

ROMA INTEGRATION IN EUROPE: WHY MINORITY RIGHTS ARE FAILING

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It is all the more ironic then that the last two decades have been the heydays of multiculturalism and identity politics. In some ways, belonging to a minority group has never been as accommodated and institutionally managed as it is nowadays. Indeed, there are especially relentless institutional, political and social efforts all over Europe to eradicate ethnic and racial discrimination. Nonetheless, there seem to be new discriminatory responses produced for each step taken towards more equal societies.¹

I. INTRODUCTION

A. An Example of a Dysfunctional Dialogue

In July 2008, Italian authorities began fingerprinting thousands of Gypsies²—adults and children—living in camps throughout the country.³ The measure was adopted as part of a broader government initiative to fight street crime.⁴ The Italian government attempted to pass the measure as a census, assuring that only Gypsies lacking valid identification papers would be fingerprinted and claiming the measure was partly designed to help the allegedly numerous Gypsy children begging on the streets.⁵ Human rights organizations and Roma non-governmental organizations (NGOs) across Europe were appalled and voiced severe criticism,⁶ accused unlawful behavior, and even compared the Italian program to those of Nazi Germany.⁷

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1. Sinan Gökçen, *Pictures in Our Heads*, ROMA RIGHTS Q., 2007, at 1–2, available at <http://www.errc.org/cikk.php?cikk=2868>.

2. The terms Gypsy and Roma are used interchangeably in this Note and are defined in Part II.A *infra*.

3. *Italy Rebuke on Roma Fingerprints*, BBC NEWS, July 10, 2008, <http://news.bbc.co.uk/2/hi/europe/7500605.stm>.

4. *Id.*

5. *Id.*

6. UNICEF, for instance. *Id.*

7. *Council of Europe Blasts Italy over Roma Fingerprinting*, EURACTIV NETWORK, June 30, 2008, <http://www.euractiv.com/en/social/europe/council-europe-blasts-italy-roma-fingerprinting/article-173775>.

At first, the European Parliament adopted a resolution urging Italian authorities “to refrain from collecting fingerprints from Roma, including minors . . . as this would clearly constitute an act of direct discrimination based on race and ethnic origin.”⁸ Italian authorities refused to comply with the recommendation and, instead, submitted detailed explanations of their policy, assuring that only unidentifiable persons—those lacking Italian or European identity documents—would be fingerprinted.⁹ Upon reviewing the policy, the European Commission (EC) found that there was no evidence of intentional discrimination or of seeking data based on ethnic origin.¹⁰ The EC, in effect, reversed the admonition by the European Parliament and placed a stamp of approval on the measure.¹¹ What made this reversal in the official position of European authorities seem even worse to outside observers was the almost complete lack of transparency regarding the additional information submitted by the Italian government and the reasoning used to reach the EC’s conclusion.¹² Human rights organizations proceeded to request an explanation of the EC’s position but were, apparently, unsuccessful.¹³

The fingerprinting policy debate occurred less than two months before the first European Roma Summit.¹⁴ The Summit took place on September 16, 2008, in Brussels and was a gathering of members from Roma communities, organizations, and NGOs; various European Union institutions; and European national governments.¹⁵ The Summit was an ambitious attempt to organize various governmental, non-governmental, and institutional efforts and to distill a united, coherent, and effective plan for cooperation regarding the Roma situation in Europe.¹⁶ The European strategy for integration and various practical and theoretical frameworks were discussed, including global responsibility¹⁷ and the

8. Resolution on the Census of the Roma on the Basis of Ethnicity in Italy, PARL. EUR. DOC. (B6-0348) (2008), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA 20080361+0+DOC+XML+V0//EN&language=EN>.

9. *Italy Rebuke on Roma Fingerprints*, supra note 3.

10. Constance Johnson, *European Union/Italy: Fingerprinting of Roma Approved*, Sept. 5, 2008, GLOBAL LEGAL MONITOR, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l20540630_text.

11. *See id.*

12. “[T]he EC has not disclosed information on how it arrived at its controversial decision.” Open Society Justice Initiative, *European Commission Standpoint Fails to Address Discriminatory Nature of Fingerprinting in Italy*, Sept. 8, 2008, <http://www.statewatch.org/news/2008/sep/italy-roma-osi-prel.pdf>.

13. *Id.*

14. *See* F. Villarreal & C. Walek, *European Roma Summit Conference Report* (Sept. 16, 2008), available at http://www.vmc.be/uploadedFiles/VMC/Thema/Minderheden/Roma/European_Roma_Summit_16092008.pdf.

15. *Id.* at 1-3.

16. *Id.*

17. *Id.* at 10.

rights-based approach,¹⁸ but the normative nature and force of anti-Gypsyism were not examined,¹⁹ and Gypsy law was not mentioned at all.²⁰

As this Note aims to show, the discourse at the Summit exemplifies the current dysfunctional dialogue between the Roma community and activists, national governments and political majorities, and European institutions. Despite the fact that these entities apply a multi-faceted approach toward the common goal of improving the situation of the Roma in Europe, their efforts are caught in the vortex of, and to a large extent are immobilized by, the powerful, morally charged social tension between Roma and non-Roma. As this Note will show, the Roma community lacks a unified ethnic identity or strategy, national governments operate under a pervasive lack of political will for Roma integration, and the European authorities advocate and invest in a formalistic application of minority rights, while all ignore the core social tension around the issue of Roma integration.²¹ This social tension, formed and solidified over centuries,²² defines the two-sided animosity and mistrust between Roma and non-Roma and forms a powerful shield against the successful application of legal norms and effective social policies for Roma inclusion.

B. The Purpose of This Note

Roma make up the largest minority in Europe,²³ and throughout their dispersed and isolated communities endure persistent discrimination and poor, even deplorable, socio-economic conditions.²⁴ How to integrate them into the European community remains an ongoing concern.²⁵ This Note will argue that the European strategy for Roma integration is inadequate because it fails to address

18. *Id.* at 16.

19. The severity of anti-Gypsyism, the presence of prejudice and stereotypes, and the need to fight them was acknowledged, but with no attempt to examine their nature, causes, or impact on integration strategies. *See id.* at 5, 18, 20.

20. *See generally* Villarreal & Walek, *supra* note 14.

21. Except to acknowledge the presence of negative attitudes and assert that these should be changed. *See id.*

22. Parts III.A and III.B *infra* summarize the history of Roma oppression and the dynamics of the interaction between Roma and non-Roma in Europe.

23. EUR. COMM'N DIRECTORATE-GEN. FOR EMPLOYMENT & SOC. AFFAIRS, THE SITUATION OF THE ROMA IN AN ENLARGED EUROPEAN UNION 1 (2004), available at http://www.erionet.org/site/upload/publications/reports/roma_in_enlarged%20european%20union_en.pdf.

24. Specific facts and statistics about the Roma socio-economic situation in Europe are presented in Part II.A *infra*.

25. “[O]ne of the European Union’s (EU) most important challenges is the integration of a group of its own citizens [the Roma].” Gaétan Pouliot, *The Roma: A New European Challenge; Europe’s Hidden Face*, www.eucanyja.ca/en/documents/The-Roma.doc (last visited Jan. 31, 2010).

the normative nature of anti-Gypsyism, the isolationist and ethnocentric nature of certain elements of Romani culture and Gypsy law (and especially outsiders' perception of those), and the profound and mutual mistrust between Roma and non-Roma in European countries.

This Note aims to provide enough background to illuminate the dynamics of social interaction between Roma and non-Roma in order to explain one important reason why the European human rights platform is ill-suited to effectively address the profound social, political, and cultural challenges the Roma face in Europe. Because socio-ethical norms are more powerful than written law in shaping social dynamics,²⁶ and because anti-Gypsyism and Gypsy oral law are such socio-ethical norms,²⁷ the minority rights legal framework will be ineffective unless the nature of the social tension between Roma and non-Roma is first acknowledged and addressed.

Specifically, this Note will argue the current profound animosity between Roma and non-Roma is the result of unwritten socio-ethical norms operating between Roma and non-Roma and is unlikely to be easily shifted in favor of the written law. Attempts by governments and European institutions to legislate and to encourage norm internalization²⁸ in the affected societies and cross-nationally has been ineffective.²⁹ This is because European authorities fail to address meaningfully the deeply rooted animosity and historically self-justified mistrust operating between Roma and non-Roma that are currently defining the dynamics between those groups.³⁰ In simpler words, it is difficult to promote minority rights and non-discrimination when the majority and minority have not even agreed to cooperate with each other.

The following sections of this Note consider the Roma minority, the non-Roma majorities and governments, and the European Union, in light of Koh's theory of norm internalization³¹ and the prevalence of social norms over legal

26. The proposition that social norms are more powerful than written law is put forth in: Lynn M. LoPucki & Walter O. Weyrauch, *A Theory of Legal Strategy*, 49 DUKE L.J. 1405 (2000). This is discussed in more detail in Part IV *infra*.

27. *See infra* Part IV.

28. According to a theory advanced by Harold Koh, international human rights norms become effective in a society only when they undergo a process of "norm internalization," through which the existing socio-ethical norms in a given society start evolving toward and, eventually, coincide with, the written law. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2646 (1997). *See also infra* Part IV (discussing Koh's theory of this process).

29. Improvements of the Roma situation between 2002 and 2008 have been called "feeble." *Debate on West Balkans at the European Policy Center*, ERIO NEWSLETTER (Eur. Roma Info. Office, Brussels, Belg.), Feb. 2008, at 2, available at <http://erionet.org/site/upload/publications/newsletters/NL%202-2008%20%28site%29.pdf>.

30. *See infra* Part V.

31. *See infra* Part IV.

rules.³² First, the complexity of Gypsy law and culture is examined, including some isolationist and ethnocentric elements. Second, the nature of anti-Gypsyism and political opposition to Roma inclusion are discussed. Third, this Note argues that Roma attitudes toward non-Roma, and non-Roma attitudes toward Roma, constitute socio-ethical norms and, as such, are stronger forces of social behavior than minority rights laws. Last, Europe's strategy for Roma integration is analyzed in light of a norm-internalization theory and the existing social dynamics between Roma and non-Roma.

II. COMPLEXITY OF ROMA IDENTITY, LAW, AND CULTURE

A. Current Situation

The term Roma generally refers to persons who “[describe] themselves as Roma, Gypsies, Travellers, Manouches, and Sinti, as well as other terms.”³³ The term Gypsy originated from the mistaken assumption that Gypsies came from Egypt; the term Roma is similarly misdirecting to the extent it suggests Romanian origins.³⁴ Roma encompass people belonging to both nomadic and non-nomadic communities—diverse in respect to language, religion, nationality, history, and culture—but understood to share a common ethnicity.

The Roma emerged from India around 400 B.C. as a tribe of nomadic musicians and entertainers, and they found their way into Europe in the thirteenth and fourteenth centuries, mainly as slaves.³⁵ It is uncertain whether they were

32. See *infra* Part IV.

33. Directorate Gen. of Employment & Social Affairs of the European Commission, *The Situation of Roma in an Enlarged European Union*, at 5 (2004), available at <http://ec.europa.eu/social/main.jsp?catId=813&langId=en&moreDocuments=yes>. For a discussion of the internal disagreement among Roma themselves regarding which term should be used, see Larry Olomofe, *In the Eye of the Beholder: Contemporary Perceptions of Roma in Europe*, ROMA RIGHTS Q., 2007, at 9–15, available at <http://www.errc.org/cikk.php?cikk=2881#1>.

34.

The term “Gypsies” . . . originates from past mistaken beliefs that the Romani people came from Egypt. . . . Even the terms “Rom” (singular) and “Roma” (plural) lend themselves to misunderstandings because they seem to imply descent from Romania; in fact, these terms connote “man” or “husband” in the Romani language, which is related to Sanskrit.

GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE vii (Walter O. Weyrauch ed., 2001) [hereinafter GYPSY LAW].

