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Constructing Fortress Europe: Third Country Nationals As Unwelcome Guests

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ABSTRACT

Ever since the introduction of the EU's four freedoms, EU citizens have been promised the freedom to move freely within the confines of the EU. As the EU's population expanded through enlargement, in conjunction with growing pressure on labor market, wages and employment, European public attitudes toward immigration seem to become more polarized. Thus, immigration, especially that of the admittance of non-EU third-country nationals, may be rendered as a highly contested issue within Europe's two-level systems. However, what is happening inside the EU, in terms of intra-EU immigration, is rarely considered within such contestation. This paper plans to address this issue by using a historical institutionalist approach in analyzing scholarly claims regarding the securitization of immigration vis-à-vis the development of EU immigration policies and approaches, as well as the role that citizenship plays on immigration. This way, a fuller understanding of Europe's overall unfavorable attitude toward immigration could be achieved.

KEYWORDS

Immigration, Third-Country Nationals, New Institutionalism, Citizenship, Europeanization

The creation of the EU's four freedoms and the Schengen Area has allowed both EU citizens and third-country nationals (TCNs) to travel with very little restriction. However, it looks as though Europe is experiencing a backlash against immigration, especially in the case of external immigration. A central aspect of this backlash is the concept of TCNs. In EU parlance, TCNs refer to individuals who are nationals and citizens of non-EU member states (Eurofound, 2007). However, in immigration studies, TCNs are equal to the concept of *alien*—defined as “a person who is not a national of a given State”—and *foreigner*—defined as “a person belonging to, or owing an allegiance to, another State” (International Organization for Migration, 2004, pp. 4, 25). Therefore, TCNs could encompass not only non-EU citizens (non-EU TCNs), but also EU citizens who live or reside in another EU member state (EU TCNs). Even so, headlines surrounding the backlash against immigration seem to only target non-EU TCNs, regardless of the fact that non-EU TCNs are the largest group of people who exercised the freedom to move inside the EU (Benton & Petrovic, 2013). To better understand this backlash, a closer analysis of EU immigration policies and approaches needs to take place. This paper intends to do just that and aims to answer the question of what might explain the backlash against immigration in Europe by first reviewing existing scholarly EU research on immigration and citizenship. Afterward, a historical institutionalist analysis of claims derived from the literature review vis-à-vis the development of EU immigration policies and approaches, as well as Europe's competing notions of citizenship will be carried out.

LITERATURE REVIEW

Europe today can be categorized in two interconnected groups: the EU and the national level (i.e. the now 28 EU member states). The dynamics between these groups can be understood by Putnam's two-level games theory (1988) and the concept of Europeanization. Putnam's theory views international negotiations between states as encompassing of negotiations at the national level between domestic groups and their respective state government, as well as the international level among different state governments. Outcomes in the latter depend on the intersection and overlap of the win-sets, which Putnam defines as the array of possible international level agreements in domestic negotiations of various states in the national level (1988, p. 439). A related theory in EU studies regarding negotiations on immigration politics is the concept Europeanization, which Bulmer and Radaelli (2004, p. 4) describes as “processes of a) construction, b) diffusion and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms.”

Immigration literatures within the two aforementioned frameworks vary in content, but most of them deal with individual case studies and, most importantly, the notion that bottom-up Europeanization equals to the securitization of immigration. Geddes (2003) distinguishes four periods of immigration policy integration: the period of minimal immigration policy involvement from 1957 to 1986, the period of informal intergovernmentalism from 1986 to 1993, the period of formal intergovernmental cooperation from 1993 to 1999, and the period of communitarization from the late 1990s and onward. These four periods saw the uploading of immigration policies from the national level to the informal, outside-of-the-EU level (e.g. the Trevi group), and upwards to the Justice and Home Affairs (JHA) and *acquis communautaire* level of the EU. However, as Boswell (2003) notes, the uploading of immigration competence from the national to the EU level furthers the securitization of

immigration in the form of externalized immigration control, in which migrant-sending and transit states work with the EU in strengthening border controls as a result of the increase in illegal immigration to EU territories and the lack of sufficient instrument in the national level to combat such type of immigration. Geddes (2005, p. 802) supports and extends this claim by describing that EU policies focus more on the fortification of territorial borders in response to the “geo-political and conceptual widenings of migration” of post-cold war Europe.

The securitization of immigration is a key theme in EU immigration scholarship. Huysmans (2000) argues that the issue stems from the fear that immigration threatens the inner, cultural, and welfare security of EU member states. In this light, integration and inclusion of non-EU TCNs of whichever type in the EU become a more complex issue. However, the contemporary notion of securitization of immigration could also be explained by Europe’s low external threat level. Rudolph (2006) asserts that in times where external threat is felt, states would rally and take in more non-EU TCN migrants—as illustrated in post-WWII Germany’s admission of predominantly Turkish guest workers and France’s admission of predominantly North African workers for the purpose of rebuilding their respective economy and population growth, as well as facing against Communist threats. As threats subside, immigration becomes contested and, therefore, securitized. Givens (2010) furthers this notion by stating how issues concerning border control, visas, and asylum have relatively been salient and agreeable upon in the EU level, whilst EU level integration policies are much more contested, since the latter touches upon the internal fears, as outlined by Huysmans (2000), that states have toward immigration. On top of that, recent critical junctures like 9/11 are noted in creating path dependency by reaffirming and realizing the embedded notion of immigration as a security threat (Brouwer, 2003; Karyotis, 2007)—which is evident in the post-9/11 restrictive policy outcomes of the EU (Bendel, 2005) and the EU’s Hague Programme’s equation of freedom and justice as equal to strengthening security (Bigo, 2005).

