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Socio-Legal Integration

Polish Post-2004 EU Enlargement Migrants in the United Kingdom

Agnieszka Kubal

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SOCIO-LEGAL INTEGRATION

Cultural Diversity and Law

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Around the world, most states are faced with difficult issues arising out of cultural diversity in their territories. Within the legal field, such issues span across matters of private law through to public and constitutional law. At international level too there is now considerable jurisprudence regarding ethnic, religious and cultural diversity. In addition, there are several layers of legal control – from communal and religious regulation to state and international regulation. This multiplicity of norm setting has been variously termed legal pluralism, inter-legality or inter-normativity and provides a fascinating lens for academic analysis that links up to cultural diversity in new and interesting ways. The umbrella of cultural diversity encompasses various population groups throughout the world ranging from national, ethnic, religious or indigenous groupings. This series particularly welcomes work that is of comparative interest, concerning various state jurisdictions as well as different population groups.

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Chapter 1
Introduction

Migration has grown in recent years to be an all-important social phenomenon. More people than ever are considered to be 'on the move', transcending various state, local and legal borders.

Globalization has additionally altered the context for migration. The growth of new technologies of communication and transport allow the frequent and multi-directional flows of people, ideas and cultural symbols. The erosion of nation-state sovereignty and autonomy weakened systems of border control and migrant assimilation (Castles 2002).

This happened in parallel with the growing 'super-diversity' of migrant populations (Vertovec 2007). Many host countries, like the United Kingdom, which traditionally attracted stable flows of populations from Commonwealth or formerly colonial territories, are now characterized by 'an increased number of new, small and scattered, multiple-origin, transnationally connected, socio-economically differentiated and legally stratified immigrants who have arrived over the last decade' (Vertovec 2007).

As a result, various studies examined these new forms of migratory processes and migrants' incorporations, particularly the emergence of transnational communities (Glick Schiller et al. 1995), various forms of identities and citizenship (Portes 1996).

However, with the exception of the legal pluralism scholarship (Ballard 1994, 2006, 2007; Grillo et al. 2009; Menski 1993, 2006, 2008; Shah 2007, 2008, 2009, 2011), not much has been said about how migrants build their relationship with law in the host country, about the nature of their legal adaptations. But it is primarily the South Asian immigrant communities (Bangladeshis, Sikhs, Gujaratis and Pakistanis) arriving in the UK since the 1940s–1950s which have constituted the main focus of the legal pluralists' analysis.

I argue that it is important to re-think our understanding of new forms of migrants' legal incorporations and adaptations, their multiple legal identities and multi-layered citizenship. Given this super-diversity of contemporary migrants, it is rather naïve to assume that one analytical lens will do justice to their various characteristics and relationships with law. Not all migrants arriving in the host country will carry their own 'legal baggage' in the form of alternative (to the state law) unofficial laws or customary practices of social ordering based on indigenous, religious or private laws (Chiba 1998).

If we are to understand immigrants' legal adaptations today, immigrants stemming from diverse and heterogeneous parts of the world, with different yet at the same time not so distant legal traditions (e.g. civil law), we need to examine

how the perception of law is produced and consumed and then draw out its social implications, such as what meaning people attach to law, what expectations they have and how they behave towards it in everyday life (cf. Kurkchiyan 2010). This book looks at how contemporary migrants build their relationship with law in the host country, how this relationship is being formed – and transformed – and which factors this is influenced by.

Since 2004 Eastern European migrants (hailing from the 'A8' – EU Accession States)[1] have become an inseparable part of the British ethnic mosaic. Using the case study of Polish post-2004 EU enlargement migrants, this study focuses on the legal behaviour of migrants in the UK, that is, the strategies and tactics they employ in order to follow, comply with, avoid or manoeuvre around the law and their choices of 'semi-legal' over legal status. The study is also concerned with migrants' values and attitudes to the rules that govern their work and residence in the UK (and to the legal system in general) and the interpretations of legality that they result in, especially in terms of how they affect the choices migrants make while dealing with the body of law (subsequent legalization strategies).

Therefore, contrary to the traditional approach to socio-legal research representing the 'law-first' perspective (Cowan 2004), where the primary concern is the study of law per se and its effects in society (Currie 2008b), this book makes a case for a 'proper' recognition of migrants' agency and their legal culture – their values, attitudes and accustomed patterns of legal behaviour – in the study of their socio-legal integration.