35. Patrin, Timeline of Romani History, <http://reocities.com/Paris/5121/timeline.htm> (last visited Jan. 31, 2010).

brought and traded as slaves, or brought to Europe and enslaved later in the course of warfare. Still, historians claim that well over half the Roma population in Europe during the fourteenth century consisted of slaves.³⁶

Roma are currently the largest minority in Europe, with some estimates ranging from 10 to 12 million³⁷ and others ranging from 6.8 to 8.7 million.³⁸ Precise demographic data is unavailable, and official and unofficial estimates for each country vary substantially.³⁹ Relevant data is scarce, partly due to an unwillingness of the population to self-identify as Roma for official purposes.⁴⁰

Currently, the Roma throughout Europe experience extreme social exclusion, poverty, and intentional—often systematic—marginalization and discrimination in housing, healthcare, education, social benefits, and job opportunities.⁴¹ Roma have a lower life expectancy (10 to 15 years lower than the European average),⁴² have a higher infant mortality rate, live in substandard conditions (described as “de facto ghettos” even in Western European states),⁴³ face unemployment of up to 80 percent,⁴⁴ and, in many instances, do not have access to healthcare or education.⁴⁵ To illustrate the problem of unemployment,

36. IAN HANCOCK, *THE PARIAH SYNDROME: AN ACCOUNT OF GYPSY SLAVERY AND PERSECUTION* 1 (1987).

37. “There is an almost complete lack of official, publicly available and reliable Roma-specific data of relevance to EU social inclusion and anti-discrimination policy.” *THE SITUATION OF THE ROMA IN AN ENLARGED EUROPEAN UNION*, *supra* note 23, at 37.

38. “Estimates indicate that between 6.8 and 8.7 million Roma live in Europe, 68 per cent of whom live in Central and Eastern Europe and the Balkans.” U.N. DEV. PROGRAMME, *AT RISK: ROMA AND THE DISPLACED IN SOUTHEAST EUROPE 12* (2006), available at http://hdr.undp.org/en/reports/regionalreports/europethecis/Europe_&_the_CIS_2005_en.pdf.

39. For example, the 2001 official Bulgarian census sets the number of Roma in Bulgaria at 370,908. News Guide Bulgaria, *Census 2001: Ethnic Groups in Bulgaria (Self-Awareness)*, [http://news.guide-bulgaria.com/News.aspx?1687=Census_2001_Ethnic_Groups_in_Bulgaria_\(self-awareness\)](http://news.guide-bulgaria.com/News.aspx?1687=Census_2001_Ethnic_Groups_in_Bulgaria_(self-awareness)) (last visited Jan. 31, 2010). Expert estimates, however, suggest that the number for the country is between 700,000 and 800,000, U.N. Dev. Programme, *supra* note 38, at 12.

40. U.N. Dev. Programme, *supra* note 38, at 12, 16.

41. *THE SITUATION OF THE ROMA IN AN ENLARGED EUROPEAN UNION*, *supra* note 23, at 6.

42. *EU Summit Looks at Ways to Improve Lives of Roma*, DEUTSCHE WELLE, Sept. 16, 2008, <http://www.dw-world.de/dw/article/0,2144,3648166,00.html>.

43. Roma are described as living “in de facto ghettos” even in Western European states. Vladimír Špidla, *Concluding Address at the International Conference: Roma Diplomacy – A Challenge for Europe* (Dec. 5, 2005), available at http://ec.europa.eu/employment_social/fundamental_rights/pdf/roma/icdipldec05_en.pdf (on file with author).

44. *THE SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION*, *supra* note 23, at 2.

45. *Id.* at 1-2.

consider that, in 2006, 90 percent of all Roma in Bulgaria lived on state benefits.⁴⁶ Additionally, due to the combination of lower-than-average life expectancy and higher-than-average fertility rates, it is estimated that half the Roma population in Central and Eastern Europe is under the age of 20.⁴⁷ Widespread lack of identification documents, often statelessness, and lack of title to land occupied by Roma communities further complicate the problems they face.⁴⁸ Finally, the unfortunate situation of the Roma is illustrated by the percentage of Europeans who consider being a Roma a disadvantage: 77 percent of Europeans consider being Roma a disadvantage, while 79 percent consider being disabled a disadvantage.⁴⁹

The statistics above demonstrate the seriousness of the social, economic, and political disadvantages of Roma communities. These statistics only hint, however, at the prevalence and nature of negative stereotypes toward Roma, generally referred to as anti-Gypsyism.⁵⁰ These attitudes are responsible for the lack of political will toward Roma integration but are themselves partly a reaction to Gypsy law and culture.⁵¹

B. Roma Identity

Roma activists in the last century have assumed that a united European Roma community can be more effective in advocating for minority rights than independent, separate efforts of each country's Roma populations within their local jurisdictions.⁵² When the World Bank and the Open Society Institute, for

46. "According to official figures, 370,000 Roma currently live in Bulgaria—90 percent of whom live on state benefits, receiving 75 euros a month per family." *Roma in Bulgaria*, DER STANDARD (Austria), Aug. 8, 2006, available at <http://www.eurotopics.net/en/presseschau/archiv/article/ARTICLE6248-Roma-in-Bulgaria> (EURO TOPICS trans.).

47. This age distribution is comparable to that of the poorest African or Asian societies. Commission Staff Working Document, *Community Instruments and Policies for Roma Inclusion*, at 4, COM (2008) 420, available at <http://register.consilium.europa.eu/pdf/en/08/st11/st11530-ad01.en08.pdf> [hereinafter Working Paper 2008].

48. *Id.* at 35. For a further discussion of the problem of Roma statelessness in particular, see generally EUROPEAN PARLIAMENT, COMMITTEE ON CIVIL LIBERTIES, JUSTICE & HOME AFFAIRS, ROMA AND STATELESSNESS (2007).

49. *European Roma Summit Conference Report*, *supra* note 14, at 4.

50. See *infra* Part III.B (defining and discussing anti-Gypsyism).

51. See *infra* Part III (arguing that anti-Gypsyism is at least partially a reaction to Gypsy law and "social model").

52. This is evidenced by the emergence of multiple European Roma-focused NGOs in the last couple of decades aiming to represent European Roma, such as the International Romani Union, the European Roma Rights Centre (ERRC), and the European Roma and Travellers Forum (ERTF). For a list of Roma-focused organizations, see Universiteit van

instance, launched the Decade of Roma Inclusion in 2005,⁵³ “they assume[d] that any plan of action to systematically improve the living conditions of the Roma will need to transcend national borders.”⁵⁴ Some scholars point out that, if Roma are to be able to use the minority rights platform, they in fact need to strengthen, present, and even construct, a unified identity.⁵⁵

In uniting their efforts and strength, however, the Roma in Europe confront logistical problems in addition to the substantive problems of social isolation, disadvantages, and prejudice. Their scattered geography and lack of common language, religion, or defined common cultural identity create obstacles on the path of devising a unified approach.⁵⁶ The Roma are scattered throughout Europe⁵⁷—usually in hundreds of small, isolated, ghetto-like communities adjacent to villages and cities.⁵⁸ Only an estimated 2.5 million speak a language even

Amsterdam, Roma Organizations throughout Europe, <http://home.medewerker.uva.nl/h.j.m.vanbaar/page3.html> (last visited Mar. 13, 2010).

53. Decade of Roma Inclusion 2005-2015, About, <http://www.romadecade.org/about> (last visited Jan. 31, 2010).

54. Dirk Auer, *The Roma in Europe*, EUR. TOPICS MAG., Feb. 10, 2007, http://www.eurotopics.net/en/magazin/gesellschaftverteilerseite/roma_in_europa_2007_09/debatte_roma_in_europa/ (emphasis added).

55.

Existing mechanisms for minority rights tend to focus on relatively large and, more importantly, cohesive “national” minorities who are citizens of one state but have not only continued ethnic, cultural, religious and/or linguistic ties to another but also a national consciousness or solidarity with that other state. This view of minorities, clearly, excludes the [Roma]. Diverse [Roma] groups have no cohesive identity, and as a transnational community, the [Roma] people do not have a home country or a government to provide that unifying identity.

Lua Kamál Yuille, *‘Nobody Gives a Damn About the Gypsies’: The Limits of Westphalian Models for Change*, 9 OR. REV. INT’L L. 389, 413–14 (2007).

56. See generally Ditte Lauritzen, *Is There a Basis for a “Roma Nation”? A Critical Evaluation of Romani Identity and Common Interests Among European Roma 2* (2004), available at <http://www.tolerance.cz/courses/monnet/summer2004/essayDitte.doc>.

57. “The Roma live scattered throughout Europe, their communities are mixed and dispersed, but the awareness of their common origin, the disadvantaged social situation and the discrimination give them a sense of solidarity.” Eur. Consult. Assembly, Committee on Legal Affairs and Human Rights Report, *Legal Situation of the Roma in Europe*, Doc. No. 9397 (Apr. 19, 2002).

58. In 2006, “[o]ne third of the Roma in the Czech Republic [were reported as living] in closed ghettos, according to a study by the Czech Ministry of Labour and Social Affairs.” *The Ghettoisation of the Roma in Czech Republic*, HOSPODÁRSKÉ NOVINY (Czech Republic), Sept. 7, 2006, available at

remotely related to Romani,⁵⁹ and, even within that group, there are many different dialects with only rudimentary similarities;⁶⁰ the remaining 8 to 10 million speak the language of their country of residence.⁶¹ The Roma have no common religion: some are Christian, some are Muslim,⁶² some subscribe to traditional Roma superstitions and beliefs, and some do not practice any religion.⁶³

Summing up, it has been argued that Roma across Europe have a common identity based on common origin in India, a common history in Europe, a common culture of being nomads and a darker look which differ from other Europeans. . . . However, it can be argued that the Romani identity today is relatively weak. Thus, it is pointed out that “the Roma constitute an extremely diverse minority,” and “the Roma themselves do not (yet) make up a homogenous ethnic group. Rather, the Roma today are a continuum of more or less related subgroups with complex, flexible, and multilevel identities.”⁶⁴

These differences exist even among Roma communities in the same country.⁶⁵ In light of these factors, some European states in the past have refused to acknowledge that Roma constitute a distinct minority, but have insisted that their situation is simply a socio-economic problem.⁶⁶ While this semantic description may be used as a justification for a government’s chosen approach toward the Roma,⁶⁷ the lack of clear common identity, language, or culture also makes it difficult for Roma themselves to unite their efforts.

http://www.eurotopics.net/en/search/results/archiv_article/ARTICLE6831-The-ghettoisation-of-the-Roma-in-the-Czech-Republic (EURO TOPICS trans.) (emphasis added).

59. “The language is of Indian origin and is based on Sanskrit or Hindi. Today, around 2.5 million Roma speak the language and in Europe there are between 50 and 100 dialects, which are ‘not mutually comprehensible except at very basic levels.’” Lauritzen, *supra* note 56, at 2 (internal citation omitted).

60. *Id.*

61. *Id.*

62. In Bulgaria, some Roma are known as “Turski Tsigani” (meaning “Turkish Gypsies”) because they speak Turkish or a mix of Turkish and Bulgarian. See Elena Marushiakova & Vesselin Popov, *The Turkish Gypsies in the Balkans and the Countries of the Former Soviet Union*, in *GYPSIES AND THE PROBLEM OF IDENTITIES: CONTEXTUAL, CONSTRUCTED, AND CONTESTED* 179, 179 (Adrian Marsh & Elin Strand eds., 2006).

63. “British Romanichals speak a language with an English grammar and Rromanes lexicon; Rudara in Romania speak Romanian; Lovari in Sweden speak a Rromanes dialect. Many German Sinti practice Catholicism; Laloro in Estonia are Lutheran; Erlii in Bulgaria are Muslim.” Yuille, *supra* note 55, at 401–02.

64. Lauritzen, *supra* note 56, at 34 (internal citations omitted).

65. See Yuille, *supra* note 55, at 402.

66. Germany, for example. See *id.* at 412.

67. See *id.*

Roma attempts to unite their efforts have ranged from the declarations of a self-proclaimed “Gypsy King”⁶⁸ to the International Romani Union’s declaration of a Roma Nation in Europe.⁶⁹ In 2001, in an oral statement before the U.N. Commission on Human Rights, the International Romani Union requested recognition from the international community of the Roma Nation.⁷⁰ In that statement, the speaker described a nation with no territorial or state status claims, but one that unites individuals under the rule of law for the achievement of a common dream: a dream comparable to that of Martin Luther King Jr.⁷¹

Even if the international community was willing to recognize a Roma Nation, however, absent a precedent, the process, consequences, and advantages of such recognition are unclear.⁷²

No experience with the recognition of a non-territorial nation leaves open the question of the threshold that must be attained before a legally binding custom can be created. It will depend both upon the nature of the alleged rule and the opposition it arouses. Here, again, failure to act is as much evidence of states’ attitudes as are their actions.⁷³

Arguably, the interest that unites the diverse communities of Roma throughout Europe, and would provide the strongest claim to a shared identity, is the shared interest in equality, nondiscrimination, and integration.⁷⁴ Even efforts

68. For an article on the self-proclaimed Gypsy King, Florin Cioaba, see Brigitta Gabrin, *Gypsy King: The EU Offers New Hope for the Roma*, CAFÉ BABEL, Jan. 2, 2007, <http://www.cafebabel.com/eng/article/19854/gypsy-king-the-eu-offers-new-hope-for-the-roma.html> (Melanie Cutler trans.).