Looking outside of the realm of security, there exists an abundance of specific Europeanization literature that uses an institutionalist view on the issue of the transfer and development of immigration competence. Literatures using such view are evident in Faist’s and Ette’s (2007) article compilation, featuring comprehensive empirical assessment of Europeanization cases that wholly argue that top-down impact of EU immigration competence, as well as European integration in general, have changed the scope of immigration policies and the political dynamics of immigration policy-making in the national level. As a result of this path dependent European integration, harmonization of certain immigration policies in the EU level has become contested. Givens and Luedtke (2004) note that harmonization motions in highly salient areas, such as provisions regarding non-EU TCN movement and asylum, would unlikely result in success, opting more toward exclusively restrictive harmonization. However, motions in low salient areas, such as intra-EU border controls and anti-discrimination, would more likely result in a rather expansive harmonization support. Toshkov and De Haan (2013) further note that the EU’s salient policy area of asylum has had limited impact in national asylum policy outcomes. This is noted to happen as a result of the unequal allocation of asylum recognitions and applications in each member states. However, when the institutionalist view is looked on from the eyes of the European Court of Justice (ECJ), Slot and Bulterman (2005) note that there seems to be a convergence happening within the rules and regulations for EU TCNs, and certain non-EU TCNs, regard-

ing the right of movement and residence.

Convergence and harmonization account as two salient themes within the institutionalist immigration literature. Further institutionalist literature on path dependence—which contends that distinctive historical sequences of prior actions shape the current landscape of, for instance, policy regulations toward non-EU TCNs—might shed a light on why these two exact themes are covered. Boswell (2005) notes that external critical junctures, such as the ones regarded by scholars who write on the securitization of immigration, are not the only ones that have created and shaped immigration policy outcomes or individual attitudes toward non-EU TCNs. Instead, Boswell notes that path dependent changes inside the EU should also be considered. Herz (2006) notes that intergovernmental policy-making that involves unanimity—the *modus operandi* of the pre-formalized ad hoc immigration groups—has influenced not only immigration policy outcomes, particularly with regard to asylum, but also put in place an intergovernmental dynamics in the JHA—even when Qualified Majority Voting (QMV) was introduced in 2004. Herz further argues that this happens because working groups preparing the work of the JHA still hold an intergovernmental characteristic. However, Herz also notes that intergovernmental cooperation rarely exists in issues of regular immigration, which might explain the failures in trying to achieve certain EU immigration policy outcomes. Furthermore, Boswell (2007) emphasizes the need to look at internal, or rather institutional path dependency of the EU in order to better comprehend the current immigration circumstances in Europe. Boswell illustrates this by claiming that 9/11 did not lead to the securitization of immigration, since securitization would increase pressure on reducing immigration and would be contradictory to the immigration system that has already been put to place by the EU and its member states.

Turning back to the issue regarding the convergence of rules and regulations for certain non-EU and EU TCNs, Slot and Bulterman (2005) explains that the main driving force of such convergence is the ECJ's interpretation of the provisions on citizenship in Articles 18 and 12 of the EC Treaty. The notion of citizenship is a complex one, for it, according to Cover, “attempts to encompass in one word a legal status, a state of mind, a civic obligation, an immigration benefit, an international legal marking, and a personal virtue” (as cited in Faist, 2000a, p. 5). Therefore, both internal and external movements of non-EU and EU TCNs in European territories might pose a challenge to this notion of citizenship. In EU immigration and citizenship studies, citizenship has been described as “postnational” (Soysal, 1994; Tambini, 2001) and “transnational” (Baübock, 2003), meaning that there is “a shift in the major organizing principle of membership in contemporary polities: the logic of personhood supersedes the logic of national citizenship” (Soysal, 1994, p. 164). These descriptions posit that there exists a receding significance of interstate boundaries and that exclusive rights to nationals of a particular state are no longer exclusive. Such rights are now available to any residents of that state regardless of the resident's status. In this sense, the notion of citizenship has become, or rather on its way to become denationalized (Bosniak, 2000; Sassen, 2003). Even if this was true, scholars like Faist (2000b) have questioned the denationalization of citizenship claim. Faist states that although there are evidences of rights expansion vis-à-vis Europeanization found in multiple studies surrounding the denationalization of citizenship, those evidences are only representative.

Furthermore, citizenship in Europe has been called “nested,” which Faist (2000a, 2001) describes as holding multiple citizenships and participating fully in both the EU and national level. Faist posits that in light of this concept, certain individual rights have not only

been enlarged, but they have also been Europeanized and, to an extent, institutionalized so that a right enjoyed in one EU member state can be enjoyed in another EU member state. Jacobson and Ruffer (2003) further this view by claiming that there exists a development in the importance of EU and national level judicial agencies on the expansion of migrant rights. A critical principle of this claim is the role of the “nesting effect,” which means that “people will go to a higher nested organization to appeal, judicially, for recourse; but only so far as they have to go (for example, the province is preferred over the state; or the state over a regional organization)” (Jacobson & Ruffer, 2003, p. 86). Therefore, as the highest court in the land, the ECJ has arguably the utmost authority and power in Europe when citizenship is viewed as that of a Matryoshka doll, in which national citizenship is nested within a larger doll that is EU citizenship.

The expansion of citizenship rights to non-EU and EU TCNs through the ECJ can be seen as a key salient theme in EU immigration and citizenship scholarship. On the legal side, Wiesbrock (2012) highlights that as of current, the type of rights that non-EU TCNs can legally enjoy is dependent on which migrant category does that TCN fall under, since the EU could not grant full extension of EU citizenship status to non-EU TCNs. Maas (2008) further notes that although there have been certain widening and deepening of rights for EU TCNs, there exists a difficulty in passing certain non-EU TCN rights legislations as a result of the continuing contestations with regard to the importance of borders and national citizenship. However, Wiesbrock (2012) argues that there is room in the ECJ for identical interpretation of EU rights to non-EU and EU TCNs, which would not only subscribe to the objectives of the Tampere and Stockholm Programmes, but also be a feasible alternative to the full extension of EU citizenship.

