roderick Parkes, „Immigrant Integration Meets European Integration", SWP Discussion Paper, 2007.
[9] Andrew Moravcsik, „Why the EC Strengthens the State", Centre for European Studies, Harvard Department of Government, Cambridge MA 1994 (Working Paper 52); Virginie Guiraudon, „European Integration and Migration Policy: Vertical Policy-Making as Venue Shopping", *Journal of Common Market Studies*, 38 (2000) 3 S. 251-271; Eiko Thielemann, „The Soft Europeanisation of Migration Policy", ECPR Joint Sessions of Workshops, Turin, 22-27.3.2002; Roderick Parkes "What Limits for Government Control?", *Political Quarterly*, 78/2, 2007, pp.272-281.

the national level, and disguise their own vested interests. They can also lend normative acceptance to an idea by pointing to its support amongst a wide range of governments.

- some forms of cooperation (European integration, transatlantic cooperation) are underpinned by ideological justifications. Controversial policy ideas picked up by governments via international cooperation can be promoted, not by reference to their substantive content, but rather to their desirability for maintaining cooperation.

- information exchange between governments has been improved. Informational asymmetries between governments and parliaments have thus increased. Governments can make selective use of the information they gain – it can be released or withheld, depending on whether it will mobilise opposition or support.

Their institutional position can also furnish participating national actors with greater political opportunities to exploit problems. Problems arising in one member state can be of relevance to all the others because the interconnectedness of the EU's states leaves them vulnerable to developments throughout the Union. By the same token, a problem in one state may draw other members' attention to vulnerabilities in their own system which had previously gone unnoticed. By cooperating together, national executives gain knowledge about problems in other countries which is not available to other domestic actors. They also gain a certain authority in commenting on these issues thanks to their proximity to those directly involved in handling them. This allows participants to control the political use made of such problems.

3. A British Model of Inclusion

Although often seen as an archetypal 'multicultural model', it is important to stress that British policy-makers did not—at least initially—follow a guiding philosophy of multiculturalism. Indeed, the formulation of the idea of multiculturalism in Britain appears in many ways to have been reactive to the reality of the minority and immigrant policy measures already in place there. Such *a posteriori* philosophising stands in contrast to the rigorously intellectualised policies of the French. Yet it is precisely this *ad hoc*, piecemeal quality which situates Britain's policies firmly in its broader politico-cultural traditions. As pointed out elsewhere, the British reaction to the continental revolutions of the 18th and 19th Centuries was to stress the desirability and success of slow and steady change *in response* to social changes—a quality already reflected as much in its political system as the jurisprudential legal tradition.[10] It is unsurprising, then, that British immigrant policy initially reflected the principal contours of entrenched state-societal relations. Subsequent philosophising maintained these contours even as traditional state-societal relations have changed.[11]

A 'bottom-up' approach was adopted to minority accommodation in Britain, whereby central government typically intervened only as a last resort. The regulation of social minorities' position was traditionally undertaken by local society or local government rather than by centrally-coordinated, state-sponsored action. The roots of the *laissez-faire* ethos are illuminated by a comparison of Britain's and France's divergent revolutionary experiences. Due to its political evolution, Britain has stressed the primacy of society over state, whilst in France the reverse is true. If the French revolution envisaged changing the very relations between government, state and society, the English revolution was principally concerned with the reassertion of Parliament—an institution perceived as evolving out of society. There developed a sort of Whiggish paternalism which only regulated society when it had to. In France, meanwhile, the State came to dominate society, seductively promising an equality which the natural inequities of an unregulated society could not provide.

This conception of state-society relations recognises that the state is incapable of showing a 'benign neglect' towards the minorities in its territory. The British state apparatus does not claim to hover impartially above society. Instead it recognises a natural tendency to pander to the interests of certain groups. Government therefore has a residual duty to combat this, even when its natural instinct has been to allow society to regulate itself. Rather than take on certain groups with particularist privileges, the British government has tended to extend these privileges to others. All this may explain the thinking behind the Wakeham Report[12] which, instead of abolishing the entitlement of some Anglican Bishops to sit in the House of Lords, suggested that the entitlement be extended to various other religions.

The reactivity of state to society, and the acceptance of existing particularist societal, cultural and political interests, especially after efforts to ensure harmony between Protestants and Catholics and the union between England and Scotland, left the door open to multiculturalism. Many commentators also highlight the colonial experience, where the British, untrammelled by the humanist apologism which

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[10] Adrian Favell, *Philosophies of Integration: Immigration and the Idea of Citizenship in France and Britain*, (London: Macmillan/New York: St.Martin's Press, 1998).

[11] These policies cannot today be considered liberal in the proper sense of the word. Joppke and Morawska distinguish between "de facto multiculturalism" and "official multiculturalism". The former results from *de facto* limits to state power over society. The latter reflects state intervention in society to ensure the cultural freedoms of certain groups. Christian Joppke and Ewa Morawska, *Towards Assimilation and Citizenship. Immigrants in Liberal Nation-States* (Basingstoke: Palgrave Macmillan, 2003).

