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**Including Citizens Who Do Not ‘Fit’  
On Some Contradictions of Liberal Antidiscrimination Discourses**

**Incluindo Cidadãos(ãs) Que Não ‘Se Encaixam’  
Sobre Algumas Contradições dos Discursos Anti-discriminação Liberais**

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**Abstract**

This article analyzes inclusive dimensions of the liberal antidiscrimination tradition that is grounded in the reinforcement of civil and political liberties and in neutral public institutions, where each member of society is relevant as a rights- and duty-bearer under the umbrella of the rule of law. Drawing on our experience with the inclusion of Romani people, the largest ethnic minority group in Europe, we examine the challenges of the liberal inclusion discourse when finding its realization in hierarchically stratified European societies. Circumscribed by *laissez-faire* markets and politics, they let vast socio-economic inequalities and cultural stereotypes prevail practically untouched. We argue that the contradiction between these citizenship-based and market-based liberal institutions gradually corrupt the process of equalizing right-holders and results in Roma to be pushed even further to the margins of society. The inclusion policies recognize this contradiction of formal equality as they are made for those who fail ‘to fit in’ and those who do not ‘count’ yet. We point out that many Roma do not effectively experience the promise of citizenship since Roma inclusion policies do not fully grant them the status of those who have the right to have rights.

**Keywords:** Citizenship; Liberal Antidiscrimination Tradition; Romani people; Inclusion.

**Sumário**

Este artigo analisa as dimensões inclusivas da tradição liberal de antidiscriminação que se baseia no reforço das liberdades civis e políticas e em instituições públicas neutras, onde cada membro da sociedade é relevante como portador de direitos e deveres sob a égide do Estado Democrático de Direito. Com base em nossa experiência com a inclusão do povo Romani, o maior grupo de minoria étnica na Europa, examinamos os desafios do discurso da inclusão liberal ao encontrar sua realização em sociedades europeias hierarquicamente estratificadas. Circunscritos por mercados e políticas *laissez-faire*, eles permitem que vastas desigualdades socioeconômicas e estereótipos culturais prevaleçam praticamente intocados. Argumentamos que a contradição entre essas instituições liberais baseadas na cidadania e no mercado corrompe gradualmente o processo de igualar os detentores de direitos e os resultados em Roma para serem empurrados ainda mais para as margens da sociedade. As políticas de inclusão reconhecem esta contradição de igualdade formal, pois são feitas para aqueles que não "se encaixam" e aqueles que ainda não "contam". Salientamos que muitos do povo Romani não experimentam efetivamente a promessa da cidadania, uma vez que as políticas de inclusão do povo Romani não lhes conferem plenamente o estatuto de quem tem direito a ter direitos.

**Palavras-chave:** Cidadania; Tradição Liberal de Antidiscriminação; Povo Romani; Inclusão.

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## 1. Introduction

The situation that many racialized and ethnic minorities experience combines inequalities, discrimination and denials of civil and political rights, cultural identity and minority rights, and socio-economic justice in (re-)distributing welfare resources. Inclusion policies designed to fight these phenomena are articulated in three inclusion discourses: liberal non-discrimination with a dominant value of liberty, multiculturalism with a dominant value of tolerance, and social justice with a dominant value of equality. Loosely employing the vocabulary of the French Revolution, there are three components of citizenship: *'Liberté, Égalité, et Fraternité'*. An emphasis on individual freedoms leads inclusion policy-makers to concentrate on liberal antidiscrimination discourses; an emphasis on brotherhood, which puts forward the values of community and blood and soil connections, is the starting point for multicultural inclusion discourses; and finally, the dominant perspective of distributive equality employs not only formal rights and community bounds, but also socio-economic welfare and redistribution mechanisms.

Despite sharing the objective, each of these discourses makes a preference for a different societal system from the outset. The liberal antidiscrimination discourse claims priority for civil and political systems, the multicultural discourse starts with culture, and the socio-economic discourse bases all its inclusion policies on socio-economic welfare integration. Sometimes they can complement each other in promoting substantial equality, whereas at other times, politics of inclusion can reinforce existing inequalities of another. These domains are closely connected with each other and burden one another reciprocally – in the sense that better solutions for the problems of one domain can increase the problems of another.

We found our analysis in the paper on our long-term professional and advocacy engagements with the European inclusion policies for Romani people.<sup>1</sup> Since 1990s, various packages of European inclusion policies are in place to secure equal and effective enjoyment of their citizenship rights to currently excluded Roma. These policies offer implicit solutions, each one organizing the relationship between civil, political, economic, social and cultural policies differently. Critics, however, emphasize those Roma inclusion policy packages, which apply inclusion discourses concurrently, are not as compatible as policy makers would wish and contain contradictions.