Aside from issues surrounding citizenship and rights, the conceptualization of citizenship status is also worth noting. Unlike the proponents of postnational, transnational, and nested citizenship, Hansen (2009) argues that national citizenship takes precedence over EU citizenship. Therefore, membership of citizenship in Europe is not only governed by each individual member state, but it is also viewed as reinforcing, rather than superseding, national citizenship. This view then reaffirms the aforementioned discussion that the status of “EU citizen” and the benefits that come with that status can only be given to those who are nationals of EU member states, which includes EU TCNs, not non-EU TCNs. The reinforcement of national citizenship is evident in literatures on the growing importance and implementation of civic integration, wherein states require non-EU TCNs to undertake courses, tests, interview, etc. to assess, *inter alia*, particular language skills and country knowledge for purposes of naturalization and settlement (Carrera & Wiesbrock, 2009; Goodman, 2012; Joppke, 2007a, 2012). In light of this, immigration is then treated not so much as a security issue, rather an identity issue of whether or not non-EU TCNs could integrate into their respective host countries. Therefore, it looks as though there exists a clash between the discourse on citizenship and the securitization of immigration regarding the treatment and mobility of non-EU TCNs. At the same time, there seems to be a disconnection between that particular clash and the institutionalist theme of convergence and harmonization that are happening in the EU level. Ameliorating this disconnection is, therefore, an imperative in order to understand the current negative EU immigration circumstances.

ANALYSIS

The new institutionalist frame of approaches provides an important lens to analyze

how the EU works in terms of its policies and approaches to immigration. As has been discussed in the literature review, it is apparent that this particular framework is an effective tool to analyze the broad modus operandi of an institution such as that of the EU, for it encompasses a “disparate set of ideas with diverse disciplinary origins, analytic assumptions, and explanatory claims” (Jupille & Caporaso, 1999, p. 431). To better explain about the tenets of new institutionalism, Aspinwall and Schneider (2000) note that the framework can be broken down into three approaches: sociological, historical, and rational choice institutionalism. In their own way, these approaches aim to explain the process of uploading and downloading certain policies or competences. However, they also aim to describe why actors behave as they behave and how, as Radaelli (2000) notes, institutional “rules, shared interpretations, symbols, schemata and meanings” (p. 38) influence actors’ choices, making them bias agents who could potentially structure actions and outcomes in both the EU and national level (March & Olsen, 1984). However, explicit differences between these three approaches and the logic behind them do exist.

According to Harmsen (2000), sociological institutionalism focuses on not only how culture, domestic institutions, and certain path dependent preferences endogenously form an actor’s decision-making process, but also how socialization affects an actor’s preference and choice. On a similar note, historical institutionalism focuses more on the role of the past, particularly on how previous policy decisions and approaches play a role in shaping the path that current policies and approaches take. Conversely, rational choice institutionalism regards political actors as strategic agents of their respective country’s national interest. Both sociological and historical institutionalisms are often coupled together as a result of their complementary frameworks and quantitative nature, whilst rational choice institutionalism is a case of its own as result of its qualitative nature (Aspinwall & Schneider, 2000). For the purpose of this paper, taking on a historical institutionalist approach seems to be the best fit, since, for the most part, scholarly claims regarding the securitization of immigration, as well as the conceptualization of citizenship in Europe touch on the development of certain EU policies and approaches over time. Therefore, to clearly analyze and link these claims and concepts so as to gain a fuller understanding of Europe’s overall unfavorable attitude toward immigration would require an approach that takes into account the role of the past.

The EU’s original form, as well as its development over time can clearly be distinguished when it is analyzed in a historical institutionalist approach. As was mentioned, Geddes (2003) illustrates that the Europeanization of immigration competence can be categorized in four periods: the period of minimal immigration policy involvement from 1957 to 1986, the period of informal intergovernmentalism from 1986 to 1993, the period of formal intergovernmental cooperation from 1993 to 1999, and the period of communitarization from the late 1990s and onward (p. 131). To understand what kind of policies and approaches came up within these periods is imperative in order to understand not only why there exists contestations with regard to immigration in today’s Europe, but also what steps the EU has taken and is currently taking in the facilitation of immigration in and to the borders of the EU.

Geddes (2007) notes that the EU’s first and foremost objective centers around economics, which can be illustrated by the creation of the single market via the 1992 Maastricht Treaty (Maastricht), as well as the formulation of the Economic and Monetary Union (p. 51). The free movement of persons was one of four freedoms—the other three being the free movement of goods, services, and capital—that were created as a result of this exclu-

sively economic integration. The term “persons,” here, should be questioned when non-EU TCNs are taken into consideration, in relation to the Europeanization of immigration competence over the course of EU history. Looking back at the period of minimal immigration policy involvement, it is evident that TCN-related issues were dealt with more in an intergovernmental setting, as illustrated in the function of the TREVI group—an intergovernmental, outside-of-the-EU group that was set up to respond to terrorism and coordinate policing of the EU (Bunyan, 1993, p. 1)—and the 1985 Schengen Agreement—a treaty on the removal of internal borders, which was later supplemented by the Schengen Convention in 1995.

Initial uploads of immigration and asylum competence could be seen in the Maastricht Treaty, wherein it institutionalized the ad hoc intergovernmental setting on immigration in Europe in the form of the JHA—the EU’s third pillar, under Title VI of Maastricht (Monar, 2012). This was a huge step in the EU, since there were no explicit mentions of a harmonized immigration and asylum agenda in the original Treaty of Rome. However, the first mention of such subject can be traced back to the 1975 Tindemans Report, yet the issue itself became subordinated when the matter of internal border controls took much greater precedence in the EU (Niemann, 2006, p. 12). Even so, the 1990s was a different period of time in Europe. Immigration became a concern more than ever as a result of the high influx of immigration, especially that of illegal immigrants (Boswell, 2003). A major aspect of Maastricht was the establishment of TCN-related issues of “common interests” that includes asylum policy, external borders crossing, general immigration non-EU TCNs policies, non-EU TCN entry and movement conditions on member state grounds, non-EU TCN residence conditions on member states grounds (which includes family reunion and employment access), and combating illegal TCN immigration, residence, and work (Geddes, 2003, 135). It should be noted, however, that the ECJ at this time was excluded from the affairs of JHA under Article L of Maastricht; there was, however, one exception to this, which was Article 100c on visa policies (Edward, 1995; Monar, 2012, p. 722). The real innovation in Maastricht, however, was the introduction of EU citizenship under Maastricht’s Articles 8–8e, which will be further discussed in later paragraphs.

