Unauthorized Americans And European Outcasts

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UNAUTHORIZED AMERICANS AND EUROPEAN OUTCASTS

Marisa S. Cianciarulo*

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Carlos is a twenty-five year old personal trainer living in the United States. He attended four years of high school and two years of junior college in the United States and hopes to pursue a career in sports medicine. He speaks English, Spanish, and Tagalog fluently, excels in sports, plays soccer on the weekends, and enjoys the occasional road trip with friends. He owns a car, lives on his own in an apartment, cares for his ailing mother, and generally lives a life comparable in many ways to other young Americans with similar educational backgrounds. But his life is different in one very significant way: he is an undocumented immigrant.

Carlos’s mother, a lawful permanent resident of the United States, brought him with her from the Philippines to the United States when he was fourteen years old. He was not eligible to immigrate permanently with his mother, but she obtained a temporary visitor visa for him. Once his ninety day temporary visa expired, however, Carlos became an undocumented immigrant. He is better situated than most undocumented immigrants because he is eligible for

1. Carlos is a real person whose name and other identifying information have been changed to protect his privacy and safety.
sponsorship by his mother and a U.S. citizen sibling, but the waiting periods are thirteen years and twenty-four years, respectively.2

In the meantime, Carlos lives a precarious life. He drives with an expired license because he does not have current immigration documents, and hopes not to be pulled over. He was unable to accept a position on a professional sports team because of his lack of immigration documentation and must continue to be self-employed. His U.S. education and fluent English enable him to blend into American society seamlessly, but he lives with the secret and the stigma of his unauthorized status.

The United States is home to a generation of whom this Article refers to as “unauthorized Americans”—illegally present young adults like Carlos, who were brought or sent to the United States when they were children.3 These immigrants tend to demonstrate a high level of integration into mainstream U.S. society, but they cannot fully integrate or participate in U.S. society due to their undocumented status.4 Immigration reform is slow in coming and grudging in what it is willing to offer. In the event that it is not forthcoming or that it occurs too late for young adults like Carlos, what is the result? What happens to a generation of U.S.-educated, fully integrated Americans who are not actually Americans? What message does it send to the next generation of children brought to the United States by their parents, encouraged to do well in school, and exposed to a culture that consumes and envelops them and then rejects them once they are adults?

This Article looks to Europe as one potential source of answers to that question. Europe has generations of young adults who were born in Europe and yet remain marginalized in immigrant communities. This marginalization has been difficult to overcome, even where the immigrants in the marginalized communities have European citizenship. Britain, Germany, and France have relatively short histories of immigration compared to the United States and have high levels of immigration from culturally and religiously diverse countries. In those countries, marginalization seems to result from cultural barriers erected both by “native Europeans” as well as immigrants and their native-born descendants.

An “us versus them” mentality has emerged in both Europe and the United States. In Europe, “us” represents the white, and historically and

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4. See id. at iv (reporting that unauthorized immigrant youth are 22% less likely to attend college than U.S.-born residents are, the rate of poverty for unauthorized children is nearly double that of U.S.-born children, and unauthorized immigrant children are 20% less likely to have health insurance than the U.S.-born children of unauthorized immigrants are).
native population, and “them” represents legal immigrants and their native-born descendants. However, in the United States, “us” has come to represent citizens and legally-present immigrants, and “them” represents illegally-present immigrants. Each marginalized group faces integration challenges and widespread public opinion that they are responsible for their own marginalization.

This Article explores the integration challenges of British, French, and German citizens of ethnically diverse descent and of undocumented immigrants in the United States who have been raised in the United States since childhood. The Article compares European obstacles to integration, which are primarily cultural, to U.S. obstacles to integration, which are primarily legal. The Article argues that by failing to remove legal barriers to full integration, the United States is poised to have cultural barriers to integration develop and proliferate that are more difficult to correct than legal barriers.

This Article does not address the complex interactions of U.S. immigration policy, U.S. economic policies, international economic conditions, and poverty and corruption in sending countries; it accepts that those enormous external factors combine to influence the movements of individuals who have no control over them.\(^5\) Beginning from the proposition that undocumented immigration is unlikely to end in the near future, this Article proposes that the United States reap the benefits of a generation of young adults who have utilized its educational, cultural, and economic offerings. In order to take full advantage of the skills and talents that undocumented youth offer, their full integration via legalization is necessary.\(^6\)

Part II of this Article documents the social integration of unauthorized

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6. No significant immigration legislation has been passed since the 1996 Illegal Immigration Reform and Immigration Responsibility Act of 1996, although a number of bills have been proposed. Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009. See e.g., Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006) (proposing (1) the granting of lawful permanent resident status to unauthorized immigrants who meet certain continuous presence and admissibility criteria; and (2) the establishment of a “blue card” earned legalization program for agricultural workers who meet certain requirements); Security Through Regularized Immigration and a Vibrant Economy Act of 2007, H.R. 1645, 110th Cong. (2007) (proposing (1) the granting of conditional residency to unauthorized immigrant workers who meet certain requirements, with a possibility of adjusting to permanent resident status; and (2) the establishment of a “blue card” earned legalization program for agricultural workers who meet certain requirements; Agricultural Job Opportunities, Benefits, and Security Act of 2007, S. 1639, 110th Cong. (2007) (proposing the granting of four-year indefinitely renewable visas to unauthorized immigrant workers who meet certain requirements; Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. (2007) (proposing (1) the granting of lawful permanent resident status to unauthorized immigrants who meet certain requirements; and (2) establishment of a “blue card” earned legalization program for agricultural workers who meet certain requirements); Comprehensive Immigration Reform Act of 2010, S. 3932, 111th Cong. (2010) (proposing (1) the granting of lawful permanent resident status to unauthorized immigrants who meet certain require-
Americans, an integration brought about through education and evident in the social and political participation of unauthorized Americans despite their lack of legal immigration status. Part II then addresses the legal barriers that unauthorized Americans face. U.S. immigration law provides very few avenues for legalization to undocumented immigrants. They tend to be ineligible to legalize their status, or, if they do qualify for legal status, they are subject to lengthy stays outside the United States as a prerequisite to legalization. Part III presents, as a basis for comparison, the integration challenges of ethnically non-European citizens of Britain, Germany, and France. Despite being legal immigrants or full citizens, many members of these groups experience a cultural “otherness” that separates them from mainstream society. Part IV discusses the potential for the United States to have multiple generations of unauthorized Americans, referencing the experience of Europe as an example of the type of marginalization that could infect millions of individuals who are socially and culturally American but legally unrecognizable as such. Part IV also examines the most recent proposed immigration legislation and what its effect might be on current and future generations of undocumented immigrants. The Article concludes that legalization for undocumented immigrants who have grown up in the United States is a more favorable alternative than engendering further marginalization, but that comprehensive immigration reform will not put an end to unauthorized immigration.

II. UNAUTHORIZED IMMIGRANTS LIVING IN THE UNITED STATES SINCE CHILDHOOD: OUTCASTS BY LAW, CITIZENS BY CULTURE

The Pew Hispanic Center estimates that approximately 1.5 million undocumented immigrant children resided in the United States in 2000. In 2005, the number of undocumented immigrant children reached a peak of 1.6 million, and the number was estimated to be 1 million as of 2010. Many of the unauthorized children who entered the United States over the last ten to fifteen years are now adults between the ages of eighteen and twenty-nine. With no change in the immigration laws occurring in the intervening years, they constitute a second generation of adult undocumented immigrants living

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7. See infra notes 16-52 and accompanying text.
8. See infra notes 53-73 and accompanying text.
9. See infra notes 122-151 and accompanying text.
10. See infra notes 154-157 and accompanying text.
11. See infra notes 157-160 and accompanying text.
13. Id.
and working in the United States. They have thus achieved a relatively high level of integration into mainstream American society, but remain unable to attain full integration due to an absence of avenues for lawful immigration status.

A. Cultural Integration

Assimilation, a concept that has been critiqued as an undesirable loss of unique culture, has nevertheless been the dominant indicator of cultural integration in the United States. The standard indicators for assimilation are social, economic, and political integration. Social integration indicators include: language proficiency, “cultural and religious practices,” “inter-marriage rates,” and “residential patterns.” Economic integration is measured by education and employment. Political integration is measured by the “proportion of elected officials,” “political participation,” and “access to government resources.”

