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European Misfits: The Europeanization of National Immigration Policy in Italy and Spain

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Abstract:

Since its inception, the EU has asserted increasing pressure and influence on national policies of its member states. This capstone seeks to examine the effects of Europeanization on national immigration policy in Italy and Spain. Using the Three Step Model of Cowles et al, the study analyzes EU, Italian and Spanish lawmaking in the area of immigration to determine if, and to what degree, Europeanization has occurred, and how goodness of fit and mediating domestic factors influenced the outcome. The study found that the outcome in both Italy and Spain was surface-level absorption of EU policies, without fundamental transformation in the way each country thinks about immigration policy. Although a high degree of misfit, a necessary condition for Europeanization, is present in each case, the study found that mediating domestic factors had a greater effect on the outcome. This study contributes to the growing body of literature on Europeanization and confirms the inconsistency in the degree of Europeanization across countries and policy areas observed by other scholars.

I. Introduction

Since its inception with the Treaty of Rome in 1957, the European Union (the European Community at the time) has profoundly changed the countries of Europe. Scholars refer to this process of transformation as “Europeanization”. Europeanization has affected policy, institutions and processes in almost all sectors of society, the economy and politics, even in areas that were traditionally controlled by the state. One of these areas is immigration policy, which, because of its close ties to security and identity, has long been considered the exclusive purview of national governments. As the EU has expanded, it has recognized the importance of an integrated and comprehensive European approach to immigration, which has led it to increasingly encroach on

the area of immigration policy, formerly reserved for states. This study examines this process in Italy and Spain and seeks to determine how Europeanization has affected national policies in the two countries. The study finds that, although there has been surface-level absorption of EU policies in both Italy and Spain, domestic politics and public opinion have prevented national immigration policies from being fundamentally transformed by Europeanization.

The cases of Spain and Italy, two countries with similar immigration experiences, provide a great opportunity to examine how Europeanization has affected national immigration policies. Immigration policy will be considered to include border control and preventing illegal migration, managing legal migration, facilitating family reunification and managing integration of immigrants. Italy and Spain are representative of the countries of Southern Europe, which have experienced immigration very differently than the countries of Northern Europe, such as France, Germany and the UK. While these countries have long histories as receiving destinations for migrants, it is only within the past 30 years that Spain and Italy have transformed from countries of emigration to countries of immigration. This transformation was rapid and unexpected and left Spain and Italy unprepared to deal with the large influx of immigrants from Eastern Europe, Africa and Latin America that began to arrive in the 1980s. The countries of Northern Europe did not look kindly upon this phenomenon and expressed concern that Italy and Spain had become the open back door to Europe. In addition, Spain and Italy both have large quantities of illegal immigrants, which are attracted and sustained by robust underground economies. Additionally, Italy and Spain have two of the lowest birthrates in Europe, which means that migrants are desperately needed to sustain economic growth and the national welfare systems. Yet at the same time, both countries are wary of immigration and the ability of immigrants to assimilate into Italian and Spanish culture, a concern, which is compounded by their proximity to

North Africa and several high profile incidents in recent years involving immigrants and anti-immigrant sentiments.

II. Europeanization Theory

For decades scholars have been studying the relationship between the European Union and its member states, beginning with a bottom-up approach that looked at how the countries of Europe shaped European integration, and slowly moving to a top-down approach in the 1990s that examines how European processes, policies and institutions influence the member states. In reality, the relationship is circular with both bottom-up and top-down influences occurring simultaneously (Borzel 2001; Bulmer and Burch 2001; Goetz 2002).

Europeanization is a term that has been applied by scholars in a variety of ways (see Featherstone 2003: 5; Radaelli 2003: 29), but here it will be used to mean how the EU impacts the domestic policies of member states. In a pioneering 2001 study, Cowles, Caporaso & Risse created a three-step framework to explain how EU policy creates domestic change (Cowles et al. 2001; Caporaso 2007). The first step, European integration, includes a wide variety of EU lawmaking (see Section IV). The second step is goodness of fit, or the degree of congruence between the EU policy and domestic policy. Cowles et al. (2001) theorize that there must be some degree of misfit to create pressure for the state to adapt its policy. Misfit is a necessary, but not sufficient, condition for domestic change (Borzel and Risse 2003: 58). The third step is the existence of domestic mediating factors. There could be any number of different domestic factors, such as the scope and type of executive leadership, presence and number of veto players, institutional capacity, timing, strength of special interest groups, etc. (Radaelli 2003; Héretier

and Knill 2001), which could in turn be broken down into an infinite number of individual factors. The degree of misfit and mediating domestic factors work together to determine if, and to what degree, a policy is implemented by a member state at the national level.

Radaelli (2003), building on the work of Borzel (1999), Cowles et al. (2001), Héritier (2001), and Héritier and Knill (2001), identifies four possible outcomes of Europeanization: inertia, absorption, transformation, and retrenchment, which encompass both the direction and magnitude of change. Inertia occurs when the member states resists or rejects the imposition of a policy change. Inertia can take the form of lags, delays in the transposition of EU directives, or total resistance to change. Absorption occurs when the state accommodates policy requirements without fundamentally modifying essential structures or political behavior. Transformation indicates a fundamental change in the logic of political behavior and the way of thinking about a problem. In some cases, retrenchment occurs, and policy actually becomes less European, often because adaptational pressures create a domestic backlash that strengthens the opposition to reform.

