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Leaving Ethnic Minority Students Behind
A Study of the Danish Education System

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Abstract

Denmark provides free and compulsory education for all children, which is in compliance with international human rights law. But statistics reveal that students with an immigrant background perform lower as a group than ethnic Danish students. Therefore, this thesis investigates how the lower results of ethnic minority students in the Danish public primary and lower secondary school may be explained. The aim is to determine whether the Danish state is violating ethnic minority students' right to education free from discrimination.

According to research ethnic minority students perform better in schools in countries with a high adoption of multicultural policies. Therefore, the Danish laws and policies in the field of integration and education are assessed from the perspective of multiculturalism, and discussed with findings from a fieldwork conducted in the Danish school.

Based on the analyses of this thesis it can be concluded that the Danish state has a high adoption of policies aimed at assimilating the minority with the majority, rather than recognising and accommodating the cultural and linguistic specificities of ethnic minority groups, due to a perception of Denmark as a monocultural state. Negative preconceptions and stereotypical understandings of ethnic minority groups are constructed on the level of policy and legislation. These are reproduced on the local level where the teachers have adopted the negative preconceptions of members of ethnic minority groups, hereby denying ethnic minority students a genuine opportunity for performing well in school.

Table of Contents

1. Chapter 1: Introduction

The growing ethnic and cultural diversity in Denmark brings about challenges for the society of ensuring that everyone has equal enjoyment of rights regardless of their ethnic origin or race and that everyone are equally protected against discrimination. About ten percent of the Danish population have another ethnic decent than Danish, which is still a rather recent development as the group of immigrants and their descendents grew with 427.500 people in the period of 1980-2012.[1]

In Denmark students with a different ethnic minority background than Danish generally perform worse in school than their ethnic Danish peers, and 'visible' (non-white) minorities perform the worst.[2] This is documented by internationals tests (for example PISA Ethnic 2012, PISA Ethnic 2009 and PISA 2006)[3], and by national tests where the results of students with another ethnic background than Danish show up lower in the final exam at the end of primary school.[4] Research also show that between 47 to 55 percent of children with a non-Danish ethnic background are considered 'functionally illiterate'[5] compared to 14 percent of their ethnic Danish peers.[6] Immigrants in Denmark generally share a lower socio-economic position in society, but according to statistics this cannot alone explain the lower performance levels.[7] Thus having an ethnic minority background is connected with a high degree of vulnerability even when the socio-economic conditions are good.[8]

Motivated by notable lower results of immigrant children in the school system the Danish Institute for Human Rights recommends an investigation of whether the Danish educational legislation, policy and practical implementation unintentionally and

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[1] Danish Ministry for Social Affairs and Integration 2012: 21.
[2] Zentai 2014: 93.
[3] Christensen et al. 2014: Tabel 2.1., p. 21.
[4] OECD. 2010: 18. See also Social – og Integrationsministeriet 2012: 131.
[5] 'Functionally illiterate' entails finding it difficult to transfer what is learned in school to another context (Jensen et al. 2012: 1).
[6] Jensen et al. 2012: 1.
[7] OECD 2010: 20.
[8] Zentai 2014: 93.

indirectly discriminates ethnic minority students.[9] The question is whether, in the democratic society based on some idea of equality, non-western ethnic minorities suffer from discrimination, not (only) deriving from law itself, but from social attitudes that have become ingrained into the society and are reflected in social policies and on the local level in the classroom.

The present research project takes on the task of investigating how the lower results of children with a non-Danish ethnic background may be explained. Recent research within the field of minority education proves that immigrants perform better in educational systems in countries where there is a higher adoption of multicultural policies across polities.[10] Motivated by these recent findings Danish policies and legislation in the area of integration and education will be assessed from a multicultural perspective, and discussed with findings from a field work study conducted in the Danish primary school. Through the theory of multiculturalism it is possible to critically explain political and policy choices across the field of integration and education, and enhance an understanding of the connection between policy interventions and outcomes.[11]

1.1. Research Area

Previous studies have shown that the former government (in power 2001-2011) continued to strengthen the focus on Danish culture and language in the national school curriculum, arguably excluding non-ethnic Danish students from the school system, and from developing a sense of citizenship. Motivated by these conclusions this thesis will investigate the role of the education system in the Danish society today:

From a multicultural perspective how are the Danish educational policies, structures and practices embedded in and reproducing hegemonic societal structures, which exclude some minorities? Can this be assessed as a violation of the human right to education as well as racial discrimination?

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[9] The Danish Institute for Human Rights 2013: 16.
[10] Zentai 2014: 92.
[11] Zentai 2014: 90.

Analysing the education system on the level of policy, legislation *and* practice is based on the argumentation that while policy papers do have some indications for educational outcomes, the policy level does not encompass the whole social reality. This approach is motivated by the theoretical standpoint wherein an understanding of discrimination of minorities as not only deriving directly from law itself, but also as possibly institutionalised in social practices, is found. Multicultural defenders argue that lower results of minority groups in the school system may be partially explained by negative pre-constructions and stereotypical understandings of minority groups. Therefore it is relevant to assess how the category 'immigrants' is produced on the policy level, and how it is reproduced in practice.

1.2. Research Design

In chapter 2 the theoretical framework for the thesis is presented. Hereafter chapter 3 will present universal and regional human rights instruments concerning the right to education, non-discrimination provisions and minority rights. This is followed by an introduction of EU anti-discrimination law. Chapter 4 contains the analysis of the Danish integration strategy, the Danish Integration Act and the Danish Education Act, followed by chapter 5, which contains the fieldwork analysis. In the final chapter the primary conclusions of the thesis are presented.

Theoretical works of multiculturalists (Kymlicka 1995), (Kis 1996) and (Young 1990) are often cited throughout the study. Additionally, studies where the theory of multiculturalism is operationalised are referred to e.g.. (Zentai 2014), (Gitz-Johansen 2006), (Gitz-Johansen & Horst 2010). Studies about *how* negative constructions of the immigrants are produced in Denmark and the (interpreted) effects of these pre-constructions are also cited (Buchardt 2011), (Andreasen 2012) and (Moldenhower & Øland 2012). By including other academic studies to support analytical conclusions the present study can build a more substantive argument that draws on a variety of research that critically assess inter-ethnic relations and diversity management in Denmark.

1.3. Terminology

1.3.1. What defines a 'minority group'?

The terms 'minority' and 'majority' are used as generic terms instead of terms like 'migrants', 'immigrants' or 'foreigners'. This is because I want to refer to a power relation between the two groups, rather than what characterizes the members of the two groups themselves. The question is which group that has the power to set the agenda in e.g. policymaking and social life, and who has the power to define itself and the other part.[12] Thus 'ethnic minorities' encompasses both first and second generation immigrants, who may or may not have Danish as their official nationality.

The focus on the *relationship* between the ethnic groups, rather then on the ethnic groups themselves, is in compliance with the aims and the analysis of the research. I am aware that the terms majority and minority, in all their simplicity, ignore that there are an infinite number of positions within these groups, which constitute the lives of the individuals. When I still choose to use this terminology it is to investigate what exactly it is about the Danish educational structures and institutions that have similar, negative outcomes for (non-white) migrants, refugees, immigrants etc.

Within the field of minority research the approach to studying minority related issues is that these can only be studied as an interaction between majority and minority, and that due to differences in the relation of dominance there is always a form of marginalisation of minority groups and/or individuals belonging to minority groups at play. It is often the marginalisation that initially establishes individuals, with behaviour that diverges from the norms, as a group. It is therefore one of the main tasks of minority research to assess when and how these processes of in- and exclusion take place.[13]

Focus is thus on what Irish Young refers to as 'social groups'. Social groups are more than just mere categories, as members of social groups share more than just certain characteristics and attributes; they share a sense of identity. Even though certain

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[12] Gitz-Johansen 2006: 23.
[13] Krag 1992: 311.

objective criteria can be necessary for an individual to characterize herself as belonging to a certain group, it is the identification with a certain social position, a common history that a certain social position produces, and the self-identification that defines the group as a group.[14] It is not a group you 'sign up to', it is a group you find yourself thrown in to.[15] Social groups constitute individuals as his or her sense of history, affinity, and separateness is constituted by his or her group affinities.[16]

Young argues that groups are not real as such, but they are real as social relations. This is an anti-essentialist perception of groups, which means that Young does not subscribe any 'natural' assets to social groups. They are all socially constructed and can thus be socially deconstructed. They do not exist without individuals and can also change as the social reality changes, and may also fade away again. Sometimes social groups come into being only because another group excludes or segregates a category of persons, and those who are part of that category come to understand each other as a group over time, on the basis of their shared oppression. In this way groups come into being, but are never 'consciously' formed.[17]

2. Chapter 2: The Theory of Multiculturalism

'Multiculturalism' is both descriptive, referring to the growing diversity of liberal societies today, a political strategy on how to deal with a culturally heterogeneous population, and a normative vision of how nation states *should* respond to this diversity and complexity.[18]

Will Kymlicka's theory of multiculturalism has grown out of the liberal ideology that states should ensure freedom and equality for all citizens to enjoy and pursue the good life.[19]

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[14] Young 1990: 44.
[15] Young 1990: 46.
[16] Young 1990: 45.
[17] Young 1990: 46.
[18] Miller 2006: 326.
[19] Kymlicka 1995: 75.

Kymlicka's focus is on the multiculturalism that derives from national and ethnic differences. Thus he uses the word culture and multicultural in a narrow sense: As ethnic terms that do not encompass gays, women etc. He uses 'a culture' as synonymous with 'a nation' or 'a people': a community existing across different generations, more or less with its own institutions, occupying a territory or homeland, with the same language and history. He defines a state as multicultural if its population belong to different nations (multination state), or if the population have emigrated from different nations (polyethnic state), and if this aspect plays an important role in people's personal identity and political life.[20]

The first wave of writings in the field of multiculturalism concerned the 'justice' of the minority rights claims. Critics claimed that state institutions should be 'colour blind'; that minority rights are both arbitrary and inherently discriminatory. Contrarily, defenders of multiculturalism do not believe in the 'colour blindness' of state institutions. Kymlicka argues that while institutions may seem colour blind they are in fact tilted towards the needs, interests and identities of the majority, which marginalizes non-majority groups.[21]

According to Kymlicka equality between different ethnic and cultural groups can only be achieved by granting special rights to groups who are not in a majority position. He argues that minority rights promote the liberal ideals of fairness and the principle of equality, and compensate for the injustices minority group members have suffered in the past. In this way minority rights are consistent with the idea of justice, and may even be required in order to achieve it.[22]

2.1. The Emergence of the One-Nation State

Traditionally the nation-state relied on its citizens as consisting of only one ethnically homogenous people. As this is rarely the case, with the creation of the democratic

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[20] Kymlicka 1995: 18.
[21] Kymlicka & Norman 2000: 4.
[22] Ibidem.

nation state came the development of different theories on how to deal with a heterogeneous population.