69. International Romani Union, *Declaration of a Roma Nation*, Jan. 1, 2001, available at <http://www.hartford-hwp.com/archives/60/132.html>.

70. Paolo Pietrosanti, Comm’r for Foreign Affairs, U.N. Comm’n on Human Rights, Oral Statement at the International Romani Union (Mar. 2001), available at http://www.radicalparty.org/humanrights/gy_comm_57_pietrosanti.htm (on file with author); see also Press Release, U.N. Comm’n on Human Rights, Commission on Human Rights Begins Review of Indigenous Peoples (Apr. 12, 2001), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/7128598103EDC5AAC1256A310026C37D?opendocument>.

71. “[T]he same political, concrete, realistic dream of Martin Luther King, who did not fight merely for the emancipation of a minority, but for the implementation and enforcement of the American Constitution, the founding document of one of the oldest democracy” Pietrosanti, *supra* note 70.

72. For a discussion of advantages and disadvantages of the Roma nation approach, see generally Lauritzen, *supra* note 56, concluding that there is a sufficient level of shared Roma identity and common interests to justify the formation of a political organization.

73. Eva Sobotka, *They Have a Dream: The State of Roma Affairs in the Czech Republic*, CENT. EUR. R., May 21, 2001, <http://www.ce-review.org/01/18/sobotka18.html>.

74. See generally Lauritzen, *supra* note 56.

to unite around these shared goals have been difficult, as corruption and lack of transparency and open communication have challenged the integrity of transnational Roma advocacy bodies.⁷⁵

Several large organizations representing the Roma in Europe have formed in the last several decades, including the European Roma Rights Centre⁷⁶ and the European Roma and Travellers Forum.⁷⁷ These organizations have received significant recognition by European authorities as representative of the European Roma population and are entrusted with initiating and carrying out various social programs funded by the EU.⁷⁸ The lack of strong Roma identity and leadership structure are hurdles on the path toward effective integration, but they pale in comparison to the hurdle that is the public's negative understanding of Romani ethical tradition and culture (Gypsy law) and the perceived refusal of Roma to take responsibility for internal human rights issues or to acknowledge certain social obligations.⁷⁹

75. Professor Ian Hancock, author of *THE PARIAH SYNDROME*, *supra* note 35, severed all ties with the International Romani Union in 1998 due to corrupt inner politics of the organization. Although he had “spent the greater part of [his] adult life in support of [the International Romani Union], among other things successfully pushing for its representation in the UN and in UNICEF,” he had “witnessed such a tragic decline in its organization and operation, that [he] no longer want[ed] to be associated with it.” Ian F. Hancock, *Statement Regarding My Position with the International Romani Union*, ROMNEWS NETWORK CMTY., <http://www.romnews.com/community/modules.php?op=modload&name=News&file=article&sid=322&mode=thread&order=0> (last visited Mar. 13, 2010).

76. European Roma Rights Centre, http://www.errc.org/English_index.php (last visited Mar. 13, 2010).

77. European Roma and Travellers Forum, <http://www.ertf.org/> (last visited Mar. 13, 2010). For a list of Roma-focused organizations, see Universiteit van Amsterdam, *supra* note 52.

78.

Member states of the Council of Europe should encourage the Roma to set up their own organi[z]ations and/or political parties, and participate in the political system as voters, candidates, or members in national parliaments. Romani communities, organi[z]ations and political parties should be given the full opportunity to take part in the process of elaborating, implementing and monitoring program[s] and policies aimed at improving their present situation.

Eur. Consult. Assembly, *supra* note 57, at I.10. *See also* Working Paper 2008, *supra* note 47, at 29.

79. Claude Cahn, *The Unseen Powers: Perception, Stigma and Roma Rights*, ROMA RIGHTS Q., 2007, at 7–8, available at <http://www.errc.org/cikk.php?cikk=2870> (stating that some members of the Roma elite deny that there are internal human rights violations in the Roma communities). *See also infra* Part II.D.

C. Gypsy Law

Even though different Romani communities often know little about each other,⁸⁰ and groups have adapted differently to their environments, perhaps one unifying factor for Roma is that they operate under a similar normative code—"an autonomous legal system, one which operates outside the parameters of state law."⁸¹ "Romani systems of the administration of justice vary from each other just about as much as is humanly conceivable, even though different groups mostly have similar moral codes."⁸² Because Roma legal tradition is oral, variations in normative proscriptions and prescriptions across groups are understandable,⁸³ but the main principles of Gypsy law are arguably shared.⁸⁴

"Gypsy law has evolved to insulate Gypsies from the host society, and thus to maintain its own insularity from the host legal system. . . . Gypsies share a fervent belief in their own uniqueness, and ethnocentricity has kept them from violating their prohibition against cultural integration."⁸⁵ Gypsy law has arguably evolved as a defensive and insulating mechanism⁸⁶ and manifests not only a deep mistrust toward *gaje* (a Romani term encompassing all non-Roma)⁸⁷ but also "disdain for the non-Gypsy world,"⁸⁸ cultural superiority, and entitlement to treat *gaje* as lesser people.⁸⁹ Gypsy law centers around taboo notions of purity and impurity of body parts, words, and actions.⁹⁰ *Gaje* are seen as categorically impure and, therefore, to be avoided.⁹¹

80. "[T]he various branches of the Romani people know little about each other." GYPSY LAW, *supra* note 34, at 2.

81. *Id.* at 12.

82. T.A. Acton, *A Three-Cornered Choice: Structural Consequences of Value-Priorities in Gypsy Law as a Model for More General Understanding of Variations in the Administration of Justice*, 51 AM. J. COMP. L. 639, 640 (2003).

83. "[A] legal culture that for about one thousand years has been based on oral tradition, and contradictions are inevitable." GYPSY LAW, *supra* note 34, at 2.

84. "[D]ifferent groups mostly have similar moral codes." Acton, *supra* note 82, at 640.

85. GYPSY LAW, *supra* note 34, at 27–28.

86. "[T]he Gypsy legal system not only protects the Gypsies from external and internal threats, but also serves as a code that organizes Gypsy society. In particular, Gypsy law has evolved to insulate Gypsies from the host society, and thus to maintain its own insularity from the host legal system." *Id.* at 27.

87. Examples of those trends are found in Gypsy law as it related to *gaje* (a term encompassing all non-Romani people without differentiation). *Id.*

88. *Id.* at 47.

89. *See generally id.*

90. *See generally id.*

91. *See generally* GYPSY LAW, *supra* note 34.

The Gypsies generally view the *gaje* as having no sense of justice or decency. . . . Furthermore, not only do the Gypsies consider non-Gypsies polluted, they also believe that Gypsy names and rituals lose their magical effectiveness if uttered to *gaje*. Consequently, the Gypsies believe they should approach and respond to the *gaje* with caution, especially if the *gaje* profess good intentions.⁹²

“Under Gypsy law, theft and fraud are crimes only when perpetrated against other Gypsies.”⁹³ “The Gypsies . . . have no moral objections to these activities so long as one does not victimize another Gypsy, causes no physical harm, and takes no more than is necessary to survive.”⁹⁴ *Gaje* are seen as overindulgent and exploitative⁹⁵ or as fools,⁹⁶ and, by some accounts, theft from *gaje* is even considered praiseworthy.⁹⁷ If a Gypsy steals from another Gypsy, however, “the thief is publicly shamed and banished from the community until he or she has repaid the victim.”⁹⁸ Gypsies view fraud and theft from *gaje* not only as permissible, but they also “engage in deliberately fraudulent practices.”⁹⁹

It is the popular understanding—or misunderstanding—of these elements of Gypsy law and attitudes toward *gaje* that provides fuel for claims of the Romani “predatory nature” that is an essential part of anti-Gypsyism.¹⁰⁰

Because Roma maintain that “their own law is the only true law,”¹⁰¹ Roma often do not comply with the laws of the host country and often violate the host country’s theft and fraud laws.¹⁰² As a result, elements of Gypsy law are clearly incompatible with the law of the host country and therefore with the concept of integration. Currently, “in most cases in which the autonomous legal system of the Gypsies clashes directly with the law of the host country, the private legal system of the Gypsies prevails.”¹⁰³ The complex problem that arises here is that oral legal tradition and culture blend, and even scholars cannot quite agree on the proper differentiation or classification between them: Redfield categorizes

92. *Id.* at 25.

93. *Id.* at 52.

94. *Id.* at 49.

95. *Id.*

96. *Id.* at 49 n.166.

97. GYPSY LAW, *supra* note 34, at 49.

98. *Id.* at 47.

99. *Id.* at 51 (Examples listed include misrepresenting goods and trading unfit horses in Spain, considering welfare in the U.S. as the ultimate scam, used car and home repair deceptions, etc.).

100. *See infra* Part III.B (discussing anti-Gypsyism).

101. GYPSY LAW, *supra* note 34, at 49.

102. *Id.*

103. *Id.* at 12.

Gypsy “rules of convention” and “coherent patterns” as culture; Weyrauch calls them “laws.”¹⁰⁴

Some scholars claim that certain elements of Roma culture (or laws) have evolved to “[foster] the separation of Gypsy and non-Gypsy”¹⁰⁵ and to “[prohibit] against cultural integration.”¹⁰⁶ Scholars further note that Roma have stayed isolated largely by choice¹⁰⁷ and, for instance, have used illiteracy as a way to ensure the continuance of their oral legal tradition and to keep outside influences to a minimum.¹⁰⁸ Considering *gaje* as impure, using illiteracy as a method for self-preservation, and viewing blue-collar positions (such as factory work) as incompatible with the Roma’s sense of dignity and autonomy¹⁰⁹ may all have been, in some way, necessary factors in order to preserve some sense of distinct identity through history.

There may be a way to distinguish between cultural features that Roma would be entitled to preserve and oral legal principles or practices that serve as an isolationist and ethnocentric barrier, as well as conflict with the law of host countries. However, there is a lack of discussion and acknowledgement of these issues within the current discourse about Roma rights.¹¹⁰ In the absence of such discussion, the general public perceives Roma as pursuing a claim to preserve certain isolationist and ethnocentric norms in conflict with mainstream social rules, while, at the same time, acquiring additional legal entitlements and social benefits.¹¹¹ Viewed in this light, opposition to Roma inclusion is at least partially an opposition to certain perceived elements of their culture.¹¹² Discussing nuances of culture and law is understandably difficult in an environment in which even discussion of crime statistics is criticized as fueling stereotypes, as shown in the following section.¹¹³

104. *Id.* at 57.

105. *Id.* at 60.

106. *Id.* at 27–28.

107. “African Americans and Latinos have suffered from discrimination in a number of areas, such as the educational system, but the Roma have tended to stay apart by choice.” GYPSY LAW, *supra* note 34, at 60.

108. *Id.*

109. *Id.* at 58.

110. *See infra* Part V (discussing the European strategy for Roma inclusion).

111. Cahn, *supra* note 79, at 8 (arguing that “Roma advances are cut short . . . by a discourse which seeks justice on the one hand, but argues for exemption from culpability on the other”).

112. *See infra* Part III.B (discussing anti-Gypsyism).

113. *See infra* Part II.D.

D. Roma Denial of Internal Community Issues

Although some Roma advocates and scholars offer more contextualized reactions,¹¹⁴ for the most part, Roma organizations tend to criticize discussions of Roma crime or criminal statistics, arguing that such discussions only fuel anti-Roma stereotypes.¹¹⁵ Use of such statistics is not only seen as having this effect but is often described as an intentional attempt to fuel negative sentiments.¹¹⁶

Consider the following example: in July of 2007, Italian MEP, Roberta Angelilli, attributed to the European Union Fundamental Rights Agency (FRA) “a report that ‘mainly Roma children’ were involved in the ‘200-million-Euro business’ of child begging.”¹¹⁷ Consequently, the FRA publicly distanced itself from the report, and Angelilli was accused of using the report to inflame anti-Romani attitudes in Italy.¹¹⁸ It appears that whether or not the report was true was not even a part of the discourse that followed. Eloquently stated by Claude Cahn, “Roma rights . . . are undermined by efforts by prominent Roma to deny legitimacy to the idea that there may be particular human rights issues arising from and in Romani communities. Roma rights advances are cut short, frustrated and reduced by a discourse which seeks justice on the one hand, but argues for exemption from culpability on the other.”¹¹⁹

Responses to the Italian government’s decision to fingerprint Roma exemplify the dynamic.¹²⁰ An unscientific TV poll showed that 80 percent of Italians supported plans to better control Roma illegal activity.¹²¹ The Roma community and human rights activists rebuked the plan as clearly discriminatory, and this became the main topic of debate.¹²² Meanwhile, the problem of criminal activity itself remained off the public discourse stage, despite arguably being a shared issue around which Roma and non-Roma could unite.