There are a variety of studies, which apply this, and other theories of Europeanization, to various EU countries and policy areas. For example, one oft cited study is that of Jordan (2002), which examines the Europeanization of British environmental policy. Other examples include a study of the Europeanization of agricultural policy by Roederer-Rynning (2007), and the general study of Europeanization in France by Ladrech (1994).

Application of the theory of Europeanization to the area of immigration policy is a recent development in the literature. Ette and Faist (2007, 9-11) provide a helpful overview of studies in the area. Studies have so far found contradictory evidence of the impact of the EU on national immigration policies. For example, Thielemann (2001) finds that the EU has been an important

catalyst for changes in national asylum systems, whereas Geddes (2003) finds that the EU can only be considered a marginal explanatory factor for immigration policies of the 1980s and 1990s. Although there is increasing interest in the intersection of Europeanization and immigration policy, Ette and Faist point out that there are still significant gaps in the literature. One common problem is that many scholars focus too narrowly on one country without offering any point of comparison (see Geddes 2005; Vink 2005). There is also a general problem with a lack of systematic research, with many scholars using descriptive analysis of cases, without any kind of theoretical framework to guide their analysis.

This study seeks to fill one of these gaps by using the theoretical framework of Cowles et al. outlined above to compare how the EU has affected national immigration policies in Italy and Spain. Italy and Spain are two countries that have largely been neglected in the literature, in favor of more traditional countries of immigration, such as France, Germany and the UK.

III. Methodology

To determine the effect of the EU on national immigration policies in Italy and Spain, this study will begin by examining EU lawmaking relating to immigration, including the most important treaties, conventions, acts, programs, directives and communications in the area, which corresponds to the first step in our Europeanization framework. Next, the study will outline and analyze the most significant national immigration policies of Italy and Spain to determine the direction and degree of Europeanization. The final analysis will attempt to explain the reasons for these outcomes by examining goodness of fit and mediating domestic factors.

IV. Creating an EU Immigration Policy: From Treaties to Directives

Europeanization begins at the supranational EU level with the creation of "formal and informal norms, rules, regulations, procedures, and practices" (Cowles et al 2001, 6), which make up the "acquis communautaire," the total body of EU law, which member states are required to integrate into their national legal system. States are bound, first and foremost, by the EU treaties, which impose binding obligations. Treaties are considered part of the national law of each member state. This category of primary legislation includes Founding Treaties, such as the Treaty on European Union, as well as treaties of accession, and bilateral agreements between the EC and other countries.

Below the primary treaty level, the secondary level of legislation includes policy-making legislation issued by the European Council or the European Commission. Included in this category are *regulations*, which are binding and directly become part of the national law of member states without the need for implementing legislation. *Directives* are also binding, but must be integrated into national law within a certain period of time using implementing legislation. Each member state may decide how to best implement the directive at the national level. Additionally, *decisions* are also binding, but are meant to address specific issues and only apply to the specific state or company to which they are addressed. Non-binding legislation is issued as a *recommendation* or an *opinion*, and allows the EU institutions to express their opinion and desired actions, without imposing a legal obligation. Outlined below are the most important pieces of EU legislation relating to immigration.

In order to implement directives, the states must begin by "transposing" the legislation into national law. Each directive includes a time period in which it must be implemented. According to Gonzalez-Enriquez (2011), the average time granted is 37 months. Once the

directive has been transposed, the states must notify the EU and the other member states. The transposition proceedings are monitored, and the Commission can launch an infringement procedure in the case of (1) non-notification, (2) non-transposition, (3) late transposition, or (4) incorrect transposition. If the member state persists in its infringement, the case may be referred to the European Court of Justice, which may impose financial sanctions.

The Treaty of Rome (1957)

Signed in 1957 by the heads of state of France, Belgium, Italy, Luxemburg, West Germany and the Netherlands, the Treaty of Rome created the European Economic Community (EEC), the predecessor to the European Union. The treaty established a supranational European government embodied in four institutions: the Commission, the Council of Ministers, the European Parliament, and the Court of Justice. The treaty created a Common Market with freedom of movement of goods, services, capital and people. The treaty established common agricultural, trade and transport policy and declared that other common policies would be created as needed.

Schengen Agreement (1985)

The Schengen Agreement established an area of free movement of persons, which eliminated internal borders between the Member States (originally France, Germany, Belgium, Luxembourg and the Netherlands). The treaty created a single external border between the Member States with identical immigration procedures (common visa rules, right of asylum, and checks at external borders). To compensate for this new freedom, cooperation and coordination among police and judicial authorities were strengthened, and a shared information database, the

Schengen Information System (SIS), was created. Italy joined the Schengen area in 1990, and Spain did so in 1992.