When liberal democracy and secularization of the modern state emerged, and with this the concept of equality and equal citizenship, a question of loyalty appeared: How can citizens be expected to be loyal to the state on whose territory they live? This question was answered by the nationalist thesis that subjects may consider the state their own and can be expected to even die for it *if* the citizens are tied to each other by a sense of solidarity, which goes beyond and came before their political convictions, and *if* the state is a an expression of their pre-political solidarity community.[23]

Following the nationalist thesis the emergence of the democratic nation state came with the creation of a strong ethnic bond, which ideally should come before every other bond ('the national awakening'). The awakening included the construction of a high culture, known as the national culture.[24] Heterogeneity was seen as a threat to the political stability and thus discouraged by public authorities, which implemented assimilating policies where ethnic minorities were expected to adapt to the majority society.[25]

2.1.1. Egalitarianism in the Modern Democratic State

The modern nation state claims to be both democratic and egalitarian in the sense that every child is equal before the state. However, this egalitarianism only extends to all citizens if the territory of the state is identical with just one ethnic homeland.[26]

Nationalism is only egalitarian towards *its own* people, as it not only defines who are the citizens of the state; it is equally a way of limiting the competition of political goods. It identifies distinct political advantages to people who belong to the nation, as they have privileged access to the goods that are distributed by the public authorities. [27] Loyalty of minorities is not a given, since they were not part of the pre-political solidarity community. Therefore, considering the security of the nation state, it is better

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[23] Kis 1996: 196-197.
[24] Kis 1996: 198.
[25] Banting & Kymlicka 2006: 1.
[26] Kis 1996: 199.
[27] Ibidem.

for the majority if the minority merges with the majority group through assimilation.[28] Nationalism thus faces the dilemma of how to deal with ethic minorities within the state while remaining egalitarian. The answer to this dilemma is found within liberalism.[29]

Liberal nationalism is also nationalism, as it shares nationalism's ultimate goal of a unified nation state.[30] But the answer that liberalism gives to the question, of how to keep solidarity of the citizenry towards the state, is different: Nationalism claims that in order for the people to remain in solidarity with the state they must form one nation, while liberalists withhold that the state must ensure equal freedom for all citizens to pursue their idea of the good life.[31] It is arguably nationalism with the restraints of the rule of law, citizen's rights and political equality.[32] Nevertheless voluntary assimilation is expected because the primary loyalty of the citizenry should ultimately be towards the state.[33]

Liberalism and nationalism was a happy reunion as liberalism was the answer to nationalism's democratic and egalitarian impulses, and their discriminatory behaviour towards minority communities: Liberals believed that the state could not recognize multiple communities, and be equal towards all citizens at the same time. They argued that the existence of a majority language (for example) does not imply that the minority cannot speak their minority language in the private sphere; all citizens share the same rights and obligations of the state, but can do what they want in the private sphere.[34]

According to Janos Kis however, assimilation is not a morally indifferent process, because the minority is as much an 'us' as the majority is. He argues that a minority group member who chooses to enrol into the majority nation abandons his/her own group simultaneously, and this move will have effects on his/her whole personality. It is therefore more than a question of what is 'advantageous' for him/her: It is a question of

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[28] Kis 1996: 200f.
[29] Kis 1996: 201
[30] Ibidem.
[31] Kis 1996: 202
[32] Kis 1996: 201
[33] Ibidem.
[34] Ibidem.

who (s)he is, where (s)he belongs, and how (s)he defines him/herself. The minority culture is what gives form to the individual's life and changing it may force the individual to change his/her personality, which should be considered a very heavy burden. [35]

Therefore inequitable distribution of resources, e.g. access to - or advantages in education, cannot be excused with the liberal argument that the 'other' can simply assimilate: Assimilation cannot be carried out quickly or completely. [36]

The question thus remains of how the liberal democratic state should respond to diversity. How is it possible to answer the question of political loyalty, while securing harmony between freedom and equality simultaneously? [37] The need for a common national identity is an issue that has been raised again and again within the liberal debate, a need that is claimed by some liberals and denied by others. From a multicultural perspective the only way to create solidarity between groups, and for groups to develop a sense of allegiance with the larger state, in a multicultural state, is to accommodate rather that subordinate ethnic identities. [38]

Traditional liberal democracies have mainly responded to diversity by granting civil and political rights to individuals. [39] Janos Kis argues that by supplementing traditional civil rights with group related minority rights the initial disadvantages of minority groups can be counterbalanced. He vouches for a co-nation rather than a one-nation state, where the state considers all its ethnic communities living on its territory, and all cultures and traditions, as its own. [40] The co-nation state should offer special advantages to people who are disadvantaged as a group when approaching a position of equality. [41]

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[35] Kis 1996: 209.
[36] Kis 1996: 212.
[37] Kis 1996: 214.
[38] Kymlicka 1995: 55.
[39] Ibidem.
[40] Kis 1996: 228.
[41] Kis 1996: 225.

2.2. A New Notion of Identity

Charles Taylor argues that what comes fourth in the politics of multiculturalism is a demand for recognition caused by the supposed link between identity and recognition: He argues that the theory of multiculturalism is build on the idea that part of our identities is shaped by the recognition or misrecognition of others.[42]

According to Taylor we have not always thought of the connection between recognition and identity this way. This way of thinking, he suggests, developed after the collapse of the social hierarchies built on the basis of honour in the 18th century. The idea of honour was replaced by an idea of the inherent dignity of all human beings: [43] The importance of every human being's ability to live its own life truly, and the belief in the originality in every human and in every culture.[44]

In order to understand the connection between identity and recognition, also the most crucial feature of human life must be recognised, which is its dialogical character: We discover our (own original) identity in dialogue with others, and our own identity is dependent on our relationships with others. We become full human beings by acquiring the rich human languages of expression (talk, art, love etc.) and we learn these trough 'significant others' (parents, friends, teachers, colleagues etc.). We define our identity with others, and sometimes in the struggle against what our significant others want to see in us.[45]

Therefore an individual or a group can suffer real harm if the society around them mirrors back a demeaning picture of them. In the worst cases misrecognition can lean to self-hatred and oppression, as the misrecognised group (or individual) internalise the picture of inferiority. It has for example been argued that blacks have adopted the white's demeaning image of them, and in order for them to be free from oppression they need to disengage themselves with this self-loathing image.[46]

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[42] Kis 1994: 25.
[43] Taylor 1994: 29.
[44] Taylor 1994: 30.
[45] Taylor 1994: 32-33.
[46] Taylor 1994: 25.

2.2.1. Politics of Equal Recognition

The focus of equal recognition has led to two different politics: 'Politics of universalism' where the equal dignity of all human beings is emphasized, and achieved by granting equal rights to all citizens.[47] On the other hand the modern notion of identity has led to the 'politics of difference', where everyone should be recognized for his or her unique identity. This not only applies on a personal level; we are also asked to recognize the uniqueness of each culture. The argument is that it is exactly the distinctness of minority cultures that have been assimilated to the majority society, which goes directly against the modern ideal of authenticity. Therefore, defenders of politics of difference believe that universal equality can be achieved only by making certain distinctions. They believe that affirmative action offers the minority a competitive advantage, which is justifiable on the grounds of historical discrimination.[48]

There is evidently a conflict between these two different kinds of politics since one leads to 'colour blind' politics whereas the other requires recognition and fostering of particularity. The latter also claims against the former that the culture that everyone should be assimilated to is in fact a reflection of one hegemonic culture. Thus it is only the minority culture, the suppressed culture, which is forced to change its forms, which is considered highly discriminatory.[49]

2.3. The Typology of Minority Groups

It is important to acknowledge that different minority groups are claiming different rights. The analysis of this paper concerns the group Kymlicka defines as immigrant minorities. Immigrant groups tend to ask for advantages that will make it easier for them to participate in the state institutions.[50] They do not seek national autonomy, but greater recognition of their ethnic identity, and they usually want for the laws and

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[47] Taylor 1994: 37.
[48] Taylor 1994: 38-39.
[49] Taylor 1994: 43.
[50] Kymlicka 2000: 19.

institutions to become more accommodating of cultural differences. They typically wish to integrate into the majority society, and to be accepted as full members of it.[51]

Kymlicka call this 'poly-ethnic rights', which are group rights that can be claimed by immigrant groups. Poly-ethnic rights can create equality between groups as it counters the way dominant culture privilege some ethnic groups but disadvantage others. This is also the demand for public funding for cultural practices, and funding of mother tongue teaching in the school system.[52] Additionally, immigrant groups can rightfully demand government support for the protection of part of their cultural heritage.[53]

Liberals support the rights of the individuals to question and decide what cultural traditions are valuable to them. Therefore special rights can only be justified as long as they promote equality between groups, and minority rights that put restrictions on the civil rights of the individual are illiberal.[54] Kymlicka emphasizes that liberals should only promote 'external protections' that involve the rights claims of a minority group against the majority, which should further equality between groups.[55]

2.4. The Relation between Culture and Freedom

Freedom within liberalism is for the individual to have the freedom of choice. The idea is that governments should not define how people should live their lives; people should be free to change the idea of what the 'good life' is, as they want. Therefore the preconditions that enables people to live the good life are $_{a)}$ that we are able to live our lives from the inside according to what give us value in life without the fear of discrimination and punishment, and equally important $_{b)}$ that we are able to change our minds about our perception of the 'good' and educate ourselves about other ways of life.[56]

Kymlicka emphasises that minority rights are not only consistent with the liberal idea of individual freedom but are actually promoting it. He suggests that freedom is intimately

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[51] Kymlicka 1995: 11.
[52] Kymlicka 1995: 115.
[53] Kymlicka 1995: 97.
[54] Kymlicka 1995: 152.
[55] Kymlicka 1995: 36.
[56] Kymlicka 1995: 81-82.

linked with and dependent on culture, which is the reason why minority rights can increase the freedom of individuals.[57] He argues that individual freedom is intimately connected to what he calls a 'societal culture': "*[…]which provides its members with meaningful ways of life[…]*".[58]

Individual freedom within the liberal tradition means to have the ability to make choices among different options. Kymlicka argues that it is our societal culture that provides these options and makes them meaningful to us. We choose to engage in certain social practices, based on our idea of the value of these social practices. To have an idea of – and understand a social practice is first of all to understand the meanings attached to it by our culture, thus to understand the history and language of that culture.[59]

This is why culture is so valuable: Our choices are only meaningful within a societal culture, and without one we are left with no meaningful options, which is the very foundation of individual freedom.[60] For people to have access to meaningful options, they need access to a societal culture. Thus group-differentiated measures aimed at ensuring access to meaningful options are legitimate in a liberal theory of justice.[61]

According to Kymlicka immigrant groups do not have the same rights to receive government support to help re-establish their societal culture, as national minority groups. They arguably leave their home country 'voluntarily' and therefore expectations of integration are not unjust as long as people had the choice to live and work within their own culture.[62] Therefore the state institutions and practices should be adapted to be able to accommodate the cultural and ethnic differences of immigrants, but should not be recreated completely.[63]

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[57] Kymlicka 1995: 75-76.
[58] Kymlicke 1995: 76.
[59] Kymlicka 1995: 83.
[60] Kymlicka 1995: 82.
[61] Kymlicka 1995: 84.
[62] Kymlicka 1995: 96.
[63] Kymlicka 1995:98.