[12] Royal Commission on the Reform of the House of Lords, *A House for the Future*, January 2000. This Report dealt with the reform of the House of Lords.

characterised French efforts, did not seek to impose a 'British' or English culture on the inhabitants. They were motivated by the desire to stabilise the territories for their own means and, in order to keep costs low, aimed to do this with the minimum number of personnel possible. They found that the best way to achieve this was to coexist with native cultures, even mimicking the social and administrative structures already in place. This became known as 'indirect rule' in India, where a comparatively small number of British formed an administrative crust, leaving it to Indian administrators actually to implement policies.[13]

Following our above schema, traditional British policy can be disaggregated according to the three indicators:

- *British policies have tended to offer relatively extensive liberties to members of minority groups, whilst demanding that they perform few duties to the national community in return. This reflects the conception of the (nation-)state as subordinate to (a non-homogeneous) society.*

- *efforts to exclude members of minorities deemed difficult to accommodate into state and social structures have traditionally been confined to the border. Those immigrants on the territory have been extended broad cultural freedoms; however, these can only be maintained if the numbers of newcomers are carefully regulated and concentrations of certain groups do not accumulate.*

- *the legitimate bounds of state intervention in this sphere have traditionally been rather limited. These traits reflect the guiding philosophies and past political battles that have moulded the state's development in Britain, and in particular its relations to society.*

These principles and traits run through policy, as the following overview of the core features of British immigrant policy indicates. Despite the assertion in this paper that immigrant policy is undergoing a change of direction, it is also noticeable that many of these traits persist in the solutions adopted for the problem of 'Muslim integration'.

3.1 Anti-Discrimination: Cultural Freedoms—what Duties?

At the heart of British efforts to accommodate immigrants into the state and society sits a body of anti-discrimination law designed to ensure not a 'cultural melting-pot', or a culturally uniform society, but rather the conditions for mutual tolerance of cultural particularities. This has been traced back to the development of the British state, and the idea that the rights and duties associated with social membership in Britain aim not at encouraging full political participation in the state (as in France), but at ensuring a 'pleasant form of communal living'.[14] It thus reflects a notion of the supremacy of society over state, with the state's role confined to ensuring that individuals can practice the highest possible degree of cultural expression in the public and private spheres, rather than to imposing a uniform blueprint for cultural behaviour.

Beyond this limited state intervention, Britain's anti-discrimination policy bears the other hallmarks of its broader immigrant policy model too: the use of social exclusion as a tool of social control is confined to the border, with strong border controls seen as a necessary counterpart to the maintenance of social freedoms. Moreover, immigrants have been usually afforded relatively robust rights with little emphasis placed on their reciprocal duties.

Yet, given that this body of anti-discrimination law might be seen as archetypal of the British immigrant model, it is perhaps surprising to note that policy-makers

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[13] Gilles Kepel, *Allah in the West. Islamic Movements in America and Europe,* (Cambridge: Polity Press) 1997.
[14] Favell, *Philosophies of Integration*.

initially made an unusual break with traditional British modes of dealing with social minorities, drawing inspiration from developments across the Atlantic and, specifically, the racial nature of discrimination problems in the US. Cultural groups were defined primarily in racial terms.

For a long time, UK anti-discrimination law left Muslims, as a religious group, largely unprotected. The Race Relations Acts (RRA) 1965, 1968, 1976 attempted to guarantee selected "racial" groups the kind of cultural tolerance granted *de facto* to members of the cultural majority and *de jure* to certain "native" minorities. Some Muslims were deemed to belong to a "racial minority"; they thus gained *indirect* protection against religious discrimination. However, the racial slant the RRA gave to the entire institutional and legal machinery dealing with the accommodation of those who defined themselves as primarily part of a religious-cultural, rather than a racial, group was a source of major irritation to the Muslim lobby.

Recent years, however, have seen far-reaching changes in the realm of religious discrimination—a reaction to the sometimes explosive dissatisfaction expressed by Muslims. Given that the developing nature of discrimination itself has traditionally been taken as the pole of reference for immigrant policy laws, the perceived rise in religious discrimination has forced a more comprehensive extension of anti-discrimination legislation to religious groups. The Equality Act 2006 finally provides broad protection against discrimination on the grounds of religion or belief, as well as age, disability, gender, gender reassignment, race and sexual orientation. Passed by Parliament in 2006 and due to enter into force in 2007, the Act establishes an integrated Commission on Equality and Human Rights, replacing three separate equality commissions addressing discrimination on the basis of race, gender and disability. The new Commission is tasked with promoting understanding and encouraging good practice with regard to relations between the groups identified above as well as between these groups and others. Certain exceptions notwithstanding—national security, for example—the Equality Act further outlaws discrimination in the provision of goods, facilities, services and premises. Nevertheless, the protection it affords is unequal: although addressing discrimination for all of the above groups, the act creates a positive duty for public bodies to promote equality only in the realm of gender.

Against this background, immigrants' protection against the incitement to religious hatred has grown in importance. Policy-change was deemed necessary in response to a revitalisation of religious hatred, and Muslim lobbying, beginning with the Rushdie affair and exacerbated by the terrorist attacks on the United States in 2001 and London in 2005. Provisions to outlaw 'incitement to religious hatred' had been proposed in the Anti-Terrorism, Crime and Security Bill in 2001 and the Serious Organised Crime and Police Bill in 2005. They were successfully resisted because of concerns about a clash with liberal principles of free speech, and the idea that the government was simply instrumentalising the problem of Muslim terrorism to justify the introduction of provisions that had little to do with enhancing security. The successful passage of the Racial and Religious Hatred Act (2006) has since transformed the legal landscape.

The Racial and Religious Hatred Act amends the Public Order Act to criminalise threatening words or behaviour used by a person intending to stir up religious hatred. The original wording required simply the possibility (not the intention) of stirring up hatred and would also have criminalised abusive and insulting behaviour. The amendments were introduced by the House of Lords following a storm of protest about the impact the Act would have on freedom of speech. Prominent comedians formed part of a large coalition that opposed the legislation

on these grounds[15].

Protection from cultural discrimination may nevertheless be considered a negative right to cultural expression; various positive rights afforded to other minorities remain out of reach for Muslims. The British constitution is riddled with examples of particularist privilege. In the modern era this has generally been mitigated by their extension to various other 'deserving' groups, depending on socio-political developments. Inventing through 'positive action' new, countervailing inequalities—as opposed to extending existing ones—has seldom been an option. The British conception of 'positive action' thus differs from the US-American one. If the US has stressed equality of outcome, Britain has rarely moved beyond measures aiming at equality of opportunity. Where it exists, British positive action differs from the US model by avoiding workforce quotas emanating from central government, and by putting the onus on public sector employers, particularly at the local level.