The Single Europe Act (1986)

The Single Europe Act, signed in 1986, was the first major amendment to the Treaty of Rome. The Act set a 1992 deadline for creating a full single market, which the Treaty of Rome had so far failed to establish because the required unanimity in the decision-making procedure was so difficult to achieve. The Act allowed for deeper integration by making it easier for the EEC institutions to pass laws, particularly by increasing the types of cases in which the Council could use Qualified Majority Voting (rather than unanimity) and by strengthening the power of the Parliament.

Treaty of Maastricht on European Union (1992)

The Treaty of Maastricht built on the precedents of the Treaty of Rome and the Single Europe Act to finally create the European Union. The treaty created a three-pillar structure for the power of the EU: (1) the European Communities (2) common foreign and security policy, and (3) justice and home affairs (JHA). The Treaty also created a co-decision procedure, in which the European Parliament adopts acts in conjunction with the Council. Additionally, the Treaty created a new European citizenship, which takes precedent over national citizenship, and guarantees European citizens new rights, including "the right to circulate and reside freely in the Community" (Europa). The creation of the third pillar of justice and home affairs was particularly important in that in gave the EU control over "rules and the exercise of controls on

crossing the Community's external borders", "combating unauthorized immigration" and "a common asylum policy" (Europa).

Treaty of Amsterdam (1997)

The Treaty of Amsterdam took EU integration a step further, streamlined decision-making procedures and laid the groundwork for the ascension of new members. Most importantly, the Treaty increased the amount of decisions covered by QMV and transferred JHA powers from the Council to the Commission, thus bringing immigration and asylum issues into the Community method of decision-making (rather than the intergovernmental method between Member State governments). Although visa procedures were brought into the QMV method, most other areas related to immigration policy remained subject to unanimous approval. The Treaty also incorporated the Schengen Convention into EU law, thus allowing for free movement between the twelve Schengen members.

Tampere European Council (1999)

The special European Council of Tampere identified the creation of an area of freedom, security and justice a top priority, insisting that freedom and security must also be extended to non-citizens residing in the EU. The Tampere Council called on the EU to create a common asylum and immigration policy, as well as partnerships with major countries of origin of immigrants. The Tampere Conclusions set much of the groundwork for the far-reaching Treaty of Lisbon eight years later.

Dublin Regulation (2003)

The Regulation, which replaced the Dublin Convention of 1990, established the principle that only one Member State is responsible for examining an asylum application. This responsibility usually lies with the first safe country the asylum seeker entered or the country responsible for their entry into the territory of the EU. Thus the structure of the Regulation enshrines the "safe third country" principle, allowing Member States to automatically reject asylum applications if the applicant first passed through another safe country where they could have applied.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

This directive aimed to create common laws relating to family reunification in order to protect the family unit and facilitate integration. The directive states "third-country nationals who hold a residence permit valid for at least one year in one of the member states and who have the genuine option of long-term residence can apply for family reunification" (Europa). The directive must apply to spouses and minor children, but member states can decide whether to extend it to other groups such as parents, non-married partners and children above majority. Member states retain the ability to reject a family member for reasons of public policy, internal security or public health. In addition, member states are free to grant family reunification based on more favorable conditions than the minimum standards created by the directive.

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

The directive creates a single status for long-term residents across the member states to ensure equal treatment. Member states are required to apply the directive in compliance with the non-

discrimination requirement of the Charter of Fundamental Rights. Immigrants must be given long-term resident status after five years of continuous legal residence. In addition, decisions must be made within six months of receiving an application. Applicants must prove they have sufficient resources to live without social assistance, and sickness insurance. Member states are allowed to require applicants meet other integration conditions and may refuse to grant status on the grounds of public policy or security. Once a person has been granted long-term resident status they are entitled to equal treatment with nationals in most categories.

Hague Programme (2004)

The Hague Program of 2004 set out a five-year agenda with 10 priorities for strengthening the area of freedom, security and justice. Four of the points specifically addressed immigration issues: (1) Defining a balanced approach to migration, (2) Developing integrated management of the Union's external borders, (3) Setting up a common asylum procedure, and (4) Maximizing the positive impact of immigration. The Hague Program represented an acknowledgement of the potential positive impacts of legal migration, rather than a limited focus on combating illegal immigration.

Frontex (2004)

The European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union (Frontex) was created in 2004 to improve the integrated management of the external borders of the EU. Frontex was meant to embody the priorities laid out by the Tampere Conclusions and the Hague Programme regarding the area of freedom, security and justice.

Global Approach to Migration (2005)

In 2005 the EU created the Global Approach to Migration as a framework for "dialogue and cooperation with non-EU countries of origin, transit and destination" (Europa). The three main priorities of the framework are: (1) improving the organization of legal migration and facilitated mobility, (2) preventing and reducing irregular migration in an efficient, yet humane way, and (3) strengthening the synergies between migration and development.

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 1 September 2005 – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union

The communication provides guidance for countries to create national integration policies. Concrete guidelines include preventing discrimination in employment, offering integration courses that teach about language, history and institutions, considering diversity in school curriculum, and strengthening the capacity of service providers to assist non-EU nationals.