The issue of immigration was further formalized in the 1999 Amsterdam Treaty (Amsterdam). There, Monar (2001) notes that certain immigration issues under the auspice of the JHA were communautarized to the first pillar under Title IV of Amsterdam that governs “visas, asylum, immigration and other policies related to the free movement of persons,” which consequently created an area of freedom, security, and justice (AFSJ). Not only that, but Amsterdam also gave the ECJ mandate in those former-JHA areas, which meant that the ECJ could take and rule in cases under Amsterdam’s Title IV, only if requested by national member states’ courts. QMV was also introduced as a new voting mechanism in order to streamline the problematic unanimity-requirement of intergovernmental procedure (Monar, 2001). In a lot of ways, however, the expansion of EU competence in areas of immigration and asylum happened more after Amsterdam—specifically pointing to the provisions of the 1999 Tampere Programme (Tampere). Tampere outlined the basic features of an EU common immigration and asylum policy, including partnering with countries of origin, creating a Common European Asylum System (CEAS), treating non-EU TCNs in a fair manner, and managing immigration flows (European Council, 1999). Not only that, but Tampere also noted that long-term resident non-EU TCNs “should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU

citizens”—a key essential when considering Europe’s competing notions of citizenship (European Council, 1999).

Geddes (2007) characterizes the significance of Amsterdam and Tampere as “the legal basis and a political direction” (p. 52) for issues of immigration and asylum in the EU level. However, literature on the securitization of immigration contends that immigration and asylum in a post-cold war Europe are considered as security challenges, which scholars interpret as constructing Fortress Europe (Bendel, 2005; Boswell, 2003; Geddes, 2005; Huysmans, 2000). However, this may not be the case since an inward-looking Fortress Europe would mean restricting and fortifying EU’s borders so as to decrease the susceptibility of those so-called security challenges. Instead, external and institutional path dependent junctures that the EU has experienced throughout its development needs to be taken into account. For instance, proponents of the securitization of immigration often point to the EU’s restrictive asylum regulation, the Dublin II Agreement (Dublin II), as justification for the construction of Fortress Europe (Guiraudon, 2000; Levy, 2005). However, historical institutionalism illustrates that the restrictive content of Dublin II was not something new, since its predecessor, the 1990 Dublin Convention, had the same provision that acknowledges the member state of first entry as the one responsible for processing asylum applications (Hurwitz, 1999). What Dublin II did in 2003 was that it not only reinforced the already existing tenets of its predecessor, but also furthered them by creating EURODAC—a database of fingerprints for asylum seekers and illegal immigrants. In fact, these restrictive measures led Dublin II to be criticized for its unfair burden sharing practice, since it imposed “untenable pressure on those states situated along Europe’s borders: ‘gateway’ countries such as Poland, Spain, Italy and Greece” (Arimatsu & Samson, 2011, p. 8). In response to this, the Dublin III Agreement (Dublin III) was created in 2013, which, like its predecessors, still placed responsibility to process asylum applications to the member state of first entry. What Dublin III did, however, was that it changed its regulation to provide better safeguards for asylum seekers, including a suspensive right of appeal, the prohibition for states to transfer an asylum seeker to another member state, an early warning mechanism to monitor member states’ implementation of asylum laws, an emphasis on respect for family life (which is extended for unaccompanied minors), a right to personal interview, and a common leaflet on the Dublin and EURODAC process (European Union, 2013).

Not only does the literature on the securitization of immigration often points fingers at the EU’s restrictive asylum regulation, but it also often points fingers at the JHA’s border control agencies, specifically *Frontières extérieures*, or FRONTEX, as it is often called (Chillaud, 2012; Léonard, 2009, 2010; Papastavridis, 2010). Created in 2005, FRONTEX is a Warsaw-based independent EU agency that works on the coordination of operational cooperation between EU member states to strengthen, as well as manage, the EU’s external border and was thought to be a response to 9/11 (Boswell, 2007; Neal, 2009). However, as Neal (2009) notes, a closer analysis shows that FRONTEX was created not a result of this particular critical juncture, nor was it a result of securitization. Neal (2009) comments that FRONTEX was, in fact, created to respond to “the disintegration of a common EU response to migration, security and borders,” with the terms “security” and “urgency” were all but missing within the discourse of the establishment of FRONTEX (p. 346).

Not only that, but when analyzed in a historical institutionalist approach, it is apparent that the creation of FRONTEX can be traced way back to the establishment of Schengen Area. The 1985 Schengen Agreement and the 1995 Schengen Convention were

aimed at removing internal border controls of the EU so as to be in line with the EU's four freedoms—especially the free movement of people—that was formulized under the EU's economic core of establishing a single market. It should be noted, however, that all four freedoms—the free movement of people, goods, services, and capitals—were created exclusively for EU nationals, including EU TCNs, but not non-EU TCNs (Barnard, 2013). Even before Schengen was communautarized into the *acquis communautaire*, Schengen affected the EU greatly as it not only removed internal border controls, but also developed a strong external border aspect, including the provision of common visas to non-EU TCNs. Building on this, Tampere and its successor, the 2004 Hague Programme (Hague), also emphasized the need to regulate and manage EU's external border, which then pressurized the European Council to strengthen not only external, but also physical border control by establishing a European external borders agency: FRONTEX (Council of the European Union, 2004).