Unauthorized Americans have the opportunity for some social and economic integration, despite the stigma of their immigration status. Brought to the United States as children by their parents or adult guardians, they have attended school in the United States, and many have obtained advanced degrees. Many are fully bilingual and bicultural, having attended American schools and grown up alongside native-born Americans. By definition, they do not have representation in formal government, but some do participate in

15. See, e.g., Riva Kastoryano, Negotiating Identities: States and Immigrants in France and Germany 30-31 (Paul DiMaggio et al. eds., Barbara Harshav trans., Princeton University Press 2002) (explaining that “assimilation,” once defined as “a process that led individuals of different origins, living in a common territory, to create enough solidarity to sustain a common national life,” has become synonymous with conforming to the dominant culture) (quoting Philip Gleason, The Odd Couple: Pluralism and Assimilation, in Speaking of Diversity: Language and Ethnicity in Twentieth-Century America 47-90 (1992)).


18. Id. at 13.

19. Id.

20. Id.

21. See Roger Penn & Paul Lambert, Children of International Migrants in Europe: Comparative Perspectives 111 (2009) (“[T]he greater the level of cultural affinity with their host country among children of international migrants, the more incorporated they will be in other spheres, such as education and the labour market.”).

22. Schools are not required to report the presence or number of unauthorized immigrant students; exact numbers are therefore unavailable. See Kelley R. Taylor, Immigration and Schools: Policy and the Law, A Legal Memorandum, Spring 2008, at 3. However, researchers estimated in 2006 that there were 360,000 undocumented graduates of U.S. high schools who would benefit from passage of the DREAM Act (indicating that there are over 360,000 undocumented graduates of U.S. high schools) and another 715,000 undocumented students currently enrolled in U.S. public schools. Jeanne Batalova & Michael Fix, Migration Policy Inst., New Estimates of Unauthorized Youth Eligible for Legal Status Under the DREAM Act 3-4 (2006), available at http://www.migrationpolicy.org/pubs/backgrounder1_dream_act.pdf.
the political process to an extent. Overall, unauthorized Americans demonstrate varying levels of societal integration.

1. **Education in the United States**

Undocumented children in the United States are, like any other children, required to attend school. Ever since the 1982 Supreme Court decision in *Plyler v. Doe*, an undocumented child’s right to a public school education through high school has been recognized as a constitutional right. Notably, the Supreme Court presaged a “permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents.” The Court recognized that the children of this subclass of undocumented immigrants should not be punished for the actions of their parents, and warned against creating “a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime.”

Although some unauthorized Americans pursue degrees beyond the required high school diploma, many others struggle with education. Citing census data, a recent New York Times article reported that approximately 41% of New York City’s Mexican population drops out of school between the ages of sixteen and nineteen. The article attributes the high dropout rate to language barriers, fear of deportation discouraging access to resources, parents working multiple jobs, and the students’ belief that “there is no point in staying in school because their lack of legal status limits their access to college scholarships and employment opportunities.”

New York’s experience is consistent with the national trend. The Pew Hispanic Center reported that the high school dropout rate for foreign-born Hispanics is 52%, and that 29% of undocumented immigrants between the ages of twenty-five and sixty-four have less than a high school education. Among undocumented immigrants within the age range of eighteen to twenty-four, 40% have less than a high school education.

An important finding by the Pew Hispanic Center researchers indicates that age at the time of entry into the United States has an impact on educational success. Undocumented immigrants who arrived before the age

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23. See infra notes 46-51 and accompanying text.
25. Id. at 218-19.
26. Id. at 220.
27. Id. at 230.
29. Id.
32. Id. at 11.
of fourteen had a much greater likelihood of completing high school: only 28% of those immigrants had less than a high school education, compared to 46% of undocumented immigrants who entered at age fourteen or older.\footnote{33} Despite the challenges and statistics discussed above, unauthorized Americans have a fairly high rate of post-high school education. According to the Pew Hispanic Center researchers, 49% of undocumented immigrants between the ages of eighteen and twenty-four are in college or have attended college.\footnote{34} Those who came to the United States before turning fourteen have a particularly high rate of pursuing higher education: 61%\footnote{35}. What can account for these outcomes is a topic of social science beyond the limited scope of this Article. However, it is sufficient to observe that the younger children are when they come to the United States (albeit without authorization), the more education they are likely to obtain. With education comes more opportunity for social integration, as discussed below.

2. Social Integration

Social integration is perhaps the most controversial and fluid factor in determining the level of an immigrant group’s integration. As a German political scientist commented, “In a democratic society, integration means fitting oneself into a political–civil societal formation and developing a feeling of belonging to it.”\footnote{36} The language spoken by members of the group, their adherence to their home country’s cultural and religious practices, their rate of intermarriage, and their residential patterns are affected by many factors, the impact of which changes with each generation.

Unauthorized Americans tend to be bilingual, but the level of English proficiency varies. According to a 2005 report by the Urban Institute, “Many children [with limited English proficiency] are not learning English even after seven or more years in school.”\footnote{37} Consistent with other statistics on education, however, the age of the child when he or she begins school in the United States seems to have an impact on how proficient his or her English will become.\footnote{38}

The emphasis on monolingual English as a measurement of assimilation is controversial. The traditional model, in which monolingual English is the norm by the third generation, has been informed by historical factors that have not reproduced themselves in the current generation of immigration.\footnote{39}

\footnotesize{\begin{itemize}
\item \footnote{33} Id. at 12.
\item \footnote{34} Id.
\item \footnote{35} Id.
\item \footnote{36} Bassam Tibi, Between the Worlds, in Germany in Transit: Nation and Migration 1955-2005 228, 229 (Deniz Gokturk et al. eds., David Gramling trans., 2007).
\item \footnote{37} Randy Capps et al., Urban Inst., The New Demography of America’s Schools: Immigration and the No Child Left Behind Act 18 (2005).
\item \footnote{38} Id.
\item \footnote{39} Alba, supra note 16, at 4-5.
\end{itemize}}
As one author has noted, Spanish has emerged as a “lingua franca for a plurality of the new immigrants.”\footnote{40} The same critique applies to adherence to social and religious customs of the home country. Assimilation, the dominant model of social integration, traces back to the early twentieth century mass migration of white Europeans.\footnote{41} The current trend, owing to travel and technological advances over the last several decades, is a “widespread transnationalism in which immigrants and their children feel at home in two societies.”\footnote{42} It is therefore neither surprising nor particularly telling that unauthorized Americans adhere to some of the religious and social customs of their home countries.

Residential integration is yet another controversial indicator of integration. Given that residential segregation is stricter in urban areas\footnote{43} and that suburban areas are less accessible to lower-income groups,\footnote{44} the elusiveness of residential integration is arguably more of a socioeconomic factor than one of assimilation. Thus, the fact that 47% of undocumented immigrants—unauthorized Americans among them—live in the principal cities of metropolitan areas, as compared to only 29% of native-born Americans, is not particularly illustrative of assimilation or a lack thereof.\footnote{45}

An arguably more telling measure of assimilation by unauthorized Americans is political integration.

3. Political Integration

Unauthorized Americans, as is the case with most immigrants present in the United States illegally, have little or no political power in that they are not represented in government and have restricted access to government resources. In terms of political participation, however, unauthorized Americans have been fairly active in the political process. Examples of undocumented American participation in the political process is perhaps most evident in the decade-old struggle to pass the Development, Relief and Education for Alien

\footnote{40}{Id. at 5 (citing Gillian Stevens, Immigration, Emigration, Language Acquisition, and the English Language Proficiency of Immigrants in the U.S., in IMMIGRATION AND ETHNICITY: THE INTEGRATION OF AMERICA'S NEWEST ARRIVALS 163-185 (Barry Edmonston & Jeffrey Passel eds., 1994)).}
\footnote{41}{Id. supra note 16, at 8-9, 18.}
\footnote{42}{Id. at 19 (citing Nina Glick Schiller, Linda Basch & Cristina Blanc-Szanton, TOWARDS A TRANSNATIONAL PERSPECTIVE ON MIGRATION: RACE, CLASS, AND ETHNICITY RECONSIDERED (1992)). See also Alejandro Portes, DIVERGENT DESTINIES: IMMIGRATION, THE SECOND GENERATION, AND THE RISE OF TRANSNATIONAL COMMUNITIES, in PATHS TO INCLUSION 50 (Peter Schuck et al. eds., 1998) (describing transnational communities comprised of members who “are at least bilingual, move easily between different cultures, frequently maintain homes in two countries, and pursue economic, political, and cultural interests that require a simultaneous presence in both”).}
\footnote{43}{Id. supra note 16, at 8.}
\footnote{44}{See Pew Hispanic Ctr., supra note 3, at 16 (reporting that “the median annual household income of unauthorized immigrants was $36,000, compared with $50,000 for people born in the United States” despite the fact that unauthorized immigrant households have 1.75 workers compared to native-born households’1.23 workers).}
\footnote{45}{Id. at 3.}
Minors Act, or “DREAM Act” as it is popularly known.46