Treaty of Lisbon (2007)

The Treaty of Lisbon abolished the pillar structure and renamed JHA the "area of freedom, security and justice", which gives the European institutions new competencies relating to border control, asylum and immigration, including establishing common management of the EU's external borders (through the strengthening of Frontex), creating a common asylum system, and establishing rules and rights in relation to legal immigration. These areas are now subject to the co-decision and QMV procedures, and are considered shared competencies of the EU and the

member states. Additionally, the Court of Justice was given jurisdiction over these immigration areas. The Charter of Fundamental Rights of the European Union was incorporated into EU law by the Treaty and grants numerous rights to all persons living in the EU. Thus immigrants in regular or irregular situations are guaranteed such rights as prohibition from inhumane or degrading treatment or punishment; the right to education and healthcare; equality before the law and non-discrimination; worker's rights; the right to an effective remedy and a fair trial.

European Pact on Immigration and Asylum (2008)

In furtherance of the Tampere and Hague programs, the Pact reaffirmed the need for further efforts to create a fully integrated EU immigration and asylum policy. The five points of the Pact cover: (1) Organizing legal immigration, (2) Controlling irregular immigration, (3) Improving border controls, (4) Creating a Europe of asylum, and (5) Collaborating with countries of origin and transit. The Pact is further recognition of the importance of legal migration for the EU, especially for economic growth.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 June 2008 - A Common Immigration Policy for Europe: Principles, actions and tools

This communication outlines 10 principles with concrete actions to continue to develop a common immigration policy for the EU, categorized under the larger goals of prosperity, solidarity and security. Significantly, the communication prioritizes facilitating skilled labor migration and integration to improve the socioeconomic development of the EU, whereas effectively fighting illegal immigration is addressed last.

Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

This directive was issued to improve the ability of the EU to attract high-skilled workers, by harmonizing entry and residence conditions throughout the EU, simplifying admission, and improving the legal status of those already in the EU. Applicants apply directly to and are evaluated by a specific member states, and if approved will be issued an EU Blue Card. The member state can chose to reject an application if they instead give priority to EU citizens, legal residents or EU long-term residents, or based on an excessive volume of admission.

Stockholm Programme (2010)

As the successor to the Hague Programme, the Stockholm Programme outlines EU priorities for the area of freedom, security and justice from 2010 to 2014. The program insists on further integration of border controls and visa policy, as well as the development of a "comprehensive and flexible" migration policy (Europa).

Overall Trends in EU Legislation

Since its inception, the European Union has viewed immigration as an important area of shared concern that should be addressed through supranational policies. From the beginning, one of the main goals of EU immigration policy has been to harmonize policies across all member states. Yet in other areas of interest, the EU has shifted its focus over the years. The early emphasis was on securing the external border of the EU and preventing almost all migration. More recently, the focus has shifted to achieving socioeconomic development of the EU through recruiting skilled

workers, reuniting families, creating a path to regularization to bring migrants into the legal welfare and tax systems, and guaranteeing the fundamental rights of all residents of the EU territories.

V. National Immigration Policy in Italy

Italy was a latecomer to the area of immigration legislation. Since the time of unification in 1861, Italy had been a country of emigration and didn't need to worry about controlling or regulating immigration. It wasn't until the 1970s that immigration started to occur in numbers significant enough to be noticed. Yet immigration was still largely occurring from other European countries, thus the lack of significant ethnic differences failed to make these immigrants a concern for the Italian government and citizens. In the 1980s things began to change as Italy transformed from a sending country to a receiving country and became a destination for large numbers of African immigrants. Italy quickly realized that this new phenomenon of immigration was not about to end, and would only grow larger, particularly as immigrants established themselves and created links between Italy and their home country. The increasing racial and ethnic diversity of the migrant flows also began to evoke concerns among the public. In 1986 the Italian government set about the task of creating national legislation to regulate immigration and integration of migrants.

Law n. 943/1986 (1986)

The 1986 law, entitled "Foreign Workers and the Control of Illegal Immigration", was the first attempt by the Italian government to create a true immigration law. This law came about as a

result of both domestic pressure and pressure from the European Community. The Northern European countries, which had a long, and often contentious, history of immigration, were even more alarmed by the growing number of migrants from the Third World than Italians themselves. They saw the countries of the Mediterranean as a weak point in the EC's external border and feared that if migrants could gain easy access to Italy (or any of the other EC Mediterranean countries), they could just as easily cross the internal EC borders into Northern European countries, which were made even more enticing by their high standards of living.

The law was designed to address foreign workers' rights and rules on the employment of foreigners, and also included a regularization program (Calavita 2004, 367). In response to concerns of unions and leftist opposition parties over the abuse of migrants, the law gave foreign salaried workers access to all social services and welfare provisions. The law was also meant to address the need for foreign labor by creating enrollment lists of prospective immigrants in all Italian embassies that Italian businesses could use for hiring. This method of worker recruitment was wildly inadequate and did little to hinder the flow of illegal immigrants. Although the law was in large part a result of EC pressure, it contained limited provisions for external control or security, and those controls that were created were rarely enforced. In addition, the law included a regularization of 118,000 illegal workers. Yet the regularization was criticized for its low turnout, likely in part because Italian employers preferred to keep their employees illegal so they didn't have to pay them full wages or benefits, or pay taxes.