The 1976 Race Relations Act permits various forms of positive action. Schedule 37 allows training bodies to encourage persons of a certain racial group to undertake training in an area of work where the body believes the group to have been underrepresented in the previous twelve months. Schedule 38 permits employers to encourage persons of a certain racial group to take advantage of work opportunities, under certain conditions. Employers may place advertisements stating that applications from certain racial groups will be welcomed. Strong forms of reverse discrimination, whereby members of racial groups with inferior qualifications are preferred, have not been permitted. Nor is it allowed to prefer members of a racial group with equal qualifications, because of their race.

3.2 The Education System: A Grassroots Approach

In the early 1960s, there was no comprehensive central policy on "immigrant children". The prime aims were the teaching of English and the dispersal of the immigrant children.[16] This was in keeping with a guiding principle of the emergent multicultural system: that cultural freedoms could only be maintained if large concentrations of a certain ethnic group were avoided, given such concentrations' supposed predisposition to retain their cultural distinctiveness. The question of discrimination in schools and the underperformance of pupils supposed to result from it were highlighted from the 1970s. As in anti-discrimination policy, the rights of immigrants were stressed and questions of immigrants' reciprocal 'duties' (such as learning English in order to mitigate one's own social marginalisation) were thus somewhat ignored.

The 1981 Rampton and 1985 Swann Reports reinforced concerns about provisions for ethnic minority pupils.[17] The experts drew attention to the underperformance of pupils of West Indian origin. Perhaps surprisingly, the Reports found that pupils of Asian origin were not significantly under-performing. It is only since 1996, when official reports disaggregated the overall Asian performance, that the severe underachievement of pupils of Bangladeshi and Pakistani origin was recognised. However, although government has belatedly recognised the under-performance of pupils of Bangladeshi and Pakistani origin, the emphasis has been on combating racial discrimination. Muslims complain that not enough sensitivity is shown to their religious requirements.

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[15] "Religious bill attacks free speech, says Atkinson", *Guardian,* 30th January 2006
http://www.guardian.co.uk/religion/Story/0,,1698393,00.html
[16] Sui-Mee Chan *Primary & Secondary Education in England & Wales from 1944 to the Present Day* (8th ed.) (London: Londonmet, 2002).
[17] The Swann Report put the emphasis on using schools as an agent to change social attitudes towards race. Cultural and linguistic diversity were to be maintained by sustaining links with after-school educational organisations. The line was drawn at teaching in a minority language, or taking on responsibility for the in-school maintenance of cultural and linguistic diversity.

This trend was reinforced from the late 1990s as result of a series of high-profile problems involving black pupils. In 1999, the Stephen Lawrence Inquiry added impetus to the combat of racial discrimination in schools. It was then that the government accepted that not only should racial incidents in schools be better monitored but also that schools should better prepare children for life in a culturally diverse society. Changes to the Race Relations Act and developments in 'citizenship' education attest to this. A report the following year finally looked at all the perceived factors of underperformance together- race, gender, class- and found that race was the prime cleavage: racial groups underachieved no matter what their class or gender.[18]

The principal points of contention for many Muslims remain requirements for religious education and collective worship in state schools—a complaint they share with secularists. The British Humanist Association, for example, complains that "the process of obtaining an exemption from the requirement that collective worship be [wholly or mainly of a broadly Christian character] is sufficiently bureaucratic and time consuming to deter schools".[19] Meanwhile, religious education must reflect "the fact that the religious traditions of Great Britain are, in the main, Christian, while taking account of teachings and practices of the other principal religions represented in Great Britain".

A grassroots approach has been deployed by the government to deal with these problems, and exempt the government from taking contentious decisions on the issues raised. Local Education Authorities (LEAs) have been delegated power to regulate school holidays. Newham LEA, for example, has redistributed four days of allotted holiday to non-Christian festivals. Yet the Local Government Authority has not thrown its weight behind the practice, believing that this will disrupt studies.[20] It is also permissible for schools to relax dress regulations. The Department for Education and Skills' (DfES) guidelines recommend sensitivity "to the needs of different cultures, races and religions", yet ultimate responsibility lies with the school governing body. DfES guidelines also recommend that schools cater for the needs of ethnic and religious groups, but this is often not carried out.[21] As for training teachers to deal with the needs of a pluralistic school environment, newly qualified teachers must have demonstrated an understanding of these needs, but more experienced teachers are not held by any code of standards in this regard.[22]

The education of Muslims throws up a multitude of tricky problems such as identifying the point where accommodating cultural or religious distinctions ceases to improve educational achievement, and starts acting as a hindrance; or where recognising these distinctions stops acting as a means to transform social attitudes and begins to fragment society. The authorities are forced to confront the interaction of various factors of disadvantage—gender, class, race—and increasingly religion. The fact that pupils of Pakistani and Bangladeshi origin come disproportionately from disadvantaged backgrounds, and that gender has formed a fault line in Britain's dealings with Islam, only serves to complicate the issue. The government has preferred to delegate power to LEAs and schools to cope with these problems. This is proving increasingly unsatisfactory, particularly in areas where

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[18] David Gilborn and Safia Mirza, *Educational Inequality: Mapping Race Class and Gender,* (London: OFSTED 2000).

[19] British Humanist Society *A Better Way Forward* 2002 p.7

[20] British Humanist Society *A Better Way Forward* 2002

[21] British Humanist Society *A Better Way Forward* 2002 The 1996 Education Act requires for schools to provide space for pupils to eat meals brought from home.