Unauthorized Americans have led and actively participated in rallies and other forms of campaigning for the federal DREAM Act and state versions. In Los Angeles, for example, dozens of undocumented students spoke at a September 2010 rally, urging federal lawmakers to pass the DREAM Act.47 In Arizona in May 2010, a group of undocumented students led a sit-in at the offices of Senator John McCain to urge him to support the DREAM Act.48 In June 2012, unauthorized Americans rallied in Los Angeles to support the DREAM Act and President Barack Obama’s decision to halt removal proceedings and deportations of DREAM Act-eligible immigrants.49

Unauthorized Americans have also “come out” publicly as undocumented immigrants in an effort to influence the political process. Undocumented high school and college valedictorians have spoken publicly in order to bring the plight of unauthorized Americans to the public’s attention and advocate for immigration reform.50 In November 2010, a California State University, Fresno student and DREAM Act supporter publicly declared his undocumented status after being elected student body president.51

Although involvement in the political process has not yet led to passage of the federal DREAM Act, it has had at least one important positive effect: it has called attention to the lack of avenues for legalization for people who, but for their manner of entry years ago, are in all other respects American.

B. Legal Barriers to Integration

The last major legalization program to affect a sizable number of young adults brought to the United States as children was the Nicaraguan Adjustment and Central American Relief Act of 1997,52 which applied only to Nicaraguans, Salvadorans, Guatemalans, and some citizens of former Soviet

46. See infra section C.1 for a discussion of the DREAM Act and attempts to pass it.
states. Since then, the approximately 11 million undocumented immigrants living in the United States have had little or no opportunity to legalize their status. Even if there was some immigration benefit for which they might qualify, their lengthy unlawful presence in the United States renders them ineligible for most immigration benefits. The current federal policy not to prosecute long-time unlawfully present immigrants may prevent deportation, but it does nothing to resolve the legal status of those immigrants. This section explores two of the most common avenues to lawful immigration status and explains why they are not available to the generation of unauthorized Americans.

1. Sponsorship-Based Immigration

The United States allows U.S. citizens and lawful permanent residents to sponsor immediate relatives for immigration to the United States. Citizens may sponsor spouses, parents, children, and siblings. Lawful permanent residents may sponsor spouses and unmarried children. Aside from spouses, parents, and minor children of citizens, beneficiaries of relative petitions must wait for an immigrant visa to become available once the petition is approved before they can immigrate to the United States. During the time that a beneficiary is waiting for an immigrant visa number to become available, a wait of two to twenty-three years depending on the preference category and nationality of the beneficiary, no lawful immigration status is

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53. 8 C.F.R. § 40.61(a) (2012).
55. See 8 U.S.C. § 182(a)(9)(B)(i)(II) (2012) (rendering inadmissible for a period of ten years departed aliens who had previously been present in the United States without authorization for one year or more); 8 U.S.C. § 255(c) (2012) (rendering ineligible for adjustment of status aliens who have failed to maintain lawful presence in the United States, thus requiring such aliens to depart the United States and seek an immigrant visa from abroad).
56. See Memorandum from Janet Napolitano, Sec’y of Homeland Sec., on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) [hereinafter Napolitano Memo], available at http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf (directing immigration officials to exercise prosecutorial discretion in removal cases against undocumented immigrants who meet the following criteria: (1) entered the United States before the age of 16; (2) have continuously resided in the United States for five years preceding the date the memo; (3) is currently in school, has graduated from high school or obtained a high school equivalency degree, or has been honorably discharged from the U.S. armed forces; (4) does not pose a threat to national security or public safety; and (5) is not above the age of 30).
58. Id. § 1153(a)(2).
59. The number of available visas is determined by statute. See id. § 1151(c) (setting forth the annual number of visas available for each family-based category).
available via the sponsorship petition.61 Beneficiaries who are lawfully present in the United States through some other means during this process, or who fall into very specific exempt preference categories, may apply for adjustment of their immigration status to lawful permanent resident without leaving the United States once an immigrant visa is available.62 Aliens who have violated their visa status are ineligible for adjustment of status; they must depart the United States to apply for an immigrant visa once one becomes available.63 Aliens who accumulated one year or more of unlawful presence in the United States are barred from returning to the United States for ten years.64

In the situation described in the introduction to this article, the unmarried adult undocumented immigrant from the Philippines, Carlos, has a brother who is a U.S. citizen and a mother who is a lawful permanent resident. Both family members may sponsor him, but Carlos does not obtain lawful immigration status by virtue of those petitions. His estimated wait time for an immigrant visa is twenty years through his mother’s petition and sixteen years through his brother’s petition.65

Assuming that his mother had sponsored Carlos fifteen years ago, Carlos could apply for an immigrant visa next year. However, Carlos began accumulating unlawful presence as soon as he turned eighteen and continued residing in the United States on an expired visitor visa. As an alien working and residing in the United States without authorization, Carlos is in violation of immigration law and is thus ineligible to apply for adjustment of status in the United States. If Carlos returns to the Philippines to apply for an immigrant visa through his mother’s approved sponsorship petition, he will be barred from reentering the United States for ten years as an alien who accumulated more than one year of unlawful presence. The same outcome will result if and when his brother’s sponsorship petition is approved. Thus, for Carlos and many other unauthorized young adult immigrants like him, family-based immigration is not a viable option even when they have relatives eligible to sponsor them.66

61. The V visa, which provided temporary nonimmigrant status to beneficiaries of certain immigration petitions, was limited to petitions filed on or before December 21, 2000. 8 U.S.C. § 1101(a)(15)(V) (2012).
63. See 8 U.S.C. § 1255(c) (rendering ineligible for adjustment of status aliens who have failed to maintain lawful presence in the United States, thus requiring such aliens to depart the United States and seek an immigrant visa from abroad).
64. 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2012) (rendering inadmissible for a period of ten years departed aliens who had previously been present in the United States without authorization for one year or more).
66. Employment-based immigration is subject to the same restrictions as family-based immigration. Although employers may sponsor employees for lawful permanent residence under certain

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2. Cancellation of Removal

Cancellation of removal is a discretionary immigration benefit granted to aliens in removal proceedings whose departure from the United States would cause “exceptional and extremely unusual hardship” to the alien’s U.S. citizen or lawful permanent resident spouse, parent, or minor child.\(^\text{67}\) An applicant for cancellation of removal must have been continuously present in the United States for ten years prior to the date of being placed in removal proceedings in order to qualify.

For a number of reasons, this benefit is unappealing or unavailable to unauthorized Americans. First, applicants for cancellation of removal must be in removal proceedings.\(^\text{68}\) An individual may not apply for this benefit on his or her own. As enforcement priorities tend to focus on criminal aliens, many unauthorized Americans are not in removal proceedings, but rather, as discussed above, are living their lives without the interference of Immigration and Customs Enforcement (“ICE”). It is generally not an appealing or advisable prospect to request that ICE place an individual in removal proceedings, which exposes the individual to the threat of deportation.

Second, cancellation of removal is a highly subjective immigration benefit that focuses on hardship to a qualifying U.S. citizen family member, not hardship to the applicant. The standard for exceptional and extremely unusual hardship is a strict one that requires a showing that the qualifying family member will suffer hardship beyond that expected from enforced separation through deportation. For example, having U.S. citizen children from whom the applicant will be separated or who would have to return to the home country with the applicant is generally not sufficient to meet the standard.\(^\text{69}\) Being the primary caretaker of a U.S. citizen parent with medical problems that cannot be adequately addressed in the home country, on the other hand, is more likely to meet the standard.\(^\text{70}\)

\(^{67}\) FN67

\(^{68}\) FN68

\(^{69}\) FN69

\(^{70}\) FN70

limited circumstances, beneficiaries must still meet the same eligibility requirements for adjustment of status that family-based beneficiaries must meet.

\(^{68}\) See 8 C.F.R. § 240.21(c) (2012) (authorizing only the immigration courts and the Board of Immigration Appeals to grant cancellation of removal).