Although Italy tried to placate the Northern European countries with the passage of Law 943, the measures included in the law did little to address their concerns. Although immigration was increasingly seen as a problem, Italy continued to give priority to its economic concerns.

Martelli Law 39/90 (1990)

One of the stated rationales of the Martelli law was to implement the requirements for Schengen membership and reassure the Northern European countries that Italy was taking appropriate steps to prevent the entry of unwanted immigrants into the free movement zone. Yet, like the 1986 law, Italy was, in reality, more focused on furthering its economic interests by creating a quota system for migrant workers and allowing another regularization.

Once again, the labor recruitment program was too clumsy to actually be effective, with a complicated process of consultation between government agencies and business required before the quota could be determined. In addition, the quotas were always too low to accommodate the number of workers who wanted to come to Italy. The 1990 regularization was somewhat more effective than that of 1986 because it allowed migrants themselves to initiate the process, with 234,000 workers applying for regularization.

Yet the law failed to effectively stem the problem of illegal immigration or strengthen border controls. The large black market in Italy meant that it was easy for illegal migrants to work undetected, and employers often preferred to keep it that way. Calavita points out that only 15,000 regularizations were based on "auto-certification" as a member of the underground economy, indicating that most workers in the black market did not believe it worth the effort or risk to apply for regularization (2004, 369). Additionally, migrants who violated Italy's immigration laws were rarely deported and it remained quite easy to enter Italy illegally.

Turco-Napolitano Law 40/1998 (1998)

The Turco-Napolitano Law was the first attempt by Italy to create a comprehensive and systematic immigration law, which addressed the need for both greater control and greater

immigrant rights. Once again, the law was, in large part, a result of pressure from the EU to control illegal immigration, and the need to include new obligations under the Schengen system. After Kurdish immigrants that were given formal notice to leave Italy and return to Albania were found to instead have taken up residence in the Netherlands and Germany, the Schengen members threatened to expel Italy unless it introduced stricter detention and expulsion laws (Joppke 2004, 383). Turco-Napolitano attempted to address all of these needs.

In order to appease the EU, the law contained provisions to deny entry, allow deportation, allow detentions for up to 30 days, and impose an income requirement for renewal of residence permits. In order to try to reduce illegal immigration, the law also allowed potential migrants to enter the country to look for work, without already having been hired.

On the other hand, the law aimed to improve access to work, promote integration, and give undocumented immigrants access to health care, education and legal representation, as well as improve the quota system to more effectively fit the needs of the labor market.

Bossi-Fini Law 189/2002 (2002)

Italian immigration legislation took a more restrictive turn with the Bossi-Fini law of 2002. The measure included the creation of the "contratto di soggiorno", which required immigrants to have a job before entering Italy and receiving a residency permit; reduction of the length of residence permits; increase in the length of residence needed to apply for a permanent residence permit; family reunification made more difficult for parents and non-immediate relatives; immediate enforcement of deportation orders; increase in detention from 30 to 60 days for migrants without residency permits; and, a fingerprinting requirement when permits are issued or renewed. In addition, the law did not include any measures for integration.

Like the laws before it, Bossi-Fini was also accompanied by a mass regularization, in which more than 600,000 migrants were given 1-year residence permits.

Law 94/2009 (2009)

The 2009 law, passed under the conservative Berlusconi government, continued the trend toward restrictive controls. The law increases sanctions and monetary penalties against undocumented migrants; redefines illegal immigration as a criminal offense; increases detention time to six months; requires citizens to report undocumented migrants, teachers to report undocumented students, and doctors to report undocumented people who seek medical attention; and, forbids civil acts to be performed by non-citizens. The law does nothing to address immigrant rights or integration, and thus has received significant criticisms from groups throughout Italy.

VI. National Immigration Policy in Spain

Like Italy, Spain has only recently transformed from a nation of emigration to one of immigration. Beginning in the 1980s, immigration began to rapidly increase in both quantity and scope. Spaniards were generally accepting of immigrants from Europe and Latin America and did not feel threatened by their entry or residence. But by 2000 the makeup of migrant flows had shifted dramatically, with 60% of immigrants coming from outside Europe (Cornelius 2004, 388). Also similar to Italy, Spain has a large underground economy, which was very attractive to and accommodating of illegal immigrants. In crafting immigration policy, Spanish officials tried to balance these important factors with pressure from the EU. Spain first addressed immigration

through legislation in 1986, the same year in which Spain joined the EC and before immigration had become a highly visible issue in the country.