2.5. Institutional Oppression

Defenders of multicultural reforms argue that they are needed to overcome deep-seated forms of exclusion and stigmatization helping Western democracies to become freer and fairer. In this view, affirmative action policies are justified by making up for past discriminatory practices. Iris Young, however, argues that affirmative action policies counteract *current* biases and blindness of institutions.

Young argues that minority groups suffer from a form of institutional *oppression*, which should be the primary concept for naming group-related injustice.[64] She argues that 'discrimination' is the wrong term as it puts focus on the victim who has to prove the assault case by case, while the oppression that minority groups suffer from is rather hidden in institutional practices that are framed as culturally neutral.[65]

Institutional oppression is hidden in the society where 'individual merits' are used to justify who qualifies for what positions. This social hierarchy based on 'individual merits' is widely believed to be justifiable in an egalitarian democratic society.[66] But Young argues that all ways to measure competences are culturally normative: Standardized testing, educational credits etc.[67] The tests actually reflect the competences of the majority who has gone to certain kinds of schools, and have been taught how to perform in these situations. What is actually being evaluated is whether the individual has acquired specific cultural, normative and social behaviours.

These tests, educational credentials etc. are used to decide who can qualify for what positions, which is how injustice is justified: exclusion is based on 'objective' criteria.[68] In the American context, within which Young was writing, the tests were designed by white-middle class males, who operated with white-middle class styles and meanings.

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[64] Young 1990: 195.
[65] Young 1990: 196.
[66] Young 1990: 200.
[67] Young 1990: 206.
[68] Young 1990: 208.

As a result the skills and competences of Blacks, women and other minorities, showed up lower.[69]

With the theory of multiculturalism a normative vision of how states ideally should respond to ethnic and cultural diversity was presented. The main area of concern for the analysis of the following chapters is to determine, based on the theoretical framework, what integration strategy the government implements, and how this is reflected in educational policies. Questions of how the government perceives itself, the immigrant, culture and ethnicity will be addressed. The analytical conclusions will be discussed with the international human rights standards that are presented in chapter 3.

3. Chapter 3: International and European Regulation

Human rights are rights that should be enjoyed by everyone, including by members of ethnic minority groups who are entitled to full and equal enjoyment of all human rights and fundamental freedoms. Additionally, individuals belonging to ethnic minority groups, and ethnic minorities as groups, are entitled to specific protections that are linked to their ethnic status for example the right to enjoy and maintain one's culture, religion and language on a non-discriminatory basis.[70]

This chapter will present the standards of international law and European law concerning the right to education, the principle of non-discrimination and minority rights protection mechanisms. The chapter will begin by introducing relevant United Nations (UN) human rights instruments, hereafter the framework of the most relevant Council of Europe (CoE) and European Union (EU) documents are presented.

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[69] Young 1990: 210.
[70] The UN: http://www.un.org/WCAR/e-kit/minority.htm.

3.1. The Right to Education under International Human Rights Law

Across different international human rights instruments it is widely agreed that the right to education is an indispensable right, which is fundamental for the enjoyment of other human rights.[71]

The right to education should be enjoyed by everyone as proscribed by the Universal Declaration on Human Rights (UDHR) (1948) article 26(1): *"Everyone has the right to education[…]"* and free from discrimination: *"All are entitled to equal protection against any discrimination[…]."[72]*

According to the UDHR article 26(3) *"[p]arents have a prior right to choose the kind of education that shall be given to their children",* which for example entails that they may choose between public or private schools as they wish provided that *""[…] the schools conform such minimum educational standards as may be laid down or approved by the State".[73]*

Article 13 of The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Denmark in 1972, is the most wide reaching article on the right to education in international human rights law.[74] The article establishes the right's connection to the moral basis for all human rights, which is the belief in the inherent dignity of all human beings.[75]

It adds to the UDHR article 2 in different aspects for example as it provides that education *"shall promote understanding among all "ethnic groups" as well as […]racial[…]groups."[76]*

According to article 13 the duty to provide education for all falls on the state who are obliged to actively pursue the *"development of a system of schools at all levels[…]",[77]*

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[71] CESCR, General Comment No. 13 (Twenty-First Session, 1999) [UN Doc. E/2000/22] The right to education (art. 13 ICESCR) [Compilation, 2004, pp. 71–86], para. 1.
[72] UDHR, Art. 7.
[73] ICESCR, art. 13(3).
[74] CESCR, General Comment No. 13, see note 70, para 2.
[75] Beiter 2006: 27.
[76] CESCR, General Comment No. 13, see note 70, para 4.
[77] ICESCR, art. 13(2)(e).

although the obligations of the state vary in relation to the different levels of education. The article puts a positive obligation upon the state to establish a free and compulsory state primary school system unlike the ECHR protocol 1 article 2 (see below).

The objectives of article 13 of the ICESCR has been further elaborated in other declarations since its adoption, and therefore state parties are obliged to provide education that meets the aims and objectives of article 13 (1) as it can be interpreted in light of, for example, the Convention of the Rights of the Child (CRC) (1989).[78] Violations of article 13 may occur through the direct action of the state, or if the state fails in taking the appropriate steps required by the covenant.[79]

3.2. The Right to Education Free from Discrimination

Denmark has ratified UNESCO's Convention against Discrimination in Education (CDE) (1960). Article 1(1) states:

 "[…]the term discrimination includes any distinction, exclusion, limitation, or preference which, being based on race, colour[…]has the purpose or effect of nullifying or impairing equality of equal treatment in education[…]".

The CDE seeks the elimination of what may be referred to as 'active' and 'static' discrimination. While 'active' discrimination derives directly from state actions and is equivalent to what is known as 'direct discrimination' (see explanation below), 'static ' (or de facto) discrimination is much more ingrained into the society and is the result of how economic, social, cultural and geographical factors have unequal effects for vulnerable groups. According to the convention the state has positive obligations to ensure that the situation of vulnerable groups in society, and in education, is advanced.[80]

Another important convention in the area of the right to equality and non-discrimination is the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (1965), ratified by Denmark in 1971, which is an international agreement and

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[78] CESCR, General Comment No. 13, see note 70, para 5.
[79] CESCR, General Comment No. 13, see note 70, para 55.
[80] Beiter 2006: 245.

thus the provisions are legally binding for state parties. According to the convention contracting states must prohibit and eliminate all forms of racial discrimination (direct and indirect, see below) and ensure that everyone are equal before the law regardless of distinction to race, although 'race' is not defined.[81] According to article 5 (e) (v) the state must ensure that everyone has equal access to enjoy the right to education free from discrimination.

Additionally, the right to enjoy the right to education free from discrimination is protected in the following universal international human rights instruments: Article 26 read with article 2 of UDHR, article 13 read with article 2(2) of the ICESCR and in the CRC article 28(1).

Article 2(2) of the ICESCR provides that everyone should be able to exercise the rights of the convention free from discrimination of any kind on the basis of for example race or colour. It provides both positive and negative obligations for the state in the area of 'direct discrimination' (see below).

In the *(CESCR) General Comment No. 13: The Right to Education (Art. 13)* it is stated that the prohibition against discrimination enshrined in article 2(2) of the covenant applies to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The committee emphasises that it interprets article 2(2) and 3 in light of for example the CDE, ICERD and CRC.[82]

In the same general comment it is confirmed that affirmative action policies aimed at creating de facto equality between groups is not violating the principle of non-discrimination with regard to education.[83] While the committee accepts that the right to education is subject to progressive realization, according to the resources of the state

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[81] International Convention on the Elimination of All Forms of Racial Discrimination (1965) 660 UNTS 195, entered into force on 4 January 1969. On the CERD and its relevance to the right to education, see Gomez del Prado, 1998, para 5 (UN Doc. E/C.12/1998/23).
[82] CESCR, General Comment No. 13, see note 70, para. 31.
[83] CESCR, General Comment No. 13, see note 70, para . 32.

party, the state parties have immediate obligations to ensure that the right is enjoyed without any form of discrimination.[84]

3.3. The Right to Education of Members of Minority Groups

Education is considered a fundamental opponent for enabling minorities to reproduce the ethnic, religious and linguistic aspect of their identity.[85] In this context it is relevant to look at article 27 of The International Covenant on Civil and Political Rights (ICCPR) (1966), article 30 CRC, which is essentially repeating article 27 of ICCPR, and certain parts of articles 2 and 4 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1992).

The right of minority groups to enjoy their own culture, practice their own religion and speak their own language is protected under article 27 of the ICCPR. The right is protecting people who belong to a group that share a common language, culture or religion. Article 27 is a right that members of minority groups are entitled to enjoy in addition to all other individual rights, and may not be restricted to apply to legal citizens only, or permanent residents, even migrant workers constituting such minorities are entitled to this right.[86]

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities (1992) defines the right of persons protected by the declaration to enjoy his or her culture, religion or language in positive terms unlike article 27 of the ICCPR. Although it is not a binding international document, and therefore does not put legal obligations upon the state, it should be approached as an important international standard setting instrument.[87] It provides that the protected groups should be able to enjoy their culture, religion or language in private or public life free from discrimination (stated in article 2(1)).

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[84] CESCR, General Comment No. 13, see note 70, para. 43.
[85] Beiter 2006: 142.
[86] HRC, General Comment No. 23 (Fiftieth Session, 1994) Article 27 ICCPR, para 1, 3.1, 5.1, 5.2.
[87] Thornberry, 1994: 12.

3.4. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

From the ECHR (CoE) only individual rights will be referred to, as the minority conventions of the CoE link minority status to citizenship directly. The following will thus present the right to education and the anti-discrimination provision under the ECHR.

3.4.1. The Right to Education under the European Convention on Human Rights

The right to education is protected in Article 2 of Protocol 1 to the ECHR. The ECHR must be interpreted as a living instrument, which means it must also be applied in situations that were not foreseeable during the drafting.[88]

The right to education is not absolute and leaves states with a margin of appreciation. When accessing whether any restrictions are acceptable the European Court of Human Rights (the Court) will consider if *"[…]'they are foreseeable[…]pursue a legitimate aim[…] whether the means employed to realize the intended aim are reasonably proportionate to its attainment.'"*[89]

The Court has emphasized that the first and second sentence of the Article[90] are interlinked, and therefore they must be read in light of each other, and be interpreted holistically. Additionally, the Court stated that the right must be read in conjunction with other relevant articles of the Convention[91] for example Article 14: Prohibition of Discrimination, which has been invoked several times for example in relation to segregation of Roma children in the school system in *D.H. and Others v. the Czech*

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[88] Harris et al. 2009: 699.
[89] Harris et al. 2009: 700.
[90] Protocol 1 Article 2: The Right to Education:
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the state shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.
[91] Koch 2009: 152.

