Introduction

This book compares the rights and social inclusion of two racialized minority groups: Roma in Central and Southeast Europe (CSEE), and African Americans in the United States (U.S.), primarily in the American South. We couch those attempts loosely in the frameworks of Roma rights and civil rights, though we will focus mainly on Roma rights in post-Communist CSEE (from 1991 until the present) and civil rights during the U.S. Civil Rights movement (roughly 1954–1968). Scholars have made fleeting comparisons between Roma and African Americans for years,¹ and in the last decade the Roma rights–Civil Rights comparison has recurred with increasing frequency.² Despite the burgeoning recognition of the broader similarities between Roma and African Americans, including the systems that facilitate their marginalization and the barriers to their representation, no book-length work has sustained these comparisons. *Roma Rights and Civil Rights: A Transatlantic Comparison* seeks to be the first work to do so, through the frames of law and culture.

Certain periods in history have seen more intense development of Roma rights and civil rights than others. We concentrate on two of those periods, the Civil Rights movement in the U.S. and the enlargement of the European Union (EU) into post-Communist CSEE. To provide fuller context, we will


also examine their precursors. For precision, we capitalize “Civil Rights” when referring to the movement and use “civil rights” when referring to general civil rights laws, whether connected to the Civil Rights movement or not. “Roma rights” is our umbrella term for the legal and policy protections for Roma, which are sometimes called “Roma integration” or “Roma inclusion.” While this book uses those expressions as well, we prefer the term “rights” for several reasons. First, we acknowledge that full equality for these two marginalized groups remains inchoate, despite the burst of activity during Civil Rights and eastern enlargement. Second, we will frequently analyze governmental pursuits of equality and their limitations, whereas “rights” more aptly invokes legal mechanisms. This approach also highlights the age-old question of whether laws move cultural attitudes or vice versa – a question that we tackle directly in evaluating the successes and failings of Roma rights and civil rights. Finally, we are concerned with how central governments – the supranational institution of the EU and the federal government in the U.S. – both advance rights and foment popular resistance to minority inclusion. We find that the rights framework underscores the center–periphery relations and the federalism questions that are at the heart of Roma rights and civil rights.

In the geographic areas where African Americans and Roma have historically been most numerous – the American South and CSEE – great strides toward equality were made during eras that witnessed the downfall of seemingly unmoving ideologies (i.e., Jim Crow and Communism). During Civil Rights and eastern enlargement, the U.S. and the EU sought to construct a new social order – an endeavor that often presented the American South and European East in contradistinction to the egalitarian and democratic ideals that each polity espoused.3 In this view, African Americans and Roma were internal Others who had endured subjugation and needed the forceful intervention of the central government to become equal. It was a depiction that the American South and Eastern Europe were familiar with. These two areas can be considered ideological and cultural “Souths,” marred by legacies of war, division, and interethnic or interracial problems. The American South, according to the mythology of Civil Rights, was the epicenter of slavery, Black Codes, and Jim Crow, where Reconstruction had failed.4 Under the European gaze, Eastern Europe has been viewed as liminal and barbaric for centuries.5 Some CSEE countries have been treated as synonymous with “Balkan” and its historical

affiliate “Ottoman”; the violent breakup of Yugoslavia seemed to cement the region’s essentialization. Cast as Others, the majority populations of the American South and CSEE would come to see minority rights as the incursions of hegemonic, and even hypocritical, outsiders.

And yet, during eastern enlargement and Civil Rights, minority protections became intertwined with the “national” identities that the U.S. and the EU were forging. Formally created with the Maastricht Treaty of 1992, the EU (previously the European Communities) went on to consolidate power and institute a single currency and Union membership. Throughout these transformations, minority protections became incorporated into the European project—that is, the legal and cultural creation of a supranational polity whose member states share certain institutions and “values.” As the principal architect of both Roma inclusion and European integration, the EU required CSEE countries that sought to join the Union to devise policies on the social, political, economic, and cultural inclusion of Roma. Initially, Roma inclusion was only a condition imposed upon aspiring members; however, as the EU revamped its constitutional order in the late 1990s and early 2000s, minority protections made their way into the laws and fundamental rights binding existing members. Three tectonic trends therefore coalesced in Europe at this time. The first was the eastward enlargement of the EU into former Communist countries, which nearly doubled both the Union’s territory and the number of member states. The second trend was the constitutionalization of the EU, which expanded the Union’s competence to prohibit racial discrimination. The third trend was the EU’s push to raise living and educational standards and employment opportunities for approximately 10 million Roma, an effort that underwent different incarnations, from accession conditions for candidate countries to laws and policies applicable to all member states.