Organic Law on Rights and Freedoms of Foreigners 5/85 (1985)

Spain's first major immigration law was principally motivated by pressure from the EC, which Spain was preparing to join. Therefore Spain acquiesced to the desires of the Northern European countries and greatly restricted legal immigration and imposed sanctions on illegal immigration and their employers. In addition, family reunification was not permitted and no permanent residency permit was created. This law also included a regularization, but the reach and impact were small, with only 23,000 undocumented migrants regularized. Unsurprisingly, the law did not have the desired effect, and by 1998 the foreign population had increased by more than 500,000 (Gonzalez-Enriquez 2011), most of which had come illegally because the lack of legal channels and the massive underground economy in Spain.

Law on the Rights and Freedoms of Foreigners in Spain and their Integration 4/2000 & Amendment 8/2000 (2000)

The growing wave of immigrants, especially those from Northern African, began to cause widespread concern about the inability of these migrants to assimilate into Spanish culture. Thus the main focus of Law 4/2000 was facilitating the integration of migrants, but not regulating the flow of incoming migrants. The law created permanent residency and work permits, and a process by which undocumented migrants could obtain a stay permit after two years of residency. In addition, the law granted family reunification, as well as broad social rights (including healthcare and education) to undocumented migrants who registered with the local

Padrón municipal register. The law also provided for another regularization, in which 188,000 out of 244,000 applicants were given legal stay permits. These numbers far exceeded the government's expectations, and compounded fears of the more conservative factions of the country that immigration needed to be more strictly controlled.

Shortly after the 4/2000 law was passed, the more conservative Popular Party (PP) won a legislative majority and quickly set about amending the law, which they believed gave away too much of the State's control over immigration. The law lengthened, from two to five years, the period before an undocumented migrant could regularize their stay permit and reinstated expulsion as a form of punishment for illegal residency. Although the PP had been alarmed by the number of applicants for the 2000 regularization, widespread protests by those who had been denied forced the government to allow yet another regularization in 2001. Even though it was less than a year later, another 339,000 migrants applied. The PP saw this as confirmation of their fear that such "amnesties" were attracting more foreigners, thus compounding the issue. The government vowed that no more regularizations would occur, but, at the same time, failed to create more efficient channels for legal entry, thus guaranteeing that large flows of immigrants would continue to enter the country illegally.

2003 Reform of Alien Law

Driven by fears surrounding 9/11 and the continuing increase in non-European migrants, the conservative Popular Party and the socialist PSOE came together in 2003 to reform the 2000 Alien Law to make it more restrictive. The reform forced migrants without permanent residency to re-register every two years, and eliminated routine regularization, allowing regularization only for migrants who could prove "rootedness" in Spain and Spanish culture. After three years of

residency migrants could attempt to legalize by showing either social insertion, as certified by the local town hall, or workplace rootedness.

In addition to making legal residency more difficult, the reform gave the police access to municipal registry data, allowed the immediate expulsion of illegal migrants who committed crimes with terms of less than 6 years, and increased sanctions for illegal immigration.

2005 "Normalization"

Despite its promise, four years after the last regularization, the government conducted another regularization, which attracted more than 700,000 applicants. Although the government labeled it a "normalization" to bring undocumented workers out of the underground economy so they would contribute to tax revenues and the welfare system, it was obvious that this regularization was no different than those before it, and that the problem of illegal immigration continued to grow.

2009 Reform of Alien Law

Law 2/2009 transposed several EU directives and brought Spanish immigration policy more in line with EU legislation. The law gives spouses and children of labor migrants equal right to work; includes unmarried partners, but excludes parents from the right to family reunification; gives irregular immigrants freedom of association, assembly, education and vocational training; and extends the maximum period of detention from 40 to 60 days. In addition, the EU Return and Sanction Directives were transposed, which fight illegal immigration through deportation and sanctions of employers who hire illegal migrants and increase financial penalties for illegal immigrants. Spain specifically cites the European Pact on Immigration and Asylum as an

influence of the reforms, but only applies its provisions relating to irregular immigration and border controls, without improving means for organizing legal immigration.

VII. Analysis

A. Outcome of Europeanization in Italy

Italy's early immigration laws, of 1986, 1990 and 1998, were significantly influenced by Europeanization, and can be considered absorptive outcomes. The 1986 law was passed one year after the creation of the Schengen agreement. Italy was not a founding member of the Schengen Agreement, but this was in part because the Northern European countries feared that Italy's nonexistent immigration policy would create a porous border into the Schengen area (Calavita 2004, 367). Therefore, Italy set about creating its first immigration law in preparation for future entry into the agreement and to appease Northern Europe. Four years later, Italy passed a new immigration law in February 1990, only four months before officially acceding to the Schengen Agreement. Italy formulated this new law largely based on Schengen conditionality, and thus focused on securing its borders. Similarly, the 1998 Turco-Napolitano law was passed one year after the Amsterdam Treaty incorporated the Schengen Agreement into EU law. The passage of this new immigration law helped convince the other member states that Italy was ready to take on the renewed responsibility of helping to secure the EU's southern border (Pastore 2008, 106). Yet although Italy was largely motivated to pass these laws as a result of European pressure, the outcome was only absorption of EU policy, rather than transformation. This is reflected in the fact that Italy continued to let in massive amounts of illegal immigrants. Despite disapproval from Northern Europe, Italy repeatedly dealt with the problem through mass regularizations in

1986, 1990, 1995 and 1998 (Brick 2011, 13). In addition, Calavita points out that both the 1986 Law and the 1990 Martelli Law "suffered from a discrepancy between the law 'on the books' and the law 'in action' (2004, 369). These regularizations and lack of implementation illustrate that although Italy wanted to become more integrated into the EU system, they applied only the minimum requirements, while continuing to pursue policies that suited their national interests. The EU was unsuccessful at transforming Italy's view of immigration, as it was still not seen as an important or pressing issue.