In this paper, we analyze the liberal antidiscrimination discourse of inclusion while looking at some of its contradictions. The liberal antidiscrimination discourse on inclusion focuses predominantly on problems of missing legal and institutional recognition and political

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<sup>1</sup> Roma people are the largest ethnic minority group in Europe, for more information, see: <https://www.opensocietyfoundations.org/voices/gypsies-roma-travellers-animated-history> access 10 April 2021.



disenfranchisement of underprivileged groups. We will initially outline some main pillars of the liberal theory of society that accentuate the neutral character of public institutions. The design of public institutions in this perspective is founded on individual legal recognition and impersonal rule of law. Secondly, we will enlist and analyze some of the main concepts of liberal political theory. Finally, we will examine some of the contradictions that are entailed within these inclusion policies mainly related to the recognition and rights of the citizens. Inspired by Offe's (1984) definition of the concept of contradiction, we examine the contradiction of inclusion policies defined as an emergent functional discrepancy, or 'lack of fit', between the economic, cultural and political spheres of citizenship.

Liberal antidiscrimination laws and policies became common standards of international politics in the 1950s. Since then we have experienced their intensive proliferation and diffusion into the institutional social organization of Western societies (Koppelman 1996, Douzinas 2008, Kapur 2009, Pogge 2007). The antidiscrimination legal principles of civil and political recognition shape the character of the public institutions of liberal democracies and legitimize social practices. The claims made in the name of antidiscrimination, meanwhile, cover areas as diverse as the character of working relations and regimes of international politics.

## 2. Individual and Property Rights

The liberal theory of inclusion is individualistically oriented. The concept of individual rights can be traced back to English legal guarantees for private property in the 11<sup>th</sup> century (Alexander 2006). It is also built on the premises of individual agency and mutual non-interference and it presupposes the notion of individual legal persons - right-bearers (Habermas 1998). As the objective system of universal rights, the rule of law provides the frame for casual social interactions among individuals enjoying rights. In liberal thought, only the individual right-bearer can actualize civil and political rights. Liberal rights are allocated to each individual. Liberal inclusion policies thus focus on protecting these original domains of rights-holders against their mutual interference or against unwarranted state interventions. Therefore, it is the legal and political competence of individual members of ethnic minorities, which should be safeguarded by inclusion policies.

In liberal societies, the concept of individual rights represents the fundamental organizational principle of social relations as well as the basis for any adequate mutual recognition and self-respect. According to Williams (1991, in: Somers and Roberts 2008, 399), "rights imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being." Rights are thus markers of interpersonal recognition. It is only through having rights that one can be recognized as an equal in liberal



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society. Moreover, the process of self-recognition is entirely dependent on the mediating role of rights. Feinberg (in: Shue 1996, 14) claims that:

Legal claims-rights are indispensably valuable possessions. A world without claim-rights, no matter how full of benevolence and devotion to duty, would suffer an immense moral impoverishment. A person would no longer hope for decent treatment from others [...]. A claim-right, on the other hand, can be urged, pressed, or rightly demanded against other persons.

One should thus not hope for stable and impartial institutions beyond the right-claiming universe. Rights, defined as the source of social recognition, are localized in the center of social relations. Altogether, as Taylor (1996, 16) maintains, rights “are attributed to individuals prior to society”. The ability to claim rights thus indicates a threshold of civil recognition and political participation. Yet, not every rights-bearing subject is in a position to make those claims to rights. Thus focusing on the articulation of rights as claims to recognition pertains to the rights of those who have the legal status of citizenship, but find it difficult to access the rights that this status provides. While citizenship promises autonomy, equality and the right to make claims to rights to its citizens, it simultaneously marginalizes and subjugates those who fail ‘to fit in’.

Liberal perspectives on claiming rights draw mainly on ideas asserting that citizens are individuals whose primary concern lies not in the realization of a common good, but in the realization of their interests and passions (Espada, 2000). Modern, liberal notions of citizenship are intimately tied to the development of the liberal state with its rights-based focus. With the development of a money economy and a strong emphasis on the promotion of individual liberties, as well as a government that required very little participation, the rights to claim rights in other words citizenship, took on a different meaning, one that emphasized liberty instead of participation. The grounding idea was that citizens were guided by private interests and passions, instead of common politics and public good alone. Van Leeuwen (2010) suggests that, according to the liberal perspective, public space does not possess any moral supremacy since political power comes into being through the voluntary decisions of rational people. Taking a closer look at the liberal theory of rights, we encounter a definition of rights as enforceable individual choices or enforceable individual interests. Those who take one of these strands argue that the right-bearer is either a rational agent capable of making choices, or a person that has universally communicable interests worthy of enforced protection. These assumptions of descriptive equality based on reasonable choices or communicable interests do not automatically mean that all people are considered the same. They are equal based on the mutual comprehensibility of choices they make or fundamental interests they pursue. Rights thus allow us to exercise control over the articulation and execution of our choices and interests. Nevertheless, conceptualized either as reasonable choices or as communicable interests, rights represent predications and extensions of individual selves. Rights are the legal recognition of individual will, desires or interests.