\(^{69}\) See, e.g., Delgado v. Holder, 674 F.3d 759, 765 (7th Cir. 2012) (declining to review on jurisdictional grounds a decision by the immigration judge and Board of Immigration Appeals that the applicant, who claimed that his school-aged U.S. citizen daughters would have to live in a dangerous area and would not be able to maintain their good grades in the Mexican school system, failed to prove extreme and unusual hardship); In re Andaloza-Rivas, 23 I. & N. Dec. 319, 321 (B.I.A. 2002) (overturning, on the basis that the standard for exceptional and extremely unusual hardship had not been met, an immigration judge’s grant of cancellation of removal to a Mexican mother with asthma whose U.S. citizen children would “face complete upheaval in their lives and hardship that could conceivably ruin their lives”).

\(^{70}\) See In re Monreal-Aguinaga, 23 I. & N. Dec. 56, 63 (B.I.A. 2001) (noting that an applicant with elderly U.S. citizen parents for whom the applicant is the sole source of support, or an applicant with a U.S. citizen child “with very serious health issues, or compelling special needs in school” might have a “strong case” for cancellation).
Finally, it is within the discretion of the immigration judge to decide whether, once the requirements above are met, the applicant deserves cancellation of removal. In deciding whether the applicant merits cancellation of removal, the immigration judge may consider the length of the applicant’s residence in the United States, the applicant’s ties to the community, and the applicant’s criminal history.  

In the case of Carlos, it would be ill advised to have him apply for cancellation of removal. Although he is unquestionably of good moral character and meets the ten-year residence requirement, a claim of exceptional and extremely unusual hardship to his permanent resident mother would be difficult to sustain. His mother spends a substantial amount of time in the Philippines, where she receives medical care. Two of his adult siblings, as well as several nieces and nephews, also reside in the Philippines and could help Carlos care for his mother there. When Carlos’s mother comes to the United States, she can easily stay with her other adult children who reside in the country legally.

Except for Deferred Action for Childhood Arrivals, a non-legislative program promulgated by the Obama administration, no other viable immigration options exist for Carlos and others like him. His long-term unlawful presence renders him ineligible for sponsorship by qualifying family members. He cannot meet the onerous requirements for cancellation of removal. He has a full and productive life in the United States and has not left the country since arriving as a young teenager, but his status is as illegal as the most recent unauthorized migrant to cross the southern border.

C. Public Opinion of Unauthorized Americans

At all levels of government, public opinion of unauthorized Americans is divided. On the one hand, legislators who recognize unauthorized Americans as a deserving subset of undocumented immigrants have tried to pass legislation to legalize them. Similarly, some states have sought to correct what they perceive as injustice towards unauthorized Americans with state versions of the DREAM Act. On the other hand, supporters of more restrictive immigration policies have prevented the DREAM Act from becoming law. Similarly, states troubled by perceived economic and cultural concerns, the large number of undocumented immigrants, and stymied federal efforts to reform immigration law, have passed immigration enforcement laws targeting all undocumented immigrants, including unauthorized Americans.

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72. See Napolitano Memo, supra note 56. See also, Michael A. Olivas, Dreams Deferred: Deferred Action, Prosecutorial Discretion, and the Vexing Case(s) of DREAM Act Students, 21 William & Mary Bill of Rights J. 463, 474 (2012) (noting that “[deferred action], however advantageous in stopping the clock or in throwing sand into the deportation and removal gears, is not a true or final resolution of undocumented immigration status, and will likely leave many DREAMers unassisted and ineligible for any ultimate change in their legal status”).
1. Failure to Pass the DREAM Act

Possibly the most telling aspect of the U.S. debate on unauthorized immigration is the failure, time and again, to pass legislation that would give young adults brought to the United States as children and educated in U.S. schools an opportunity to legalize their status. Proponents of legalization for this group of young adults have unsuccessfully sought to pass various versions of the DREAM Act since 2001, either as stand-alone legislation or as part of comprehensive immigration reform.\(^73\) The 2011 version, introduced in the House of Representatives with eighty-eight cosponsors, died in the House Subcommittee for Immigration Policy and Enforcement.\(^74\)

The 2011 DREAM Act would have granted conditional permanent residence to applicants who proved that they had resided continuously in the United States for at least five years prior to the enactment of the legislation, had been persons of good moral character since entering the United States, did not fall under certain categories of inadmissibility, had earned a high school diploma or general equivalency diploma and/or had been admitted to an institution of higher education, and were thirty-two years old or younger on the date of enactment of the legislation.\(^75\) Applicants would have had to undergo background checks and a medical examination before being granted conditional status.\(^76\) After six years as a conditional permanent resident, the DREAM Act applicant would have been eligible for full lawful permanent residence provided that the applicant had continued to be a person of good moral character; had not abandoned her/his residence in the United States; and had acquired a degree from an institution of higher education, or had


\(^74\) Development, Relief, and Education for Alien Minors Act, H.R. 1842, 112th Cong. (2011). A companion bill, S. 952, was introduced in the Senate.


\(^76\) Id. § 3(a)(4), (5).
completed at least two years of a bachelor’s degree or higher degree, or had served for at least two years in the U.S. armed forces.  

Opponents of the legislation argue that the DREAM Act would reward illegal immigration, would allow DREAM Act beneficiaries to sponsor their illegally present relatives, is vulnerable to fraud, does not exclude convicts of certain crimes, and does not have an annual cap or an expiration date. Advocates contend that the DREAM Act does not reward illegal immigration because it is only available to those who entered as children and thus did not have the requisite intent to violate U.S. immigration. Advocates further argue that the proposed law justly and wisely gives young adults who have grown up in American society the opportunity to use their education, skills, and talents in ways that contribute to the U.S. economy and society.

For the last eleven years, opponents of the DREAM Act have prevailed at the federal level. Unauthorized Americans continue to graduate from high school and college, serve in the armed forces, and raise U.S. citizen children while having to live lives overshadowed by their unauthorized immigration status. A June 2012 memo from the Secretary of Homeland Security instructs immigration enforcement officials to use their prosecutorial discretion to suspend the removal proceedings of undocumented immigrants who meet the description of potential DREAM Act beneficiaries, but the Department has no authority to grant any legal status to those immigrants. In the meantime, states have begun taking matters into their own hands, passing DREAM Acts in some states and immigration enforcement legislation in others.

2. State Immigration-Related Laws

State laws directed at undocumented immigrants have focused on two distinct failures on the part of the federal government. On the one hand are


77.  Id. § 5(a)(1).


79. Id.


81. Id.

82. Id.


84. See, e.g., ROBERTO G. GONZALES, YOUNG LIVES ON HOLD: THE COLLEGE DREAMS OF UNDOCUMENTED STUDENTS 12 (2009) ("[T]he initial investment in [the public school education of unauthorized immigrants] pays relatively few economic dividends as long as they are limited in their ability to continue on to college and obtain higher-skilled (and higher-paying) jobs that require more than a high school diploma.").

85. See Napolitano Memo, supra note 56, at 1, 3.
laws that respond to Congress’s inability to pass the DREAM Act or any component of comprehensive immigration reform by allowing unauthorized Americans to attend state universities and pay in-state tuition. On the other hand are laws that attempt to address the federal government’s perceived inability or unwillingness to enforce existing immigration law by making the state inhospitable to undocumented immigrants. The result is further confusion about the future of unauthorized Americans in U.S. society.

a. State DREAM Acts

State DREAM Acts provide educational opportunities to unauthorized Americans by treating them like U.S. citizens and lawfully present immigrants for purposes of eligibility for financial aid and in-state tuition. As of the spring of 2014, eighteen states—California, Colorado, Connecticut, Hawaii, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, and Washington—have DREAM Acts in effect.86 Undocumented immigrant students who have graduated from those states’ elementary and high schools may apply for in-state tuition if they sign an affidavit stating that they will legalize their status as soon as they are eligible to do so.87

To some degree, state DREAM Acts minimize the polarizing effects of decades of failure to pass comprehensive immigration reform by placing undocumented American students on the same footing as U.S. citizen and legal immigrant students. Once college and graduate school are completed, however, no state legislation can change the fact that the graduates are not eligible to work legally in the United States. Nevertheless, despite their limitations, they send a message to unauthorized Americans that the state values them as productive members of U.S. society, that it does not fail them for being brought to the United States by adult family members, and that there is hope that a federal DREAM Act will pass in the near future. Immigration enforcement legislation, on the other hand, supports the polarization and makes no distinction between unauthorized Americans and other undocumented immigrants.


b. State Immigration Enforcement Legislation

State immigration enforcement legislation seeks to use state power to prevent undocumented immigrants from living and working in the state and to punish undocumented immigrants who are found to be in violation of federal immigration law. Alabama, Arizona, Georgia, Indiana, South Carolina, and Utah have all passed laws targeting undocumented immigrants through enforcement measures. Another twenty states considered and rejected immigration enforcement legislation, and another five states are currently considering such legislation.