[22] British Humanist Society *A Better Way Forward* 2002BHA complains that the General Teaching Council's code of practice is voluntary and unenforceable. The code states that "teacher professionalism involves challenging stereotypes and opposing prejudice to safeguard equality of opportunity". It encourages "a genuine concern for other people and an appreciation of different backgrounds". Teachers awarded the Qualified Teacher Status are expected to have shown that they understand and uphold the code. BHA believes it should be enforced along the same lines as the doctor's code of practice and extended to all teachers in the public sphere.

Muslims do not form a minority sizeable enough to have their priorities recognised.[23]

The emergence of Muslim faith schools might, then, be taken as evidence for the failure of today's multicultural state education. In fact, faith schools have a pedigree stretching back beyond the establishment of the state education system. They are a hangover from the Church of England's (CoE) activism in the educational sphere and 19th century government's subsequent disinclination to act. The privileged position enjoyed by the CoE was gradually extended to other denominations from the 1870s.

The 1944 Education Act forms the framework for today's faith schools. The Act created two categories of state-funded faith schools: voluntary controlled schools would be managed and funded by local education bodies but with certain concessions to denominational religious instruction. The second category was the voluntary aided school, which allowed churches to retain overall control of the school but provided a large degree of funding. The commitment to provide inclusive education, as well as their impoverished state, meant that CoE schools principally adopted the former status. Catholic schools, which felt no compunction to provide anything other than denominational education, overwhelmingly signed up to the latter. It is also worth noting that the Act made it compulsory for maintained schools to start the day with an act of worship, and to provide religious education according to a syllabus agreed with their local education authority.

The sweeping reforms made by the Conservatives to the national curriculum, some forty years later, reconfigured, at the insistence of the CoE, the teaching of religious education. For our purposes, the most important developments were the churches' calls for the reinforcement of the 'agreed syllabus', and the late amendment which indeed obliged syllabuses to reflect the fact that Christianity was Britain's majority religion.

There were, meanwhile, few official obstacles to the establishment of Muslim faith schools, and by 1995 there were approximately 40 private Muslim schools in Britain. Yet, the positive privileges afforded Christian faith schools have not automatically been extended to Muslim schools. For one thing, the former overwhelming need for schools, which strengthened the churches' hand *vis-à-vis* the state in the 1944 compromise, no longer applies. Piecemeal extension of rights to Muslims in this area might have been more forthcoming were policy-makers not wary of Britain's aping the Dutch precedent.[24] In the Dutch system, even schools based on the principles of Transcendental Meditation have received state funding. The criteria for funding are based upon the applicant school illustrating that its distinctive religious basis is not catered for elsewhere. This emphasis on difference is perceived by some British policy-makers to have accentuated the fragmentation of identity and society in the Netherlands. Meanwhile, as in the abovementioned question of freedom from religious hatred/free speech, traditional British liberal values have come into conflict with one another: whilst faith schools offer great freedom of choice to parents, they undoubtedly constrain the religious choices made by children.

This did not prevent the 'New Labour' party from making a manifesto pledge to assess the extension of state funding to faith schools. Indeed, it was actually a shift away from the social-democratic value of equality that permitted New Labour to re-examine the question of faith schools. For a party newly committed to freedom of

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[23] Hewer identifies some of the issues specific to Muslims which are most problematic: the desire to secure a safe community for post-pubescent girls, requires sex segregation, if not in all education, certainly in physical and sex education classes. Some Muslims seek to integrate the *Qu'ran* throughout the educational experience. Yet secularism and qualitative testing are not leaving room even for a sense of spirituality in schools. More specifically, Muslims would like to see boys given instruction to become community religious leaders. Chris Hewer, "Schools for Muslims", *Oxford Review of Education,* 27/4 2001 pp.515-528.

[24] Harry Judge, **"Faith-Based Schools and State Funding: A Partial Argument",** *Oxford Review of Education*, 27/4, (2001), pp. 463-474

choice and quality of education, faith schools ticked a number of boxes. The aftermath of the Conservative government was one of inter-school competition and league tables, and faith schools are shown to do well on this superficial qualitative level. What is often forgotten, though, is that many faith schools, including voluntary aided ones, enjoy certain advantages. It is worth noting that "any school granted the exceptional and remarkably attractive privileges of being able to choose its own teachers, of being able to depart from bureaucratically defined procedures, to develop its own sense of mission, and—this above all—in the last analysis to select its own pupils, whether through admission or through the ultimate sanction of exclusion, is almost certain to succeed."[25] The year 1998 saw the first two successful applications for state funding from Muslim schools.

3.3 The Legal System: Between Pluralism and Uniformity

As stated above, Britain's multicultural slant derives in large part from its earlier socio-political answers to the problems associated with governing a culturally diverse territory. The politico-institutional set-up of the Union of Scotland and England allowed for a large degree of regional and cultural particularism, but was nevertheless overarched by a single legislature. This provided fallow ground for the system of multiculturalism in Britain. The judico-institutional setup diverged from this pattern. Scots and English legal systems remained reasonably distinct despite the influence of an overarching common legislature. Thus, whereas the UK's political set-up proved suitable for a pluralist, multicultural system to develop, the same cannot be said for its legal system where too great a degree of particularism persisted; some argue that two parallel, monocultural systems have developed—one in England and Wales, one in Scotland. Shah criticises the fact that English law ignores or misinterprets anything which it cannot understand on its own terms.[26]

Muslim scholars in Britain complain that English law remains a bastion of mono-culturalism in an otherwise pluralist system. This is evidenced by the *de facto* establishment of legal pluralism in Britain. Bodies like the Islamic Shari'a Council have sprung up, mediating private disputes between Muslims and enforcing their decisions through a mixture of consensus and social ostracism. This may well indicate the well-established propensity attributed to Muslims to settle disputes away from the official judicial sphere, or the fact that some Muslim immigrants come from legally pluralist 'soft states' like Bangladesh. Nevertheless, it also points to the fact that many do not feel that the judiciary is capable of resolving Muslim issues satisfactorily.[27]