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As Locke and Hobbes postulated, there has to be a profitable, predictable, safe and reasonable exchange for individual right-bearers to voluntarily start collaborating and developing an institutional environment for this collaboration. Liberal citizens need to sit down and agree on a social contract, which would guarantee the conditions of collaboration and security. Citizens in liberal theory are equal parties to a contract and the rule of law is the principal materialization of the conditions of this contract. The relationship between liberal citizens is strictly reciprocal, as they owe to each other the same respect and autonomy of freedoms (Sommers 2008). This relationship is the contractual foundation stone on which lies the liberal theory analysis of what exactly citizens owe to each other. In addition, the citizenship of those who for some reason are unable to meet their contractual obligations is often questioned and sometimes their civil and political rights can be restricted, such as in the case of US prisoners who are automatically disenfranchised after conviction. Yet, several scholars (Frazer and Lacey 1993, Pateman 1989a, Coole 1993) have argued that liberal perspectives on citizenship were non-universal, hierarchical and most citizens were excluded. From liberal perspectives, however, citizens enjoy passive liberty that is enshrined in law. In other words, of interest was not so much participation, but an undisturbed individual.

The narrowing of the content possibilities to individual rights is an important moment in the development of the liberal inclusion discourse. It makes a significant difference whether the rule concerning the preservation of life is laid down in the formulation “it is wrong to kill”, which address everybody equally, or as the claim: “I have a right to life”. Charles Taylor (1996, 18) emphasizes that:

...the two formulations are not equivalent in all respects, because in the latter case the immunity or liberty is considered *the property of someone* [my emphasis]. It is no longer just an element of the law that stands over and between us equally.

The latter formulation gives the individual subject some control over the rule. The fact of having freedoms and immunities turns into an entitlement to claim and to defend one’s rights. The rule is not solely an articulation of an objective legal order or of a universal moral obligation by which we all are bound, but an expression of individual subjective will. The mutation of transcendental and objective natural law to subjective rights creates a multiplicity of fragmented individual identities and personal spheres, which do not overlap.

The claims for inclusion and belonging that we have witnessed – especially in the last three decades – in Western nation-states are not new, but are a recurrent, if not fundamental aspect of democratic or democratizing polities (Isin and Turner 2002). In the process, the two aforementioned conventional perspectives on citizenship have become increasingly entangled with the development of modern democracies. As democracy and political participation have been institutionalized within the boundaries of a nation-state, in modern democracies the principle of being a citizen seems to imply that through membership the citizen is included in a national community, in which the citizen acquires some fundamental civil, political, social and economic rights and obligations whilst simultaneously retaining his/her autonomy in regards to certain claims and choices. This autonomy is reflected in rights and implies



recognition of political agency. So it is the right of citizens to make claims to rights that differentiates citizenship from mere subjecthood. Yet, this claim making is also further complicated by who is recognized as citizen. Yet here we want to highlight a paradox that modern democracies have had to contend with, and for which republican and liberal perspectives on citizenship seem increasingly inadequate.

In the past few decades, Western nation states have experienced a trend toward the formation of new claims for inclusion and belonging, with previously excluded groups increasingly framing their struggles in the language of rights and recognition. For the replacement of the idea of the objective (a-personal) law with rights as individual attributes of the subject can result in significant difficulties in establishing a community (Douzinas 2000). It is then a question of the highest importance of how to develop inclusion policies in this individualized public space where social bounds are created because of subjective interests. However, according to Douzinas (2000) the accent on individual right-bearers and a right-claiming universe raises important concerns about social cohesion. In liberal societies, relations with others are based either on self-interests or on legal obligations. Liberal citizens, as right-bearers emancipated from history, religion, culture and ethics, found themselves situated in a vacuous universe of no moral proximity and apathy. Perry (2011), however, argues that there are substantive moral, cultural and religious commitments and loyalties outside the legal system that cannot be easily set aside without losing an important part of self-identity. Perry also argues that these commitments trouble liberal theories. It is therefore possible that liberal inclusion policy, centered on the regime of individual rights, will experience difficulties in addressing the needs of excluded minorities such as European Roma, as it lacks the concepts of belonging to a community and of asserting collective identities (Habermas 1998, Perry 2011). The situation of Roma in Europe challenges the given structures of inclusion within the existing liberal democratic framework of the nation-state, and thus, necessitates a different conception of citizenship that recognizes when, for instance, Roma enact themselves as citizens. Without a developed notion of belonging to a single group organized around social or cultural identities, the only inclusion policies possible are those from which others can equally benefit. In the next section we will focus on how liberal theory conceptualizes commonly shared public institutions without evoking these non-legal and civic identities.