As was mentioned, Tampere was a particularly important programme for it outlined the EU's common immigration and asylum policy. Scholars who write on the securitization of immigration often view Tampere as a shift away from focusing on economic immigration—a focus that lined up well with the EU's economic core—to focusing on asylum and security, even though there was a proposed policy plan on legal immigration in 2005 that was supposed to follow up on a 2004 Commission Green Paper on economic immigration (Commission of the European Communities, 2004). However, when Hague is taken into account, it seems as though there was a U-turn in the discourse on immigration, wherein economic immigration takes precedence over other forms of immigration. Hague states that “legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy” (Council of the European Union, 2004, p. 19).

A choice of focusing back to economic immigration was easier said than done. According to Luedtke (2011), the European Council passed three successful highly salient Directives on legal non-EU TCN issues after Hague—family reunification, long-term residents, and the Visa Information System—and two successful low salient ones—the admission of students and researchers. However, Luedtke mentions that there was only one highly salient Directive that proved unsuccessful, which was the one on economic migrants. Although these outcomes were not in line with what Hague had envisioned, it should be noted that 2004 was not a conducive year in Europe. Bendel (2007) notes that ramifications of 9/11 and the 2004 Madrid train bombings greatly contributed to the shift in the EU's approach to immigration, focusing less on economic immigration and more on security and control (p. 36). Path dependency requires a focus on not only what is going on internally, but also what is going on externally. Therefore, when the time is right, the issue of economic immigration could then take precedence. An illustration of this can be seen in the year 2009. The year 2009 can be argued as the right time for the issue of economic immigration to take precedence, which can be illustrated by the successful admission of Blue Card Programme for highly-skilled economic migrants by the European Council. In fact, Luedtke (2011) mentions that in that year, EU member states were influenced by what Spain did with its problem with illegal immigration, in which a *de facto* labor immigration policy was placed through regularizing Spain's low-skilled labor—meaning that the workers could then gain certain EU rights under the Long-term Residents Directive (p. 15-16).

The Stockholm Programme (Stockholm) was the next incarnation of Hague and Tam-

pere. To view Stockholm in a historical institutionalist manner, it is imperative to look more into the main provisions of the European Commission's Global Approach to Migration and Mobility (GAMM). As the implementation provision of Stockholm, GAMM prioritizes four main components, which included "improving the organisation of legal migration and facilitated mobility, preventing and reducing irregular migration in an efficient, yet humane way, strengthening the synergies between migration and development, strengthening international protection systems and the external dimension of asylum" (European Commission, 2014b). Taking into account the wording and the focus of these four priorities, it is clear that those priorities constitute as evidence of the EU's institutional path dependency, since their policy aims and approaches are not only similar to that of their predecessors, but also could be linked to past decisions and developments of, *inter alia*, the removal internal borders of Schengen, the strengthening external border management, and the creation of a coherent CEAS.

Taking into consideration the historical institutionalist analysis of the development of immigration policies and approaches in the EU level that has been presented so far, it looks as though the claim on how the securitization of immigration via the Europeanization of EU competence has constructed Europe's Fortress Europe attitude toward immigration might just be inaccurate. With regard to the contention on restrictive immigration policies, taking on a historical institutionalist analysis has shown that EU level policies have only actively participated in the area of immigration control and border control, which Givens (2010) characterizes as "a crucial component of not only migration flows but also national security" (p. 82). Generally, issues surrounding border control, visas, and asylum are the ones that prove to be salient in the EU level. On top of that, external border agencies like FRONTEX and the Visa Information System have, as Guild notes, represented a "hardening of the tools of control" (as cited in Neal, 2009). Even so, this does not mean that a Fortress Europe is being constructed, at least not in the supranational level.

To gain a fuller understanding of Europe's overall unfavorable attitude toward immigration, a look into the judicial branch of the EU, the ECJ, needs to be taken. Currently, there exists a difference between scholarly and legal literatures surrounding the roles that non-EU and EU TCNs have in the EU immigration discourse. In scholarly literatures, only non-EU TCNs are often mentioned when discussing immigration, but both non-EU and EU TCNs are mentioned in legal literatures on immigration. As has been discussed in the literature review, the role of law and the ECJ are becoming much more contested as they touch upon issues of identity. For instance, Cornelissen (2013) notes that the ECJ has not only been criticized for overprotecting non-EU TCNs vis-à-vis the ECJ's interpretation of EU Regulations on the coordination of social security system, but at the same time, the ECJ has also been criticized for its interpretation of special non-contributory benefits—which supports the view that non-EU TCNs have to demonstrate a certain degree of integration in the host state before they could claim any particular benefits. Nevertheless, legal literatures that have analyzed decisions made by the ECJ over time confirm that there exist an expansion of rights that TCNs could claim, which mainly touched upon the principle of non-discrimination under the provisions and notions of citizenship in Europe (Kochenov, 2009, 2011; Kochenov & Plender, 2012; Peh, 2013; Slot & Bulterman, 2005; Wiesbrock, 2012). Morano-Foadi and Andreadakis (2011) further note that recent decisions made by the ECJ show that the gap between EU citizens' rights and non-EU TCNs' rights has lessened as a result of the ECJ's similar interpretation of certain non-EU TCN provisions to case laws rel-

evant to EU citizens, as well as the use of the Charter of Fundamental Rights—such as that of the 2010 *Rhimou Chakroun v Minister van Buitenlandse Zaken* case. It is noted that this convergence occurred in such a way as a result of the ECJ’s core belief of non-discrimination by reason of nationality and that “the ECJ speaks the language of freedom and it is committed to offering a sound interpretation of the Treaties and facilitating the operation of the internal market” (Morano–Foadi & Andreadakis, 2011, p. 1087).