114. *See, e.g.*, Cahn, *supra* note 79.

115. Several examples of such criticism are offered in this section.

116. Consider this reaction: “Comments like Interior Minister Roberto Maroni’s call for the immediate dismantlement of Roma camps, and the arrest of their inhabitants, are to my mind clearly fascist.” *Euro MP: Italy’s Handling of Roma ‘Clearly Fascist’*, EURACTIV NETWORK, June 2, 2008, http://www.euractiv.com/en/priorities/euro-mp-italy-handling-roma-clearly-fascist/article-172925?_print.

117. Cahn, *supra* note 79, at 8 (internal citation omitted).

118. Claude Cahn uses this example to condemn the use of statistics for the purpose of fueling anti-Romani sentiments, but argues strongly in favor of Roma owning up to the internal violations of human rights, as well as demanding respect of those rights from non-Roma community. *Id.*

119. *Id.*

120. *See supra* Part I.A (discussing the Italian fingerprinting program and debate).

121. “[A]n unscientific TV poll showed Maroni’s plans to better control the Roma had the overwhelming support of 80% of the Italians.” *Council of Europe Blasts Italy over Roma Fingerprinting*, *supra* note 7.

122. *Id.*

Arguably, Roma are in a better position than non-Roma to address human rights violations that arise from, and happen inside, Romani communities.¹²³ As Cahn points out, addressing such issues might be the fastest way to start dispelling Roma stereotypes.¹²⁴ Cahn's view is consistent with the thesis of this Note that, until the existing social norms are addressed, introducing minority rights legislation into the mix is unlikely to improve the situation.¹²⁵ As Cahn points out, the problem with dispelling Roma stereotypes by addressing internal human rights issues is that by doing so, Roma would be acknowledging, and, in effect, admitting to these stereotypes.¹²⁶ This is something that the Roma community is not prepared to do.¹²⁷ The next section, summarizing the history of Roma oppression, makes it easy to understand why this is so.

III. PERSISTENCE OF SOCIAL AND ETHICAL OPPOSITION TO ROMA INTEGRATION

A. History of Oppression

Historically, the Roma have been oppressed, enslaved, persecuted, expelled, and subjected to ethnic cleansing, as recently as 1999.¹²⁸ The following sample of events illustrates the pervasive and continuous persecution of Roma in Europe. Anti-Gypsy laws were passed as early as 1471—first in Switzerland, then in most other European countries.¹²⁹ Roma were expelled from cities and countries (the penalty for Roma arriving in England was death); executed or mutilated for being Gypsy; and transported to America, Portugal, Australia, and Brazil.¹³⁰ In many countries, Roma were ordered to settle down or face expulsion or death.¹³¹ In 1803, Roma were banned from being able to reside in France.¹³² In 1830, as a matter of policy, Germany started placing Roma children with non-Roma families.¹³³ In 1885, Roma were excluded by U.S. immigration policy, and many Roma returned to Europe.¹³⁴ In addition, during the 19th century,

123. Cahn, *supra* note 79, at 8.

124. *Id.*

125. *See infra* Part IV.

126. Cahn, *supra* note 79, at 7–8.

127. *Id.*

128. The most recent incident of ethnic cleansing happened in 1999, concurrent with the Kosovo conflict. Voice of Roma, The Current Plight of the Roma in Kosovo: Summary of Report, http://www.scn.org/roma/survey_intro.html (last visited Jan. 31, 2010).

129. Patrin, *supra* note 35.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

nomadism was banned in both Serbia and Bulgaria.¹³⁵ By 1876, Roma were proclaimed to be of a “genetically criminal nature.”¹³⁶ In 1926, Switzerland mimicked Germany and began taking Roma children away from their families, changing their names, and placing them in non-Roma homes;¹³⁷ two years later, Bavaria placed all Roma under permanent police surveillance.¹³⁸ In 1934, Sweden began sterilizing Roma.¹³⁹

During the Holocaust, Roma faced the same fate as Jews and “were singled out for annihilation on racial grounds.”¹⁴⁰ Some scholars estimate that the Roma death toll ranged from 220,000 to 500,000.¹⁴¹ Others place it closer to 600,000.¹⁴² The fact that the international community seems unwilling to acknowledge the Roma Holocaust or provide reparations for Roma survivors (similar to those provided for Jewish survivors) is a source of a continuing indignation by members of the Roma elite.¹⁴³ In January 2009, after the U.N. failed to include the Roma Holocaust in the commemoration ceremony for the International Day in the Memory of the Holocaust, the European Roma and Travellers Forum (ERTF) president, Rudko Kawczynski, said the following:

The Holocaust was the implementation of the Final Solution, Hitler’s genocide programme intended to eradicate the genetic contaminants in his plan to create a master race. Only Jews and Roma were subject to the Final Solution, and both peoples lost the same percentage of their total number. However, since the end of the war in 1945, little has been done to acknowledge the Romani survivors.¹⁴⁴

135. Patrin, *supra* note 35.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* For a detailed discussion of the situation of the Gypsies in Europe from the time of their arrival through the early twentieth century, see generally HANCOCK, *supra* note 36.

140. HANCOCK, *supra* note 36, at 65. By some accounts, Nazi persecution of Gypsies started earlier and under stricter criteria than that of Jews: “Criteria for classification as a Gypsy were twice as strict as those later applied to Jews: if two of a person’s eight great-grandparents were even part-Gypsy, that person had too much Gypsy ancestry to be allowed, later, to live. [By comparison, to be considered Jewish, the definition required one Jewish grandparent.]” *Id.* at 64.

141. Holocaust Teacher Resource Center, Sinti and Roma (“Gypsies”): Victims of the Nazi Era, <http://www.holocaust-trc.org/sinti.htm> (last visited Jan. 31, 2010).

142. HANCOCK, *supra* note 36, at 81.

143. Press Release, European Roma and Travellers Forum, Roma Ignored at the UN Commemoration of International Day in the Memory of the Holocaust (Jan. 20, 2009), available at http://www.ertf.org/down/PR_UN_160109.pdf.

144. *Id.*

In the former Communist Bloc, serious efforts were made to assimilate the Roma.¹⁴⁵ Stalin banned the Romani language and culture.¹⁴⁶ Roma were provided social benefits, healthcare, education, and jobs, like everyone else; they arguably, “benefited from a system that espoused worker equality.”¹⁴⁷ Eastern bloc countries forced Roma children to attend school; sometimes, the schools were segregated, and many Romani children ended up in schools for the mentally ill.¹⁴⁸

Extreme measures took place in Czechoslovakia, where Roma women were coerced into sterilization.¹⁴⁹ As late as 1976, there were government proposals for compulsory sterilization as an act of “socialistic humanity,” justified by claims that twenty percent of the Romani population was mentally retarded.¹⁵⁰ Roma neighborhoods remained separate from non-Roma communities;¹⁵¹ sometimes, the separation was marked by tall, long concrete walls erected by city managers to keep Romani neighborhoods segregated and invisible.¹⁵²

The transition to democracy and a market economy in post-Communist nations has offered prosperity to many; however, many Roma have not experienced this prosperity.¹⁵³ They did not benefit from privatization of land, suffered disproportionate increase in unemployment, and were totally unprepared

145.

The Communist Assimilation Plans resulted in large numbers of Roma being brought into the urbanized areas where the children were sent to the state schools. The aims of these policies were to break up the large Romani communities, resettle the Roma among the general population as members of a new urban-sub-proletariat, educate the children and hopefully assimilate the Roma into the general population.

Ronald Lee, *Roma and Education*, <http://kopachi.com/articles/roma-and-education-by-ronald-lee/> (last visited Jan. 31, 2010).

146. Patrin, *supra* note 35.

147. Jeffrey Fleishman, *New Gypsy Vision for the Future*, L.A. TIMES, June 23, 2006, available at <http://articles.latimes.com/2006/jun/23/world/fg-gypsies23>. See also *Gypsies Want Global “Nation” to Fight Exclusion*, AGENCE FRANCE PRESSE, July 25, 2000, <http://www.globalpolicy.org/nations/gypsy.htm>.

148. Fleishman, *supra* note 147; see also Lee, *supra* note 145 (illustrating that governments required students to attend state schools as part of their assimilation policies).

149. Social workers would obtain uninformed consent promising cash and tangible goods, then perform sterilizations “often under the guise of caesarean sections and abortions.” Florinda Lucero & Jill Collum, *Human Rights in Russia and the Former Soviet Republics: The Roma During and After Communism*, TOPICAL RES. DIG. 98, 98 (2007), available at <http://www.du.edu/korbel/hrhw/researchdigest/russia/roma.pdf>.

150. HANCOCK, *supra* note 36, at 102.

151. See *The Ghettoisation of the Roma in Czech Republic*, *supra* note 58.

152. The author is aware of several such walls in various cities in Bulgaria, for instance, in the city of Plovdiv.

153. *Gypsies Want Global “Nation” to Fight Exclusion*, *supra* note 147.

to confront the rapidly changing social conditions.¹⁵⁴ “Under communism, gypsy communities were protected from total social and economic exclusion by safety nets which ensured that everyone had equal rights to basics like education, housing and employment. In the free-market world which has steamrolled across Eastern Europe since 1989, many have become virtually total outcasts.”¹⁵⁵

Instead of improving, there are signs that the situation of some Roma communities in Europe is getting worse: in April of 2009, EC Commissioner Vladimír Špidla¹⁵⁶ expressed a deep concern about “the *increasing* level of aggression against Roma in the European Union,” pointing to “a pattern of violence targeting Roma.”¹⁵⁷

Even this brief historical summary begs the question, “Why?” Answering this question is well beyond the scope of this Note, which only looks at one aspect of anti-Gypsyism. This paper argues that anti-Gypsyism is more than a dislike of, or intolerance toward, a group of people who look different or are perceived to be inferior. It is a moral judgment toward aspects of Roma tradition and culture, seen as justified by self-preservation and defense of a social model.¹⁵⁸

B. Anti-Gypsyism: A Special Type of Moral Racism

The Gypsies . . . are an idle, miserable race, a curse to the countries they inhabit, and a terror to the farmer through whose lands they stroll. They seem utterly destitute of conscience, and boast of dishonesty as if it were a heavenly virtue Laws have been passed in several countries to banish them, and great cruelties sometimes practiced to enforce these laws So deeply rooted are sin and vagrancy in the hearts of this miserable race, that neither penal laws nor bitter persecution can drive it out.¹⁵⁹

154. *See id.*

155. *Id.*

156. Špidla is the Commissioner for Employment, Social Affairs, and Equal Opportunities. *See* European Commission, Vladimír Špidla – EU Commissioner for Employment, Social Affairs and Equal Opportunities, http://ec.europa.eu/commission_barroso/spidla/index.cfm?langId=en.

157. Declaration by Vladimír Špidla, Commissioner for Employment, Social Affairs, and Equal Opportunities, European Commission, on Violence Against Roma (Apr. 20, 2009), <http://ec.europa.eu/social/main.jsp?catId=518&langId=en&newsId=489&furtherNews=yes> (emphasis added).

158. *See infra* Part III.B (discussing the “moral” nature of anti-Gypsyism).

159. O.P. GOYAL, *NOMADS AT THE CROSSROADS* 38 (Isha Books 2005) (quoting *The Christian Enquirer*, Sept. 29, 1855).

In some people, the term “Roma” evokes notions of a romantic and carefree lifestyle devoted to travelling, music, and a celebration of life.¹⁶⁰ But European attitudes toward Roma are defined by anti-Gypsyism.¹⁶¹ “[A]nti-Gypsyism is a specific form of racism which is based on de-legitimation and moral exclusion.”¹⁶² Roma are seen as “crooks [who] will steal or swindle”¹⁶³ and social parasites with “deviant traits.”¹⁶⁴

Some theorists argue that stereotypes of deviant and counterculture groups are necessary for the formation and sustenance of cultural identity.¹⁶⁵ “Deviant forms of behavior, by marking the outer edges of group life, give the inner structure its special character and thus supply the framework within which the people of the group develop an orderly sense of their own cultural identity.”¹⁶⁶

Ian Hancock gives several reasons stemming from internal and external factors for the emergence and persistence of a negative Roma stereotype in Europe.¹⁶⁷ The historical circumstances of the Gypsies’ arrival in Europe as scattered peoples linked by language, culture, and origin, but lacking any political, religious, or geographic unity, contributed to their original failing to assert a positive identity.¹⁶⁸ Further contributing factors were an “[a]ssociation with the Islamic threat, their dark skin, and the various means of livelihood which exploited the superstitious nature of the Medieval Europeans.”¹⁶⁹

Additionally, Hancock argues, internal factors compelled Gypsies to intentionally distance themselves socially from non-Gypsies.¹⁷⁰ Gypsy law (internalized concepts of pollution and cleanliness), although adopted to a

160. “The romanticized image of the ‘Gypsy’ is alive and well in song lyrics, novels, costume parties, musical groups, and other forms of cultural imagery They dance by campfires, travel in caravans, tell fortunes with crystal balls or Tarot cards.” Voice of Roma, Breaking “Gypsy” Stereotypes, http://www.voiceofroma.com/culture/gyp_vs_rom.shtml (last visited Feb. 18, 2010).