### 3. Neutrality of Public Institutions

Liberal societies subordinate the execution of power to the impersonal rule of law. Apart from the daily execution of power, law and rights are asserted on a self-referential base without ties to any external system (Dworkin 1981, Rawls 1971, 1996, Habermas 1998).<sup>2</sup>

<sup>2</sup> Jeremy Bentham argued that “right, the substantive right, is the child of law: from real laws come real rights; but from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters, gorgons and chimaeras dire. And thus it is that from legal rights, the offspring of law, and friends of peace,



Liberal theory obliges the state and the law to treat all individuals with equal recognition and respect and this entails treating all individuals in the same way. Liberal theorists emphasize that state institutions should uphold their neutrality with regard to social and ethno-cultural diversity of citizens, and public institutions should be disentangled as much as possible from this diversity (Rawls 1971, 1996, Habermas 1998, Barry 2001, Joppke 2003). The neutrality of state institutions is essential for the functioning of liberal institutions, which would be otherwise paralyzed by the recognition of social and cultural diversity (Bell: in Offe 1992). The organization of liberal societies refuses to officially allocate social positions in line with social class, ethnicity, gender or family background (Barry 2001, Rawls 1996). In this regard, Perry (2011) mentions a controversy when a priest, while rejecting being viewed as a citizen, refused to answer the court's interrogation by referring to his pastoral duties. The priest in this case wanted to be treated by public institutions as a priest instead of a citizen. Other counsellors such as doctors, law enforcement, journalists, or solicitors can experience similar conflicts of roles, which can potentially violate the equality of right-bearers. In order to organize a society in which members enjoy equal legal recognition, *vis-à-vis* each other as well as in front of state institutions, diversity based on different individual, social, and cultural characteristics has to be eliminated.

Pursuing the goal of the neutrality of public institutions, Rawls's theory of political liberalism (1996) developed a conception of "overlapping consensus". According to his conception, various groups, while holding incompatible cultural, religious, metaphysical and gender views, can come to an agreement and work out common neutral legal and political norms which would guide their social interactions. We can all discover common legal and political norms by conceptualizing the "original position", in which, while standing behind a "veil of ignorance", we deliberately abstract from the knowledge of our social attributes and elaborate only our rational competence. The veil filters out the knowledge of our personal ends and purposes tied to our social lives (Perry 2011). The legitimacy of commonly shared neutral institutions could have as many sources as social, cultural and philosophical perspectives that people share. We should all agree on norms but we can disagree on why they are the right norms, as many people will interpret them in light of their own history, social status and culture. The universal (applying to everyone) legal and political norms organizing the public sphere would overlap with the multiplicity and diversity of our particular identities. It is clear that Rawls and other liberal theorists consider differences of nationality, social status, ethnicity, gender and religion as something accidental and secondary; as "features relating to social position, native endowment, and historical accident, as well as to the contents of persons' determinate conception of the good, are irrelevant, politically speaking" (Rawls 1996, 79). The role of personal identity attributes is simply to justify the existence of overlapping legal and political norms.

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come antilegal rights, the moral enemies of law, the subverters of government, and the assassins of security" (Bentham 1843, quoted in: Sommers and Roberts 2008, 396).



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Hence, in liberal theory, difference is recognized, respected and conceptualized when publically neutralized and secured for private articulation only. The differences of culture, gender, religion and social status do not gain public (civil and political) currency, but are set aside and tolerated to unfold in the domain of private associations (Perry 2011). Difference is deliberately omitted from the reach of liberal state institutions and framed by the private context of interpersonal tolerance and permissibility; for example, the case of early marriages which is justified by reference to cultural background, which the liberal legal system - with a strict division of childhood and adulthood - considers an illegal deviation. Conversely, according to Joppke (2001), liberal states attempt to keep their public sphere limited to as few features of the dominant culture as possible. He writes that, “what they in most cases do require is a mere adoption of official language(s) in the public as well as dual commitment to democracy and pluralism” (2001, 436). Ethnic minorities and immigrants should be able to learn the officially recognized local language and at the same time (although this condition is equivocal and very often inadequately defined) respect the constitutional principle of democratic governance and commit to tolerance of other cultures, even when they contradict their own convictions. Hence, while the state places almost no cultural impositions on their national minorities or newly arrived entrants, the need to grant them a particular cultural recognition is also not urgent. Joppke (2001, 436) further argues that:

If one takes the nationalizing practices of states as variables rather than parameter, one sees that in contemporary liberal states there is very little that these states expect of and impose on their newcomers, even at the point of acquiring citizenship. If this is the case, it is not clear why these states should concede minority rights in return for their (very minimal) cultural impositions.

As contemporary nation-states make their procedures of acquiring citizenship easier, multicultural policies and minority rights are not necessary for securing equal treatment for all individuals. The minimal imposition of the officially recognized state language is justified with reference to its function as an operator of social cohesion and state organization. Joppke (2001, 437) concludes that, “if minority rights are compensation for states’ strong nationalizing practices, the weakening of these nationalizing practices removes the case for (this type of) minority rights.” Yet, nowadays it is acknowledged that equality and difference are not opposite but interdependent strategies, such that political equality rests upon the recognition of difference, which in turn implies the recognition of equal value of these differences (Bock and James, 1992).

Liberal theory operates with a vaguely circumscribed number of common human characteristics and conceptions of ‘the good and the right’. However, it is not that liberal theory postulates the neutrality of institutions, requiring them to hold an agnostic account of the best set of values. A “comprehensive conception of the good” is a complex package of values that integrates all that is valuable in private and public life (Rawls 1999). It does not mean that liberal theory of neutral public space forbids citizens from asserting their own conception of the good. What it forbids is to privilege one form of life at the expense of others (Habermas





1998). Conceptualized accordingly, liberal axioms can also be in accord with the presupposition of social, cultural and political neutrality of liberal institutions as they all embody the liberal set of values. It is under this perspective that the *modus operandi* of liberal institutions is to protect the rule of law instead of perfecting citizens.