Republic. Here the Court decided that indirect discrimination is prohibited under the Convention.[92]

The Article is framed as a negative obligation, which does not require the contracting state to establish a state educational system, to grant proper funding, or to meet certain European standards on matters like curriculum and management.[93] The Convention allows for access to educational institutions existing at the given time, which was established by the Court in the case known as the *Belgian Linguistic* case.[94] It can be discussed whether the Article does imply a positive obligation upon the state to establish public schooling, one of the pro arguments being that the right loses its *raison d'être* otherwise. Additionally CoE member states are obliged to establish free compulsory education under other conventions such as the ICESCR and the CRC.[95]

As to the second part of the Article, that the states shall respect religious and philosophical convictions, it is merely a negative obligation for the state not to indoctrinate the children in any single point of view or moral attitude, and to convey any information in an objective way.[96] The Court has emphasized that when it comes to philosophical convictions they consider beliefs that are*"'[…]worthy of respect in a "democratic society" and are nor incompatible with the human dignity[…] they must not conflict with the fundamental right of the child to education.'"*[97]

In addition, the Court has emphasized that knowledge should be conveyed in an 'objective, critical and pluralistic' manner, especially in subjects such as religion and ethics where the parents' beliefs may directly be contradicted as was decided in the leading case *Folgerø V Norway*.[98] This case concerned the teaching on Christianity in religion classes, which clashed with the religious beliefs of non-Christian parents. The Court found that the focus on Christianity was not in itself in contradiction with the Article, but the object of the lessons, which was to provide the pupils with a Christian

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[92] Koch:2009: 170.
[93] Harris et al. 2009: 708.
[94] Harris et al. 2009: 700.
[95] Koch 2009: 173.
[96] Harris et al. 2009: 704.
[97] The court in ECtHR, *Campell and Cosans V UK* 1982: para 36.
[98] ECtHR, *Folgerø v Norway* 2007.

upbringing, together with the predominant focus on Christianity did not meet the objectivity requirement.[99] In the *Folgerø* case the Court emphasized that in a democratic society the views of the majority cannot dominate those of the minority.[100]

3.4.2. The Principle of Non-discrimination under the European Convention of Human Rights

Article 14 prohibits discrimination, and it differentiates from other rights of the Convention by being a 'parasitic' right: The scope of the article is limited to only concerning discrimination of rights and freedoms set fourth in the Convention. As such it is not a general prohibition of discrimination. However, the Court can find a breach of the Article even if there is no violation of other rights, which it did in the *Belgian Linguistic* case. Her the Court established that although the state is not obliged to establish any state education system under the Convention, if it chooses to do so, it may not restrict access to it on a discriminatory basis. Consequently, in cases where the claim of discrimination falls within the ambit of the convention, a complainant may claim a violation of Article 14 without claiming a violation of any other right of the Convention.[101]

In its case law the Court has defined discrimination as:

"[…]treating differently, without an objective and reasonable justification, persons in relevantly similar situations[…]It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory."[102]

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[99] Harris et al. 2009: 705. This approach was confirmed in earlier cases such as ECtHR, *Kjeldsen, Busk, Madsen and Pedersen v Denmark* 1976.
[100] Harris et al. 2009: 707-708.
[101] Harris et al. 2009: 580-581.
[102] ECtHR, *Zarb Adami v Malta* 2006: para 71 (citing ECtHR, *Willis v UK* 2002: para 48).

Thus, the applicant has to prove that people in *similar* situations as herself enjoy preferential treatment. The Court has also decided that discrimination can occur if a state fails to treat persons differently whose situations are significantly different.[103]

3.4.2.1. Proportionality Test

When an applicant brings a case to the court he will typically argue that he was treated differently and adversely than others in similar situations, because of his membership of a specific group. The list of characteristics, on the basis of which differential treatment is considered discriminatory, is un-exhaustive, and therefore differential treatment based on other characteristics may also render differential treatment discriminatory.[104]

If the Court finds that there was in fact differential treatment, in the context of exercising one of the rights and freedoms set fourth, the Court applies the test set out in the *Belgian linguistic* case. This test enables the Court to make a distinction between permissible differentiation and unlawful discrimination.[105] The Court argues that "*[…]the principle of equality of treatment is violated if the distinction had no reasonable and objective justification.*"[106]. Differential treatment can hence be justified by considering whether the aim and effects of the measures employed were legitimate. In addition, besides lacking a legitimate aim, a violation of Article 14 is found when there is no proportionality between the "*[…]means employed and the measures sought to be realized.*".[107]

The court for example finds that differential treatment can be justified if the aim is to protect the interests of the community and the rights and freedoms of others.[108] In this context the next question is if the measures were in proportionality with this aim. The court leaves the state a 'margin of appreciation' when they asses whether the different treatment was proportionate with the legitimate aim pursued.[109] In this context the Court has argued that the scope of the state's margin of appreciation varies "*[…]according to*

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[103] ECtHR, *Thlimmenos v Greece* 2000
[104] Harris et al. 2009: 584-585.
[105] Harris et al. 2009: 586.
[106] ECtHR, *Belgian Linguistic* case 1968: para 10.
[107] ibidem.
[108] For example ECtHR, *Sidabras and Dziautas v Lithuania* 2004: para 55.
[109] Harris et al. 2009: 586.

the circumstances, the subject matter and its background[…]one of the relevant factors may be the existence or non-existence of common ground between the laws of the contracting states."[110]

If the court fails to find common European standards it will apply the general proportionality test.[111] In many cases the Court decided that here had been no violation of Article 14 on grounds of proportionality. This reflects the position of the Court, which considers the state authorities in a better position to assess what measures must be taken in order to protect the public interest, especially in the context of economic or social strategy.[112]

In the assessment of proportionality the Court considers whether other measures could have been employed by the state to achieve the same aim. A general rule is that the more serious the difference of treatment is conceived to be then equally serious justifications are required from the state.[113] The Court has identified certain badges under which differential treatment calls for very strict interpretation of objective and reasonable justification, for example differential treatment based on race or ethnicity.[114] The Court has emphasized that the state must insert all means to combat racism.[115] This position on racial discrimination has been very important in cases of indirect discrimination in the field of education.[116]

3.4.2.2. *Indirect Discrimination*

The importance of Article 14 has been developed in a series of cases for example regarding police violence and education segregation of Roma communities in Eastern and Central Europe. As earlier mentioned the Court has also developed its position on the notion of indirect discrimination in this context:[117]

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[110] ECtHR, *Petrovic v Austria* 1938: para. 38.
[111] Harris et al. 2009: 589.
[112] Harris et al. 2009: 588, 591.
[113] Harris et al. 2009: 589-590.
[114] Harris et al. 2009: 590.
[115] The Court in ECtHR, *DH v Czech Republic* 2007: para. 176.
[116] Harris et al. 2009: 592.
[117] Harris et al. 2009: 578.

"A general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory not withstanding that it is not specifically aimed at the group[...]and that discrimination potentially contrary to the Convention may result from a de facto situation".[118]

According to this argument unintentional (indirect) discrimination of a particular group may derive from a policy when it is implemented in practice. The court has hereby accepted that discrimination may derive not only from direct actions by the state, but also from *de facto* situations.[119]

The Article is not prohibiting affirmative action policies to correct what the Court calls *"factual inequalities"*. In fact, if the state does not attempt to correct inequalities through differential treatment it may constitute a violation of the Article in itself.[120]

If the complaint is in the context of institutional discrimination it may be particularly difficult for the applicant to provide the necessary evidence since the law in itself may not be discriminatory rather the implementation of it.[121] In cases of indirect discrimination the Court has argued that less strict rules of evidential proof should apply for the applicant to place a burden of proof on the respondent state. In the *DH v Czech* case the Court established that in the context of indirect discrimination statistical proof of discriminatory impacts could shift the burden of proof to the state.[122] In addition, in this case the Court established that the applicant no longer has to prove intent when claiming a violation of Article 14, which has widened the scope of the Article.[123]

In the case *Horváth and Kiss v Hungary* the European Court of Human Rights ruled a violation of Article 2 of Protocol 1 in conjunction with Article 14. The two applicants, who were of Roma origin, had been schooled in a separate school for children with 'mental disabilities' where the curriculum is less advanced than in regular schools. The

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[118] ECtHR, *DH v Czeck Republic* 2007: para, 175.
[119] Harris et al. 2009: 607.
[120] Harris et al. 2009: 580.
[121] Harris et al. 601.
[122] Harris et al. 2009: 600-602.
[123] Harris et al. 2009: 608.

applicants claimed to have suffered from indirect discrimination due to misdiagnosis of Roma children, which resulted in them being sent to remedial schools. They argued that:

"[…]social deprivation was linked to the concept of familial disability and they argued that the definition of mental disability as comprising social deprivation and/or having a minority culture amounted to bias and prejudice. In addition, the tests had been culturally biased putting Roma children at a particular disadvantage and their socio-cultural disadvantaged background resulting from ethnicity had not been taken into account and that the examination process had not been sufficiently individualised."[124]

In this case the Court noted that the word 'respect' in Article 2 of Protocol 1 proscribes obligations for the state to implement positive measures to enhance the situation of minorities, who have suffered from discrimination in the past, in the education system.[125] The Court found that the statistics presented to it showed that Roma children were overrepresented in the remedial school that the applicants attended, caused by systematic misdiagnosis of mental disability, which meant that a general measure had disproportionate prejudicial effects for the Roma, constituting a case of indirect discrimination.[126]

3.5. European Union Legislative Framework

Besides the ECtHR the EU has its own judicial revenue through which European citizens can claim their human rights. If the matter falls under EU competences citizens can have a claim under EU law, either in their national courts, or in the European Court of Justice (CJEU). The CJEU makes sure that the treaties are applied an interpreted in line with the law. The court can rule in cases brought by Member States, institutions or other legal persons.[127]

The principle of equality is enshrined as one of the fundamental principles and founding values of the EU. Article 2 of the Treaty of the European Union (TEU) states:

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[124] Case Summary, Horváth and Kiss v Hungary, Application Number: 11146/11 p.3.
[125] ECtHR, *Horváth and Kiss v Hungary* 2013 para 103, 104.
[126] ECtHR, *Horváth and Kiss v Hungary* hudoc 2013 para 105, 110.
[127] Treaty on the Functioning of the European Union as amended by the Lisbon Treaty (2007). Article 21.

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities".[128] Additionally according to article 3 TEU *"[t]he Union shall[…]combat social exclusion and discrimination, and shall promote social justice[…] and protection of the rights of the child."*

The EU is a supranational organisation stemming from the fact that it can adopt laws that immediately become part of national law.[129] After the Treaty of Lisbon went into force in 2009 the EU Charter of Fundamental Rights (2000) became a legally binding document and judicially enforceable with status as EU primary law.[130]

Article 21 of the charter is a non-discrimination provision, including prohibition of all forms of racial discrimination, and article 14 provides union citizens with the right to education. Similar to the ECHR the charter provides a non-discriminatory right to access education at institutions existing at the given time.[131]

Concerning the scope of the charter it is not a freestanding bill of rights as it only applies within the field of EU law. So article 51(1) states:
'The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law[…]' In relation to member states the charter applies when they *implement* EU law, but also when they derogate from EU law, which broadens its applicability.

The charter is indirectly bound with the ECHR, and has borrowed about half of its rights from the convention. Article 52(3) prescribes that charter rights that are the same as convention rights shall be interpreted with the same meaning and scope although*"[t]his provision shall not prevent Union law providing more extensive*

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[128] Consolidated Version of the Treaty of the European Union, C83/13, 30.3.2010, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF, accessed on 18 March 2014.
[129] Beiter 2006: 185.
[130] Douglas-Scott 2011: 651.
[131] Beiter 2006: 196.

protection." In the case *J.McB. v L.E.* the CJEU stated that the jurisprudence of the ECtHR should be followed in those cases where the charter rights are the same as the rights of the convention[132]

3.5.1. The EU Racial Equality Directive

In 2000 two new directives were adopted: The Employment Equality Directive and the Racial Equality Directive (the Directive hereafter). This section will present the latter.