The rhetoric and legislative history of state immigration enforcement laws seem to suggest that the states that enacted them view all undocumented immigrants, regardless of manner of entry or significance of ties to the United States, as lawbreakers deserving punishment and isolation and/or fiscal drains who do not contribute to society. Alabama’s immigration enforcement law claims that “illegal immigration is causing economic hardship and lawlessness.” Arizona Governor Janice K. Brewer maintains that her state’s immigration enforcement legislation is aimed at protecting and defending the state from the “public safety and economic strains” caused by illegal immigration. Governor Nathan Deal of Georgia cited the “burden [illegal immigration] is creating on our correctional, educational and healthcare assets” in support of his state’s immigration enforcement legislation. The Indiana state senator who spearheaded the successful effort to pass immigration enforcement legislation in his state referred to the taxpayer burden of “educating children of illegal immigrants, providing healthcare, and other living expenses.” State Senator Larry Grooms of South Carolina stated that


90. See id. (stating that Illinois, Michigan, Pennsylvania, Ohio and Wisconsin are currently considering immigration enforcement legislation).


the rationale behind his state's immigration enforcement law is that "[w]e can't allow [undocumented immigrants] to continue to disregard our laws, weaken our culture, and threaten our liberty."95 Utah Governor Gary R. Herbert referred to the "significant societal costs associated with illegal immigration."96

The message that state immigration enforcement legislation sends to unauthorized Americans is a negative one: they are unwanted, law-breaking drains on society. For a group of people who have been educated alongside and grown up with the supporters of these laws or their children, that message is patently unjust. How could a tax-paying, gainfully employed, conscientious young adult like Carlos be an unwanted drain on society? It is not difficult to see how such federally created and state enforced societal divisions may eventually lead to greater marginalization and disillusionment of the growing population of unauthorized Americans. Why bother to seek higher education and integration when at the culmination of the effort awaits rejection?

III. EUROPEAN DESCENDANTS OF IMMIGRANTS FROM NON-EUROPEAN COUNTRIES: CITIZENS BY LAW, OUTCASTS BY CULTURE

Europe, in particular Britain, Germany, and France, face immigration challenges that are unique to each country and unique in comparison to the United States.97 Whereas the bulk of United States immigration controversy stems from the unauthorized entry of immigrants from the contiguous country of Mexico and its Central American neighbors, European immigration controversy tends to center around the cultural differences of legal non-European immigrants and their European-born children. Although significant cultural differences do exist among various ethnic groups in the United States, those differences do not result in the polarization apparent in European societies. Undocumented immigrants from Mexico and Central America in the United States do not stand out in terms of dress, language, and religion in the same stark way that Bangladeshis and Pakistanis, North Africans, and Turks tend to do in Britain, Germany, and France, respectively. As a German journalist observed, "A teacher with a cross

around her neck is a daily phenomenon in German schools; she fits into the overall picture, whereas a teacher with a head scarf sticks out, just because she is Muslim.  

These three European nations thus struggle with an immigrant population that is seen as “other” not because of obstacles to formal citizenship, but rather despite the citizenship of the immigrants and their descendants. The European debate centers on the proper role, value, and extent of multiculturalism—a debate that also exists in the United States but that does not generally pertain to young adult undocumented immigrants who have grown up in the United States. The cultural differences between the European countries and the countries of origin of their primary immigrant groups create tension and conflict on a scale not seen in the United States.

This section will contrast unauthorized Americans with the generations of unintegrated citizens and legal immigrants in Europe. While ethnic minorities in Europe enjoy full citizenship rights, a number of divisive cultural factors have prevented full integration. This section explores the reasons for the cultural tension, which seem to be directly related to the circumstances of immigration to Europe and differ significantly from the circumstances of immigration to the United States. The United States has been relatively free of the ethnic divisions seen in Europe in recent years, but might expect an increase of such ethnic divisions as legal barriers begin to transform into insurmountable cultural barriers.

A. Immigration and Citizenship in Britain, Germany, and France

1. History of Immigration to Western Europe

Like the United States, the prosperous European countries of Britain, Germany, and France welcomed immigrants from other European countries in the late 1800s and early 1900s, primarily to fill labor shortages. Unlike the United States, there was very little immigration from non-European countries such as Japan, China, and Mexico, and “nonwhite ethnic minorities accounted for less than 0.1 percent of the population in both Britain and France” by the end of World War II. It was not until the latter

99. See Joel S. Fritzer, Public Attitudes Toward Immigration in the United States, France, and Germany 49 (2000) (“The aim of immigration into France from 1888 . . . to the start of World War 1 in 1914 was to remedy the dramatic labor shortage caused by the country’s continuing low birthrate. Until around the turn of the century, Belgians predominated . . . Their numerical superiority was eventually surpassed by the many Italian laborers . . . France also employed . . . Spaniards, Swiss, and Germans.”). See also, id. at 64 (“[F]rom 1880 to the outbreak of World War 1, ethnic Poles from Russia, Austro-Hungary, and even what was then eastern Germany [as well as eastern European Jews] were the dominant ‘non-German’ workforce.”).
100. Penn & Lambert, supra note 21, at 35.
101. Maxwell, supra note 17, at 29.
part of the twentieth century and the end of colonialism that Britain, Germany, and France began to experience high levels of immigration from non-European countries.  

France has been home to North African immigrants since the 1930s, but began to see an upsurge in 1962, when Algeria gained independence from France. France’s need for labor in the wake of war-related labor shortages and emigration from France, combined with “colonial-era connections and legal privileges” available to inhabitants of French protectorates in the Caribbean and North Africa, led to a dramatic population change. By 2001, nonwhite ethnic minorities accounted for more than 7% of France’s population.

Similarly, Britain experienced a high level of post-colonial immigration from India and Pakistan, whose citizens were granted British citizenship and could immigrate without visas. Responding to labor recruitment efforts, Muslims, Sikhs, and Hindus immigrated in large numbers, increasing Britain’s nonwhite population significantly. Like France, Britain had gone from a 0.1% nonwhite population to a greater than 7% nonwhite population by 2001.

Immigration to Germany increased significantly due to guest-worker agreements utilized primarily by Italians, Greeks, Turks, and Yugoslavs. Although German post-World War II immigration policy focused on temporary worker visas and eschewed the idea of Germany as an immigrant nation, by the late 1960s, Germany was allowing more permanent immigration. By 2001, Germany was home to more than 2 million Turkish immigrants and their children.

Although the reasons for immigration to Europe tend to mirror the reasons for immigration to the United States—employment and better economic opportunities—the similarities do not go much further. Immigrants to Europe from culturally distinct countries have experienced a lack of integration that

102.  Penn & Lambert, supra note 21, at 35.
103.  Fetzer, supra note 99, at 56.
105.  Maxwell, supra note 17, at 34. See also id. at 34-35 (stating that inhabitants of the French Overseas Departments Guadeloupe, Guiana and Martinique were granted French citizenship; that citizens of the French territory of Algeria had “the right to free travel in metropolitan France;” and that citizens of the French protectorates Morocco and Tunisia were eligible for visas to France).
106.  Id. at 29.
107.  Id. at 34. See also Penn & Lambert, supra note 21, at 39 (“[F]rom 1948 to 1962, almost all citizens of its former colonial domain had unrestricted access to the United Kingdom as a result of the 1948 British Nationality Act.”); infra notes 115-117 and accompanying text (discussing nationality in the United Kingdom).
108.  Penn & Lambert, supra note 21, at 38, 39.
109.  Maxwell, supra note 17, at 34.
110.  Penn & Lambert, supra note 21, at 35.
111.  Id. at 46.
112.  Klopp, supra note 97, at 40.
has persisted through generations. This marginalization has occurred despite the liberalization of citizenship and naturalization laws.