Although there exists a change in how the ECJ rules in cases involving TCNs, it should be noted that the interpretation of rights does have a territorial extent in the EU. Legal literatures have analyzed that most ECJ cases that have widened and deepened TCN rights in the EU only include those who either have relations with an EU citizen or those who are EU nationals residing in a different EU member state—EU TCNs. In fact, Slot and Bulterman (2006: 749) note, “For third country nationals for whom the rules applicable to EU citizens do not apply because they have no relationship with an EU citizen, the rules for harmonization have yet to be developed.” According to Kochenov and Plender (2012), the ECJ has only recently changed its decision-making method regarding EU TCN rights during the 2010 *Janko Rottmann v Freistaat of Bayern* case (Rottmann), which is now characterized as “a new non-market rights-based paradigm of EU citizenship law” (p. 371). However, even before *Rottmann*, the ECJ has had experience in interpreting cases where notions of rights and EU citizenship are taken into consideration. For instance, in the 1998 *María Martínez Sala v Freistaat Bayern* case (Sala), the ECJ ruled favorably with regard to the issue of the degree to which an economically inactive person—in this case, a Spanish citizen who resided in another EU member state—could claim social assistance in an EU host member state vis-à-vis the notion of non-discrimination under Article 18 of the EC Treaty. The ECJ also favorably considered and, as a matter of fact, extended that particular notion of non-discrimination when judging on similar, Sala-like cases like the 2001 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* case and the 2002 *Baumbast and R v Secretary of State for the Home Department* case. These two cases both deal with not only the issue of providing assistance to EU citizens who are viewed as economically inactive by the EU host member state that those citizens reside in, but also the issue of those citizens’ right to reside in their respective host member states.

Questions of residence and non-discrimination were also asked and positively responded in cases involving non-EU TCNs who have relations with one or more EU citizens. Two often-cited cases of this instance are the 2004 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* case (Chen) and the 2011 *Gerardo Ruiz Zambrano v Office national de l'emploi* case (Zambrano). The first case involves Kunqian Catherine Zhu—a girl born to Chinese parents who were granted Irish nationality due to the fact that she was born in Northern Ireland, and hence, were granted EU citizenship—and Man Lavette Chen—Zhu’s mother who admittedly planned the birth in Northern Ireland in order to take advantage of Zhu’s EU citizenship and reside permanently in the UK. UK officials rejected Zhu’s and Chen’s application of residence permit, but ultimately, the ECJ ruled in favor of Zhu and Chen, taking into account Chen’s status as a minor, an EU citizen, and the notion of non-discrimination under Article 18 of the EC Treaty. The second case is similar to that of the first, but it did not involve the exercise of the right of free movement and residence by the EU citizen—which would be the children in both cases. Instead, in the second case, the ECJ affirmed the right of non-EU TCN parents who are primary caregivers of minors who are EU citizens to reside and work in the EU member

state that granted citizenship to the children.

Zambrano constitutes one major TCN case after *Rottman* that interpreted citizenship and the provision of rights differently. Peh (2013) notes that the *Rottman* judgment “signalled a willingness to depart from [the ECJ’s] earlier cross-border approach” (p. 34) in interpreting EU provisions regarding EU TCNs. Although pre-*Rottmann* cases did broaden the scope of rights entitlement of certain TCNs, Kochenov and Plender (2012) note that those cases applied a “purely market-oriented cross-border logic” (p. 376) that took into account the EU’s economic core of the establishment of a single market and the four freedoms that are attached to it. Legal literatures note that post *Rottmann* cases, including *Zambrano*, *Shirley McCarthy v. Secretary of State for the Home Department*, and *Dereci and others v. Bundesministerium für Inneres* illustrate that not only has the ECJ changed its decision-making method regarding TCN related cases, but it has also expanded, to an extent, the notion of EU citizenship vis-à-vis non-discrimination and the rights that come with it as something other than just the involvement in the EU’s internal market by way of exercising the four freedoms afforded by being a citizen of the EU (Kochenov, 2011; Kochenov & Plender, 2012; Peh, 2013; Shuibhne, 2012).

Even though there still exists an extent to who could benefit from the rights given by the EU and its member states, as well as the forms of rights that could be conferred to non-EU and EU TCNs (Kochenov, 2009), it is imperative to note the impact that the expansion of certain TCN rights has had over time to EU member states. The widening and deepening of TCN rights, though mainly pertain to EU TCNs and non-EU TCNs who have relations with an EU citizen, in the EU level over time might seem as something completely positive, it does present a threat to the notions of citizenship in Europe. As has been discussed, a blurred line exists in Europe with regard to the definition of citizenship and its implications. The creation of EU citizenship under Articles 8–8e of Maastricht has challenged not only the supremacy of individual national member state citizenship, but also “the paradigmatic understanding of citizenship as congruence between nation, state and membership rights” (Olsen, 2013, p. 505). Therefore, the understanding of citizenship in the national level and in the supranational EU level clashes with each other, simply because of the difference in their scope of polity and community. Not only that, but the three aspects of citizenship—citizenship as status, citizenship as rights, and citizenship as identity—are also put to contention as EU citizenship blurred the line between nationals and foreigners (Joppke, 2007b). According to Joppke (2007b), citizenship as status is defined as the “formal state membership and the rules of access to it” (p. 38), whilst citizenship as rights is defined as the “formal capacities and immunities connected with such status,” and citizenship as identity is defined as the “behavioral aspects of individuals acting and conceiving of themselves as members of a collectivity, classically the nation, or the normative conceptions of such behavior imputed by the state.” As was discussed in previous paragraphs, the expansion of rights for certain TCNs presents a crux in Europe, since even though the status of EU citizenship is conferred upon all nationals of EU member states, the increase in the provision of EU and certain non-EU TCN rights by the TCN’s respective EU host member state—resulting from those states’ obligation to conform to any ECJ judgments and to any EU provisions regarding non-EU and EU TCNs—has challenged the national identity of each individual EU member states.