A similar dynamic unfolded during Civil Rights half a century earlier. Civil Rights saw a convergence of grassroots, legislative, executive, and litigation efforts...
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to strengthen rights in voting, education, labor, employment, housing, and criminal defense, among other areas. These gains were the result of a vigorous but protracted grassroots fight for equality, which eventually prompted federal civil rights laws that, when challenged as federal overreach, were upheld by federal courts. A momentary confluence of interests brought an otherwise indifferent federal government to the side of African Americans. For the U.S., the motivating interest was the projection of equality as the nation fought the Cold War – a projection that upended the notion of white supremacy, which had so long dominated the construction of national identity. Civil Rights, too, was the product of several seismic changes: the subversion of a centuries-old social order, which had privileged whiteness as a mode of social organization; the expansion of federal powers to make way for civil rights; and the waging of the Cold War, which rallied the nation around a common goal.

CONTEXTUALIZING THE COMPARISON

Contrary to many comparative works, this book undertakes a diachronic comparison. Civil Rights and post-Communist Roma inclusion are half a century (and an ocean) apart. Yet each occurred at a moment that was pivotal to the constitutional development and identity construction of each nation – specifically, a moment where each nation saw fit to accommodate diverse populations. Civil Rights and Roma inclusion implicate center–periphery relations, top-down policy mandates,}

12 E.g., Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e et seq. (prohibiting employment discrimination on the basis of sex, race, color, national origin, or religion).
and the pull, haul, and trade between central and constituent governments—a process that goes by the shorthand of “federalism.” More broadly, resistance to civil rights and Roma rights was propelled by similar social, cultural, and political dynamics, such as racialization and white supremacy. Of course, the fact that Roma rights and civil rights have developed in starkly different epochs distinguishes each phenomenon as well. In the fifty years separating Civil Rights and eastern enlargement, colonization and apartheid fell, and an international consensus emerged against state-sanctioned racial exclusion of conationals. For instance, when sued in the European Court of Human Rights for anti-Roma discrimination, CSEE countries have had to resort to nonracial explanations for de facto segregation. This veil of subtlety and respectability has been lifted since the financial crisis, with several CSEE governments adopting xenophobic platforms (a turn not unlike contemporaneous developments in the U.S.). Overall, however, so many structural similarities bind Roma rights and civil rights that their comparative study, even if diachronic, can be profoundly illuminating.

Of course, for the utility of the comparison to emerge, we must account for the distinct temporal, cultural, and institutional features of each comparator. In other words, we must show that comparing Roma inclusion and civil rights is not only novel—it is right. Elsewhere, we have evaluated whether any differences between Roma rights and civil rights render their comparison too “thin” and “ahistorical.” We argue that one of the core similarities is that the EU and the U.S. are federalist systems encased in geographies large enough for center–periphery relations to translate meaningfully. As Roma rights and civil rights emerged, they were often enforced by the top rung of the federalist system (i.e., the supranational EU and the U.S. federal government) and against actors at the geographic and cultural peripheries (i.e., CSEE and the American South). Further, Roma and African Americans have experienced centuries of racialized subordination, a process informed by their
transnational origins – real or perceived – as slaves and migrants. This combination of traits, if thoroughly explored, underscores the utility and rigor of the Roma rights–civil rights comparison.

Racialized difference has long separated Roma and African Americans from majority populations. In part, racialization can be attributed to the distant ancestries of these two groups. African Americans, historically the largest minority in the U.S., descend from slaves taken primarily from West Africa. Similarly, it has been advanced that Roma, Europe’s largest minority, are Indic people whose ancestors hailed from Northern India and started migrating westward in the eleventh century, settling by the 1300s in parts of the Byzantine Empire that would become modern-day CSEE. 24 While the India hypothesis remains controversial, it has fostered the perception that Roma lack roots in Europe, a perception that keeps Roma outside the cultural imaginary in CSEE, just as the roots of African Americans has inhibited their full embrace in the American imaginary.25 The racialization of African Americans and Roma is also influenced by the construction of their visible and cultural difference. For both African Americans and Roma, difference has revolved around a global color line that delineates “white” from “black.”26 For Roma, another aspect of difference is the presumption of their innate nomadism, even though Roma have lived sedentary lives for centuries. A host of additional traits is ascribed to these two groups, including criminality, vagrancy, licentiousness, and idleness. All in all, despite how national identities have ebbed and flowed, and despite the regular misappropriation of their culture, African Americans and Roma cannot avoid being framed as Others.