Yet, to accuse the British legal system of mono-culturalism is to downplay the way that English law has adapted to new influences through parliamentary and judicial channels. As a concrete example, Yilmaz mentions the development of British marriage laws—an evolution occurring through statutory amendment. The 1990 and

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[25] Harry Judge, **"Faith-Based Schools and State Funding: A Partial Argument"**, *Oxford Review of Education*, 27/4, (2001), pp. 463-474

[26] Prakash Shah, "Bangladeshis in English Law", Paper Presented at the Conference of "Bangladeshis in Britain: Changes and Choices, Configurations and Perspectives", 24th-25th May 2002, London.

[27] The mono-culturalism of the legal system has had unfortunate implications for sections of the Muslim population. Yilmaz gives the example of Shari'ah marriage laws. For a woman to remarry under Muslim law, she must first obtain a *talaq* from her husband. Many Muslim men exploit this power to gain favourable divorce settlements. Since English law ignores this Muslim requirement granting divorce regardless, it is often the case that women have obtained a divorce under civil law, but no *talaq*. The husband is allowed to remarry because polygamy is permitted under Muslim law. The woman, though officially divorced under English law, is unable to remarry within her own community and may be severely disadvantaged. English law offers her no protection in this case.

Thomson, meanwhile, points to difficulties arising when Muslims die intestate and their estates are not dealt with in accordance with Shari'ah law. More contentiously, he demands that "since the Shari'ah of Islam permits a Muslim man to marry up to four wives provided that he maintains them and their children as equally as is possible, the [English] law of bigamy is re-defined so as to make allowance for valid Muslim marriages. (This is in contrast to English law which punishes bigamy but permits a man to have as many mistresses as he wishes whom he can treat as well or as badly and as openly or as secretly as he wishes, subject usually only to trial by media for the rich and famous.)"

1994 Marriage Acts modified existing laws to allow mosques to register as 'approved premises' where officially-recognised marriages could take place. Moreover, some mosques have been allowed to substitute one of their officials for the appropriate local registry official. "In such cases, a fully legalised marriage can be performed by a Muslim official according to both Muslim law and the English law, an interesting feature of plural legal reality."[28]

As for the jurisprudential dynamic, the Human Rights Act (1998) requires that courts show sensitivity to the religions of the individuals, so that judge-made English law may become more open to the practices laid down in Muslim law. Shah himself identifies one recent case where the judge made a concerted effort to take into account the ethno-religious background of the case.[29] His only reservation, and one that appears justified, is that the judge tried too hard: by treating the facts as part of an entirely alien world which he as a "white judge" struggled to understand, the judge created a caricature of religious honour etc, and divorced himself from the strands of the case which are universally comprehensible.

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[28] Ihsan Yilmaz "Muslim Alternative Dispute Resolution and Neo-Ijtihad in England", *Turkish Journal of International Relations*, 2/1 2003.
[29] *Re S (Change of names: cultural factors)* (15 May 2001, [2001] 2 FLR 1005)

4. Modes of Exclusion: Challenges to the Multicultural Agenda

It was suggested above that immigrant policies might best be differentiated according to the following characteristics:

- *the balance between, on the one hand, the rights afforded to members of officially recognised minority groups and, on the other, the duties to the 'national community' demanded in return.*

- *the permissible locus of state-sponsored exclusion (at the border, or within the social system, the economy and society) of members of minority groups.*

- *the legitimate bounds of state intervention in the social sphere.*

Traditionally, few demands were made upon individuals in return for their enjoyment of rights and freedoms. The state's capacity to exclude immigrants beyond the border was—like the legitimate bounds of state intervention in the social sphere in these matters—limited.

In dealing with the question how to handle immigrants, and particularly the Muslims amongst them, awareness has grown that many of these traits have been turned on their head [30] : the British state poses increasing conditions upon immigrants in return for granting them rights and freedoms. Active adherence to certain principles on the part of immigrants is fast becoming a requirement, a duty, for some categories of immigrant.

Our conceptual framework highlights two related traits of this latest trend in immigrant policy:

- *firstly*, that these latest solutions can be situated within a broader—and now well-established—British tendency to subordinate access to social and economic structures to the aims of immigration control. The apparently cultural nature of the latest restrictions, and the resulting assimilationist turn in policy, may well mark a qualitative development in policy; it is nevertheless in line with a long strand of previous policy. Conceptual frameworks which analyse these developments by means of a comparison between immigrant integration models (multicultural/ assimilationist/ exclusionist) view events through a culturalist lens and risk ignoring previous restrictions of a non-cultural nature, seeing these latest changes as a fundamental break with previous policies.

- *secondly*, that these latest solutions appear to have been formulated, at least in part, prior to the emergence of the problem that actually justified their introduction. Until the emergence of problems of Muslim integration—not only in Britain, but also in Spain, the Netherlands, Germany and France—this kind of cultural solution remained beyond the pale in the UK. The emergence of these problems gave immigration policy-makers a chance to advocate solutions that they had apparently nurtured for some time. Traditional theories of decision-making, which assume that solutions are developed in response to problems, rather than prior to them, would not capture this.