161. See, e.g., *European Roma Summit Conference Report*, *supra* note 14.

162. “[A]nti-Gypsyism is a specific form of racism which is based on de-legitimi[z]ation and moral exclusion.” Working Paper 2008, *supra* note 47, at 3.

163. Office of the Commissioner for Human Rights, Alvaro Gil-Robles, *Final Report on the Human Rights Situation of the Roma, Sinti, and Travellers in Europe*, Feb. 15, 2006, at 8, COM (2006) 1 final (Feb. 15, 2006), available at <https://wcd.coe.int/ViewDoc.jsp?id=962605&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

164. THE SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION (2004), *supra* note 23, at 7.

165. HANCOCK, *supra* note 36, at 117.

166. *Id.*

167. See generally *id.*

168. *Id.* at 115.

169. *Id.*

170. *Id.*

different extent by different groups, dictated a variety of behaviors in all aspects of social interaction.¹⁷¹

As described in the section on Gypsy law above, non-Gypsies were seen as unclean and polluting, and, thus, interactions with them were to be avoided.¹⁷² Additionally, according to Gypsy law, crimes like theft and fraud, against non-Roma are not crimes and are not morally wrong.¹⁷³ It is not hard to imagine how these isolationist elements of Gypsy culture might have contributed to the development of stereotypes and anti-Gypsyism.

Hancock emphasizes the powerful role of the media in the perpetuation of Roma stereotypes and notes that most (if not all) Roma images, up until the twentieth century, have been created by non-Roma and were created for the purposes of perpetuating either a romanticized version or a deviant social-outcast version of Roma identity.¹⁷⁴ The media has effectively assisted communities, Hancock reasons, in using the image of Gypsies to project their fantasies, to serve as scapegoats, or else to define the boundaries of their own cultures.¹⁷⁵

What is instrumental about viewing Gypsy culture as “deviant” and “counter-culture” is that such classification provides powerful justification for discrimination and opposition.¹⁷⁶ The next section examines the current widespread political opposition to Roma inclusion.

C. Local Opposition to Roma Inclusion

I know in Germany more than 70 percent of people are hostile towards the Roma. These are stereotypes. What we are facing in Europe is a deeply-rooted cultural codex called ‘anti-gypsism’ or ‘anti-ciganism’, that is really part of society. Walk down the street and ask a normal guy what he knows about gypsies, about Roma, and he will come out with ‘they’re thieves, they’re beggars’ and so on: all the stereotypes that we’ve known for centuries.¹⁷⁷

There is ample evidence that negative stereotypes and a basic mistrust toward the Roma continue and often result in widespread opposition to Roma

171. HANCOCK, *supra* note 36, at 115.

172. *See supra* Part II.C.

173. *See* HANCOCK, *supra* note 36, at 115.

174. *See generally id.*

175. *Id.* at 129.

176. “If people perceive of Gypsies as a counterculture, then unfortunately for all concerned, prejudice and discrimination might be looked upon as justifiable retaliation.” HANCOCK, *supra* note 36, at 117.

177. Rob Cameron, *Rudko Kawczynski – White Majority Must Also Adapt to Roma Minority*, RADIO PRAHA, Apr. 29, 2003, available at <http://www.radio.cz/en/article/40125>.

integration on the local level.¹⁷⁸ “A recent EU-wide public opinion survey shows that a quarter of Europeans would feel uncomfortable to have a Roma as their neighbour. In some countries half of the respondents take this view.”¹⁷⁹ Countries in Western and Central Europe fear that floods of Roma immigrants seeking better economic conditions will come from the newly admitted Eastern European countries.¹⁸⁰ Many in the Eastern European countries respond with resentment to special European programs that aid Roma but do nothing for non-Roma who are in the same economic situation.¹⁸¹

In Alvaro Gil-Robles’ 2006 report on the Roma situation, he expressed concern over the visible lack of political will in many places to address Roma problems, even when possible.¹⁸² He explained that local authorities, especially those in elected positions, “are often unwilling to implement measures under national program[is]” for Roma inclusion, often because such programs are unpopular with their constituents.¹⁸³ He further pointed out that officials blame “technical, economic and legal obstacles” for lack of progress for social programs, while the real, and very powerful and significant, culprit is lack of political will.¹⁸⁴

178. Working Paper 2008, *supra* note 47, at 3.

179. *Id.*

180. “A new wave of anti-Roma attitudes appears to be emerging in some countries of Western Europe, with media speculations about large scale immigration of Roma from Eastern Europe following the enlargement of the European Union.” Gil-Robles, *supra* note 163, at 5. For an in-depth discussion of how England’s recent migrant worker quotas might be an attempt to limit anticipated Roma migrant numbers, see Adriana Hristova, ‘Welcome To Europe, Which Has Always Been Yours’: Are Bulgarians and Gypsies Second Class Citizens?, 36 GA. J. INT’L & COMP. L. 677, 678, 686–87, 695 (2008).

181.

“When so many Bulgarians below the poverty line find out that the EU has set up special aid programmes for the Gypsies like free medical care, when they can’t afford to buy medicines or heat their homes in the winter because of fuel costs, then they are ready to listen to an extremist party like Ataka,” said François Frison-Roche, a Bulgarian specialist and researcher at the research institute, CNRS.

Laurent Geslin, *Post-Communism, Post Wars: Life Worsens for Gypsies*, LEMONDE DIPLOMATIQUE, Sept. 20, 2008, <http://intellibriefs.blogspot.com/2008/09/post-communism-post-wars-life-worsens.html> (Krystyna Horko trans.).

182. Gil-Robles, *supra* note 163, at 6.

183. *Id.*

184.

Each of my visits has revealed with increasing clarity, that the lack of real political will and the prevailing climate of intolerance create significant obstacles for the implementation of national programmes. In many countries, I observed that local authorities, especially those holding elected positions, are often unwilling to implement measures

By contrasting negative majority attitudes toward Gypsies with positive attitudes toward another ethnic minority in Bulgaria—Armenians—a Bulgarian journalist argues that tolerance is inappropriate for a minority with a “parasitic nature”:

Applying the notion of tolerance toward the Gypsies is simply unthinkable. We can be tolerant toward the Armenians, for example—they come to Bulgaria, a year later they know perfect Bulgarian. They identify themselves as Bulgarian; they belong to an ancient nationality. They are pleasant guests, who are a part of Bulgarian society, a part of our history and nation. Parasites [referring to Gypsies] are a different matter.¹⁸⁵

The comparison with Armenian minorities is interesting because it suggests that the Roma are discriminated against at least partially because they themselves have intentionally avoided integration.¹⁸⁶ What is objectionable about this avoidance is that it is perceived by the general public as a means to avoid social responsibility. As an example, in the village of Topolchane in Bulgaria, a citizen complained that none of the 1,590 Roma in his village of 4,000 has ever paid a single water bill in 20 years.¹⁸⁷ The claim of non-payment was confirmed as fact by the village administrator, Mayor Kalcheva.¹⁸⁸ It is easy to see how such information fuels the popular perception that Roma refuse to follow certain accepted social norms.

A deputy in the Bulgarian Parliament and professor of history provided the following explanation of the Roma situation in Bulgaria: the problem between Bulgarians and Gypsies are caused by the interaction of “our different cultural models.”¹⁸⁹ Further, he explained, they cannot integrate, because Gypsies are

under national programmes in fear of unpopularity in the eyes of the majority population, or sometimes because of their own discriminatory attitudes. Technical, economic and legal obstacles are often evoked as reasons for non-implementation of, for instance, programmes aimed at ensuring decent living conditions at Roma settlements, although in most cases, such obstacles could be overcome if there was the necessary political will.

Id.

185. Interview by Stanka Dineva with Stanislav Stanilov, Deputy Professor (June 7, 2006), available at http://www.vestnikataka.com/?module=displaystory&story_id=15980&edition_id=230&format=html (trans. by author).

186. *Id.*

187. *Discriminated by the Roma*, NEWS.BG, Feb. 28, 2009, http://news.ibox.bg/news/id_1249752133 (last visited Jan. 31, 2010) (trans. by author).

188. *Id.*

189. Interview by Stanka Dineva with Stanislav Stanilov, *supra* note 185.

“social nomads”: some survive by living off of stationary societies as “parasites,” as scavengers and thieves.¹⁹⁰ Despite the fact that some have become well educated teachers and lawyers, the deputy paints a grim picture of Roma prospects.¹⁹¹

Conflicts [between Bulgarians and Gypsies] are not based on denial of human rights to the Gypsies but on a clash between these two cultural models. They have a right to exist, to have a place to live. The problem is that their way of life directs violation of social order, established by Bulgarian society and nation. If an ordinance bans raising of pigs in [a neighborhood], Bulgarians don’t raise pigs there, but the Gypsies do. . . . There are no rights without responsibilities. All programs for Gypsy integration are going to be futile. Even if you build houses for all of them, they will bring their horses inside and ruin them.¹⁹²

While the views expressed by the political party to which the deputy belongs are nationalistic and generally belong to the political far right,¹⁹³ the fact that this sentiment is expressed by an active politician¹⁹⁴ suggests that it is shared by a wider political spectrum. In an ironic twist of intentions and consequences, EU provisions of certain social services for Roma have increased rather than eased the tension between Roma and non-Roma in some circumstances.¹⁹⁵

Political will can shift over time, of course, as certain social norms prevail and gain acceptance.¹⁹⁶ The following section examines the process by which legal norms, such as minority rights, are “internalized” in a society and what this process could tell us about the potential of successfully establishing minority rights for the Roma in Europe.

IV. SOCIAL NORMS, LEGAL NORMS, AND NORM INTERNALIZATION

Norm-internalization is the process by which certain legal norms, such as non-discrimination on the basis of race, for instance, become social norms¹⁹⁷ and,

190. *Id.*

191. *Id.*

192. *Id.*

193. Ataka is called an “extremist party.” Geslin, *supra* note 181.

194. Stanislav Stanilov, a deputy in the Bulgarian Parliament. Interview by Stanka Dineva with Stanislav Stanilov, *supra* note 185.

195. Geslin, *supra* note 181.

196. *See infra* Part IV, which describes one theory of this process in detail.

197. Harold Koh advances one theory of the process of norm internalization. *See* Koh, *supra* note 28, at 2646.

thus, become effective, actual guarantees for members of that society.¹⁹⁸ Because social norms are arguably much more powerful factors in shaping the dynamics of a society than are its written legal rules,¹⁹⁹ this process is extremely important, especially in the area of human rights.²⁰⁰ The interaction between legal and social norms is complex: they are interdependent but may arise independently of each other and may affect each other's formation.

[O]ral legal traditions that parallel but do not coincide with the other forms of law arise spontaneously in social groups. These traditions, which deal with virtually every subject touched by state-made law and many subjects that are not, are in large part the same phenomena discussed by sociologists as "social norms," and sometimes discussed by economists as "spontaneous" or "private" ordering.²⁰¹

Gypsy law is such an oral legal tradition.²⁰² Anti-Gypsyism is also a social norm, because it has a normative nature²⁰³ and is deeply ingrained in society as a justified way to deal with a social phenomenon.²⁰⁴ Both Gypsy law and anti-Gypsyism, then, can be seen as social norms.²⁰⁵

Scholars argue that social norms are not only stronger than legal norms in a society outside the courtroom, but that social norms influence how legal norms are interpreted and enforced inside the courtroom.²⁰⁶

The view that written law drives legal outcomes is plausible only because written law (to the extent that it has any meaning at all) is usually in accord with social norms. The outcomes of cases in which the applicable norms differ from the written law demonstrate that the norms, not the written law, are the driving force. While written law is sufficiently flexible to support

198. *Id.*

199. *See generally* LoPucki & Weyrauch, *supra* note 26.