As a result, although the Polish post-2004 EU enlargement migrants in the UK provide the case study of this book, the analysis presented has far broader consequences. It suggests a framework for the future approaches of researching migrants in the new socio-legal environment.

Factors of Socio-Legal Integration

Drawing on the legal and migration literature, I propose a combination of several factors with which to investigate migrants' relationship with law.

Legal Environment

Assimilation, acculturation and integration were the distinctive theoretical approaches – characteristic of the earlier historical periods between the 1900s and the 1960s – which considered migrants' compliance with the law in civic and legal matters[2] as unquestionable and fairly unproblematic. It was the 'minimum'

1 'A8' Accession State nationals hail from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia .

2 Although I appreciate that civic also encompasses legal matters, this terminology has been taken from migration studies literature (Cronin 1970).

migrants were expected to conform to and – as the research evidence and migration literature records – these changes and adjustments, at least in the behavioural sphere, were quite rapid and profound (Cronin 1970; Gordon 1964; Hein and Beger 2001b; Kallin 2003).

These research accounts of smooth and somewhat unproblematic changes of migrants forming their new relationship with the law in the receiving country could be explained in a twofold way. Firstly, they mark the early stage of migration research, the stage of accumulating the knowledge and constructing the methodological premises of the field. Secondly, migrants' rapid assimilation in the civic and legal spheres was undoubtedly aided by the sole focus on the legal framework and legal institutions of the host society. Migrants' compliance with the law was taken for granted.

These early research frameworks particularly concentrated on the host country's legislation of that time, which 'encouraged' migrants to come, work (e.g. programmes targeted at migrant workers after the Second World War in the USA, Canada and Western Europe) and subsequently, yet perhaps unintentionally, to settle.

With the change in migration patterns, as long settlement plans were replaced by a proliferation of cross-border flows, the globalization of trade and the reduction of the old boundaries and borders, the role of host states' immigration policies and legal frameworks changed from accommodative to exclusionary practices aimed at securing and controlling the borders of nation states. Many jurisdictions, which in *de jure* terms considered themselves to be homogeneous nation states with legal systems firmly grounded in Austinian principle, became confronted with the *de facto* reality of significant plurality of their own populations throughout the twentieth century. The official political views on illegal immigration transformed dramatically as economic conditions worsened, unemployment increased and anti-immigrant political movements began to attract support in the 1970s and 1980s. Several scenarios – state responses to the increasing diversity of their populations – have taken effect. On the one end of the spectrum, there was the French model – that any formal recognition of ethnic plurality would undermine the homogeneity and hence the integrity of the Republic. On the other end, there was the newly emerged South African model, which – at least according to its constitutional principles – emphasized the nation's intrinsic condition of ethnic plurality and consequently introduced it into all legislation under its jurisdiction. Western Europe and the USA – traditionally immigration countries – have now been moving closer to the former end of the spectrum, tightening their admission policies and reconceptualizing their citizenship models. As a result of these developments, a substantial shift in the studies of migrants' responses to the host country's legal environment arose from the 'problem' of undocumented immigrants crossing borders escaping from civil wars, political persecution or in search of better economic conditions.

Within the framework of transnationalism (Portes 1996; Glick Schiller et al. 1995; Vertovec 2007), the growing legalization literature focused on the complex

set of structural factors stemming from the legal system of the host country itself – via immigration policies and nationality laws – which legally constructed immigrants' 'otherness' through the reproduction of contingent illegality (Calavita 2005). 'Illegal' migration therefore became, by definition, a product of the laws made to control migration (Castles and Miller 1998). Legalization programmes and amnesty measures designed by the host state became the increasingly present tools of immigration policy. These restrictive and erratic inflections that can be seen in many parts of the law, combined with changes in the nationality legislation, produced a dyke against a full integration or foreign residents in many states of the North. These structural factors were deemed responsible for the shift in migrants' responses to the legal system of the host country, when the traditional responses (i.e. compliance and assimilation) ceased to be straightforward, as migrants, labelled 'illegal aliens' at entry itself, confined themselves to the liminal sphere of law (Coutin 2000; Hagan 1994; Mahler 1995; Menjivar 2000, 2006).