That said, the prevalence of these traits should not be exaggerated. It must be acknowledged that the latest changes may still be put down in large part to the fact that, with the accommodation of immigrant Muslims, policy-makers feel they are dealing with problems of a sort not previously encountered. In other words, efforts

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[30] Les Back *et al.*, "New Labour's White Heart: Politics, Multiculturalism and the Return of Assimilation", in: *Political Quarterly*, 2002, 73/4, pp.445-454.

have been made to formulate solutions in response to new problems. Many commentators have noted a clash between Muslims' cultural expression and the values that have traditionally informed British immigrant policy.[31] This perceived clash is widespread, stretching beyond well-trodden tensions such as freedom of expression *vs* protection from religious discrimination. Indeed, a particular source of tension has been the balance between the rights afforded to Muslims and those extended to animals.[32] The implications of failure in integrating Muslims also seem more serious than was the case with previous efforts when other minorities were the focus of attention. Although the link between criminality and a failure to accommodate and integrate immigrants has been acknowledged for decades, the radicalism and terrorist threat associated with Muslims throws up new problems. There are, however, modes of dealing with these problems within the existing framework of British immigrant policy[33]; these have only partly been taken up.

4.1 Immigrant Policy and the Immigration Policy Agenda

The emergence of a new agenda for dealing with immigrant Muslims cannot be understood solely as a rational reaction to the emergence of new problems. Instead, it reflects principles that have been employed in the sphere of immigration policy for some time.

Immigration control was previously largely reactive to immigrant policy. Strict immigration controls were justified in terms of the need to maintain the freedoms of those on the territory. Immigrants on the territory were assumed to be legally there and deserving of rights and freedoms equivalent to those afforded to "natives". Certain nationalities were denied access to the territory in order to ensure that these natives could adjust to the small numbers of immigrant minorities in society.[34]

This is no longer the case. The rationale of maintaining strict border controls in order to ensure the social and economic inclusion of immigrants has been inverted, with the social and economic exclusion of immigrants being used in efforts to maintain border controls. Thus, resident immigrants' access to the welfare system and the economy have been restricted as 'pull factors' for unregulated immigration. The reality of post-war immigration and immigration control made the assumption that those immigrants on the territory were legally there untenable. These moves have been legitimated by recourse to the idea that immigrants pose a threat, not only to the security of citizens, but also to the stability of British social, economic, political and societal systems.[35] The conditions placed on immigrants seeking access to these structures were, however, until recently "passive": they obliged the immigrant to have a certain legal status and did not demand active social behaviour on his or her part.

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[31] For a critical analysis of these ideas see: Gabriele Marranci, "Multiculturalism, Islam and the Clash of Civilisations Theory: Rethinking Islamophobia", *Culture and Religion*, 5/1, 2004, pp.105-117.

[32] In the 1970s, the Muslim and Jewish lobbies fought for and won the right to kill animals according to their distinct religious rites. However, in 2002 Britain's animal welfare minister revealed that his department was considering changing these rules. In 2004 the Farm Animal Welfare Council, the independent organisation that advises the government, argued that *halal* slaughter be outlawed by removing the exemption in the 1995 Welfare of Animals Regulations. The government has dismissed this recommendation but did agree that failure to stun an animal prior to their killing would cause the animal significant pain. The Muslim Council now demands the government rescind the statement. The state, in providing *halal* food to Muslim prisoners finds itself directly implicated in these arguments. There is also some doubt as to whether *halal* slaughter is actually required by the *Qu'ran*, so that the government may find itself having to decide on what constitutes 'genuine' Islam. Monika Wahlrab-Sahr, "Integrating Different Pasts, Avoiding Different Futures? Recent Conflicts about Islamic Practice and their Judicial Solutions", *Time & Society*, 2004, 13/1.

[33] On available solutions: Gwendolyn Sasse, "Securitization or Securing Rights? Exploring the Conceptual Foundations of Policies towards Minorities and Migrants", *Journal of Common Market Studies*, 2005, 43/4, pp.673-693. On the congruence of Muslim demands with mainstream questions of equality see: Tariq Modood, "Muslims and the Politics of Difference", *Political Quarterly*, 2003, 74/1, pp.100-115.

[34] Favell, *Philosophies of Integration.*

[35] See Pamela Jackson and Roderick Parkes, "Immigration Policy and the Social Exclusion of Minorities: British Securitization 1948-2003", in: *Journal of Social and Ecological Boundaries*, 2006, 1/2, pp.5-31.

Insertion 1: The influence of immigration control on the judicial system

Importantly, the influence of immigration policy-makers has not been confined to the political sphere. Judicial actors too find themselves under pressure to reduce social freedoms where these might be supposed to jeopardise immigration control.

The criticism of mono-culturalism in the British judicial system focuses in particular on cases at the interface between family and immigration issues. To understand such criticism, a familiarity with the nature of judicial independence in England is helpful. Shapiro argues that the independence of the British judiciary is negated by the idea of the sovereignty of Parliament: the judiciary implements parliamentary statutes without recourse to judicial review or a higher constitutional law. This was never seen as a serious problem for the private individual, since in the 19th century a consensus arose that the state had an interest in 'public affairs' alone. The state was therefore permitted to formulate laws favourable to its aims in the public sphere, and when applying it, the judge was to act as a loyal servant of the state rather than a neutral instrument. The state was said to have little (self-)interest in the private sphere, and could be relied upon to legislate neutrally. Although this consensus has long since broken down, the attendant complacency remains.

The judiciary throughout Western Europe finds itself supplanted by officials and non-state actors in the sphere of immigration and asylum. The English judiciary, fearful of censure and aware of the stringent government position on immigration, may not feel that this interface is an area for expansive policies. The relationship between family law and immigration provides a pertinent example of the difficult interface between 'public' and 'private' affairs. Certainly, the New Labour government has tackled some of the structural evidence of the blurred separation of powers with its reforms of the House of Lords and the Lord Chancellor's Department. Yet the idea persists that contact between the executive and judiciary is "necessary for the smooth running of the system".