The premise, which is presumed all reasonable individuals share, provides unproblematic grounds for formal public institutions to treat everybody fairly and equally. It is fair to say that liberalism does not presuppose a single set of values, because it claims compatibility with all of those, which prioritize rational reasoning. In this regard, it denies the neutrality of indifference and puts forward institutions condemning favoritism. However, referring to the neutral character of institutions can sometimes slip into powerful bracketing of different worldviews and oppression of minorities in the name of reason (Perry 2011). At the same time, the assumption of the ideal of the civic public as impartial and universal has been challenged. While impartiality is proclaimed, some citizens, i.e. ethnic minorities, the poor, non-whites, non-Christian, etc., remain invisible in the depoliticized spheres of the everyday struggles that mostly take place at the privacy of the home. Young (1985) asserts that the ideal of the civic public as expressing the general interest, the impartial point of view of reason, itself results in exclusion. In this conceptualization homogeneity of citizens is imagined so that those who do not fit the model of the rational citizen who can transcend body and sentiment are excluded. The distinction between the private and the public in political theory assumes homogeneity that necessitates the exclusion of many individuals and groups, particularly women and racialized groups like Roma, culturally identified with the body, wildness, irrationality (Young, 1985), and for instance, everyday life.

The original status quo which liberal theory presumes is the situation of universal formal equality. This optimal situation, by which any violation of rights is weighted, is a genuine moment when we all enjoy the same legal recognition but not necessarily the same conditions of housing, education, healthcare, nutrition, employment or access to social services. There is a dialectic between inclusion and equality inherent to the *de jure* and *de facto* situation. As Anatole France (2006) put it: “the *law*, in its majestic equality, forbids the rich as well as the poor to sleep *under* bridges, to beg in the streets, and to steal bread”. The community of right-bearers is congregated on the ground of shared legal aspirations. It is presumed that we all want to claim the same rights and we all share the same horizons of expectations and aspirations. Differences coming from birth, ethnicity or social status, however, lead to different claimants expressing different expectations. It is not the same when the law forbids the rich and the poor to live on the street, just as it is not the same when migrants have an equal right to travel, since they very often have no other choice due to eruption of conflicts, ethnic discrimination, religious persecution, poverty, land grab and evictions and extreme weather. Those not directly affected by the law forbidding sleeping under bridges can fulfil this obligation easily.

Thus, by strictly focusing on formal civil and political equality, the liberal antidiscrimination discourse has difficulties in dealing with those who have had no other choice



but to sleep under the bridge or leave a country due to racism, discrimination or poverty. Legal equality in this case does not deprive minorities of some eccentric habit but of an ultimate existential site, and it creates further obstacles to their struggle to survive. People trapped by their social, cultural, and religious attachments find it hard to pursue liberal ways of abstracting from them (Perry 2011). For instance, citizens identified ‘as belonging to Romani minorities have only limited access to the most fundamental citizenship rights, although these rights have been de jure granted to them’ (Sardelic, 2015, 159). Thus, while Roma are citizens in the de jure sense, they do not seem to be recognized as citizens - this tension is captured with the term ‘citizen outsiders’ (Solf, 2018). Confronted by empirical findings on growing inequalities and stagnating poverty, the urgent question arises whether a decent standard of living can follow merely from individual legal recognition. Some critics emphasize that solutions based on liberal theory are inadequate and shortsighted for closing eyes to social inequalities and cultural difference.

While there may be abstract equality amongst citizens, in concrete reality of power relations, citizens are still divided into various hierarchies of deserving versus non-deserving, normal versus pathological, white versus black, and so on. So it is this focus on the actual practices by which citizens are governed that distinguishes critical approaches to citizenship and for which citizen outsiders is then not an impossible proposition but actual description of how power is exercised (Solf, 2018). Solf (2018) also highlights that what is for instance distinctive about Roma is not that they are the only citizen outsiders, but that they have taken up a right (in this case freedom of movement) that they legally have, but that they are socially denied. In that sense, it is necessary to consider their (transnational) mobility not only as a social practice but also as a political terrain on which the limits of (European) citizenship are both contested and negotiated (Aradau 2008).

#### **4. Franchise, Political Equality and Participation**

The concept of citizenship - understood as the practice of participation and recognition of claims - had the difficult task of integrating popular and legal rule by connecting political participation and rights with membership of a given political community. Citizenship as practiced in Western democracies is a product of the interconnected processes of state building, the emergence of commercial and industrial society, and the construction of a national consciousness (Anderson 1983, Hobsbawm 1990). Yet, universality of citizenship assumed that laws and rules apply to all citizens in the same way, ignoring the existing inequalities amongst them. Participation and the political dimension of citizenship are rendered extremely important, and being denied the ability to participate in one’s political community contradicts the very basis of every liberal democratic nation-state. With the notion of participation, we refer to the ability to participate fully in economic, social, political and cultural life, as well as the process leading to and sustaining such a state. Access to political participation is an



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essential element of the liberal antidiscrimination inclusion discourse (Oxhorn 2006, Rostas 2013, McGarry 2010). This discourse accentuates exactly this political dimension of exclusion, through which racialized and ethnic minorities have been systematically disenfranchised and deprived of full-fledged membership in political communities.