The general typology of the elements that give rise to a particular legal environment could be put forward as follows:

1. The admission policies of host countries, e.g. the immigration laws enacted by government in state legislation.[3]
2. The international legal obligations to which the host country is a signatory (human rights).
3. The rationale behind these rules reflecting the dominant political discourse on immigration.
4. Migrants rights upon admission (Ruhs 2011), e.g.:
    a. The employment (workplace) regulations that migrants face in the host country,
    b. The social security (welfare) legislations.
5. How these rules and regulations are enforced and executed by the host state – 'law in action' (Pound 1910), particularly in the niche of the low-wage, low-skilled echelons of the host state's labour market, where majority of contemporary migrants find employment (cf. dual labour market theory (Reich et al. 1973), segmented assimilation (Alba and Nee 2003)).

Agency: Migrants as Actors

One cannot help but notice that the sole focus on the host state's legal frameworks in addressing the issues of legal adaptations portrays migrants as

3 This broad definition encompasses immigration laws and policies aimed at voluntary migrants and asylum laws directed towards involuntary migrants. However, I would like to acknowledge that the clear-cut division between voluntary and involuntary migrants (or migrants and refugees and asylum-seekers) is a problematic one and perhaps it obscures more than it clarifies. How we know whether a movement is 'forced' or 'voluntary', or why we should assume that this is significant, is rarely considered.

passive recipients of the opportunity structures consisting of immigration laws and state integration policies as expressed in the works of legal institutions. In the case of 'illegal' migrants, it is the 'procedural delays and release pending removals [that] enable them to gain most of what they migrated for in the first place' (Schuck 2007: 195). Any indications of migrants as active and responsive agents are limited to those 'few who do manage to beat the system and elicit criticism of the immigration agency' (Schuck 2007) – immigrants as villains or victims (Anderson 2008).

From the review of migration literature, it became apparent that people, by making their decision to migrate or deciding to lead transnational lives between the home and host countries, exercise a certain degree of agency and choice (Glick Schiller et al. 1995).

However, the dominant way in which the problem of agency has been addressed in migration studies is unsatisfactory. Many studies suggest that we must take account of people's agency, but then give a predominantly structuralist account or claim that the context is important while the analysis is based simply on the aggregation of individual responses to questionnaires. Those who attempt to find the balance have tended to draw on Giddens' theory of structuration (Giddens 1984). However, migration scholars have rarely paid enough attention either to important critiques of Giddens (Archer 1982; Sewell 1992) or more recent debates about approaches to post-positivist social science, in particular those drawing on critical realist perspectives (Cruickshank 2011).

As a result, the very nature of agency constitutes an important question in itself. Can agency be identified with the behaviour of individuals (actors)? In sociology and anthropology, the actor-oriented approach was popular in the 1960s and early 1970s, and ranged from transactional and decision-making models to symbolic interactionism and phenomenological analysis (Long 2001). However, it is important to point out that in attempts to combat simple culturalist and structuralist views of change, some of the 'actor-oriented' studies concentrated on the behaviour of individuals, stressing the voluntaristic view of the decision-making process. They therefore failed to examine how individual choices are actually shaped by larger frames of meaning and action, such as cultural dispositions, or what Bourdieu calls 'habitus' or 'embodied history' (Bourdieu 1981).

Therefore, should agency be viewed as an irreducible collective attribute? As Carter and Charles (2010), observed, agents are collectivities sharing the same life chances and therefore, the term 'agency' is always and only employed in the plural (cf. Archer 1996). As collectivities, agents are contrasted to 'actors', who are always singular (Carter and Charles 2010). The (always) plural understanding of agency, as a property of collectives sharing similar life chances, precludes that everyone is necessarily an agent since everyone occupies a position in society's distribution of scarce resources (cf. Bruno Latour's Actor–network theory (Latour 2005)). However, this might lead to a controversial proposition that one's agentic position may be conceived as involuntary – 'we are born into a certain place at a

certain moment and, because these distributions predate our arrival, they do not require our consent or complicity' (Carter and Charles 2010: 237).

For the purposes of the analysis, human agency has been conceptualized after Emirbayer and Mische (1998: 970) as 'temporary embedded engagement by actors of different structural environments through the interplay of habit, imagination, and judgement which both reproduces and transforms those structures in interactive response to the problems posed by changing situations'. To be an agent means to be capable of exerting some degree of control over the social relations in which one is enmeshed, which, in turn, implies the ability to transform those social relations to some degree (Sewell 1992).