2. Citizenship and Naturalization

Unlike the United States, which subscribes strictly to the doctrine of jus soli, or birthright citizenship, 113 most European countries subscribe to the doctrine of jus sanguinus, which traces citizenship of a child born on a country’s soil to the citizenship of the child’s parents. Even France, which is a jus soli country, does not consider children born on French soil to be French citizens until they reach adulthood. 114

Britain had the most expansive view of jus soli, considering anyone born in a Commonwealth country to be a subject of the Crown and thus a British citizen. 115 That policy has since eroded, and Britain now follows a modified form of jus soli. 116 Children born in Britain are only considered citizens if at least one parent is a British citizen or the equivalent of what the United States terms a “lawful permanent resident.” 117

Unlike France and Great Britain, Germany followed a strict policy of jus sanguinus until 2000. Prior to 2000, “[t]he idea that the normal citizen was of German ethnicity or blood lineage had persisted through two empires and two republics.” 118 The 2000 Citizenship Law adopted a modified form of jus soli, conferring “citizenship upon any child born on German soil whose parents had lived there legally for eight years.” 119 Citizenship is thus tied to a parent’s legal residence in Germany. Nevertheless, it is a significant change from a system that considered children born in Germany to immigrant parents as “second-generation immigrants.” 120

Whether citizenship laws that are more restrictive than U.S. citizenship laws contribute to the marginalization of immigrants to Western Europe is a question beyond the scope of this Article. The purpose of this section is to note that despite Germany’s abandonment of jus sanguinus and despite France and Germany’s long adherence to jus soli, citizens of those countries who are descendants of non-European immigrants tend to face significant challenges to integration. As discussed below, cultural and religious differences present more of a barrier than they do in the United States, identification with the country of origin persists for more generations, and marginalization exists despite legal immigration status and even citizenship.

114. PENN & LAMBERT, supra note 21, at 41.
115. Id. at 41-42.
117. See id.
119. Id.
120. PENN & LAMBERT, supra note 21, at 41.
B. Integration Challenges

To different degrees and in varying ways, non-European immigrants and their descendants in Western Europe—particularly Bangladeshis and Pakistanis in Britain, North Africans in France, and Turks in Germany—face challenges in social integration that stem from religion and culture in the country of origin as well as religion and culture in Western Europe. The public perception of immigrants in Western Europe both results from and contributes to barriers to social integration. They are very similar to the challenges faced by immigrants from non-European countries in the United States. The main difference is that the majority of immigrants to the United States come from the contiguous country of Mexico,121 a country that does not share the United States’ white, English roots but that is, like the United States, predominantly Christian.122 As this section will discuss, the religious differences between Western European, predominantly Christian, natives and Muslim immigrants exacerbate cultural tensions.

1. Social Integration

North Africans in France, Turks in Germany, and Bangladeshis and Pakistanis in Britain preserve their cultures in ways similar to immigrant communities in the United States. In many respects, this preservation of culture has no negative effect on immigrants and their descendants being respected as full members of the polity. When cultural differences eclipse similarities, however, social integration can be elusive for immigrant communities, despite legal status, naturalization, and citizenship. In Europe, the response to preservation of non-European cultural identity has arguably even greater implications than it does in the United States.

The United States, despite being an Anglocentric, predominantly Christian country,123 has a strong history of immigration and cultural inclusion. Britain, Germany, and France, on the other hand, have strong cultural and societal philosophies that are not always compatible with broad cultural inclusion. As one author stated, “[I]n the United States, it was commonplace


122. Mexico is 60% mestizo, 30% Amerindian, and 9% white. Roman Catholics comprise 82.7% of the population and Protestants 1.6%. The World Factbook: Mexico, Central Intelligence Agency, https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html (last updated Nov. 15, 2012).

to speak of ethnic minorities, whereas, in France, this phrase was held to be devoid of meaning. In [France] only citizens were recognized, and, since 1789, those free citizens were supposed to have been immune from discrimination on account of their origins."\textsuperscript{124}

Germany arguably faces the greatest challenges to social integration, both from its own culture and the culture of its most populous immigrant group: Turkish Muslims.\textsuperscript{125} Germany has made significant efforts to foster an environment of multiculturalism. Multiculturalism has competed with a desire to require conformity with the norms of the state in order to gain full acceptance in the polity—apparently irreconcilable approaches that are found throughout the Western world, including the United States. However, German norms include a religious component that represents a more dominant identity factor than it does in the United States and other Western countries. In Germany, “society is still strongly influenced by Christianity, thus making the discussion about a guiding culture one about a guiding religion as well.”\textsuperscript{126} In a country with a large Muslim immigrant population, a strong religious identity associated with full membership in the polity is a barrier to social integration. As one author described it, “In the democratically designed Federal Republic [of Germany], immigration for Muslim migrants means acquiring the identity of a German citizen. Whoever rejects this prospect is advocating the establishment of a parallel society and thus ignores the dangers of Balkanization.”\textsuperscript{127}

Germany’s struggles with integration of its most populous immigrant group is vividly illustrated by the series of approximately forty “honor killings” that took place in Germany, including Berlin, between 1996 and 2005,\textsuperscript{128} and the celebration of the September 11 terrorist attacks that occurred in several of Germany’s predominantly Turkish neighborhoods.\textsuperscript{129} These and other incidents, such as the murder of a Dutch filmmaker in the Netherlands by a Muslim offended by his film, led to public outrage over what has been called a “parallel society,” “a sort of an eastern Anatolian tribal culture that oppresses women, forces their daughters into arranged marriages, and from time to time engages in honor killings.”\textsuperscript{130} Turks responded by blaming Germany for failing to recognize Islam as a German religion or to fund state-run Islamic educational centers, which would have obviated the


\textsuperscript{125}See Dwight D. Murphy, The Last Days of Europe: Epitaph for an Old Continent, 12/1/07 MANKIND Q. 243, 245 (2007) (stating that 75% of Germany’s immigration is from Turkey).

\textsuperscript{126}Michael Brenner, No Place of Honor, in Germany in Transit: Nation and Migran 1955-2005 218 (Deniz Gokturk et al. eds., Tes Howell trans., 2007).

\textsuperscript{127}Tibi, supra note 36, at 229.

\textsuperscript{128}Cathy Young, Making Excuses for Bigotry, Boston Globe, May 16, 2005, at A13.

\textsuperscript{129}Peter Schneider, Islam in Europe: In Germany, Muslims Grow Apart, INT’L HERALD TRIB., Dec. 3, 2005, at 1.

\textsuperscript{130}Richard Bernstein, Europa: Germany’s Challenge on Muslim Integration, INT’L HERALD TRIB., Dec. 10, 2004, at 2.
need to import potentially radical theologians to teach Germany’s Muslim youth. Thus, Germany is confronted with a native society that identifies strongly as Christian, a large immigrant population that identifies strongly as Muslim, blame on each side for the failure to achieve integration, and attacks against what has been perceived as a failed policy of multiculturalism.

Religion and culture are no less of an issue in France and Britain. Despite a long history in those countries of “a multicultural and multi-religious milieu because of their colonial past and the more strongly pronounced secular elements in their societies,” North Africans in France “suffer from intense stigmatization as the foreign other.” Extreme right-wing parties include second and third generation French-born descendants of immigrants as “foreigners.” Blacks and South Asians in Britain are more likely to be stopped and searched under anti-terrorism laws.

The French approach to integration came under intense scrutiny when riots broke out in predominantly immigrant suburbs of Paris in 2005. As one author described it:

The riots of November 2005 among minority ethnic youths in the banlieues of France exposed a racism that scores deep into the French nation. Emergency law was invoked, curfews imposed and thousands of police were deployed. In the process, both the riots and the response to them brought into the open an aspect of France’s secular republicanism that often lies hidden; an explosive mix of poverty, discrimination and Islamophobia. French assimilation is seen to have failed, yet the acceptance of multiculturalism as a social fact is viewed with suspicion.

French scholars have disputed the idea that the French “model, where no racial, linguistic or religious differences are recognized, has come under strain in part because the educational system has failed to socialize immigrant children into the values, norms and heritage of the nation state.” The French accuse the media of inaccurately portraying France as divided between “French natives” and “immigrants and their descendants.” They suggest that the riots should instead “be interpreted as the manifest evidence

131. Id.
132. See id. (“Multiculturalism has failed, big-time” and the interior minister of Brandenburg’s warning that immigrants must accept the dominant German culture and for Germany not to “allow foreigners to destroy this common basis.”).
133. Brenner, supra note 126, at 218.
134. Maxwell, supra note 17, at 87.
135. Back & Sinha, supra note 97, at 70.
136. Id.
139. Ferry, Engels & Lambert, supra note 97, at 181.
that most of the frustrated young men feel entirely French and that they simply want to be accepted by the Nation, and more prosaically, to be part of a modern consumerist society. Indeed, the Paris riots were similar to the Los Angeles riots that followed the Rodney King police beating in that they erupted after two teenagers of African origin were killed and a third seriously injured while running from the police.