Inclusion policies tailored to enhancing the political standing prioritize improving the access to the institutions of representative democracy, such as the right to vote and to stand for public office. Such inclusion policies aim to correct exclusion by promoting non-discriminatory access to civil and political rights, thereby allowing members of ethnic minorities to represent their people and their interests. These policies are designed to enhance individual competence in legal and political agency, which safeguards rights-bearers in their equal access to public institutions and enables them to compete fairly with others in the political process. Discrimination is seen as a violation of civil and political rights in a situation when particular individuals are deprived of their equal legal recognition, or when other individuals or state institutions intervene with their rights by limiting or denying their political engagement. What we mean here, in a broad sense, by political participation is an interaction among peers granting them authority, freedom, dignity and the possibility to flourish in a symmetric sense and under the accountable system of power, which Anderson (2011) described as the ability to appear in public without shame (Anderson 2011). People are included politically when they stand in equality with one another. In the case of the liberal equality of opportunity, however, mutual social relations are substituted with beneficial expectations on the side of self-interest-pursuing and prudent individuals.

Although the design and allocation of civil and political rights follows a strictly individualistic pattern, and these rights can only be asserted and defended in courts, the field of political participation presupposes collective actors, who aspire for collective goals and goods (Habermas 1998). The individual recognition of human rights-bearer is subsequent to their membership in a community, and without this membership it would not be possible to assert rights (Arendt 1979, Agamben 1998, Benhabib 2002, 2006, Fine 2007, 2009, Douzinas 2000, 2008). This is the twist in liberal theory; inalienable individual rights are further conditioned by membership in a political community. Political participation is meaningful insofar as it happens within a circumscribed political community. Absence or exclusion from the political community is therefore devastating for civil and political recognition (Perry 2011). Sommers (2008, 69) outlines that, in our contemporary societies, “there are some people who are excluded from all political entities, for whom citizenship is nothing but an exclusionary hard line of demarcation.” In this regard, Arendt (1979, 300) convincingly pointed out that stripping European Jews of their citizenship rights and making them effectively stateless revealed that “the world found nothing sacred” beyond the identity of right-bearers: “[A] man who is nothing but a man has lost the very qualities which make it possible for other to treat him as a fellow man.”

Also, the situation of Roma in the EU, who apart from a small minority, hold citizenship, challenge Arendt's understanding of having the 'right to have rights', which Arendt



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saw protected as long as a person holds citizenship. Paradoxically having citizenship of an EU Member State seems to put Roma into an even more vulnerable and precarious situation since they have the right to move freely but are not recognized in their claims to the right to live a life protected from discrimination. Social recognition of people is firmly tied to the ability to claim rights. Following this reasoning, we can re-voke Arendt's argument that rights emerge through inclusion in a political community – "a place in the world which makes opinions significant and actions effective" (Arendt 1979, 296).

Relating the complexities of recognition to the importance of participation, it seems increasingly evident that certain groups, for example, migrants, refugees or Roma, lack recognition and remain unrecognized in their claim making (Van Baar, 2012). Disenfranchised and separated from her community, how can an individual right-bearer realize her rights? Without taking part in a political community, the liberal project of universalization of individual rights remains incomplete (Habermas 1998). Those inclusion policies targeting the problems with political disenfranchisement thus have to consider the shift from the individual to the collective level of claims. Dealing with group claims, however, represents a certain complication for liberal theory, as it requires considerations of precisely those particularities of social identity from which the liberal theory aspires to withdraw (Habermas 1998).

What is at play here is an anxiety that collective political rights could lead to the defense of a group's oppression of its individual members. Individual rights could often stay unanswered or even be violated by rights attributed to groups, thereby denying an individual member the possibility of questioning her own community and culture. This reservation regarding collective (socio-economic and cultural) rights is also relevant when examining another liberal institution, the minimal state, and its practice of refraining from interference in the private sphere. We discuss this in the next section.

## **5. Non-interference and Minimal State**

Liberal antidiscrimination discourse is designed to eliminate any arbitrary infringement of the civil and political rights of individual citizens by governments or statistical majorities. It is argued that social, economic, and cultural rights require positive action and a certain form of state intervention to secure their implementation. Positive action and state intervention, however, infringe on the autonomy of individual right-bearers (Buchanan 2005). Therefore, put as plainly as possible, liberal theory circumscribes (human) rights as negative rights. Negative rights by definition aim at the elimination of obstacles to individual freedom. Negative freedom thus means the absence of these obstacles, which itself then enables the free development of personal capacities for active public engagement. By contrast, positive rights are organized around the notion of freedoms which count on the presence of control and institutions (Berlin [1969] 2004).