Shah considers that recent cases have been decided against Muslims because mono-cultural attitudes towards issues like polygamy have complemented immigration aims. *R (Shamsun Nahar) v Social Security Commissioners*[36] apparently points to a judicial reluctance to recognise marriages contracted in South Asia, for fear of empowering immigrant spouses to make claims on the British state. In Bangladesh, marriages are recognised by the state even without official registration. This is the "soft state" model which allows each religion to practice and observe its own laws. A widow of Bangladeshi origin claiming her late husband's pension was not granted it by the court because her marriage document was not considered genuine. Shah sees this as irrelevant since her marriage would have been recognised by the Bangladeshi authorities. It also had the effect of branding her son illegitimate and putting her at risk of social alienation.

Meanwhile, the decision of the Court of Appeal in *Azad v ECO, Dhaka*[37] is deemed to exhibit a monocultural approach towards polygamy. Historically, the judiciary had initially taken a pragmatic approach to broken marriages, treating polygamous marriages as if they were monogamous, and providing relief accordingly. However, the 1973 Matrimonial Causes Act rendered polygamous marriages performed in England void. Nevertheless, the children of polygamous parents were recognised as legitimate by the 1976 Legitimacy Act and they were thus able to inherit British citizenship status from their English-domiciled parents.

All this changed with *Azad v ECO, Dhaka*: the Legitimacy Act had allowed children to be recognised as legitimate so long as the parents had believed the marriage to be valid as they contracted it. In this case, the father was domiciled in the UK and was presumed to be aware that his marriage was null. It therefore rested on the question of whether the mother felt the marriage was valid when she conceived the child. "As the Court saw it, the main question was whether the mother's belief was one as to validity under English law or under the *lex loci celebrationis*, that is, Bangladesh law. In an extremely briefly reasoned speech Jacob J, with whom Laws and Kennedy LJJ fully agreed, held that the question ought to be whether she had a reasonable belief in the validity of the marriage under English law."[38] There was of course no contemporary evidence as to whether she had felt the marriage to be valid by English standards nor indeed whether she had ever considered the question. The son was thus considered illegitimate.

Shah believes that immigration concerns have caused judges to remove or deny citizenship by exploiting different standards between English and local Muslim law. In particular cases involving an absence of registration documents or the progeny of polygamous couples have been decided against Muslims.

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[36] (21 December 2001, QBD (Admin Ct), [2001] EWHC Admin 1049)
[37] (10 May 2001, [2000] WL 1918688 (CA), [2001] INLR 109, [2001] Imm AR 318)
[38] Prakash Shah, Bangladeshis in English Law, p.9.

British immigration policy makers have been facilitated in their efforts to subordinate immigrant policy to their priorities thanks to their participation in forms of European migration cooperation.[39] As noted above, this has redistributed political resources in their favour which they can exploit at the national level in order to assert their preferences.[40] Yet they have not had it all their own way, and there has been no little domestic resistance to some of their priorities. The propensity to use detention as a means of excluding unwanted immigrants from society and the economy, and thus as a tool of immigration control, has, for example, long been resisted. The desire to impose 'cultural gateways' on immigrants' access to social, economic, political and societal structures has been opposed – in other words, immigrants have seldom been (formally and intentionally) obliged to adopt a certain cultural behaviour in order to gain social, economic or political rights.

4.2 Shifting the locus of exclusion from the border to society

The emergence of the 'Muslim problem' has provided a new means for policy-makers to legitimate solutions that would formerly have been rejected as disproportionate or ill-suited to the problems at hand. The former consensus about exclusion being restricted to the border has been further undermined. To take the question of detention as a tool of immigration tool: There have thus been renewed—although by no means entirely successful—efforts on the part of policy-makers within the Home Office to use prison detention, house arrest and tracking as modes of social exclusion in the service of immigration control: Perhaps the most problematic aspects of the Anti-Terrorism, Crime and Security Act (2001) were contained in Sections 22-23, which covered the detention and deportation of, as well as the refusal of entry to, non-nationals. In cases where deportation to the country of origin or a safe third country would imperil the individual in question, the Act allowed for indefinite detention.

Interpreted by some primarily as anti-immigration measures, these provisions could be applied to all those whom the Home Secretary "suspected" of being a terrorist, according to the vague definition of the word.[41] The Home Secretary's suspicion could rest on closed intelligence information. The process leading to detention took place under immigration law, rather than the normal criminal law which sets a higher standard for the admissibility of evidence.[42] This Part of the ATCSA was replaced by the Prevention of Terrorism Act 2005 following a successful legal challenge by a number of detained foreign nationals in 2002. The 2002 ruling was confirmed in 2004 by Britain's highest court, which held that indefinite detention

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[39] On the Europeanisation of British immigration policy see: Andreas Ette and Thomas Faist, „Between Autonomy and the European Union: The Europeanisation of National Policies and Politics of Immigration", in: European View, 2007, 5, pp.19-26; and the volume Ette and Faist (ed.s), *The Europeanization of National Policies and Politics of Immigration Between Autonomy and the European Union*, (Basingstoke: Palgrave Macmillan 2007).

[40] Parkes, "What Limits for Government Control?".

[41] The definition of terrorism is for the most part broad and vague. FAIR criticises the fact that the Act does not distinguish between actions against external legitimate governments and external illegitimate governments. "This unqualified and all-encompassing use of the definition of terrorism and terrorist has been and is particularly unsympathetic towards the cause of exiled and opposition groups (many of whom have come from Muslim regions and are Muslim as well) who have fled from oppressive and tyrannical regimes or have legitimate causes for their continued resistance to their governments". The distinction between freedom-fighting and terrorism is thus eroded by the Act, although struggles for self-determination are recognised by Article 1 of the UN Charter. Moreover, the terms are subjective, thus if the refugee is opposed to a repressive regime with which Britain enjoys a friendship, he or she can be termed a terrorist.