The lack of transformation became more obvious in Italy's more recent, post 9/11, immigration laws. As the focus of the EU after the Treaty of Amsterdam began to switch to ensuring human rights and facilitating legal immigration, while securing the external borders against unwanted illegal immigration, Italy's laws became increasingly restrictive with little consideration of legal immigration or migrants' rights. In addition, Bossi-Fini was accompanied by yet another mass regularization of 650,000 illegal migrants, which blatantly went against the wishes of Northern Europe. EU and Italian policies continued to diverge with the passage of the 2009 law. At this time, the EU emphasized the importance of creating a comprehensive common immigration policy that maintained strong border controls while creating policies for labor migration, legal residence and asylum that maximized benefits for the EU and adhered to high standards of human rights. Meanwhile, Italy's new law focused exclusively on border control while completely neglecting legal migration or integration of existing migrants. Italy continued to allow a minimum level of Europeanization, often transposing directives past their deadlines, while continuing to allow domestic concerns to drive policy creation, thus resulting in absorption of EU policies.

B. Outcome of Europeanization in Spain

Similarly to Italy, Spain's early immigration laws were motivated in large part by Europeanization. Spain's first effort to address the issue of immigration through legislation in 1985 was principally motivated by the fears of the Northern European countries that Spain, which was about to accede to the EC, would become an entry point for large numbers of illegal immigrants from the Third World. In fact, Cornelius argues the law "was almost entirely the result of external pressure associated with Spain's entry into the European Union" (2004, 404) in 1986. At this point, Spain still considered itself a country of emigration, and did not see immigration as a national concern. Therefore Spain acquiesced to the desires of the other countries and created this highly restrictive policy. Like Italy, Spain accompanied its early immigration law with large-scale regularizations in 1985, 1991 and 1996 (Brick 2011, 16). The next major immigration law, 4/2000, reflected the changing attitude of the EU institutions and their increased focus on migrants' rights, as demonstrated by the Tampere Council of 1999. Although Spain appeared to display a greater degree of Europeanization and less resistance to adopting EU ways of thinking about immigration, the outcome should still be categorized as absorption. Amendment 8/2000 to the Alien Law, and its restriction of migrants' rights, shows that Spain was still mainly concerned with its own national interests in regard to immigration, and only Europeanized when EU policies fit the way of thinking of the political party in power. Moreover, the back-to-back regularizations of 2000 and 2001, which legalized more than 800,000 migrants, illustrated that Spain did not hesitate to use strategies of migration management that most EU countries opposed.

After 9/11, Spain also began to show a lesser degree of Europeanization and a greater focus on restricting immigration. The reform of the Alien Law in 2003 made it more difficult to

get permanent residency and easier for authorities to expel migrants. The 2009 reform of the Alien Law went in a slightly different direction, citing Europeanization as the main purpose of the new legislation. Although the new law transposes several directives and draws on the European Pact on Immigration and Asylum, the focus remains on preventing illegal migration and controlling the borders, while avoiding addressing the topic of legal labor migration, which is generally more controversial. Although Spain's new reform and successful record of transposition of EU directives seems to indicate that Spain could be headed toward a transformative outcome of Europeanization, for now it is safer to say that the outcome remains absorptive, as it will take time to determine whether there has actually been a transformation in the way Spain views immigration.

C. Explaining Absorption Outcome: Goodness of Fit and Mediating Domestic Factors

Analyzing the immigration policies of Italy and Spain reveals the outcome of Europeanization in both countries can largely be classified as absorption. Each country (to varying degrees) implements the requirements of EU treaties and regulations without fundamentally altering their policies, institutions or views towards immigration.

I. Goodness of Fit

According to the theory of Cowles et al., this absorption can be explained by a combination of goodness of fit and mediating domestic factors. As required by the theory, there is a large degree of misfit between the EU policies and the policies of each country. Cowles et al theorize that misfit and adaptational pressure occur when "European institutions seriously challenge the

identity, constitutive principles, core structures, and practices of national institutions (2001, 8). Immigration is an area that has long been considered integral to national security and identity, and thus policymaking has been traditionally reserved for national governments. Generally, the increased focus and competencies of the EU in this area created a high degree of misfit with traditional practices and beliefs about immigration policy. The creation of new EU policies relating to immigration also touched upon issues of identity, challenging traditional ideas of national identity and national competencies in the area. There is also a high level of misfit in immigration policy because the EU and member states almost always have different priorities when it comes to immigration: the EU wants to promote harmonization and improve the socioeconomic development of the EU, while member states are most concerned about their national interests, including security and economic prosperity.