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Accordingly, there is a debate over what institutions should do: should they merely prevent existing exclusion or should they additionally create and maintain certain sets of positive practices aimed at including individuals and groups. For liberal theorists, any right is a right of a single individual against another individual or the state. This individual rights structure allows a transparent economy of rights according to which, for every claim-right held by a particular individual, there is a correlative duty of another individual (Hohfeld 1919, Oneill 2005). Any individual duty can mean an obligation to actively fulfil the rights of others or it could merely mean a passive obligation to do no harm. Liberal theory suggests that the correlative duty or the obligation generated by a rights-claim should be guided by the principle of non-interference. It argues that duties allocated to rights-bearers are exclusively negative. In the simplest terms, in such cases, avoiding harm takes priority over actively helping (Lichtenberg 2010).

According to classical liberal theory, every individual and public authority has a negative duty to prevent human rights violations by exercising restraint from interfering with the protected conduct and protected domains of every other individual (Lichtenberg 2010). Individuals are expected to refrain from violating the rights of others. Supporting human rights regimes thus requires self-restraint from individuals as well as authorities. The most pro-active public action expected is a restoration of conditions, which secure equal access to universal enjoyment of rights. In what has been said so far, the duties that are correlative to human rights claims are formulated as a general obligation not to harm others by denying them their civil and political recognition. Even the problem of poverty is conceptualized negatively and approached from the point of view of formal equality, seen as everybody's right to be free from the restraints of poverty. This violates individual liberty by depriving people of their right to be free from poverty.

Positive duties are characterized as open-ended, limited, imperfect and intrusive, since it is not plausible to hold people responsible for not rendering aid to all those who need it (Pogge 2007). While being a mere bystander and not actively supporting inclusion through fighting for equal civil recognition, I cannot be held responsible, for I am not making anybody worse off. Thus, ceasing to actively engage in alleviating the socio-economic conditions of others does not mean that I am violating their human rights (Lichtenberg 2010, 557-563). My responsibility to secure the human rights of others is guided by the principle of not doing wrong (killing, raping, and robbing). Overall, my obligation to fulfil the human rights of others is met when I make sure that my conduct does not make anybody else worse off. Harming is worse than not helping.

Pogge's solution for the question of inclusion responsibilities brings something new to the debate on negative and positive duties, although he insists on remaining within the liberal tradition of negative duties (Pogge 2002, 2007). His argument against the clear-cut distinction between negative and positive duties is based on combining Article 25 of the Universal Declaration of Human Rights (UDHR), which introduces a right to a standard of living for everyone, with Article 28, which guarantees a social and international order where human



rights can be fully realized.<sup>3</sup> Instead of following the standard interpretation of the responsibility not to violate the human rights of others, according to Pogge (2002, 71), the fundamental responsibility of liberal individuals is to include people in the civil and political order, “to work for an institutional order and public culture that ensure that all members of society have a secure access to the objects of their human rights”. This argument still focuses on securing legal access to civil and political rights, as explicated in the notion of negative duties.

However, what is new is the accent on the engagement in actively structuring institutions and social systems in which one is living. Pogge (2002, 72) emphasizes that, “I would be violating this [negative] duty if, through my participation, I helped sustain a social order in which such access is not secured”. What is concisely argued is that the violation of the human rights of others caused by maintaining institutions, which has an exclusive and coercive potential. It is not enough to refrain myself from interfering in the domains of other right-bearers when the social order in which we live generates exclusionary and unequal conditions for them. Even if refraining fully from conduct that violates the human rights of my cohabitants, I also have an extended responsibility for the institutions, which produce another form of exclusion. Thus, in order to truly advocate the liberal position, I must extend the radius of my correlative duties and actively work against (or compensate for) the exclusionary potential of (civil and political) institutions in my own society. Accordingly, this breaks from the classical liberal argument that civil and political rights require only restraint from claims, which might interfere with others, and introduces a new front of liberal inclusion policy processes. Liberal citizens should pro-actively engage in ensuring that all those living in their society are included and do not endure conditions of civil and political mis-recognition.

Pogge (2002, 64) further argues that human rights should predominantly address governments and other official power holders: “Human rights postulates are addressed, in the first instance at least, to those who occupy positions of authority within society (or other comparable social system)”. In his later book, Pogge (2007, 17) circumscribes his institutional understanding of correlative duties, which urge inclusive public policies, by claiming that one should not “foreseeably and avoidably deprive others of their livelihood”. However, many of our ordinary economic actions go beyond our ability to foresee and control their consequences. Therefore, Pogge (2007, 24-25) argues that negative duties should also incorporate a compensating element:

Human agents may participate in imposing social institutions only if they are also willing to help ensure that the human rights of those subjected to these institutions are fulfilled insofar as this is reasonably possible.

On the one hand, Pogge’s institutional understanding of injustice remains strictly phrased in the language of liberal negative duties, as not helping to uphold exclusionary

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<sup>3</sup> UDHR Articles 25 and 28, available at: <http://www.un.org/en/documents/udhr/index.shtml#a25>, (accessed: June 3, 2013), access 10 April 2021.