With regard to the role of EU citizenship, Amsterdam notes, “Citizenship of the Union shall complement and not replace national citizenship” (as cited in Kochenov, 2009, p. 181). With this in mind, literatures on citizenship in Europe that characterize citizenship

as being, *inter alia*, postnational, transitional, and nested need to be questioned. Although, as has been discussed in the literature review, these three concepts are different in their own way, they do have a commonality—that is, their recognition of EU citizenship as taking precedence over national member state citizenship. With regard to this issue, Hansen (2009) argues,

EU citizenship in no way challenges national citizenship. This fact is clear from the treaties, yet scholars continue to imbue EU citizenship with an empirical content and theoretical importance that it simply lacks. ... [T]he European Union has almost nothing to do with immigration and citizenship. (p. 6)

With this in mind, it is not surprising then that contestations inside individual EU member states could arise when non-EU TCNs who have no relationships to any EU citizens are put into Europe's citizenship equation. As a result of the expansion of rights of certain TCNs through the regulations and rulings of the ECJ, it can be argued that both non-EU and EU TCNs are breaking the boundary of Europe's two-level citizenship. The provision of rights might be seen as a prelude to the provision of citizenship, since, as was noted, rights constitute as one of three aspects of citizenship (Joppke, 2007b). For TCNs who are in the EU or who are entering the borders of Europe, there still exist limitations to what rights they could have or claim, simply as a result of their status as a non-EU citizen. However, as was previously explained, the fact that certain TCN rights have expanded throughout the course of EU history—even if this expansion only pertains to TCNs who have relations to an EU citizen or are nationals of an EU member state, but reside in a different EU member state—should still be noted, for its expansion could constitute as a threat to the definition of citizenship as identity.

Guild (2014) opines, “The European Union is currently suffering a minor identity crisis. ... The problem is that some member states are no longer sure that all EU citizens should be treated equally ... while others are outraged that their citizens might be treated as less equal EU citizens than others” (p. 1). For a citizen to be treated equally entails that citizen to have equal amount of rights as others. According to Kaczorowska (2013), “the principle of equality means that in the EU all Member States are equal in that they enjoy the same privileges and have to fulfill the same obligations *vis-à-vis* each other and *vis-à-vis* the EU” (p. 40). The fact that an EU member state national has, as a result of their state's membership to the EU, the same EU level rights, which are governed by the Community method, is what makes that national an EU citizen. At the same time, however, that EU member state national may identify more with his or her national citizenship, as opposed to EU citizenship, since the latter, as stated before, acts as a complement to, rather than a replacement for national citizenship. In fact, Eurobarometer (2013) notes 49 % of Europeans define themselves first by their nationality and then as an EU citizen, whilst 38 % of Europeans define themselves solely by their nationality (p. 26). For this reason, it can be argued that in the case of Europe, EU citizenship concerns more toward the expansion of rights as it fosters “the values of belonging, rights and participation” (Bellamy, 2008), yet identity is still intact within particular national member states.

When nationals of an EU member state who reside in a different EU member state are conceptualized as TCNs—which, therefore, would extend the scope of the EU's concept of TCNs to encompass both non-EU and EU citizens who do not hold national citizenship

of their EU host member state—it is apparent that the backlash against immigration might be caused more by the fact that EU TCNs and non-EU TCNs who have relations with one or more EU citizens are infringing on individual member states' national identity. By virtue of the doctrine of direct effect and supremacy, national member states are liable to not only take EU laws and regulations as precedence, but also transposing and implementing them in the national level (Eurofound, 2011a, 2011b). Therefore, since the ECJ is arguably the highest court in Europe by the fact that it has exclusive jurisdiction, conferred upon under Article 267 of the EC Treaty, in interpreting the treaties that govern the EU and any secondary EU laws that include those that pertain to non-EU TCNs, judgments made by the ECJ constitute a precedent and EU member states “are bound by the operative part of the judgment” when ruling on similar cases (Lenz, 1994, p. 403). Therefore, decisions that the ECJ made to expand upon the rights of certain TCNs from the EU level, which would then require EU member states to oblige to that decision, could be seen as infringing upon the notion of citizenship in the national level—specifically that of citizenship as identity. It is not unusual then that individual EU member states are seen to construct Fortress Europe to prevent non-EU TCNs from coming into the EU's already untidy identity crisis. A study of opinions on immigration by Sides and Citrin (2007) concludes that the strong backlash against immigration is rooted in perceptions of cultural and identity threats, which take precedence over perceptions over economic threats. Such conclusion is similar to some of the claims made in the literature on the securitization of immigration. Both studies characterize non-EU TCNs as not only someone from outside of the EU, but also a threat; or as Huysmans (2000) puts it, “an internal and external danger for the survival of the national community or western civilization” (p. 758). However, claims that were brought up from the literature on the securitization of immigration focused mainly on how Europeanization has securitized immigration in the EU level, not on Europe's multidimensional notions of citizenship.

Furthermore, Hansen (1998, 2009) argues that because national member state citizenship takes precedence over EU citizenship, the latter can be viewed as a reinforcing agent of the former, since a non-EU TCN has to obtain the former to then obtain the latter. The use of civic integration is a pertinent example of this reinforcement. This particular practice of integration was and is still used as a result of the failure of multiculturalism in Europe and aims to, as Focus Migration (2007) notes, “inculcate the values and principles of liberal democracy” (p. 1), as well as to acquaint migrants to the history and culture of their host state. Joppke and Morawska (2003) further note that in fact, the decay of multiculturalism and the subsequent increase of civic integration practices in Europe constitute as a step toward more of a logic of assimilation in Europe. However, Jacobs and Rea (2007) argue that although there exists a “rapid diffusion of civic integration policies” (p. 276) in Europe, it does not mean that multiculturalism has ended in Europe and that a shift toward a logic of assimilation would inevitably take place. Jacobs and Rea (2007) further argue that “the ideology of multiculturalism has the rejection of homogenisation and assimilation as its central tenet,” which is not in line with civic integration practices since they explicitly specify that “a certain degree of homogenisation, civic acculturation and (linguistic) assimilation (for a variety of reasons)” (p. 277) needs to be achieved.