Education and employment measures also place French integration under scrutiny, although the figures seem consistent with education and employment numbers for ethnic minorities in the United States. For example, immigrants from the Caribbean and North Africa “appear to have basic education attainment that is more or less similar to the national average, if not slightly better.” However, “second-generation ethnic minority males have educational outcomes that are significantly worse than members of their age cohort from the native metropolitan French population.” Despite having “educational outcomes that are similar to those of the overall population . . . [immigrants from the Caribbean and North Africa] have employment and occupational outcomes that are worse.”

Britain also struggles with the integration of large numbers of Muslim immigrants from Pakistan and Bangladesh:

There are at present approximately 1.6 million Muslims in Britain, most of them from Pakistan and Bangladesh . . . The bulk of the immigrants have not come from the educated classes of their home countries, but instead from the poorer, largely uneducated population. They stay to themselves, living in low-income households and rarely intermarrying with Britons, preferring to import spouses.

Lack of social integration of non-European citizens and immigrant populations has occurred amid a backdrop of mutually negative public opinion. It is not clear whether the lack of integration has caused the negative opinions or whether the negative opinions have discouraged integration, but it is clear that they contribute to the cultural barriers discussed above.

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142. MAXWELL, supra note 17, at 80.
144. MAXWELL, supra note 17, at 87.
145. Murphy, supra note 125, at 244.
2. Public Opinion of Ethnically Non-European Citizens

One commonality that seems to exist among immigrants to Europe and their descendants on the one hand and their ethnic European fellow citizens on the other is a negative public opinion of each other. Long before the terrorist attacks of September 11, 2001, European-born descendants of Arab immigrants were perceived as “other,” and as “invaders.” At the same time, immigrant communities developed the perception that “the world outside is hostile and that teachers, policemen, firefighters, bus inspectors, judges, and, by extension, all those who wear a uniform are the official representatives of a world that is out to get them.” These public opinions form part of the cultural barrier that hinders full integration.

An anti-dual citizenship article published in Germany in 1994 provided this opinion of German Turks:

This contemptuous attitude toward their German surroundings, which an extremely large portion of the Turkish ethnic group holds, arises primarily from its background and upbringing, and secondarily from its meager or nonexistent effort to get better acquainted with Germans. . . . Directly related to their assessment of German society as morally inferior is the increasingly influential nationalistic, fascistic, or radically Islamic-oriented Turkish press and the powerful Islamic movement behind it, both of which warn against Westernization and Germanization. A prominent social historian and professor commented in a 2000 interview that “[Germany] doesn’t have a foreigner problem; it has a Turk problem. This Muslim diaspora is fundamentally incapable of integration.”

In France, the 2003 ban on the wearing of the Muslim hijab, or headscarf, prompted a great deal of scathing public opinion on both sides of the controversy. Proponents of the ban characterized the wearing of hijab as an indication of an alliance with terrorists, a refusal to integrate into French society or support French homogeneity, and a symbol of a repressive religion.

Opponents of the ban, including French Muslim women, reli-

146. Begag, supra note 124, at 27. See also id. at 91 (“They are French by birth but not recognized as such.”); id. at 109 (“Though born in metropolitan France, the children of immigrants are still seen as the children of colonial subjects, as the descendants of ‘natives’ and ‘Muslims.’”).

147. Id. at 77.


150. See Alec G. Hargreaves, Multi-Ethnic France: Immigration, Politics, Culture and Society 111-20 (2d ed. 2007) (describing the controversy surrounding a French law banning the wearing of religious symbols, including the Islamic headscarf, in public schools).

gious figures, politicians, and human rights advocates, decried the ban as an assault on religious freedom and a violation of human rights.152

The cultural struggles between ethnic Europeans and ethnic non-Europeans continue to evolve and to challenge the integration policies of European countries. The struggle does not seem poised to end or even reach a workable consensus in the foreseeable future. The positive result of this, the silver lining so to speak, is that dialogue is occurring. That dialogue and the struggle that informs it have generated valuable lessons that transcend the challenges of three nations.

IV. IMPLICATIONS FOR U.S. IMMIGRATION LAW AND POLICY

The European experience with immigration and integration provides useful comparisons for U.S. immigration policymakers, despite the United States’ very different immigration history and integration dynamics. It is actually the differences between Europe and the United States that provide the most useful lessons. In Europe, religion and culture have separated even native-born Europeans of immigrant descent from native populations. In the United States, although cultural and linguistic differences exist between white, native-born Americans and undocumented immigrants who have been raised in the United States, the principal barrier to integration is a legal one. As discussed below, it is in the United States’ interest to exploit the lack of cultural barriers to integration that exists among young adult undocumented immigrants who have grown up in the United States, and to remove the legal barriers to full integration.

A. Marginalization: The Alternative to Integration

Persons who are not fully integrated, who perceive themselves as shut out from the mainstream, demonized, and unable to fulfill their potential, are at risk of marginalization. As the United States has seen with other marginalized groups—such as racial, gender identity, and sexual orientation minorities—the concept is synonymous with stigmatization, poverty, and violence.153 Marginalization also has the circular consequence of proliferating marginalization. As the French sociologist, novelist, and cabinet minister

152. Id. at 757-67.

Aziz Begag noted:

When feelings of insecurity grow, the tendency to remain with your own kind . . . to minimize the risk of unpleasant encounters outweighs the spirit of adventure . . . This kind of process has built especially high mental barriers among disadvantaged groups [in France] and among young ethnics in particular because of the microterritorialization in which they have immured themselves . . .

The lives of undocumented immigrants in the United States demonstrate the same vulnerability to insecurity and its resulting isolation that Begag describes, though the triggers for the insecurity differ. Insecurity stems from living the precarious life of an undocumented immigrant. The fear of deportation can even trigger depressive symptoms, particularly in households in which a family member has been arrested for an immigration violation.

Most undocumented immigrants already live in isolated conclaves. This isolation increases in severity in households in which a family member has been arrested in a workplace raid:

The effects on families, which were dramatic, included loss of childcare; large losses of income; difficulty in meeting children’s basic needs . . . and the reluctance . . . to go to agencies to obtain emergency assistance. Many families sequestered themselves round the clock in their homes . . . Long-term effects on families and children included social isolation; depressive symptoms and suicidal ideation among remaining caregivers; and anxiety, depression, and post-traumatic stress disorder in children.

The fear of deportation and the isolating behavior triggered by such fears seem to mirror the fear and isolation experienced by other marginalized groups. However, unlike the fear and isolation that characterize groups that are marginalized based on race or sexual orientation, and unlike the fear and isolation that permeate ethnic minorities in Europe, the fear and isolation experienced by undocumented immigrants stems not from immutable cultural factors but entirely from malleable legal status.

B. Legalization: Making Immigration Legislation Consistent with Principles of Social Citizenship

Providing a path to legalization for undocumented youth who have been raised in the United States would eliminate the most substantial barrier to
integration. Rather than prolonging the conditions of marginalization as current immigration law does, a formal legalization mechanism would utilize the education, skills, and cultural integration of a large segment of the immigrant population. However, it would not solve other problems related to immigration, such as controlling the borders and preventing an increase in illegal immigration. Some argue that legalization would actually lead to an increase in illegal immigration, as potential undocumented immigrants would be encouraged by the benefits available to their children. The potential benefits of legalization, however, outweigh the risks.

First, most undocumented immigrants migrate in response to overwhelming economic conditions in their home countries and in the United States. The fact that the United States offers a free public school education to their children regardless of immigration status may make the prospect of having to migrate less distasteful, but it does not make it any more or less necessary. Irrespective of the educational opportunities available to children in the United States, many undocumented immigrants would prefer to remain and/or return to their home countries if economic conditions so permitted.

Second, preventing tomorrow’s undocumented immigrants from crossing the border does not solve the problem of today’s undocumented youth. Preventing undocumented immigration will continue to be a challenge until economic conditions change dramatically in sending countries. Failing to integrate those undocumented immigrants who have been raised in the United States since childhood is not a means of controlling the border. It is a failure to exploit a resource in which the United States has already invested by providing an education.