200. This is so because the area of human rights lacks strong enforcement mechanisms. There are various monitoring mechanisms, but "states have been reluctant to adopt implementation measures that truly amount to enforcement." RICHARD B. LILICH, HURST HANNUM, S. JAMES ANAYA & DINAH L. SHELTON, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 583 (4th ed. 2006).

201. LoPucki & Weyrauch, *supra* note 26, at 1431 (internal citations omitted).

202. *See supra* Part II.C.

203. Anti-Gypsyism is a kind of moral racism. *See supra* Part III.B.

204. Anti-Gypsyism is seen as justified because of the perceived threat posed by certain elements of Roma culture. *See supra* Part III.B.

205. Gypsy law and anti-Gypsyism are described *supra* in Parts II.C and III.B respectively.

206. *See generally* LoPucki & Weyrauch, *supra* note 26.

virtually any social norm, the social norms of a particular group are not sufficiently flexible to support virtually any written law.²⁰⁷

One need not completely agree with the strong view expressed above to acknowledge that where tension exists between existing social norms and newly adopted legal rules, the legal rules would be somewhat, if not entirely, ineffective. The minority rights framework adopted by Eastern European countries, for instance, as a condition for their EU accession to membership²⁰⁸ is a group of legal norms in conflict with the widespread social norm of anti-Gypsyism.²⁰⁹ While minority rights become a part of the written laws of a society, as countries adopt the required legislation,²¹⁰ the path to their enforcement or effective observance is far from speedy or assured.²¹¹

In the case of international human rights, norms or values are defined and expressed in instruments, such as treaties, conventions, and declarations, which individual governments ratify.²¹² While treaties are considered legally binding on state governments, there is generally no enforcement mechanism when

207. *Id.* at 1435.

Conventional legal theory assumes wrongly that decisionmakers will apply written law to the exclusion of social norms, maintains falsely that expectations regarding outcomes are the direct product of written law In fact, written law is sufficiently malleable that decisionmakers can interpret it to support virtually any position that finds support in social norms or expectations regarding outcomes. That is, whatever exists in a fact pattern that gives rise to rights or entitlements under social norms will find support in legal doctrine.

Id. at 1434–35.

208. “For those countries hoping to join the European Union (EU), minority protection has become a key criterion in the accession process.” Bernd Rechel, *Introduction*, in *MINORITY RIGHTS IN CENTRAL AND EASTERN EUROPE 3* (Bernd Rechel ed., 2009).

209. Minority rights include non-discrimination toward the minority group, while anti-Gypsyism is protectionist and prescribes opposition against Roma.

210. Rechel, *supra* note 208, at 4 (discussing “the body of EU legislation which candidate states were required to transpose into domestic law”).

211. *Id.* at 3. This is clearly evidenced by the persistent, widespread discrimination toward Roma, despite the adoption of minority rights legislation. The EU Roma Policy Coalition, for instance, expressed the following evaluation of the legal framework’s effectiveness: “None of these mechanisms has achieved structural and sustainable improvements in the situation of Roma.” EU Roma Policy Coalition, *Towards an EU Roma Strategy*, <http://roma.wieni.be/eu-roma-strategy> (on file with author). See also *supra* Part III (discussing the persistence of opposition to Roma inclusion).

212. “[T]he UN’s principal means of achieving universal respect for human rights—the sponsoring of multilateral treaties for the protection of specifically enumerated human rights.” LILICH, HANNUM, ANAYA & SHELTON, *supra* note 201, at 79.

governments fail to comply, fail to enforce compliance within their jurisdictions, or fail to enact necessary domestic legislation to ensure actual compliance with these instruments.²¹³ While international diplomatic pressure could play a significant role in many cases—especially to get states to ratify human rights treaties²¹⁴—effective implementation of human rights norms in state societies is a more complex process.²¹⁵ Norm-compliance happens gradually through a complex process that is still not well understood.²¹⁶ Yet, even tentatively understanding why nations obey international norms and customs could suggest ways to effectively facilitate and accelerate such compliance.²¹⁷

As discussed above, state governments in Europe face a situation of conflicting motivations informing their Roma-focused policies and activities.²¹⁸ Examining why and how norm-internalization of international human rights standards happens in general could shed light on the complex dynamics of the current European social fabric, as it relates to the Roma.²¹⁹

Various schools of thought have offered answers regarding why nations obey international law.²²⁰ Legal philosophers, functionalists, process scholars, political realists, and critical legal theorists all reach varying explanations of the phenomenon of nations' cooperation and compliance with powerless international norms.²²¹ According to the rationalistic instrumentalist strand (those theorists applying rational choice theory), “nation-states obey international law when it serves their short or long term self-interest to do so.”²²² “Liberal international relations” theorists hold that whether or not a state obeys depends on whether that state is “liberal” in identity—meaning that it has “a form of representative government, guarantees of civil and political rights, and a judicial system dedicated to the rule of law.”²²³ Similarly, another theory argues that state compliance is dependent on the normative weight of the specific international

213. *See id.* at 583.

214. For instance, international pressure could play a role in states deciding to ratify human rights treaties. *See Koh, supra* note 28, at 2655–56.

215. As Harold Koh notes in explaining norm internalization. *See generally id.*

216. Koh reviews several different theories describing how this process happens. *See generally id.*

217. Koh explains that his theory of why nations obey international law can be used as “a plan of strategic action for prodding nations to obey.” *Id.* at 2655.

218. This is because they have adopted non-discrimination and minority rights legislation, but at the same time have to respond to popular opposition to Roma integration from their constituents.

219. Koh reasons that, if his explanation of why and how compliance happens is correct, several steps in the formulation of a more effective human rights compliance strategy follow. *See Koh, supra* note 28, at 2655–56.

220. Koh offers an overview of these theories. *See generally id.*

221. *See generally id.*

222. *Id.* at 2632.

223. *Id.* at 2633.

norms themselves.²²⁴ Nation actors obey international norms because of their “legitimacy pull”: norms are accepted as fair and just and, therefore, legitimate.²²⁵ Finally, the constructivist approach holds that, rather than having predetermined and specific interests, “states and their interests are socially constructed by ‘commonly held philosophic principles, identities, norms of behavior, or shared terms of discourse.’”²²⁶ Here, norms help shape national identities and interests.²²⁷

One of the most nuanced theses, and one that can be applied to the specific situation of Roma integration with some revealing insights, is the theory advanced by Harold Koh.²²⁸ Koh explains that compliance is reached via an interrelationship between the transnational and domestic arenas.²²⁹ Koh describes a transnational legal process as a process containing three stages (interaction, interpretation, and internalization) on three levels (social, political, and legal).²³⁰ His theory “presents both a theoretical explanation of why nations obey and a plan of strategic action for prodding nations to obey.”²³¹ Koh concludes that “where enforcement mechanisms are weak, but core customary norms are clearly defined [as in the field of international human rights], the best compliance strategies may not be “horizontal” regime management strategies, but rather vertical strategies of interaction, interpretation, and internalization.”²³² Before discussing what Koh means by “vertical strategies of interaction, interpretation and internalization,” and what this strategy would suggest for the Roma integration problem, a brief explanation of Koh’s theory is in order.

Koh explains that, in the late 20th century, scholars observing the “interpenetration of domestic and international systems” coined the term “transnational relations” in order to emphasize the increasing influence of multinational and nongovernmental players on the international field.²³³ “Instead of focusing narrowly on nation-states as global actors, scholars began to look as well at transnational networks among nonstate actors, international institutions, and domestic political structures as important mediating forces in international society.”²³⁴ These transnational actors, in their repeated interactions resulting in interpretations of norms, are an essential element of the “transmission belt,” whereby norms created by international society infiltrate into domestic society.²³⁵ Koh then details two derivative theoretical models and positions his theory

224. Koh calls this the fairness approach. *Id.* at 2601.

225. Koh, *supra* note 28, at 2601.

226. *Id.* at 2633 (internal citation omitted).

227. *Id.* at 2634.

228. *See generally id.*

229. *See generally id.*

230. *Id.* at 2656.

231. Koh, *supra* note 28, at 2655.

232. *Id.* at 2655–56.

233. *Id.* at 2624.

234. *Id.*

235. *Id.* at 2651.

somewhere in a composite view combining elements from these various explanations.²³⁶

Koh reasons that, if his explanation of why and how compliance happens is correct, several steps in the formulation of a more effective human rights compliance strategy follow.²³⁷ First, because repeated interactions amongst various actors play such an important role in producing compliance, empowering more actors to participate is the first step in designing a more effective strategy.²³⁸ Thus, intergovernmental organizations, NGOs, private business entities, and what Koh calls “transnational moral entrepreneurs” are to be carefully studied in light of their role in the production of such interactions.²³⁹

Second, because the goal of these repeated interactions is to result in interpretations of human rights norms in various contexts and levels, the fora on which such interpretations take place are also an essential element of the process and warrant critical examination.²⁴⁰

Third, because the social, political, and legal spheres are linked in a complex relationship and norm internalization happens via a certain interdependency of those spheres, one must pay attention to the dynamics of those links and how a norm could penetrate one of the spheres through influences from another one.²⁴¹ Koh gives examples of how a political majority can influence political or judicial decisions in order to incorporate international norms into the domestic sphere.²⁴² But judicial or political decisions, repeatedly framing certain habitual interactions in terms of specific norms may themselves influence the

236.

Each of these explanatory threads has significant persuasive power, and strongly complements the others. Yet my own view . . . is that none of these approaches provides a sufficiently “thick” theory of the role of international law in promoting compliance with shared global norms. The short answer to the question, “Why do nations obey international law?” is not simply: “interest”; “identity”; “identity-formation”; and/or “international society.” A complete answer must also account for the importance of interaction within the transnational legal process, interpretation of international norms, and domestic internalization of those norms as determinants of why nations obey. What is missing, in brief, is a modern version of the fourth historical strand of compliance theory—the strand based on transnational legal process.

Id. at 2634.

237. Koh, *supra* note 28, at 2655–56.

238. *Id.* at 2656.

239. *Id.*

240. *Id.*

241. *Id.* at 2656–57.

242. *Id.* at 2657–58.

political majority to accept—and internalize—these norms.²⁴³ Koh describes the process as consisting of several phases:

One or more transnational actors provokes an interaction (or series of interactions) with another, which forces an interpretation or enunciation of the global norm applicable to the situation. By so doing, the moving party seeks not simply to coerce the other party, but to internalize the new interpretation of the international norm into the other party's internal normative system. The aim is to “bind” that other party to obey the interpretation as part of its internal value set. Such a transnational legal process is normative, dynamic, and constitutive. The transaction generates a legal rule which will guide future transnational interactions between the parties; future transactions will further internalize those norms; and eventually, repeated participation in the process will help to reconstitute the interests and even the identities of the participants in the process.²⁴⁴

The vertical approach Koh advocates would suggest that a strategy for effective Roma inclusion would cut down through segments of authority and social organization and involve various actors and entities repeatedly interacting, rather than simply concentrate on sanctions for violations on the nation-state level, for instance.

European authorities seem to be strategizing, at least in part, in line with such a recommendation because they are well aware that they exist amongst many actors and that their primary role is to encourage cooperation, interaction, affirmative programs, and dialogue amongst the other different actors relevant to Roma integration in Europe.²⁴⁵ The EC has recognized the role of NGOs and, in its 2008 Working Paper, is detailing its support for various Roma-oriented organizations.²⁴⁶ The EC has been providing a grant to the European Network Against Racism (ENAR), for instance, since 2001, specifically to network with Roma NGOs since 2006, and the European Roma Information Office (ERIO) since 2007.²⁴⁷

The EC has also recognized that the fora where legal interactions happen are important for the internalization of human rights. Thus, in 2003, the EC

243. Koh, *supra* note 28, at 2654.

244. *Id.* at 2646.

245. See Working Paper 2008, *supra* note 47, at 3 (noting that “[t]he launch of an EU Roma Policy Coalition of NGOs . . . reflects the will of civil society to join forces for a better inclusion of this major community”).

246. *Id.* at 28.

247. *Id.*

started a program of non-discrimination training for legal practitioners, such as judges and prosecutors.²⁴⁸ The EC's awareness and initiatives, such as its campaign "For Diversity—Against Discrimination" and its planned film, video, and journalism activities, look to dispel Roma stereotypes.²⁴⁹ This is evidence that the EC program is reaching into the social fabric and seeking to shift attitudes that can then influence the political and legal spheres.