Even so, a question of where in Europe is civic integration being practiced and diffusing rapidly needs to be posed. Joppke (2007a) notes that civic integration was initially created by the Dutch not as a national identity issue, but just like the EU, it was created as an economic

issue (pp. 5–9). In order for non-EU TCNs in the Netherlands to gain better access to employment, a certain degree of integration, including a familiarity with the Dutch language and the Dutch ways of life, was essential. Joppke further notes that this particular kind of integration became an issue of national identity as a result of the increase in populism and turmoil surrounding Muslims and Islam in the Netherlands—which might be why a logic of assimilation is then taken on. Recent research on civic integration suggested that this type of integration could widely be seen exclusively in most Western European states (Carrera, 2006; Goodman, 2012; Joppke, 2007a, 2007b; Kostakopoulou, 2010). These states include Austria, Denmark, Germany, Finland, Belgium (specifically in the Flanders region), France, the Netherlands, Sweden, and the UK (Carrera & Wiesbrock, 2009, pp. 269–270). Interestingly, these states constitute as major EU member states that non-EU TCNs chose to reside in (Benton & Petrovic, 2013, p. 3). In all of these nine states, Carrera and Wiesbrock (2009) note that there exist differences in the content of their respective civic integration practices, with some countries—Finland, Sweden, and the UK—choosing to make civic integration optional for most non-EU TCNs. However, Carrera and Wiesbrock note that all of the nine EU member states’ civic integration content contains a language and civic orientation requirement. It can be argued that this kind of consensus illustrates the importance of national identity to individual EU member states. Therefore, the expansion of rights of certain TCNs and the fact that both non-EU and EU TCNs are able to freely migrate have created a perception of threat to individual EU member states’ identities.

Joppke (2012) further notes that the use and intensity of civic integration vary in practice. For instance, Joppke illustrates that in Germany, the acquisition of the German language is required as a result of the limited German-speaking pool of immigrants; whilst in the UK, civic integration focuses more on British customs and day-to-day living as a result of the vast English-speaking pool of immigrants. Furthermore, Cornelissen (2013) notes that the ECJ can be seen as beginning to subscribe to the concept of civic integration, which can be illustrated in the ECJ’s concurrence in some EU member states’ view that TCNs must show a level of integration before claiming any social benefits from their EU host member state (p. 106). However, this agreement specifically targets non-EU TCNs who do not have any relations to the EU, since, as Ball (2014) notes,

The ECJ’s judgment in *Chen* and *Rottmann* negatively resolved any possibility of [non-EU] TCNs being able to claim direct national citizenship status through a Union route as [non-EU] TCNs cannot fall within the material scope of Union citizenship, on the basis that they are not EU citizens. (p. 41)

Therefore, when the issue of identity insecurity that is happening inside the EU is taken into consideration, it can be argued that the backlash against immigration might just be rooted on contentions within the definition of citizenship in Europe and attached to that, the extent to which rights can be conferred upon by a host state to any TCNs, regardless of nationality or citizenship. Also, the notion that the Europeanization of immigration competence has securitized immigration should be questioned, since historical path dependent policy outcomes and approaches from and of the EU that deal with non-EU TCNs do not correspond to the prevalent claims in scholarly literatures on the EU’s construction of Fortress Europe. To comprehensively understand where and what might explain the backlash against immigration in Europe are, therefore, imperative in order to not only understand

Europe's two-level games of Europeanization, but also understand pertinent issue areas where unattractive claims regarding immigration and migrants might just be used as a veil to cover the dysfunction of having a two-level conceptualization of citizenship.

CONCLUSION

As inter- and intra-EU immigration continue to occur, a complete construction of Fortress Europe might not see the light of day. As this paper has presented, a historical-institutionalist approach to analyzing the development of immigration policies and approaches in the EU level has shown that scholarly claims regarding the securitization of immigration via the bottom-up Europeanization of immigration competence as being the cause for the backlash against immigration can be considered as false. The development of EU immigration policies and approaches rely on the institutionalist notion of path dependency, pointing specifically to the roles of past policy decisions and the impact that those decisions have on the current state of EU immigration texts. In fact, a recent communication given by the European Commission (2014a) regarding the future of EU Home Affairs policies only touches upon furthering the transposition and implementation of the Common European and Asylum System, which encompasses, *inter alia*, the already established Dublin III. Other than that, the Commission only reiterates existing and already proposed EU policies and approaches to immigration control without suggesting much concrete action other than transposing and implementing them correctly.

If, however, a sole focus on ideational notions of citizenship in Europe is considered, then it is apparent that the crux of the backlash against immigration in Europe lies in the EU's identity crisis. As the ECJ began to change its decision-making method regarding TCN related cases and the fact that non-EU and EU TCNs can now attain more rights than before in an EU host member state, the notion of citizenship as identity in Europe has become hazy. This obscure line between nationals and foreigners that is happening inside the EU can be argued as the prime reason for the construction of Fortress Europe. Therefore, the admittance of non-EU TCNs has become tougher, especially in migrant-receiving states of Western Europe, in which the practice of civic integration has become a key condition to enter their internal border. Moving forward, it is imperative to further research on European immigration in terms of each individual member states' policies and approaches, rather than the EU as a whole so as to account for all of the nuances that those states have with regard to the impact of admitting TCNs, regardless of nationality or citizenship, would have caused on their ideational notion of citizenship as identity. This way, a better, or rather a much more novel understanding of the Fortress Europe phenomenon can be achieved—an understanding that focuses more on how Europe's multidimensional notion of citizenship impacts contemporary intra- and inter-EU immigration.

AUTHOR'S NOTES

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