The directive prohibits discrimination on the basis of race or ethnicity in the context of employment, access to the welfare system and - social security, as well as goods and services. With this directive the EU recognized that in order to gain equal access to the labour market, it is necessary to guarantee equal access to for example health, education and housing.[133]

The aim of this directive is to combat racism across Europe and to implement the principle of Equal treatment in EU member states. Besides requiring prohibition of discrimination on the grounds of racial or ethnic origin, the directive requires all EU member states to apply positive measures enhancing substantial inequality, including affirmative action, to prevent or compensate for disadvantages linked to ethnic or racial origin.[134]

The Directive prohibits direct and indirect discrimination. It leaves it to the national judicial or other competent bodies to access claims of discrimination on the basis of rules of national law and practice. Differential treatment can be justified in situations where the requirements serve a legitimate aim and are in proportionality with this aim.[135]

The EU acknowledges, like the ECHR, that discrimination may also occur when people are treated equally who are in different situations. Here it is not the treatment that is

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[132] Case C-400/10 PPU JMcB v LE [2010] ECR 000.
[133] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, para 12, General provisions Article 3.
[134] Council Directive 2000/43/EC, see note 132, para 17.
[135] Council Directive 2000/43/EC, see note 132, Article 4.

discriminatory, but the effects that this seemingly neutral treatment have on people with certain characteristics.[136]

In this context what is referred to is indirect discrimination which *"shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of racial or ethnic origin at a particular disadvantage compared with other persons[…]".*[137]

In cases of presumed indirect discrimination, rather than looking at differential treatment, focus should be on differential effects.[138] In this context statistical evidence may prove sufficient in establishing discriminatory practices,[139] which is in accordance with case law of the ECtHR.

Member states should achieve the aims of the Directive by adopting a range of measures: Administrative/judicial procedures should be made available for all individuals to pursue their rights,[140] the burden of proof should be shared between the claimant and the respondent,[141] effective, proportionate and dissuasive sanctions should be made available if the obligations of the Directive are not met by the state, and can for example include paying compensation to the victim(s).[142] The state should also ensure that competent associations, organisations or other legal entities, who have a legitimate interest in ensuring the implementation of the Directive in the national context, are able to support or represent the complainant in *"[…]any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive".*[143]

In addition, the state should promote cooperation between different social partners and non-governmental organisations to address and combat the issue of racial discrimination.[144] Finally, the states may pursue the objectives of the Directive by establishing one or more bodies who have the competences necessary *"[…]to analyse*

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[136] The European Fundamental Rights Agency 2010: 29.
[137] Council Directive 2000/43/EC, see note 132, Article 2.2(b).
[138] The European Fundamental Rights Agency: 2010: 30.
[139] Council Directive 2000/43/EC, see note 132, para 15.
[140] Council Directive 2000/43/EC, see note 132, Article 7.1.
[141] Council Directive 2000/43/EC, see note 132, Article 8.1.
[142] Council Directive 2000/43/EC, see note 132, para 19, 21, 26.
[143] Council Directive 2000/43/EC, see note 132, Article 7.2.
[144] Council Directive 2000/43/EC, see note 132, para 23.

the problems involved, to study possible solutions and to provide concrete assistance for the victims".[145]

4. Chapter 4: Analysis of the Danish Case: Policy and Legislation

4.1. The National Legal Framework: Protection against Discrimination

In Denmark there is no constitutional protection against all forms of discrimination, but article 70 of the Danish constitution contains a prohibition of discriminatory treatment on the grounds of creed or descent.[146]

The Danish non-discrimination legislation is criticised for being a sort of 'patchwork', which is mainly implementing point by point what is interpreted as its legal obligations under international and European Union law.[147] There is no general legislation against anti-discrimination, which applies to all possible grounds for discrimination. Consequently, in cases where the principle of equal treatment has been violated, it must be investigated whether the differential treatment was based on one of the grounds protected by law.

Denmark already introduced anti-discrimination legislation in 1971, which protects against discrimination on the grounds of race, skin colour, national or ethnic origin, faith or sexual orientation in the context of employment.[148] Therefore, The Racial Equality Directive only led to minor changes to existing legislation.[149]

4.1.1. The Act on Ethnic Equal Treatment

Following the Racial Equality Directive Denmark introduced [Act on Ethnic Equal Treatment], which went into force July 1st 2003.[150] This act protects against discrimination on the ground of ethnicity in the context of all public and private businesses, including social protection in the areas of social security, health, social

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[145] Council Directive 2000/43/EC, see note 132, para 24.
[146] http://www.eu-oplysningen.dk/upload/application/pdf/0172b719/Constitution%20of%20Denmark.pdf
[147] The Danish Institute for Human Rights 2013: 11.
[148] Law announcement no. 626. 1987.
[149] The European Fundamental Rights Agency 2011: 17.
[150] Law no. 374. 2003.

benefits, education, and access to services which are provided to the public hereunder housing. The act protects against direct and indirect discrimination as defined in the Directive.

In cases where the complainant presents evidence, from which it may be presumed that the principle of equal treatment has been violated, the burden of proof shifts to the other part, which is also in accordance with EU requirement. However, the European Fundamental Rights Agency[151] (FRA) criticises the Danish legislation because the burden of proof only applies in formal court proceedings and not to the procedures of the specialised bodies (presented below). According to FRA this may discourage individuals from addressing complaints to the specialised bodies since discrimination may be hard to prove.[152]

[The Board of Equal Treatment] is an independent board established by the Act on Ethnic Equal Treatment. The Board deals with complaints of equality of treatment on the grounds of for example race or ethnicity outside the labour market.[153] The board works as a judicial body and has mandate to decide if legal equality provisions were violated, decide on an appropriate financial compensation to victims of discrimination, and may bring the case before the national courts if the decision and settlement of the board is not complied with.[154] It is proscribed that in order to file a complaint an individual must be directly affected by discriminatory treatment, or be member of a group that is discriminated against.[155]

The Board can only assess written evidence as opposed to oral testimonies, which the European Commission against Racism and Intolerance (ECRI) (CoE) recommends that the authorities change. Additionally the ECRI questions the independency of the board since the judges are appointed directly by the government departments concerned. If the

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[151] FRA is a European Union decentralised agency that helps to ensure that the fundamental rights of people living in the EU are protected. (http://fra.europa.eu/en/about-fra).
[152] The European Fundamental Rights Agency 2011: 20.
[153] Law announcement no. 905. 2012.
[154] http://sm.dk/arbejdsomrader/integration-og-demokrati/etnisk-ligebehandling/ligebehandlingsnaevnet
[155] http://ast.dk/naevn/ligebehandlingsnaevnet/hvis-du-vil-klage-til-ligebehandlingsnaevnet

complainant is not satisfied with the decision of the board the case may be brought before the national court, but the applicant has to finance this privately.[156]

4.1.2. The Danish Institute for Human Rights

Under Act on Ethnic Equal Treatment (2003) the Danish Institute for Human Rights (DIHR) was provided with a mandate for promoting equal treatment, and to provide assistance to victims claiming their rights have been violated, arguably the most important change following the Directive. In 2012 a new act on the function of the institute was passed: [Act on the Institute for Human Rights – Denmark's National Human Rights Institute] implementing Article 13 of the Directive.[157] Prior to the extension of the DIHR's mandate the Danish anti-discrimination legislation had not been applied systematically in Denmark.[158]

DIHR is established as the body responsible for initiating independent studies on discrimination, publish reports, and make recommendations on human rights implementation in Denmark.[159]

The Institute has a quasi judicial role: It can deal with complaints regarding violations of the principle of equal treatment on the grounds of race or ethnicity, and provide opinions on cases concerning discrimination to the Board of Equal Treatment. The Institute can also assist victims when complaining to the Board. If the Institute finds a violation the complainant can be granted free legal aid.[160] The Institute does not have mandate to hear witnesses and therefore their decisions are based solely on documentary evidence. This, together with the burden of proof, which lies with the applicant, may explain why discrimination is only established in very few cases.[161] DHIR states that the financial situation of the institute is insufficient for dealing with

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[156] ECRI 2012: 19.
[157] Law no. 553. 2012.
[158] The European Fundamental Rights Agency 2011: 18.
[159] http://humanrights.dk/about-us
[160] Law no. 374. 2003. Article 10.
[161] The European Fundamental Rights Agency 2011: 20.

issues relating to equality, and the ECRI therefore advise the authorities to revise the budget.[162]

4.2. Integration in Denmark: The Development of a Neo-liberal Agenda

Before presenting the government's integration strategy a brief historical outline of Denmark's approach to integration will be provided, which will help further the understanding of integration policies today.

Denmark has arguably made itself famous for implementing quite severe immigration and integration policies, which according to some critics border on the illiberal.[163] The country has indeed been proven to adopt a much more negative approach and rhetoric about cultural differences than e.g. their neighbouring Scandinavian countries, making themselves known for using immigration and integration policies as a means for controlling desirable and less-desirable aspects of migrants' culture.[164]

As a result of very low unemployment rates in the 1960's immigrants were invited to come and work in the industrialized production sector in Denmark. Already in the 1970's laws were passed to control immigrant flows,[165] and it became clear the guest workers were not going home. Hence the foreign workers became 'immigrants' thus removing 'immigration' from primarily being an issue for labour market policy to also being discussed in the realm of social policies and welfare state policy development.[166] As unemployment rates rose the social democratic prime minister Anker Jørgensen, in power 1979-1982, was forced to present a point of view on the issue of immigration. He stated that immigrants were equal citizens to Danes and should enjoy equal rights according to the principle of 'welfare state universalism'.[167] The creation of the welfare state was oriented towards an idea of equal citizenship as being realized through equal enjoyment of social and economic rights, and equal distribution of welfare state resources. In theory minorities would benefit from this approach as they would be

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[162] ECRI 2012: 21.
[163] Brochmann & Hagelund 2011: 13.
[164] Brochmann & Hagelund 2011: 18.
[165] Moldenhower & Øland: 2013: 398.
[166] Moldenhower & Øland 2013: 402
[167] Moldenhower & Øland 2013: 402-403.

equally included in state institutions, for example educational institutions, and benefit from economic redistribution.[168]

Additionally Anker Jørgensen argued that the welfare state should be protective and appreciative of the cultural backgrounds of immigrants, and regard immigrants as a positive contribution to the Danish society as a whole. Thus, in the beginning, immigrants were included in the welfare institutions as citizens. However, increasingly the immigrants' social problems were considered integration problems as such.[169]

In the 1980's, when a liberal-conservative coalition was in government, the power of national cultural perspectives increased and the debate intensified on whether immigration and integration was a threat to the values of the Danish welfare state model.[170] Special policies aimed at immigrants surfaced, and during this time the social construction of the 'stranger' appeared:[171] "*[…]referring to behaviour that departs from the accepted standardised national culture[…]*",[172] and called for political and educational interventions.[173]

In the 1990's the now social-democratic government stressed spreading refugees around the municipalities as much as possible, based on the idea that too much foreign culture in one place was problematic,[174] a practice still being enforced today.[175] This policy was officially implemented to avoid refugees becoming an economic burden for only few municipalities, and additionally the value in experiencing other cultures was highlighted.[176] This also reflects the nationalist idea of the national culture as being the unifying element of the society, and the need for assimilation that flows from this idea.[177]

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[168] Miller 2006: 323.
[169] Moldenhower & Øland 2013: 402-403.
[170] Moldenhower & Øland 2013: 403.
[171] Moldenhower & Øland 2013: 401.
[172] Moldenhower & Øland 2013: 411.
[173] Moldenhower & Øland 2013: 401.
[174] Moldenhower & Øland 2013: 404.
[175] Law annonce no. 1115 2013: Chapter 3.
[176] Moldenhower & Øland 2013: 404.
[177] Kis 1996: 202.