[42] There had been 304 arrests under 2000 and 2001 anti-terror legislation, of which 40 were subsequently charged under the Terrorism Act 2000. 3 were charged with membership of banned organisations, rather than specific terrorist activities. The rest had all been charged under pre-existing legislation, rather than anti-terror legislation. This raised fears about the robustness of anti-terror cases, and about how evidence which was formerly too flimsy to use might now be permissible.

without trial was unlawful under the European Convention on Human Rights.[43] In response, the 2005 Prevention of Terrorism Act introduced control orders that allow the government to restrict the liberty[44] of an individual for the purpose of protecting the public from terrorism. Although falling short of detention, these restrictions are wide-ranging; for example, they may limit the subject's movement or prohibit him from speaking to certain persons. Upon passage of the Act, the individuals in question were immediately released from prison and made the subject of control orders.

The tendency to shift the locus of exclusion from the border into society is also clear in the development of Britain's citizenship laws. Here there have been steps towards the introduction of cultural gateways around access to rights—a move that increasingly reflects immigration policy-makers' priorities. The Nationality, Immigration and Asylum Act 2002 introduced an oath of allegiance and language test requirements. The Act also gave the Home Secretary the right to remove British citizenship from those with dual nationality, who are not British citizens by birth, if they are perceived to have done something seriously prejudicial to the interests of the UK. The test-case involved the Muslim cleric Abu Hamza. These developments can be understood as part of a broader process whereby nationality, formal definitions of British citizenship and the actual rights and duties of social and political membership are linked up. Citizenship is increasingly being treated as a privilege to be earned through active behaviour, and the empty shell of its official definition is being filled with the actual rights and duties of social membership. This new approach took more concrete form with the introduction of a citizenship test in 2005.[45] Would-be migrants are expected to answer 24 questions that test their knowledge about life in the UK. In 2007, this test was extended to all those who are seeking indefinite leave to remain but not citizenship[46]—an extension most likely to affect large numbers of "unwanted immigrants". Immigrants who were not excluded on the border are now to be refused fuller social membership.[47]

To some extent, developments in Britain reflect changes taking place in other western European countries.[48] British policy-makers have been careful not to associate these measures with the features and terminology of the assimilationist models associated with some of these countries. Individual solutions, dislocated from the broader model or trend to which they belong, have been cited in order to justify British proposals. Problems encountered by other states—not least the rise of far-right sentiment—have also been instrumentalised.

The Netherlands recently introduced a citizenship test for would-be immigrants, which joins the existing lengthy and expensive integration test for applicants seeking a Dutch passport. The new test is taken in the applicants' country of origin, costs some 350 euros and is expected to require 250-350 hours of study.[49] In 2006, two German states—Baden-Württemberg and Hesse—followed suit, proposing their own form of citizenship tests. Both tests, however, were criticised for targeting Muslims, and commentators accused the conservative-run state governments of

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[43] Law Report/ "Suspects try for freedom after terror ruling by Law Lords" , *Times,* 18th December 2004.

[44] But not to deprive them of their liberty by means of detention, which would contravene Article 5 of the ECHR.

[45] "Testing passport to UK citizenship", *Guardian,* 1st November 2005.

[46] "Would-be settlers will have to pass the Britishness test", *Guardian,* 5th December 2006.

[47] Gordon Brown, before becoming prime minister, went a step beyond citizenship tests by proposing that persons seeking citizenship should be asked to perform community work. The aim would be to introduce the applicants to a range of institutions and people, thereby aiding subsequent integration. However, critics claim that the measure would associate migrants with criminals in the public mind: community service is usually imposed as a penalty for a criminal offence. The workability of the scheme is also in doubt, which has led some to dismiss it as a publicity stunt. See: "Would-be citizens should do community work, says Brown", *Guardian,* 27th February 2007

[48] Though how much is unclear: See Dirk Jacobs and Andrea Rea, „The End of National Models? Integration Courses and Citizenship Trajectories in Europe", Paper prepared for the EUSA Conference, May 2007, Montreal.

[49] "Dutch set immigrants culture test", *BBC news online,* 22nd December 2005 http://news.bbc.co.uk/2/hi/europe/4551292.stm

electioneering.

In France, meanwhile, the 2006 Immigration Bill presented by the then Interior Minister, Nicolas Sarkozy, proposed the signature of integration contracts in its opening section. In order to obtain a residence permit, foreigners would now have to commit to abide by the principles of the French Republic, demonstrate that they actively comply with these principles, and show that they have a sufficient understanding of the French language. Following the French elections in 2007, the new government built on this precedent, proposing that family members of immigrants from non-EU states should learn French before coming to France and should acquaint themselves with French culture and customs. Immigrants on the territory would now have to sign contracts committing themselves to promote the social integration of their family members.[50] Family reunification is a considerable source of "unwanted immigration" to France.

In parallel to the presentation of that first French Immigration Bill in early 2006, the interior ministers of the EU's six largest states agreed, within the G6 framework, to focus attention upon the idea of contracts in response to social unrest in Paris and the terrorist threats highlighted by the Madrid attacks. The ideas received a high degree of attention[51], and the then British Home Secretary, Charles Clarke, used the moment to throw his weight behind the idea—an example of the way that international cooperation affords participating policy-makers extra political resources both as regards the promotion of their preferred solutions and the identification of problems that justify them. Against the background of the redistribution of political resources to immigration policy-makers associated with European cooperation, the further subordination of traditional immigrant policy tenets to those of immigration control can be expected.

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[50] „Sarkozy moves quickly to tighten immigration laws", *International Herald Tribune*, 12th June 2007
[51] For example: „EU mulls integration ‚contract'", *BBC news online*, 24th March 2006; „EU six consider introduction of ‚integration contracts' for migrants", *Financial Times*, 24th March 2006.