Introducing the Legal Culture Perspective

Socio-legal integration provides a framework in which the agency of migrants could be meaningfully examined to understand its relationship with the law. Upon arrival, the lives of migrants are intertwined with the works of the law in multiple webs of allegiances and connections. As a result, different groups of migrants possess different degrees of choice about their actions (and legalization strategies) upon arrival. This depends of course on the degrees of restrictiveness of the immigration laws and the level of their enforcement (e.g. fear of deportation (De Genova and Peutz 2010), but also on individual strategies of coping with the legal frameworks, efforts to legalize one's status, priorities, values and attitudes associated with law and legality.

This study therefore argues that structural factors stemming from the legal system of the host country and its immigration policies are not sufficient to fully account for migrants' responses (agency) to the legal environment of the host country – whether they comply with the laws, remain within the 'illegal' sphere or 'in-between'.

This research is a systematic attempt to bring the culture of migrants and, specifically, their legal culture – that is, a particular configuration of values, attitudes and behaviour concerning law which migrants internalized prior to their migratory experience – into the picture. The culture of migrants has already been widely recognized as a factor that heavily influences and conditions their social and cultural integration in the host society (Bhattacharya 2008; Foner 1996; Hondagneu-Sotelo 1994; Kibria 1993; Lim and Wieling 2004; Read 2004; van Niekierk 2004; Wakil et al. 1981; Yanagisako 1985b).

Legal culture is an established term in the scholarship of socio-legal studies (Blanke and Bruinsma 1994; Blankenburg 1998; Cotterrell 1997, 2001; Friedman 1975, 1990, 2001; Gibson and Caldeira 1996; Kurkchiyan 2005, 2010; Legrand 1999; Nelken 1995a, 1995b, 2004a, 2004b, 2007; Nelken and Feest 2001). At the same time, legal culture is one of the most general and ubiquitous concepts in the study of law and society. Various scholars argue that the concept, being all-inclusive, is theoretically incoherent, as it explains too much and tends to lean

toward a self-contained 'super-organic' reality: 'the concept of legal culture seems to cover too many things, seems to explain everything that happens or fails to happen within the legal system' (Cotterrell 1997: 20).

Formal definitions of legal culture vary across disciplines and scholars (Gibson and Caldeira 1996) and are often intertwined with alternative concepts such as legal tradition (Glenn 2000, 2004), legal ideology (Cotterrell 1997) or legal consciousness (Merry 1990). Even Lawrence M. Friedman, the 'father' and the greatest advocate of the concept of legal culture, agrees that it serves more of an artistic than a scientific function as it allows an impression of general tendencies to be sketched (Friedman 1975: 12). The following sections examine the most contentious theoretical intricacies of the term – its interpretations, unit, internal dynamics and change.

There are many interpretations of legal culture. In Lawrence Friedman's early and most extensive theoretical discussion on legal culture, he offers a variety of characterizations of the concept. Legal culture refers to 'public knowledge, attitudes and behaviour patterns toward the legal system' (Friedman 1975: 193). Legal cultures may also encompass 'bodies of custom organically related to the culture as a whole' (Friedman 1975: 194). Legal culture, as part of general culture, relates to 'those parts of general culture – customs, opinion, and ways of doing and thinking – that bend social forces toward or away from the law in particular ways' (Friedman 1975: 15).

Other approaches to legal culture seem to put the analytical stress equally on ideas, attitudes and behavioural patterns. Roger Cotterrell, in his critique of the notion of legal culture, observes that in Friedman's later formulations, legal culture appears only as ideational, while the behavioural elements seem to have been discarded (Cotterrell 1997: 15). Friedman's 1977 work *Law and Society* portrays legal culture as attitudes, values and opinions held in society with regard to law, the legal system and its various parts (Friedman 1977: 76); in *Republic of Choice* (1990), legal culture consists of ideas, attitudes, expectation and opinions about law held by people in a given society (Friedman 1990: 213). While acknowledging the definitional inconsistencies, this approach remains faithful to the original conceptualization, stressing the importance of the cognitive (values, attitudes and interpretations) and behavioural (legal behaviour) aspects of people's relationship with law in a particular society.

The notion of legal culture employed here encompasses a specific configuration of values to, attitudes to and behaviour with respect to law – how they are intertwined, what they produce and the complex interplay between them. The stress on 'configuration', on how the values, attitudes and behaviour transcend individuals and are aligned to create a distinguishable pattern is particularly important (as a different 'configuration' would inevitably produce a different outcome in the form of a different legal culture).

In this study, the concept of legal culture will be employed heuristically as an umbrella concept – a useful way of lining up a range of phenomena into one very general category – where behaviours and attitudes (as well as institutions