Even though the EC also recognizes that Roma need to be involved and be an active part of any program or effort to internalize domestically any social, political, and legal norms, perhaps there is one factor that has been ignored in the EC's impressively comprehensive approach. If Koh is right that interaction between various actors is a necessary catalyst for norm internalization, the striking observation to be made about the Roma situation is that, for the most part, there is no real or systemic interaction between Roma and non-Roma communities on the domestic level.²⁵⁰ On the contrary, anti-Gypsyism and Gypsy law both prescribe avoiding interaction.²⁵¹

While some interaction is happening at the international level,²⁵² there is still no interaction between Roma and non-Roma where the problem exists and persists—in the villages and cities where Roma communities are for the most part still separate, segregated, and isolated and where existing social norms prevail.²⁵³ What the policies fail to address is how to achieve the frequency of interaction necessary, when both Roma and non-Roma groups prefer to avoid such interaction.²⁵⁴

V. THE EUROPEAN STRATEGY

The treaty creating the European Community commits member states to ensure equal opportunities, respect for human rights, and fundamental freedoms for their citizens.²⁵⁵ The primary legal instrument protecting minority rights

248. *Id.* at 27.

249. *Id.*

250. *See* Yuille, *supra* note 55, at 396–98.

251. *See supra* Parts II.C and III.B.

252. The 2008 Roma Summit is one example. *See supra* Part I.A. *See also infra* Part V (discussing European initiatives and programs).

253. "There is a clear discrepancy between the nice rhetoric of high level EU officials and what happens in the Roma ghettos and communities and the measures taken has failed to produce the results expected." European Roma Grassroots Organisations (ERGO) Network, European Commission and Roma, <http://www.ergonet.org/EUC.htm> (last visited Mar. 13, 2010).

254. Gypsy law and anti-Gypsyism both prescribe avoidance of interaction. *See supra* Parts II.C and III.B.

255. Treaty Establishing the European Community, Nov. 10, 1997, 1997 O.J. (C 340) 3, 6, 7, 29, 149.

specifically is the European Council's Race Equality Directive,²⁵⁶ which states: "the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin."²⁵⁷ Direct discrimination is defined as a situation where "one person is treated less favourably than another is, has been or would be in a comparable situation on grounds of racial or ethnic origin,"²⁵⁸ and indirect discrimination is defined as a situation where apparently neutral provisions or practices place persons of a racial or ethnic origin at a disadvantage compared with other persons, "unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."²⁵⁹ Article 5 of the Directive explicitly provides for affirmative action on the part of governments to "[maintain] or [adopt] specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin."²⁶⁰

The Roma issue became especially relevant for the European Union due to the accession of Eastern European countries with large Roma populations to the Union.²⁶¹ Since 2003, preparing for the accession of ten new member states—among which were countries containing the largest Roma minorities like Romania and Bulgaria—the European Union has acknowledged that the Roma issue is "among Europe's most pressing human rights and social inclusion priorities."²⁶² Since 2004, the European Union has been increasing its efforts to promote social inclusion through advocating anti-discrimination, human rights, and minority protection norms and practices, as applied to Roma populations in member countries.²⁶³ For the most part, new member governments have been eager to cooperate with the European Council, ratifying various human rights instruments and addressing local Roma issues through special programs and legislation.²⁶⁴ Some governments have even gone beyond treaty obligations in affording legal pathways for addressing discrimination abuses. Romania, Bulgaria, and Hungary,

256. Council Directive 2000/43, 2000 O.J. (L 180/22) (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:EN:PDF>.

257. *Id.* art. 2.

258. *Id.*

259. *Id.*

260. *Id.* art. 5.

261. THE SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION, *supra* note 23, at 6.

262. *Id.*

263. This is evidenced, for instance, by the 2002 EC report, stating: "The Council of Europe can and must play an important role in improving the legal status, the level of equality and the living conditions of the Roma. The report supports the proposal of establishing a European Roma Consultative Forum. A Charter on the Fundamental Rights of Roma should be initiated [sic]. The report advocates the need for the institution of a European Roma Ombudsman. A European Roma study and training centre is also envisaged." Eur. Consult. Assembly, *supra* note 57, ¶ 3.

264. Arguably, this was done in large part because compliance with such instruments was a prerequisite for EU membership.

for instance, have granted to NGOs and Equality Bodies²⁶⁵ the right to bring general minority rights claims in court without requiring individual victims.²⁶⁶ Despite the fact that provisions of minority rights, and specifically the treatment of Roma, were a significant part of the accession requirements for these prospective members, the Union is perceived to be a weak regulator of minority rights²⁶⁷ and to lack “a strong *acquis* on the issue of minority rights.”²⁶⁸

Part of the reason for this weakness is surely the weak regime of enforceability of international human rights in general.²⁶⁹ An additional factor specifically regarding Roma rights in Europe is perhaps the disparity in standards

265. Equality Bodies are treaty-monitoring bodies with the power to investigate individual claims and issue recommendations. Working Paper 2008, *supra* note 47, at 8.

266. *Actio popularis* claims are suits that do not require an individual victim and are thus ideal for addressing institutional and structural discrimination. *Id.*

267. Mitchell A. Orenstein & Umut Ozkaleli, *European Union as a Network Actor in Roma Minority Policy*, in *THE EXPANSION OF NATO AND THE EUROPEAN UNION* 31, 31–32 (Hilary Appel ed., 2006).

268. *Id.* A further complication to the European minority rights standard’s effectiveness is introduced by the current atmosphere of uncertainty surrounding the European Union’s future. The effectiveness of human rights instruments is not necessarily certain where member governments have confidence in the institution unifying them. However, the effectiveness of such instruments is certainly compromised where the unifying institution and its future vitality are being criticized and questioned. The latter is certainly the case with the European Union at present, especially with the complications arising from the current worldwide financial crisis. Steven Erlanger & Stephen Castle, *Economic Crisis Threatens the Idea of One Europe*, N.Y. TIMES, Mar. 1, 2009, available at <http://www.nytimes.com/2009/03/02/world/europe/02euro.html>. This lack of confidence and loyalty is likely to have consequences for the effectiveness of its legal instruments, especially in the sphere of human rights, where compliance of member governments is largely motivated by perceived advantages from creating a positive image and reputation amongst other member states.

Four main forces are undermining the EU’s foundations. First, Europe’s paternalistic welfare states are struggling to survive the dual forces of European integration and globalization. European politics is growing increasingly populist—not good news for an EU commonly viewed as an elite affair.

Citizens are fighting back, insisting that the state reassert its sovereignty against unwelcome forces of change.

When they voted down the European constitution in 2005, many French citizens blamed the “ultra-liberal” EU for their economic woes. This spring, rioters took to the streets of Paris to block labor reforms. Italians grumble that the euro has depressed their economy.

Charles Kupchan, *Is the EU Destined to Fail?*, GLOBALIST, June 16, 2006, available at <http://www.theglobalist.com/StoryId.aspx?StoryId=5383>.

269. See LILLICH, HANNUM, ANAYA & SHELTON, *supra* note 201.

applied to older and newer European members. While the European Council has required that prospective members ratify relevant non-discrimination protocols, such as the European Council's Framework Convention on National Minorities, as a pre-condition to granting EU membership, not all of the old EU members had ratified the instrument.²⁷⁰

The Hungarian sociologist Angela Kocze commented on the "strange schizophrenia" of European policy towards the Roma, saying that while the EU was demanding that its new members observe the rights of minorities, it was not making the same demands of its older members: "EU member states haven't even reached a consensus on how to define the term 'national minority,' or whether immigrants with a common cultural background, for example Arabs, Kurds or Roma, belong to one."²⁷¹

Others have called this apparent discrepancy in the application of minority standards by the Union "a double standard."²⁷² This appearance of a double standard could be the result of evolving human rights instruments or, as some claim, a side effect of older members' politically motivated strategy to gain advantage from new memberships.²⁷³ It is clear that the standards set forth by the EU are often vague and open to differing interpretations—"a 'patchwork quilt system' of minority rights protection mechanisms."²⁷⁴

Despite criticism of the deferential application of minority rights standards to member states, European authorities have been showing increasing attention to Roma issues.²⁷⁵ In 2003, together with the Open Society Institute and

270. Kupchan, *supra* note 269.

271. Auer, *supra* note 54.

272. Michael Johns, "Do As I Say, Not As I Do": *The European Union, Eastern Europe and Minority Rights*, 17 E. EUR. POL. & SOCIETIES 682, 684 (2003).

273. Orenstein and Ozkaleli advance the thesis that the EU is a "network actor" in respect to minority rights, borrowing standards and delegating responsibility to other governmental and non-governmental organizations when necessary to satisfy political appetites of its older memberships. Orenstein & Ozkaleli, *supra* note 268, at 43–52.

274. *Id.* at 41.

275. This is evidenced, among other things, by the increased frequency of reports and studies on Roma issued by the European Commission—there are a series of reports and studies published by the European Commission which deal more or less exclusively with Roma. Some of them are: EU Support for Roma Communities (2002); Situation of Roma in an Enlarged Europe (2004); Review of the European Union PHARE assistance to Roma minorities (2004); Thematic Comment No 3: 'The Protection of Minorities in the EU'; Equality and Non-Discrimination – Annual Report 2005 (special section on 'Improving the situation of Roma in the EU'); and Community Instruments and Policies for Roma Inclusion (2008). European Roma Grassroots Organisations (ERGO) Network, *supra* note 254.

the World Bank, the European Union sponsored a conference titled “Roma in an Expanding Europe: Challenges for the Future,” at which Eastern European governments launched a “Decade of Roma Inclusion” and pledged their dedication to facilitate Roma social integration.²⁷⁶ In 2004, the EC commissioned a report on the situation of the Roma in an enlarged European Union.²⁷⁷ At the end of 2007, the EC called the situation of the Roma in Europe “a very specific situation” and called upon member states to use “all means possible to improve the inclusion of the Roma people.”²⁷⁸ In 2008, the European Union sponsored the first Roma Summit as an attempt to bring governments, EU officials, NGOs, and Roma groups together to review, revise, and coordinate efforts and policies relating to Roma inclusion.²⁷⁹

The EC views its role in minority rights enforcement as limited: “ensuring the principle of non-discrimination and . . . policy coordination.”²⁸⁰ The Commission recognizes that division of responsibility clearly places the task of bettering the Roma’s educational, employment, housing, poverty reduction, and healthcare situations with the local governments.²⁸¹ The EC could encourage the exchange of information and capacity building for local, national, and international Roma organizations, for instance, through its “Inter Service Group on Roma” (ISG).²⁸² The Group is an intra-institutional working group focused on information exchange relating to Roma-relevant instruments and policies and on analyzing how Structural Funds²⁸³ can be efficiently used to support local efforts.²⁸⁴

276. *Governments Endorse “Decade of Roma Inclusion”*, OPEN SOC’Y INST. & SOROS FOUND. NETWORK, July 8, 2003, http://www.soros.org/initiatives/roma/news/decade_20030708.

277. THE SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION, *supra* note 23, at 1.

278. *European Roma Summit Conference Report*, *supra* note 14, at 2.

279. The event is discussed *supra* Part I.A.

280. Working Paper 2008, *supra* note 47, at 4. Other policy documents include the Employment Equality Directive (2000/78/EC), Communication on a Framework Strategy for Non-Discrimination (June 2005), Proposal for a Framework Strategy for All – 2007 (June 2005), Proposal for a European Union Agency for Fundamental Rights (June 2005), National Action Plans Against Poverty and Social Exclusion, Report on Social Inclusion in the 10 New Member States 2005 (February 2005), and the Green Paper Consultation on Equality and Non-Discrimination in an Enlarged EU (May 2004). *See also* European Commission, *The European Union and Roma*, <http://ec.europa.eu/social/main.jsp?catId=518> (last visited Mar. 13, 2010) (discussing policies, reports, and other documents related to Roma).

281. Working Paper 2008, *supra* note 47, at 4.

282. *See id.* at 5.

283. The European Structural Funds consist of a Fund for Regional Development, a Social Fund, and the former Community Initiative EQUAL. European Commission, *Regional Policy – Inforegio*, http://ec.europa.eu/regional_policy/funds/prord/sf_en.htm (last visited Mar. 13, 2010).

284. *See* Working Paper 2008, *supra* note 47, at 5.