Racialization therefore reduces these two groups to the “simplicity of essence”27 while facilitating their subordination. The process of racial formation creates an expedient category that denies any possibility of variation. For example, although some in the field of Romani studies has embraced the notion of Romanipen – a Romani way of life that connects the Romani peoples to Indian traditions, customs, and beliefs – the groups falling under the endonym of Roma are diverse, and not all of them accept the label. “Roma” is more a political construct than a cultural marker, an identity often wrapped up in a history of exclusion and marginalization.28 Interestingly, while some activists have shied away from this label, others have recently

24 See Ian Hancock, We Are the Romani People 2–16 (2002).
27 Roland Barthes, Mythologies 129 (1975).
28 Compare Thomas Acton & Ilona Klímová, The International Romani Union: An East European Answer to West European Questions?, in Between Past and Future: The Roma of Central and Eastern Europe 157 (Will Guy ed., 2003), with Nicolae Gheorghe & Thomas Acton, Citizens of the
pushed to reclaim it, a trend that echoes the shift from “colored” to “Negro” to “black” to “African American,” generations earlier in the U.S. In contesting the labels imposed from outside, Roma and African Americans have tried to purge their identities of stereotypes, assumptions, and their pernicious effects. These effects have spanned centuries. Across Europe, Roma have endured both state-sanctioned and vigilante persecution, based on stereotypes of vagrancy, criminality, and foreignness. From roughly the fourteenth to the nineteenth centuries, Roma were enslaved in parts of modern-day Romania. During World War II, they were systematically targeted for extermination in the Holocaust. When CSEE fell under Communism and Socialism, Roma were forcibly settled and, in some instances, forcibly sterilized; in the post-Communist transition, they have suffered extreme social and economic dislocation. All of these episodes transpired on account of the stereotypes associated with their racialized difference.

For many Roma in contemporary CSEE, the reality of marginalization and exclusion persists, despite the flurry of inclusion initiatives. By virtually any metric, Roma remain separated by chasms from their non-Roma compatriots in educational attainment, living standards, health, and employment. While these disparities correlate with the disproportionate effect that the fall of Communism and Socialism wrought upon Romani communities, a myriad of institutions operating at multiple levels (e.g., EU, national, and civil society) have pursued legal and policy reforms that attempt to remove the structural barriers to equality for Roma. These reforms include EU initiatives undertaken in preparation for eastern enlargement and even after accession candidates became member states. Nonetheless, the conundrum remains that daily life for many Roma lags far behind the aspirations of

Contextualizing the Comparison


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sweeping legal change, so that the last quarter century constitutes the unfulfilled promise of Roma inclusion.

To explicate the incongruity between daily life and legal change, this book looks across the Atlantic, to civil rights. Until recently, much of the scholarship on Roma rights has been descriptive and undertheorized. Civil rights scholarship, by contrast, is extremely robust and has had decades to amass. The fact that civil rights have had to withstand time and backlash has bolstered this scholarship, by forcing it to account for fluctuations in societal attitudes and political commitment. This legacy is all the more salient for Roma rights today; in moving from one crisis to another, Europe has had to confront a xenophobic and populist recalcitrance powerful enough to gut the transformative expansions in minority protections – a trend that U.S. civil rights scholars know all too well.

Similarly, because both Roma and African Americans are burdened by their racialized distance from the dominant constructs of the nation, their experiences, histories, and cultures are excluded from mainstream narratives. Within cultural products, political discourse, and national narratives, the imagination and representation of these two groups is negative and unidimensional. Consequently, our book counterbalances its analyses of laws and legal processes with analyses of cultural formations that challenge the long-held dislocated positions of Roma and African Americas. The complementary perspectives of law and culture provide a more holistic assessment of Roma rights and civil rights.

Our comparisons with civil rights should not be taken as reflexive endorsement of the U.S. model. During Civil Rights, the uneven actions of the federal government not only frustrated African American leaders but also fed into charges of hypocrisy that often solidified resistance to integration. As American scholars, we are also cognizant that our own contemporary setting belies the efficacy and legacy of Civil Rights, from mass incarceration to violence directed at black bodies. Indeed, the post-2016 political climate in the U.S., where xenophobic and jingoist rhetoric has been deployed to rally certain voters, parallels the nationalist zeal in a number of European countries.

Viewing Roma rights solely through the lens of African American experiences during Civil Rights has other shortcomings. Most obviously, the U.S. and EU are vastly different entities, constrained by different sets of competences, comprised of different types of members, and presided over by central governments with different

38 See Justin Driver, Supremacies and the Southern Manifesto, 92 Tex. L. Rev. 1053 (2014).
arsenals of tools to enforce their authority. Since post-Civil War Reconstruction, the U.S. has sought to federalize the protection of racial minorities so as to preempt state and local practices.59 This is notwithstanding the endorsement of federalism in the Tenth Amendment of the U.S. Constitution, which reserves certain enumerated powers for the federal government, leaving the rest to the states.40 By contrast, the EU, which hovers between an intergovernmental and supranational organization, is an amalgamation of different sovereign countries, each with its own distinct language, culture, and tradition.41 At the most basic level, the constituency that the EU manages is more unwieldy and the reserved powers at its disposal more limited.42