The construction of the immigrant as 'anti-social' and 'criminal' was intensified in this time, and the 'immigrant' or 'foreigner' was referenced mainly in a negative sense.[178] In Denmark state and nation has always been the same except for Greenland and the Faroe Islands. But Denmark's history of creating a sense of unity and strength, as a relatively small state, by drawing symbolically on a culture of consensus making and a general homogenous population, the very idea of nationality and homogeneity, felt challenged by globalisation and migration.[179]

The adoption of the Integration Act itself indeed marked a shift in social policies in Denmark. When the law was adopted in 1998 the 'Introductory allowance' was introduced. This was a social allowance benefit targeting immigrants and refugees, which was significantly lower than the social benefit allowance given to the population at large. This was the first example in Denmark of discriminatory differentiation between groups, in this case even based on ethnicity, and it defined a break with the principle of universalism in the Danish welfare state. In 2001 the allowance was levelled with the regular social benefit allowance since it was deemed discriminatory otherwise according to for example article 23 of the UN Convention on Refugees (1951), which proscribes that refugees who are lawfully residing on a state party's territory should be treated equally to citizens with respect to public relief and assistance.[180]

The neo-liberal project was particularly enforced and refined during the years of 2001-2011 where a coalition between the Liberal – and Conservative parties with support from the Danish People's Party were in power. References to 'our' values were stressed and they were stressed as threatened by the composition of the population. They adopted alienating policies, where immigrants increasingly were seen as responsible for their own integration. Especially immigrant parents were targeted; even though 'they'

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[178] Buchardt 2011: 124.
[179] Moldenhower & Øland 2013: 400.
[180] Convention Relating to the Status of Refugees (1951): Article 23.

were citizens officially, 'they' were not considered capable of rearing their children properly.[181]

The political climate during these years is illustrated by the following quote by the former prime minister: *"I would like to stress that I want a Denmark characterized by Danish values, by a strong feeling of identity for what is Danish history and Danish Culture, and naturally a strong focus on Danish language."* (Former Prime Minister Anders Fogh Rasmussen in the Parliament, May 21, 2008 – from a debate on civil servants' (mainly judges) right to wear a headscarf).[182]

The right-wing government led by Anders Fogh Rasmussen implemented a number of policies that officially applied to all citizens but in reality were targeting immigrants,[183] and integration policies were developed to combat 'ghetto's, 'fundamentalism' and 'anti-democratic' behaviour. When the 'new' government was elected in 2011 they continued this strategy by planning the implementation of policies aimed at combating forced marriages, extremism, parallel communities and antidemocratic movements.[184] The answers that were and are continually put forward concerning 'integration problems' are 'Danishness', 'workfare' and individual responsibility.[185]

4.3. Policy Analysis: The Danish Approach to Integration

The most important policy steering documents in the context of integration and education will be presented and discussed with the findings of the legal analysis, and the findings from the fieldwork conducted in two Danish schools. The inclusion of general policies is based on the presumption that while "[t]*he policy level does not determine what goes on in 'real life',[…] it plays a part[…]."*[186]

When choosing documents there is a risk of self-confirmation if you only select documents that will re-confirm your own position. The following are the criteria used

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[181] Moldenhower & Øland 2013: 405.
[182] Timm 2009: 385.
[183] Brochmann &Hagelund 2012: 18-19.
[184] Government 2011: 55.
[185] Molderhower & Øland 2013: 399.
[186] Moldenhower & Øland 2013: 414.

for the selection: The documents should be closely related to the legislation on education and integration, be central steering documents implemented by the present government, and have practical organisational implications in the area of education, family life and childhood.[187]

The following central steering documents have been chosen for analysis:

Government strategy (2011): *Et Danmark som står sammen. Regeringsgrundlag.* [A Denmark that Stands Together. Foundation for government].

Government strategy (2012): *En styrket integrationspolitik.* [Improved Policies of Integration].

Government strategy 2013: *Styrket forældreansvar* [Stronger Parental Responsibilities].

The first two documents formulate the general integration policy of the government, while the third one presents a concrete initiative allegedly aimed at enhancing the situation of ethnic minority children.

4.3.1. Integrating towards 'Sameness'

The UN recognizes that the rights of members of ethnic minority groups, and ethnic minorities as a group, are becoming increasingly important in the globalizing world. Increasing human migration across national borders is challenging the fundament of the nation state, which, traditionally, relied on having a distinct nation group occupying one territorial land. Despite the growing recognition of the rights of minority groups to equal recognition of their cultural distinctness, nation states still try to impose their national culture on the residing minority groups through assimilating policies that are aimed at diminishing cultural differences.[188]

Nationalists claim that citizens of a multicultural state cannot be in solidarity with each other, and in solidarity with the public authority under whose jurisdiction they are living. This is based on the assumption that those who do not understand each other's

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[187] Gitz-Johansen & Horst 2010: 139.
[188] UN: http://www.un.org/WCAR/e-kit/minority.htm

customs and traditions cannot form a community.[189] From the perspective of this monocultural ideology being well integrated essentially means being well adapted to the majority society.

 In [A Denmark that Stands Together] the government elaborates on what being integrated into the Danish society entails:

*"Most immigrants in Denmark do not have **integration problems.** They are integrated and have a good life in Denmark. Their dreams are the same as the majority of the Danes': A good place to live and a healthy family. They care about welfare, work and school. They are **normal citizens** in the Danish society."*[190]

The government implies that there is a correct way to live in Denmark, and integration is aimed at 'those' who have not adopted the Danish norms so far. Hereby the government establishes that Denmark is interpreted in terms of cultural and social homogeneity, and thus a logical next step is to implement policies aimed at reducing ethnic, cultural and linguistic complexity. Within the vision of cultural homogeneity, ethnic diversity is constructed as a problem as such.[191]

With the distinction between well and non- integrated citizens the government constructs what essentially can be considered an 'us' who is the normal (white) Dane who is opposed to 'the other'. The other is the 'abnormal' citizen who may be a citizen officially, but who is neglected status as a *normal citizen* as (s)he does not share the Danish virtues. This is the power of the majority: The power to define what can be considered normal and abnormal. While an outsider, allegedly, can be accepted as one of 'us' *normal citizenship,* in the above quote used in a non-legal sense, is only offered if the other assimilates. 'They' are positioned as non-citizens who are offered citizenship if they change.

According to Kymlicka this discourse of citizenship is used by the majority to advance its own culture and institutions, and to justify assimilation of minorities with the aim of

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[189] Kis 1996: 233.
[190] Government 2011: 51. My translation + highlights.
[191] Gitz-Johansen & Horst 2010: 138.

turning 'troublesome' minorities into 'good' citizens.[192] The problem of constructing groups of immigrants as abnormal in a negative sense, and the assimilatory policies that flow from these constructions, is that unequal recognition can infuse damage on those who are denied it, and render a form of oppression, as it deprives the individual of living its true self.[193] Additionally, there is a tendency that when the 'bad' are seen as the beneficiaries of multicultural policies the public support of multicultural policies dramatically diminishes.[194]

The negative educational outcomes for ethnic minorities students is evidence that these students, as a group, share a disadvantaged position. According to international and European equality provisions the government has a positive obligation for creating de facto equality, which, according to multiculturalism, cannot be achieved through the politics of assimilation. Rather than blaming 'integration problems' of some minority members on the individuals themselves, the government should implement positive measures in the areas of social, economic, housing and educational policies, which aim at enhancing their position. Kymlicka argues that denying special rights to disadvantaged minority groups, arguing that it threatens solidarity or stability, merely reflects an underlying ignorance or intolerance of these groups.[195]

4.3.2. The Non-Democratic Minority

In the context of integration policies 'democracy' and 'equality' are constructed as prevailing in Denmark, and presented as neutral values that all members of the 'community' aspire to: "*[…]democracy is neutral, good and a universal phenomenon and therefore simple and important to promote for all[…]*".[196]

In [Improved Policies of Integration], which is the government's integration strategy targeting immigrants, the government argues that policies aimed at promoting active citizenship among immigrants are needed based on the following argument:

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[192] Kymlicka 2000: 12.
[193] Taylor 1994: 36.
[194] Banting & Kymlicka 2006: 8.
[195] Kymlicka 1995: 192.
[196] Moldenhower & Øland 2013: 415.

"It is important for the sense of belonging to the community that all citizens participate in elections and in other ways contribute to the democracy. It also creates stronger ties to the community to participate actively in associations and in civil society in general"[197].

'The community' refers to majority society, which is constructed as a unity of citizens with democratic behaviour. In order for the minority to be recognized as connected to the community, (s)he must adopt this behaviour. Hereby non-democratic behaviour is directly connected to the immigrant who is outside the 'community' instead of presented as an attitude that can be found everywhere in society.

Framing non-democratic behaviour as an individual problem of immigrants; the minority as the 'non-active citizen' as opposed to the active majority member, reproduces the negative image of this group that is already prevailing in society, and renders implementation of policies aimed at assimilating the minority legit. In fact, 43% of the Danish citizens participated in the elections for European Parliament in May 2014. Thus, in reality, non-participation in democratic elections is a national phenomenon rather than directly connected to the minority.

In this context it is emphasised that discrimination and prejudice should not stand in the way for minority participation. To combat discrimination the government has established an 'Anti-discrimination Unit' responsible for carrying out research in the area, and developing initiatives and campaigns aimed at 'creating awareness and changing attitudes' in order to reduce discrimination.[198] According to multicultural defenders, and according to international and European human rights provisions, states should implement initiatives aimed at informing and challenging negative perceptions about other cultures, lifestyles and ethnicities among the general population. According to Kymlicka the state must actively fight prejudice and discrimination for example by

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[197] Government 2012: 10. My translation.
[198] http://sm.dk/arbejdsomrader/integration-og-demokrati/etnisk-ligebehandling

changing the way immigrants are portrayed in textbooks, government documents and the media.[199]

However, the strategy indicates that discrimination is considered a result of racist attitudes among a smaller amount of people towards ethnic minorities, which implies that structural discrimination is not acknowledged.[200] Defenders of multiculturalism emphasize that it is state policies and institutions themselves that are actually reflecting the needs and wishes of the majority:

"Government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups."[201]

Young argues that it is wrongful to assume that it is discrimination performed by individuals, which is the only form of injustice that minorities suffer from. It is rather an institutional oppression that derives from mono-cultural policy implementation that reproduces hegemonic structures in favour of the majority.[202] Therefore, in order for the Danish state to succeed in implementing e.g. the EU Racial Equality Directive, which also provides for the state to ensure substantial equality between ethnic and racial groups, structural discrimination needs to be addressed. By applying positive measures the member states will be able to ensure substantial equality understood as *"[…]equal enjoyment of opportunities to access benefits available in society".*[203]

As the next section will show the ethnic minority in Denmark is kept in a powerless position based on majority constructions of the minority as deviant and culturally deprived.