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institutions of one's own society. However, on the other hand, it expands the possibility to claim duties to support inclusion even when we are not aware of our individual contribution to the situation of the excluded.

An especially thorny issue for the analysis of inclusion discourses is the liberal insistence on minimal state interventions in the social formation. In such a context, it is challenging to speak about developing inclusion policies while the function of public policies as such is put in question. The complementary part to the claims for a minimal state is an accent on active citizenship and personal responsibilities for membership and active participation in society (Amstrong 2006, Wacquant 2009). Instead of state interventions on behalf of its citizens, the liberal discourse of active citizenship considers public engagement to be the obligation of individual citizens. There are two consequences of understanding public space in this way: citizens are expected to support each other - well-off active citizens should assist excluded people; and excluded people are expected to mobilize their potential and fully engage with public institutions, mainly by participating in the labor market.

## 6. Conclusion

This article analyzed theoretical insights into some of the contradictions of liberal antidiscrimination discursive tradition. It advocates inclusion policies grounded in the reinforcement of civil and political liberties and in neutral public institutions, where each member of society is relevant as a rights- and duty-bearer under the umbrella of the rule of law. Liberal inclusion policies thus bestow legal and political competences to each individual right-bearer in an equal way. These policies defend the equal legal and political recognition of every individual irrespective of their socio-economic, ethnic, gender, religious, and sexual identities and assumes no cultural impositions on newcomers.

Rights-based inclusion measures, by definition, cannot but follow a universal and equal citizenship frame. In this frame, lawmakers treat all potential recipients of their inclusion measures as equal rights-holders; as subjects who emerged from the process of abstracting from highly particular social, economic and cultural identities. The principle of the rule of law was developed as the superior instrument for the abolition of the privileges and inequalities tied to social, economic and cultural inequalities and to make all right-holders equal before the law. This formal equality, however, finds its realization in a hierarchically stratified society. This stratification is due the role of exactly those social, economic and cultural features which the citizenship frame has attempted to eliminate.

Critics point out the strictly formal and abstract character of inclusion objectives, behind which vast socio-economic inequalities and cultural stereotypes prevail practically untouched, as these objectives are circumscribed by *laissez-faire* markets and politics, which usually lack an inclusive dimension (Holston 2009, Anderson 2011, Balibar 2010). Yet, the



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situation of many minority groups in Europe goes well beyond exclusion and discrimination. Although these groups live within the political communities of nation-states and hold EU citizenship, they are often pushed to the margins of society.

Beyond dealing with equal and non-discriminatory opportunities to access, labor market mechanisms are considered a matter of the private sphere where public authorities should not robustly intervene. Liberal antidiscrimination approaches to inclusion thus engage with creating a greater number of non-discriminatory opportunities for excluded minorities to enter the labor market and providing some requalification to enhance their competitive potential. The contradiction between these citizenship-based and market-based components of the liberal inclusion discourse is captured by Sommers (2008a, 69), who states that “citizenship entails reciprocal but *non-equivalent* rights and obligations between *equal* citizens; contracts entail market exchange of *equivalent* goods or services between *unequal* market actors.” The liberal *laissez-faire* economy singles out property and capital owners and this selection also has to do with the above-mentioned social and cultural features.

Property and capital-based socio-economic inequalities gradually corrupt the process of equalizing right-holders and, as Esping-Andersen (1990, 11) foresaw: “as these generate sharpened conflicts, the liberal state will be forced to shed its ideals of freedom and neutrality, and come to the defense of the propertied classes.” The ultimate consequence of the contradiction between civil and political equality among rights-holders, and socio-economic inequalities among property and capital owners and the rest of society, is that one absorbs the other and adopts its logic (Sen and Dreze 2008). The distribution of civil and political rights thus appears to be conditional on contractual labor market integration, which further generates people who are excluded from civil and political institutions and for whom citizenship becomes nothing but an exclusionary hard line of demarcation.

We have demonstrated that the liberal inclusion draws on conventional conceptions of citizenship, according to which all citizens, if not substantially equal, are at least equally recognized as rights-claiming subjects with relatively equal access to mechanisms through which those rights claims can be made.

The promise of citizenship – i.e. that it serves as a guarantor of access to rights, or in other words, is a status that guarantees the right to have rights – is not effectively experienced by many Roma and other minority groups in Europe and elsewhere, since they are not granted the status of those who have the right to have rights. We also discussed that Arendt suggests that freedom consists in acting, which in turn is dependent on speech. For Arendt, the sources of agency and equality are the polity and community. As long as political speaking and claiming are only recognized in public spaces, most minority groups will remain unrecognized as political subjects and rights claimants.

However, if we understand politics as moments when those who do not ‘count’ make claims to be counted, minority groups would be recognized as political, and indeed, as enacting citizenship. For Arendt, human rights derive from citizenship, just as the right to have rights





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becomes also a right of citizenship. We argue that it is necessary to move beyond such conceptualization. The situation of Roma and other minority groups demonstrates that citizenship status neither guarantees access to the right to have rights, nor equality nor the autonomy to make claims. Inclusion policies are in the end made for those who fail ‘to fit in’.

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