At the grassroots level, civil society has also played a key role in advancing Roma rights and civil rights. Most prominently, civil society can hold governments accountable by filing cases challenging school segregation, police misconduct, and forced evictions.43 For Roma in particular, nongovernmental organizations (NGOs) founded and staffed by Roma offer an opportunity for self-representation and empowerment where little exists.44 Romani leaders have emerged to advocate not only for Roma rights but also for a unifying political consciousness based on an imagined political community of Roma. As with any minority rights movement, minority leadership confers legitimacy and ensures fair representation; yet Romani visibility is particularly important because the Roma rights movement has often lacked Romani decision-makers at the top, so that the agenda for change is externally driven. This stands in stark contrast to Civil Rights, where the primary drivers in civil society were African Americans themselves, heading up organizations such as the National Association for the Advancement of Colored People (NAACP).

The contributions of Romani scholars and non-Roma allies, many of whom consider themselves to be “scholar activists,” pushing back against entrenched viewpoints of Roma that merely perpetuate Romani exoticization, have bolstered civil society. On this front, one of the most interesting developments has been the critical turn in the centuries-old field of Romani studies, by way of a movement calling itself Critical Romani Studies (CRS). CRS has been ushered along by the

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59 For details, see infra Chapters 4 & 5.
40 See U.S. Const. amend. X. See also Shelby County v. Holder, 570 U.S. 529, 543 (2013).
42 As will be explored in Chapter 2, the balance between intergovernmental and supranational has tipped in recent years to the latter. See Alec Stone Sweet & Wayne Sandholtz, Integration, Supranational Governance, and Institutionalization of the European Polity, in EUROPEAN INTEGRATION AND SUPRANATIONAL GOVERNANCE 1 (Alec Stone Sweet & Wayne Sandholtz eds., 1998); J.H.H. Weiler, The Transformation of Europe, 100 YALE L.J. 2473 (1991).
43 See Mathias Morschele, Law, Lawyers and Race: Critical Race Theory from the United States to Europe (2014); EUROPEAN ROMA RIGHTS CENTRE, STRATEGIC LITIGATION OF RACE DISCRIMINATION IN EUROPE: FROM PRINCIPLES TO PRACTICE (2004).
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This book seeks to enrich the understanding of Roma rights – of its failures and potential for success – by engaging with the scholarship on how similar developments unfolded in the U.S. We chose civil rights for the rich body of secondary literature that scholars have compiled to critically and holistically assess its evolution. In pursuing these goals, we have chosen to undertake the comparison by integrating three perspectives: interest convergence, federalism, and constructs of American and European culture. Because civil rights scholarship is so broad, our methodology itself had to undergo a selection process to whittle down the approaches to those most appropriate for the comparison. We did so by asking three overarching questions:

First, what motivated the relevant actors to push for civil rights and Roma rights, and how are these rights supported? We focus frequently on governmental actors – specifically, the U.S. and EU – and deploy the interest convergence theory to explain why these actors backed minority rights when they did. As one of the most iconic by-products of critical race theory, interest convergence has morphed from a provocative axiom to a well-documented fact. In 1980, Derrick Bell posited that it

45 See Maria Bogdan et al., Introducing the New Journal Critical Romani Studies, 1 CRT. ROMANI STUD. 2 (2018); Mathias Möschel, Color Blindness or Total Blindness? The Absence of Critical Race Theory in Europe, 9 Rutgers Race & L. Rev. 57, 73–74 (2007).

46 See, e.g., Angéla Kóczi & Márton Róvid, Pro-Roma Global Civil Society: Acting for, with or Instead of Roma?, in GLOBAL CIVIL SOCIETY 2012: TEN YEARS OF CRITICAL REFLECTION 100, 120 n.1 (Mary Kaldor & Henrietta L. Moore eds., 2012) (citing Spiak’s concept of “epistemic violence”); Angéla Kóczi, The Limits of Rights-Based Discourse in Romani Women’s Activism: The Gender Dimension in Romani Politics, in ROMANI POLITICS IN CONTEMPORARY EUROPE: POVERTY, ETHNIC MOBILIZATION, AND THE NEOLIBERAL ORDER 135, 144 (Nando Sigona & Nidhi Trehan eds., 2009) (citing Kimberlé Williams Crenshaw on intersectionality); Mirga-Kruszelnicka, supra note 29, at 42 (citing Patricia Hill Collins’s concept of “the outsider within”); Bogdan et al., supra note 45, at 6 (welcoming cross-fertilization between Romani studies and critical race studies).