4.3.3. Gender (In)equality

In 'Improved Policies of Integration' the government argues that *"[t]raditional perceptions of the roles of men and women, in the family and in society in general, can*

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[199] Kymlicka 1995: 96.
[200] Jensen et. al 2012: 67.
[201] Kymlicka 1995: 108.
[202] Young 1990: 196.
[203] The European Fundamental Rights Agency 2010: 35.

also stand in the way of integration.”[204] Therefore they intend to *“[…]combat patriarchal gender roles that lead to oppression of women”*[205] among immigrant groups.

Stating that 'traditional gender roles *can stand in the way* of integration' implies that the government is neglecting the existence of gender inequality in the majority society. Gender inequality is being directly connected to having a non-Danish background, as the 'other' cannot be integrated if (s)he does not change his/her perception of gender. Defending gender equality is constructed as a key way of performing 'Danishness', similar to being 'democratic'.

This view of 'the other' is illustrated by the following quote by former Foreign Minister of the government, Villy Søvndal:
"It is obvious that the leftwing had led years of struggle for gender equality. But it is also obvious that when immigrants come here from, for instance, Somalia, then they haven't experienced that struggle and all the hardships that the struggle brought with it. And that creates cultural problems, which are not impossible to overcome but which we, to a much larger extent, must be willing to struggle with the immigrants for.”[206]

In the article 'Gender as a Tool in Danish Debates about Muslims" Rikke Andreasen's analysis of the Danish media proves that the media portrays the Muslim woman as oppressed and opposed to the liberated Danish woman. In a story in the media about immigrant women who suffered from domestic violence it is explained that the reason these women are being oppressed is because gender oppression is part of the culture they belong to – Islam. On the other hand Danish, white men who batter women are described as men for whom something has gone wrong with, and not as representatives of Danish culture and religion.[207]
According to Andreasen, the media coverage of the story simplified issues of domestic violence by reducing complex questions of gender relations, economics and social relations to a question of religion, construing the Islamic view of gender as the core

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[204] Government 2012: 10. My translation.
[205] Ibidem.
[206] Andreasen 2012: 152.
[207] Andreasen 2012: 145-146.

issue. During the 2000s 28000-42000 women suffered from domestic violence every year in Denmark. Thus what is a serious national problem is framed in the media as a Muslim phenomenon.[208] This media coverage is mirrored in political initiatives, as politicians inherit this stereotypical construction, and reproduces the 'oppressed Muslim woman' in their political decisions exemplified in 'The Improved Policies of Integration'.[209]

Søvndal (in the previous quote) refers to the diverse group of minorities as 'the immigrants', describing 'immigrants' as a homogenous group that have all come to Denmark from patriarchal societies. He constructs 'the immigrant' as opposite to Danes who have already had, and have already won, the gender struggle.[210] In reality, based on simple statistics, it is wrongful to characterize Denmark as a nation with gender equality:

"Denmark has ninety-one male local mayors and seven female; 27 percent municipality politicians are female; 39 percent of Parliament politicians are female. An even lower female representation can be seen among Danish boards of directors and executive committees, where 90 % are men. In the Public sector 80 percent of the managers are male; whereas 95 percent of managers in the private sector are men. At the universities, almost 90 percent of the professors are men; 75 % percent of associate professors are men; while 60 percent of assistant professors are men. Denmark has a serious gender gap in relation to wages, where men make as much as 20 percent more than women for comparable work. This places Denmark as number forty-three on the World Economic Forum's international list over equal pay; making Denmark rank lower when it comes to equal pay than countries like Gambia and the United Arab Emirates. Danish women carry out two thirds of domestic work in Danish homes, and take more than 90 percent of the parental leave."[211]

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[208] Andreasen 2012: 146.
[209] Andreasen 2012: 143.
[210] Andreasen 2012: 152.
[211] Andreasen 2012: 149.

In the debate gender equality is constructed as white, Christian and ethnically Danish.[212] The construction of gender oppression as a phenomenon belonging to the Muslim minority functions as a pretext for ignoring existing structural inequalities, for example the lack of equal pay, in Denmark. Gender inequality exists, even thrives in Denmark, but is made invisible through the 'oppressed Muslim woman'.[213]

Andreasen's analysis is important in this context because it serves as an excuse for the politicians not to implement multicultural policies:

"[…]We have also fought against multicultural ideology which argues that everything has equal value, for if all is equally good it is also equally indifferent. And we will not accept that. A mediaeval Muslim culture will never be as valid here in Denmark, as the Danish culture[…]"(Brian Mikkelsen, former Cultural Minister).[214]

Kymlicka stresses, that liberals should not promote illiberal aspects of minority cultures. This is a threat to individual rights as it can be oppressive of the basic personal civil and political liberties.[215] Multicultural policies are *"[…]intended to enable immigrants to express their ethnic identity, if they so desire, and to reduce some of the external pressures on them to assimilate."[216]*

It is well-known criticism that multicultural policies create space for fundamentalists to thrive.[217] From a feminist perspective the question has been raised of how women and girls, who belong to fundamentalist cultures that have traditionally oppressed women severely, can be protected, when they now live in western liberal democracies where they have individual rights that do not allow for this treatment.[218] This perspective is important and there is a balance to be struck when minority cultures are granted special rights.

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[212] Andreasen 2012: 154.
[213] Andreasen 2012: 155.
[214] Former Minister of Culture, Brian Mikkelsen in a speech the Conservative Party's annual conference in 2005. In Andreasen 2012: 153.
[215] Kymlicka 1995: 35-36.
[216] Kymlicka 1995: 41.
[217] Banting & Kymlicka 2006: 3.
[218] See: Okin 1999.

However, when implementing assimilatory policies in order to combat illiberal aspects, it should be equally important to determine whether this is an aspect that is only found within minority culture or in society generally. By constructing minority culture as oppressive of women, it is simultaneously constructed as inferior, less developed, in comparison with the Danish culture where there 'is' gender equality. This in turn legitimises assimilatory policies because Denmark cannot, as the liberal country it 'is', support nor recognize an oppressive culture. As Andreasen concludes herself:

"In the Danish political battle against Muslim minorities' alleged gender oppression, gender and feminism become hostages in a nationalist struggle. This struggle is not so much about equality as it is about excluding certain people, Muslim migrants and descendants, from the Danish community."[219]

4.3.4. Politics of Blaming the Victim

In the area of integration policies targeting immigrants the government continues to focus on the parents of minority children in [Stronger Parental Responsibilities] from 2013. This strategy was launched by the former government in 2008 and involved a number of policies targeting immigrant parents, aimed at strengthening minority children's social and linguistic development.[220] It involves six initiatives, which should explicate and strengthen the responsibility of parents in *udsatte* [vulnerable/at risk] immigrant families. Evidently, there is an intersection between the 'immigrant' and 'vulnerable' that calls for special policy. It points to a particular negative perception of the very status as 'immigrant', as these families cannot be handled through general social policies aimed at the majority population.

The first initiative involves educating kindergarten teachers to enhance their understanding of and communication with immigrant parents. This should enable the teachers to support immigrant children in breaking their 'negative social heritage'. Coming from this group of immigrant families is thus considered a negative heritage

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[219] Andreasen 2012: 154.
[220] http://sm.dk/arbejdsomrader/integration-og-demokrati/nydanske-born-og-unge/skole-hjemsamarbejde-med-nydanske-foraeldre

that one should be able to break free from. While the policy is in fact aimed at the majority representatives, the teacher, the strategy focuses on the *family* as being the source of the problem. *They* need support to change their behavioural pattern, and *they* have a negative heritage.

Another initiative involves the development of an educational programme for immigrant parents with young children. Focus will be on teaching the parents about parental responsibilities, and to inform them about rights, responsibilities and norms in Denmark, especially in the context of child rearing. The initiative points to an understanding of the parent as unable to rear their own children, and responsible for their children's' under achievements and behaviour.

The final initiative is the most radical one: The government motivates the municipalities to implement the so-called *forældrepålæg* [parental economic charge] against immigrant families. This allows the municipalities to subtract social benefits from parents if the child skips school or breaks the law. This final initiative stresses the position of the government: Immigrant parents are held responsible if their children do not 'develop properly socially and linguistically'.

With these initiatives the government asserts that child rearing in 'vulnerable immigrant families' does not meet the 'Danish' standards, and that this is somehow connected to them being 'immigrants'. It is unclear how this group exist in an essentialist sense, and putting them in one category actually constructs 'vulnerable immigrants' as one ethnic category: Non-ethnic Danes have a special need for governance in the context of raising children, which is, apparently, proved by the under achievements of the children of the targeted families.

From an ethnocentric perspective liberal thinkers of the 19th century like John Stewart Mills insisted that it was better for small national groups whose cultures, he argued, were primitive cultures from past times unable to develop socially or culturally, to be assimilated into the civilized cultures of the 'greater nations' such as Great Britain and

France.[221] Mills political thinking promoted free institutions and the idea of one national culture to create stability within the state.[222] Similarly, constructing a discourse of deprivation allows for assimilating policies, as focus is on individual inadequacy rather than institutional inequality. The 'blaming the victim approach' to integration is a denial of the fact that through categorisations, mono-cultural policy-making and an assimilatory approach to integration the government is excluding members of ethnic minority groups trough stigmatisation and non-recognition.

This is part of what Gitz-Johansen refers to as the 'deprivation paradigm' within which minority families and the housing areas they come from are considered under-stimulating for the children's development. The problem with these negative preconceptions is that they produce generalised expectations of minority families, and minority children in particular, and have the danger of becoming self-fulfilling prophecies endangering the child's welfare, self-esteem and performances.[223] The deprivation paradigm protects the majority culture and its dominant position from criticism, as the cause of problems involving ethnic minorities are constructed as embedded in the very ethnicity of the minority communities themselves. This again allows for political interventions aimed at 'fixing' individuals and families who are indentified as members of an ethnic minority group.[224]

4.3.5. 'Ethnicity' as a Vulnerability

The policy initiative 'Stronger Parental Responsibilities' is targeting *vulnerable immigrant families.* It is not clarified how this vulnerability manifests itself; why are they vulnerable, and what are they vulnerable to? Are they vulnerable to bad parenting? The word 'vulnerable' and 'immigrant' are used together uncritically, as it is left unclear how their vulnerability is connected to their status as immigrants.

In fact the undesirable position of ethnic minorities in the Danish society may have more to do with (for example) lack of adequate labour market policies that enable

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[221] Kynlicka 1995: 53.
[222] Kymlicka 1995: 55.
[223] Gitz-Johansen 2006: 68.
[224] Gitz-Johansen & Horst 2010: 147.

immigrants to get jobs than lack of individual 'integration'. From a multicultural perspective one may argue that they are vulnerable due to the discrimination that they suffer from. According to Young, the labour market is not hiring employers based on culturally objective criteria, and therefore immigrants, and other minority groups, are inherently discriminated against.[225] Thus policies that aim at improving the situation of these 'vulnerable families' should focus on the society in general rather blaming the individual.