The EC recognizes that, in order for minorities' legal rights to be effectively enforced, the availability of resources and legal counsel is as essential as the availability of the national legal framework for protecting such rights.²⁸⁵ Another central notion guiding the structure of the European policies is the assumption that "[r]eal progress on the ground depends on the Roma themselves being directly involved at all levels of policy development, decision-making and programme implementation."²⁸⁶ The European strategy sees Roma organizations as being the primary entities providing information and legal support to the Roma community and being the agents initiating the essential "Roma involvement" in policy development, as well as being a bridge between local and international efforts.²⁸⁷ This capacity building necessitates the provision of substantial financial resources.²⁸⁸

Some victories have been identified: increased awareness of Roma issues; successful human rights abuse legal challenges; and a handful of successful social programs (for instance, several successful local Roma-specific educational initiatives).²⁸⁹ However, the improvement of the Roma situation over six years has been called "feeble . . . despite the hundreds of millions of euros spent."²⁹⁰ The EU Roma Policy Coalition (ERPC)²⁹¹ expressed the following evaluation of the programs' effectiveness:

None of these mechanisms has achieved structural and sustainable improvements in the situation of Roma. The [Race Equality] Directive has not been adequately transposed and implemented in national jurisdictions. Most projects under the Action Programme were isolated and lacked strategic focus in both planning and implementation. Whatever has been achieved, it was neither sustainable nor paralleled by high level

285. *See id.*

286. *Id.*

287. *Id.*

288. "A long term investment in this direction [providing resources to Roma NGOs] is needed." *Id.*

289. *See generally* Working Paper 2008, *supra* note 47.

290. *Debate on West Balkans at the European Policy Center*, *supra* note 29, at 2.

291. ERPC is made up of Amnesty International, the European Roma Rights Centre, the European Roma Information Office, the European Network Against Racism, the Open Society Institute, Spolu International Foundation, Minority Rights Group International, the European Roma Grassroots Organisation, the Roma Education Fund, and the Fundacion Secretariado Gitano. *See* Posting of European Network Against Racism to Blogactiv, <http://enar.blogactiv.eu/> (August 4, 2008).

political commitment by the EU and Member States to prioritiz[e] and address this problem.²⁹²

One troubling shortcoming of the strategy overviewed above relates to an element that the EC itself recognizes is a necessary precondition for success: “[K]ey to success is the political will and capacity of Member State Governments to allocate budgets and support projects which are multidimensional . . . and clearly targeted on the Roma”²⁹³

And emphasized again: “[s]ocial inclusion [of Roma minorities] is not a realistic objective unless there is an across-the-board commitment to bring about systemic change in the current systems.”²⁹⁴ In its 2004 Roma report, the Employment and Social Affairs of the European Commission acknowledges that it is unclear how such “across-the-board commitment” is to be achieved in light of the pervasive anti-Roma sensibilities, except that it is clear that all legal sanctions need to be exercised.²⁹⁵ Roma advocacy organizations are also well aware that “[p]ublic attitudes towards inclusion are not the same throughout the EU and some public officials are afraid of the majority reaction to pro-inclusion measures.”²⁹⁶ Further, even if governments take steps to enact anti-discrimination legislation and special programs for Roma, as governments eager to join the EU have done in the last several years, such measures may not be sufficient to solve the problem of broader social attitudes and, thus, the systemic problem of Roma stigmatization.²⁹⁷

The European Commissioner on Human Rights acknowledged in 2006 that “the concrete results of previous action plans have so far remained sporadic while their implementation has often been hampered by resistance at local

292. EUROPEAN ROMA POLICY COALITION, DISCRIMINATION AGAINST ROMA IN EUROPE 2 (2008), available at http://www.soros.org/initiatives/roma/news/erpc_20080306/factsheet_20080306.pdf.

293. Working Paper 2008, *supra* note 47, at 5.

294. SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION, *supra* note 23, at 42.

295. *Id.*

A very powerful force for undermining social inclusion projects targeting Roma is local opposition. . . . It is unclear what measures can be employed to overcome local unwillingness to seek development funding, although it is clear that in certain contexts, such as where racial prejudice and segregation is at issue, there is a need to exercise all available *legal sanctions*.

Id. at 47–48 (emphasis added).

296. *ERIO Receives Delegation from the Western Balkans*, ERIO NEWSLETTER (Eur. Roma Info. Office, Brussels, Belg.), Feb. 2008, at 2, available at <http://erionet.org/site/upload/publications/newsletters/NL%202-2008%20%28site%29.pdf>.

297. By some accounts, anti-Roma attitudes have worsened since 2001. See Gil-Robles, *supra* note 163, at 5.

level.”²⁹⁸ Thus, there is a consensus that “[c]ampaigns to break anti-Romani stereotypes”²⁹⁹ are needed and essential, if all the other goals are to be effectively achieved—including, “the right to non-discrimination, equal access to quality education, equal access to employment and self-employment opportunities, equal access to facilities, goods and services, particularly healthcare and housing, full participation, on an equal basis with non-Roma, in economic, social, political and cultural life.”³⁰⁰

Political will in member states is, thus, identified as necessary.³⁰¹ However, no programs or efforts focus on analyzing the absence of this will or focus on facilitating or creating political will.³⁰² The following illustrates the extent to which attention is paid specifically to that problem: “The elimination of discrimination begins with clear and target-oriented information on rights and obligations of both potential victims of discrimination and the general public.”³⁰³ This quote expresses an assumption that discrimination will start to be eliminated and political will will start to emerge once information about minority rights is made available to Roma and to the general population. This view is perhaps more suited to an imaginary situation in which two groups exist separate from each other with no history of interaction; we could entertain the idea that, once informed of their respective rights and obligations and under the common interest of beneficial cooperation, those groups will accept and follow those rights and obligations. However, the view that disseminating general information about minority rights would be sufficient to reverse an entrenched practice of discrimination, prejudice, and profound mutual mistrust that currently operates between Roma and non-Roma is misguided.

The assumption that informing the general public of the proper scope of minority rights will lessen discrimination sufficiently is hard to imagine in the face of prevailing and historically grounded anti-Gypsyism sentiments. The EC recognizes that “anti-Gypsyism is a specific form of racism which is based on delegitimation and moral exclusion”³⁰⁴ (as is illustrated by the statement’s inclusion in the introduction of the 2008 working paper),³⁰⁵ but anti-Gypsyism is

298. *Id.* at 6.

299. Ivan Ivanov, *The Need of EU Policy on Roma*, ERIO NEWSLETTER (Eur. Roma Info. Office, Brussels, Belg.), Feb. 2008, at 8, available at <http://erionet.org/site/upload/publications/newsletters/NL%20-2008%20%28site%29.pdf>.

300. *Id.*

301. THE SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION, *supra* note 23, at 40.

302. There is no discussion of how to foster political will in the Working Paper. See generally Working Paper 2008, *supra* note 47.

303. *Id.* at 12.

304. *Id.* at 3.

305. See *id.*

left largely unexplored in the rest of the document.³⁰⁶ Moreover, there is no mention about Gypsy law or elements of Roma culture that may be hostile to integration. While efforts to improve education, health, and living conditions and to expand employment and development opportunities for Roma are essential,³⁰⁷ these goals cannot be achieved without addressing the social tension in a more meaningful and comprehensive way.

In essence, the EC correctly recognizes that political will is a necessary precondition for human rights instruments to succeed.³⁰⁸ The EC is also aware of the lack of such political will. Yet, it fails to openly discuss the reasons for this lack or to foster a meaningful dialogue about the hostile attitudes between Roma and non-Roma. By failing to address this crucial issue, the programmatic efforts are unlikely to lead to real improvement or cooperation.

VI. CONCLUSION

Over 500 members of the European community—member parliaments, Roma and other NGO organizations, and civilians—attended the 2008 Roma Summit.³⁰⁹ Keynote addresses were delivered by high profile figures, including George Soros, Chair of the Open Society Institute; a representative of the French Minister of Foreign and European Affairs; the Vice-President of the World Bank; and the President of the German Central Council of Sinti and Roma.³¹⁰ In his opening speech, José Manuel Barroso, President of the EC, wisely noted that the EC cannot solve the Roma problem, but can only advise and encourage local governments to implement policies to positively provide opportunities to their Roma citizens.³¹¹ He further stated that political will is necessary, and Roma involvement is essential.³¹² His insightful summary of and advice for the dynamic of the various players' conflicting positions on the international scene is helpful here:

Quite often, we hear actors from mainstream societies putting the blame for this tragic situation on the Roma themselves, on their way of life. Many people tend to say that

306. The Working Paper mentions several projects, including one providing training in non-discrimination for legal practitioners and one addressing Roma stereotypes via cultural media. *Id.* at 27.

307. These are the main focus of the Working Paper, as evidenced by the discussion on Structural Funds programs aimed at Roma education, training, infrastructure improvements, and counseling. *Id.* at 5.

308. Working Paper 2008, *supra* note 47, at 3.

309. *European Roma Summit Conference Report*, *supra* note 14, at 3.

310. *Id.*

311. *Id.* at 4–7.

312. *Id.* at 7.

the starting point for change must come from an increased sense of responsibility among the Roma, of each and every Romany man, woman and child. On the other hand, Roma civil society leaders mostly tend to emphasize that they expect urgent action to start from public authorities.

As a matter of fact, we need both. We need increased action by public authorities and majority societies as well as increased civic responsibility among the Roma—but in that order.³¹³

Mr. Barroso, thus, agreed that Roma need to demonstrate increased civic responsibility, but that this can only happen if opportunities are available to them in the first place.³¹⁴ It is clear that the Roma cannot lift themselves out of their current predicament by themselves, become productive members of society, and gain the trust of non-Roma thus dispelling notions of anti-Gypsyism. And it is unrealistic to require—and probably impossible to achieve—that the political majority put aside a powerful socio-ethical norm such as anti-Gypsyism (a norm based on a lack of trust), and trust that this would be in society's long-term interest. In order to enable social opportunities for Roma and interaction between Roma and non-Roma on a broad scale, the EC should facilitate a dialogue between the groups addressing the mutual mistrust between them. The international norm that needs to be clarified between two groups that operate under deep mistrust and hostility toward each other is, not so much part of the rubric of minority rights and non-discrimination, as it is the much more basic social construct of mutual cooperation.

The case of the Italian government's fingerprinting of Roma camp inhabitants could be analyzed in light of Koh's theory of norm internalization.³¹⁵ The government program represents the first step in the process of norm internalization, as described by Koh: social players engaging in interaction with each other. An international player, the Italian government, engages in an interaction with another player, the Roma community, by attempting to implement a program to fingerprint individuals of that community. This interaction triggers an interpretation of an international human rights norm: is the fingerprinting program discriminatory in a way that violates international standards? The transnational community, as represented by other governments, NGOs, Roma communities, and EC officials, brings forward varying voices and interpretations. The forum (in this case, the European institutions and broader European community) issues a context-specific norm interpretation. First, it demands that the program be terminated; then, it shifts gears and concludes that, because the fingerprinting is not enabling the collection of ethnic or religious identities and

313. *Id.* at 5.

314. *Id.*

315. Koh's theory of norm internalization is discussed *supra* Part IV.

would be performed only when other means of identification fail, the Italian program passes the nondiscriminatory test. The public discourse concludes with Roma organizations and activists voicing their outrage and viewing the approval by the EC as a defeat and a step back in the evolution of human rights in Europe.

The debate should not have ended there. The Italian event, as seen from the perspective of an ongoing transnational norm-internalization process, should be far from over. The actions of the Italian government created an opportunity that could be beneficial for Italy's Roma. The justification for the fingerprinting program was to address crime within the Roma community and to get Roma children in schools and away from begging on the streets. To the extent that Roma share this goal—and it hard to imagine they do not—their community and activists could agree with the stated goal and offer alternative means of achieving it, while at the same time refuting the means proposed by the Italian government. Instead of viewing this as an isolated incident that is concluded when everyone voices their outrage, this discourse could be a more constructive interaction: a functional clarification of a shared goal and the means to achieve it.

The reasons minority rights legislation is failing to improve the Roma situation in Europe are complex and many. What this Note tried to show is that one of these reasons is important, but not addressed: the unique nature of anti-Gypsyism as a type of moral judgment toward a cultural model seen as incompatible with mainstream social order. The political majority sees negative attitude toward the Romani “cultural model” as justified especially since Roma are perceived not only as isolationist and ethnocentric, but as refusing to accept social responsibilities. Roma, on the other hand, view most media coverage and discussion of Roma statistics, culture, or practices as fueling stereotypes and discrimination, especially in light of their long history of oppression in Europe and the pervasiveness of anti-Gypsyism. Changing the legal framework and educating the public about norms of non-discrimination and minority rights are unlikely to affect these engrained social norms. Political will to foster integration cannot be easily summoned and legislating nondiscrimination is unlikely to succeed where the predominant attitude between Roma and non-Roma is one of profound mistrust. A more adequate goal for the current dynamic between the group, one that would address their mistrust of each other and enable repeated interaction on a broad scale, might be mutual cooperation.