More specifically, EU treaties and directives put direct adaptational pressure on national policies that do not conform to the requirements. In the early years of Europeanization, Italy and Spain's lack of comprehensive immigration policies meant that there was almost always significant misfit between the EU treaty or policy and the national laws. Although Italy and Spain have significantly developed their immigration laws since the 1980s, in the case of directives, there is still almost always misfit that causes pressure for the countries to adapt their existing policies or create new policies to adhere to the EU requirements.

II. Domestic Mediating Factors

With the presence of a high degree of misfit, we must look to domestic mediating factors to explain why adaptational pressure led to the absorption outcome. As both Spain and Italy began to receive increasing numbers of immigrants, especially from Africa, in the 1980s and 1990s,

immigration quickly became a highly salient political issue in the two countries. Both political parties and the general public began to view immigration as an important issue that affected their very security, identity and prosperity.

In the years before Masstricht, immigration had not yet become such a salient issue. As the EU put pressure on the countries of Southern Europe to close their borders, Spain and Italy acquiesced to some degree to Europeanization by creating their first major laws on immigration, yet Europeanization was tempered by the economic needs of the countries. Although both countries closed their borders on paper, they continued to allow entry of large number of illegal immigrants, which were later regularized to fill needs in the large underground economy of each country and rarely enforced employer sanctions for fearing of hurting the business sector. In Spain, in particular, Cornelius notes the "closeness of government-business ties…clearly limits the enforcement of employer penalties for hiring illegal immigrants" (2004, 409). Italy was also resistant to fully integrating the EU's restrictive immigration policies because of the pressure from Catholic groups, NGOs and unions to protect the rights of immigrants and help them integrate into society and the economy (Joppke 2001, 384).

Additionally, although the general public did not yet see immigration as a threat, right-leaning parties, such as the Lega Nord in Italy and the Popular Party in Spain, were already taking up the fight against immigration and an increasingly security-based rhetoric. The effect of the PP can be seen in the 8/2000 amendment to the Alien Law in Spain. Only a few months after the more liberal PSOE passed an immigration law granting significant rights to migrants, the PP came to power and immediately set about amending the law to make it more restrictive of immigration.

After 9/11, political parties and public opinion became even more powerful mediating factors that prevented full Europeanization of immigration policies. Politicians and citizens on both ends of the political spectrum began to view immigration as a threat to the security and identity in their countries, rather than just a matter relating to economics. The discovery that the majority of those involved in the 9/11 attacks were Muslim immigrants sparked widespread calls for greater restrictions on immigration to prevent the entry of possible terrorists. Citizens in Italy and Spain were also becoming increasingly aware of the large number of immigrants from non-European, and mainly Muslim and African, countries flooding their countries and failing to integrate, presenting a parallel threat to the national identity of each country. Several high profile incidents served to stoke these fears. For example, in 2002 a boat of 1000 Kurdish refugees was discovered off the coast of Sicily, providing Italians with visible evidence that their country's immigration policies were failing to deter and keep out unwanted migrants (Calavita 2004, 362). Politicians who may, in reality, be more sympathetic to the immigrant cause are pressured by the public to appear to be taking measures to prevent unwanted immigration and secure the borders. This security focus is evident in the Bossi-Fini law of 2002 in Italy, which "clearly deviates from the contemporary European mainstream, which reserves harshness for illegal immigrants and tends to welcome legal (especially high-skilled) immigrants" (Joppke 2001, 382).

It is evident that domestic politics and public opinion have had an increasing influence and tempering effect on Europeanization, resulting in absorption of EU norms rather than full transformation.

VIII. Conclusion

Research has shown that the process of Europeanization can have profound effects on national policies of the member states. Yet this study confirms what other scholars have found: that there are still areas, such as immigration policy, where states are resistant to real change. Although immigration policy seems like fertile ground for Europeanization because of the high degree of misfit between EU and national policies, the increasing politicization and securitization of immigration issues in recent years has caused mediating domestic factors to have a greater effect on the outcome. As politicians and citizens on both ends of the political spectrum have come to see immigration as a threat to their security and national identity, lawmakers have been forced to oppose EU policies focused on legal migration and integration, in favor of more restrictive policies.

It is possible that the future may bring true transformation of immigration policies as a result of Europeanization. Maybe Spain's 2009 reform of the Alien Law is an indication of a new trend towards more liberalized policies, rather than an outlier among restrictive policies. As both Italy and Spain continue the trend toward aging populations and falling birthrates, immigration may once again be seen as an issue of economic need rather than of security. Even if Italy and Spain remain overall opposed to large-scale migration, a reduced degree of political salience could also lead to a different outcome. The less that domestic political actors push for more restrictive immigration policies, the greater chance there is for transformative Europeanization. Only time will tell if these changes in Italy and Spain will truly lead to a transformation in immigration policy.

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