Finally, eliminating the legal barrier to integration would strengthen and encourage the social citizenship that undocumented immigrants raised in the United States already demonstrate.\footnote{See Michael A. Olivas, The Political Efficacy of Plyler v. Doe: The Danger and the Discourse, 45 UC DAVIS L. REV. 1, 12-13 (2011) (noting that “the undocumented have every incentive to remain in the United States, to adjust their status through formal or discretionary means and to contribute to the U.S. economy and polity”).} Despite the significant risk for marginalization that their undocumented status poses, undocumented immigrants raised in the United States do not exhibit the same symptoms of marginalization that some immigrant communities in Europe exhibit.\footnote{See Leisy Abrego, Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants, 45 LAW & SOC’Y REV. 337, 344-345 (2011) (“Undocumented youth are legitimated in educational settings and are able to learn the language, absorb the customs, and make the culture their own in ways that are not available to those who migrate as adults. For example, whereas working-class adults may signal to others through their clothing and language practices that they are outsiders; undocumented students dress and speak English in ways that typically make them indistinguishable from their U.S.-born peers. Thus, unlike undocumented first-generation immigrants, undocumented youth can manipulate social assumptions to avoid questions about their legal status.”) (citations omitted).} Moreover, U.S. society is not burdened by the intense cultural and religious differences that divide ethnically diverse Europeans from their “native” European counterparts. It is a society hospitable to immigrants who wish to preserve cultural identity and who at the same time respect the open, flexible society that

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allows such cultural intermingling to exist.\textsuperscript{158} Undocumented immigrants who have grown up in the United States have benefited from this unique society, have been steeped in the same civic background of their native-born peers, and have demonstrated a willingness and desire to participate fully in the cultural and political life of the United States. Retaining the legal barrier to full integration is a disservice to them as well as to the society that could benefit from their full participation.

C. \textit{Whether the Border Security, Economic Opportunity, and Immigration Modernization Act Would Achieve Acceptable Immigration Reform}

The most recent proposed comprehensive immigration reform legislation is S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, introduced on April 16, 2013.\textsuperscript{159} If passed, the bill would remove most legal barriers to full integration for unlawfully present immigrants. Not only would it legalize DREAM Act immigrants,\textsuperscript{160} but it also would convert the undocumented status of other unlawfully present immigrants to that of registered provisional immigrants,\textsuperscript{161} provide for the earned adjustment of certain agricultural workers,\textsuperscript{162} establish a portable agricultural nonimmigrant visa,\textsuperscript{163} eliminate the diversity visa program\textsuperscript{164} and replace it with a points-based immigration system,\textsuperscript{165} and confer “immediate relative” status on the spouses and minor children of lawful permanent residents.\textsuperscript{166} These provisions have been on the wish list of immigrant advocates for decades, but some concessions are present in the legislation.

For example, the Act creates a new class of immigrants called registered provisional immigrants (“RPIs”), undocumented immigrants who are now legally present but are not lawful permanent residents or citizens.\textsuperscript{167} Undocumented immigrants who entered the United States prior to December 31, 2011, have maintained continuous physical presence since December 31,
2011, have no significant criminal history, and satisfy any outstanding tax liability may apply for RPI status within one year of the publication of the final regulations implementing the law.\footnote{168}{Id.} Once approved, RPI status continues for six years and may be renewed for additional six-year periods if the RPI has been continuously employed or enrolled in school since becoming an RPI, has paid taxes, is not likely to become a public charge, and can demonstrate an income not less than 100\% of the federal poverty level.\footnote{169}{Id.} However, RPIs will not be granted adjustment of status to lawful permanent resident until all immigrant visa applications pending since before the date of enactment of the law have become available.\footnote{170}{Id.} At the current rate of immigrant visa approval for the lowest immigration priority—Filipino siblings of U.S. citizens—RPIs will have to wait a minimum of twenty-three years to seek adjustment of status, unless the visa allocation for Filipino siblings of U.S. citizens is increased.\footnote{171}{See BUREAU OF CONSULAR AFFAIRS, supra note 3 (reporting that the Department of State is currently issuing immigrant visas for petitions filed on behalf of Filipino siblings of U.S. citizens in 1989).}

A similar concession appears in the Act’s version of the DREAM Act.\footnote{172}{See S. 744 § 2103.} It allows for the adjustment of status of immigrants who entered the United States before the age of sixteen, earned a high school diploma in the United States, and earned a higher education diploma or accumulated at least two years towards a bachelor’s degree in the United States or served in the U.S. military.\footnote{173}{Id.} However, unlike past versions of the DREAM Act, the Border Security, Economic Opportunity, and Immigration Modernization Act requires that the DREAM Act adjustment applicant be an RPI for at least five years before becoming eligible for adjustment.\footnote{174}{Id.} Perhaps in part due to these concessions as well as to intensifying public support for comprehensive immigration reform,\footnote{175}{See, e.g., Immigration, POLLINGREPORT.COM, http://pollingreport.com/immigration.htm (providing the results of polls conducted by ABC News/Washington Post, the Pew Research Center, Fox News, Gallup, and several other organizations and news groups, all of which indicate that a majority of Americans support comprehensive immigration reform, including a path to legalization for undocumented immigrants); Immigration Reform Through the Lens of Republican Primary Voters, RESURGENT REPUBLIC (Mar. 28, 2013), http://www.resurgentrepublic.com/research/immigration-reform-through-the-lens-of-republican-primary-voters (reporting that polling of conservative voters indicated strong support for earned legalization and the view that mass deportation of the United States’ undocumented population is not feasible).}
hundreds of proposed amendments, the bipartisan bill was voted out of the Senate Judiciary Committee on May 21, 2013. If it is eventually passed, it will be a step in the right direction towards comprehensive immigration reform.

It is important to note, however, that passage of comprehensive immigration reform legislation will not put an end to unauthorized immigration; only a seismic shift in economic conditions on both sides of the border would do so. Even if the United States cannot stop unauthorized immigration or control the economic conditions that compel migration, it can control how it reacts to such factors and how it treats the immigrants whose migration results from those factors. Ideally, Congress will review immigration legislation periodically in order to adapt to the changing needs of the United States and its immigrants. Without such review, future generations of migrants reacting to the economic magnetism of the United States will face the same marginalization that current undocumented immigrants face today.

V. CONCLUSION

While the United States has struggled with large waves of illegal immigration, Europe has struggled to integrate the immigrants that it welcomed with legal residence and citizenship. Britain, Germany, and France have different approaches to integration but face similar obstacles. Primarily, culture and religion—of both the “native” populations and the ethnically diverse populations—pose barriers to integration that have proven difficult to overcome.

Undocumented immigrants in the United States, despite their lack of legal status, enjoy a higher level of integration than many native-born Europeans of immigrant origin. Unburdened by the cultural and religious barriers to integration experienced by many Germans of Turkish descent, French citizens of North African descent, and British subjects of Bangladeshi and Pakistani descent, undocumented immigrants who grow up in the United States primarily face a legal barrier to integration: the inability to legalize their status. To date, the inability to integrate fully has not had a dramatic impact on the undocumented population, despite the constant fear of deportation and other risk factors for marginalization. However, in light of the fact that illegal immigration is unlikely to cease in the near future, the potential exists for one generation of undocumented immigrants raised in the

176. See Summary of All 300 Amendments Filed to S. 744 on 05/07/13, InfoNet Doc. No. 13041760 (Am. Immigration Lawyers Ass’n), May 8, 2013.
177. Senator Charles Schumer (D-NY) introduced the bill, which was co-sponsored by Senators Michael F. Bennet (D-CO), Richard Durbin (D-IL), Jeff Flake (R-AZ), Lindsey Graham (R-SC), John McCain (R-AZ), Robert Menendez (D-NJ), and Marco Rubio (R-FL).
United States to become a multi-generational situation. Decades and generations of being exposed to the conflicting experience of social integration on the one hand and legal rejection on the other may create the tensions that occur in severely marginalized groups.

Comprehensive immigration reform is one way to deal with the situation, but it must do so in a way that reflects the realities of immigration to the United States. Immigration legislation deals with the here and now: just as immigration is a reaction to economic factors, immigration legislation is a reaction to economics-based migration. Unauthorized immigration is not likely to cease merely because a comprehensive immigration reform bill is passed. As long as economic factors continue to compel migrants to seek jobs in the United States, the United States will be faced with unauthorized immigration. In order to benefit from a situation not likely to change in the near future, it is essential that U.S. immigration laws be adaptable, current, and realistic rather than punitive and static.