Another example of the government using 'immigrant' and 'vulnerability' together uncritically is in the context of 'Ghetto Lists'. The 'Ghetto List' is a list of housing areas, created by the government, that are considered particularly vulnerable based on certain criteria. The housing areas that qualify as 'ghettos' call for political and social interventions.
One of the criteria for a social housing area to qualify as a 'ghetto' is if more than 50 % of the residents are immigrants. Other criteria are e.g. high unemployment rates, low levels of education & high crime rates.[226] In this context the government considers merely being an immigrant as equally negative to being unemployed or being criminal.

It is policies like these that create minority groups because ethnicity is recognised in a negative sense, as threatening to society – similar to crime. This reflects the mono-cultural interpretation of the Danish society where having another ethnicity in itself is considered a problem. From the mono-cultural position pressure to change and develop is only aimed at ethnic minorities *"[…]whereas societal structures and institutions as well as their practices are encouraged to focus on facilitating the assimilation of minority populations into Danish cultural and social norms".*[227]
This constructs an asymmetric relation between minority and majority groups, where minority communities are not considered identities in their own right.[228]

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[225] Young 1990: 205.
[226] Government 2014: 1.
[227] Gitz-Johansen & Horst 2010: 138.
[228] Ibidem.

As French sociologist Loic Wacquant stated, after he visited Denmark, these 'Ghetto Lists' become self-fulfilling prophecies that exclude people from majority society, even more than they already are. Wacquant stressed that these housing areas are, in fact, just areas with high unemployment rates, low levels of education, and high crime rates. The government should therefore focus on creating jobs for people, making the schools better, and combating crime instead of stigmatising the residents.[229]

The strategy 'Stronger Parental Responsibilities' has similar connotations of vulnerability being tied directly to ethnicity. But what renders ethnicity a vulnerability is majority society implementing assimilating policies that have the effect of excluding immigrants rather than recognising their equal worth; structural oppression. A seemingly natural system of cultural norms is constructed which regulates inclusion and exclusion, and which allows for social problems related to ethnic minority groups to be seen as embedded in their ethnicity. Minority cultures are framed as being deviant to that of the majority, and as threatening social cohesion.[230] As with the politics of combating ghettos, calling certain immigrant families, with undesirable characteristics, 'vulnerable' renders political sanctions towards this group acceptable. In fact, with the 'Ghetto List', the government has asserted that the very ethnicity is, in itself, the problem.

Based on this strategy it may be concluded that in Denmark the discourse of 'integration' is assimilation in essence. Based on the desire for recreating a monocultural society the immigrant is constructed as the stranger who subscribes to criminal and anti-social behaviour, who is threatening the social cohesion. This in turn allows for the construction of minorities' cultures as deviant and inferior to national Danish culture.

The next section will investigate how this approach to integration is reflected in the legislation on integration and education. The construction in policymaking of the immigrant as inferior expectedly calls for legislation that contributes to this

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[229] Omar 2013.
[230] Gitz-Johansen & Horst 2010: 138.

categorisation. This is turn call for non-recognition of the cultural, linguistic and ethnic backgrounds of minority groups in the school system.

4.4. Legal Analysis: The Danish Integration Act

The aim of the analysis of the Integration Act is identifying, through the theoretical framework, what perception of 'integration' and the 'immigrant' that can be derived from the law. The analysis will be concerned with the preamble wherefrom the underlying philosophy and purpose of the law is found, and examples from other parts of the law will be included to support analytical conclusions.

The Danish Integration Act, adopted in 1998, is aimed at newly arrived refugees and immigrants. This legislation is included in the analysis because it is evidence of how the Danish state aims at integrating foreigners into the Danish society. Therefore policies targeting minority children in the school system can be understood and interpreted in light of this legislation even though the Integration Act itself does not (always) cover these children.

4.4.1. A Nationalist Response to Diversity

According to the preamble the primary goal for integration is to enable the foreigner to become a law-abiding and (economically) contributing citizen with the ability to act in accordance with the 'Danish society's fundamental values and norms' after the process of integration has taken place.[231] This relies on a construction of 'the immigrant' as having a different set of values and norms than the dominant group, which the whole integration strategy builds upon.

These assimilatory demands of foreigners can be understood as part of a nation building strategy in accordance with the nationalist thesis. Nationalists withhold that loyalty of the citizenry towards the state can only be achieved and sustained through the development of one common 'high culture', which supposedly secures unity and mutual solidarity among the population of the state. If the citizens form a bond based on language, culture and ethnicity, which is strong enough to create a sense of 'us' and

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[231] Law annoncement no. 1115 2013: Chapter 1.1.

'them', the members of 'us' are much more likely to defend (the state) and rely on each other as opposed to an unknown member of 'them'.[232] When someone from the outside arrives he or she is considered a threat to the state, as this individual is not part of the socially constructed unity. According to this idea of state coherency it is natural for the state to aim at assimilating the newcomer to the national culture and hereby secure his or her solidarity. The state seemingly adopts the idea that *"[…]increasing ethnic diversity will inevitably weaken the normative consensus, herby also gradually undermining the foundation of the welfare state."*[233]

The construction of one national habitus shared between the dominant group in turn reconstructs the minority as the 'stranger' – the ever-disturbing outsider of the collectivity within which he or she does not belong.[234] The stranger is not just constructed as different but also inferior: It is he or she who has to adopt the norms of the dominant group. However, from the perspective of multiculturalism, no culture can be considered inferior to another.[235]

State coherency may be sustained without minority assimilation. Janos Kis argues, as a defender of multicultural policies, that understanding another culture is possible even without one language, or one set of common customs and habits. And if two cultures are transparent to each other, then a feeling of solidarity can emerge between the individuals, and a sense of community can develop although their language, habits and customs differ.[236]

Charles Taylor withholds that every human being and every culture has an inherent need for recognition. From this perspective, demanding minority groups to assimilate, rather than recognizing the equal worth of cultural, linguistic and ethnic differences, may result in the minority internalizing the majority's demeaning picture of them,

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[232] Kis 1996: 196-197.
[233] Brochmann & Hagelund 2011: 13.
[234] Moldenhower & Øland 2013: 402.
[235] Raz 1995: 75.
[236] Kis 1996: 236-237.

which can lead to self-oppression – and hatred.[237] As Kymlicka emphasises, people's self-respect is tied up to the esteem in which their group is held, and if a culture is not generally respected then the dignity and self-respect of its members will also be threatened as a consequence. 'Successful' integration (to gain a new culture) is possible, but painful. Members of liberal societies do value their cultural membership, and no cultural groups voluntarily assimilates, even if they have economic incentives and political pressure to do so.[238] It seems that membership of a culture plays a big role in people's self-identity.[239]

4.4.2. Nation Building: Policies of Forced Integration

In the preamble it is stated that *successful integration* is a precondition for being granted unlimited permit of stay.[240] Evidently, integration is considered solely the responsibility of the foreigner rather than a process which both majority society and the minority take part in. This is also implying that integration is actually something that can be more or less successful, depending on the minority member's ability to assimilate. According to Kymlicka, however, integration should be understood as a two-way process: Immigrants must adapt to the mainstream society, just as the mainstream society must adapt to the immigrants.[241] ECRI has recommended Denmark to revise their policies to reflect the idea of integration as a two way process.[242]

The Integration Act prescribes that immigrants and refugees receive the same social benefit allowance as Danish citizens, thus removing the distinction according to statuses citizens/immigrants that was introduced in 1998. The allowance is given under the condition that immigrants participate in an 'Integration Programme' that is developed and administered by the municipality where he or she lives. Participation in this

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[237] Taylor 1994: 25.
[238] Kymlicka 1995: 88.
[239] Kymlicka 1995: 89.
[240] Law annoncement no. 1115 2013: Chapter 1.2.
[241] Kymlicka 1995: 97.
[242] ECRI 2012: 40.

programme is mandatory in the sense that if the individual does not follow his or her programme the municipality is allowed to impose economic sanctions.[243]

The Integration Programme is aimed at immigrants and refugees who have come to the country for various reasons. Kymlicka acknowledges that the line between voluntary and involuntary migration is hard to draw in a world with massive financial inequality and different levels of respect for human rights.[244] Refugees, who can hardly be said to have come voluntarily, can claim the same poly-ethnic rights that immigrant groups can demand because Kymlicka finds it unrealistic for them to claim national rights in the receiving country.[245]

However, humanitarian migrants may suffer from psychological traumas due to their pasts, which may serve as a hindrance for complying with the programme. Instead of finding support and recognition from the authorities migrants and refugees instead meet punishments in the shape of economic sanctions that may only serve to worsen their situation. The ECRI has stated that the provisions for obtaining Danish citizenship, including the citizenship test presented below, have the danger of affecting the people protected by the ECRI disproportionately.[246]

Although the Danish government has removed the discriminatory policies of the Introductory Allowance and Starthelp, the replacement is not de facto less discriminatory. The minority member is subjected to economic sanctions, which the majority member is not, does he or she not 'successfully integrate'. It is arguably part of a development, which has been ongoing since the 1980's, where immigrant's social problems in Denmark are considered integration problems as such.

As part of the nation building project foreigners must pass a 'citizenship test' in order to be granted citizenship. In this test the foreigners have to prove that he or she has obtained skills in the fields of language, culture and history that are considered

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[243] Law annoncement no. 1115 2013: Chapter 4 a.
[244] Kymlicka 1995: 99.
[245] Kymlicka 1995: 98.
[246] ECRI 2012: 7.

necessary to become Danish citizens. The test is about aspects of the Danish social and political life that citizens allegedly face in the 'modern society'.[247] The citizenship test, along with other nation building policies, can be considered a rejection of multiculturalism.[248] The citizenship test reaffirms that there is one culture, language, history and one set of traditions which the state considers to be its own: It reasserts itself as a one-nation state, where citizenship is given as a kind of reward for naturalisation with the Danish society.

4.4.3. Reaching Equality through Assimilation

According to the Integration Act integration policies should enable immigrants and refugees to 'participate on an equal footing' as ethnic Danes. The Danish state has adopted the liberal-nationalist approach where the egalitarian principle is honoured by treating everyone the same (or even less favourably in some instances).[249] Nationalists oppose several communities within one state due to the belief that mutual solidarity cannot be expected of members from different national communities. Liberals, on the other hand, were opposed to the idea of several communities within one state, because they believed that people could not be equal before the law, if the state recognized several communities. Recognition of different communities would lead to differential treatment, which could never be acceptable under the equality principle. Therefore they reached the same conclusion as nationalism: The state can only belong to one nation.[250]

Immigrants and refugees are not given any competitive advantages, rather the opposite. The belief is that by 'integrating' the minority he or she is put at an equal footing. But this assimilatory approach will not create equality. Ideally granting special rights to minority groups may in fact put them at an equal footing since it reduces to the extend that smaller groups are vulnerable to larger groups.[251]

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[247] http://uvm.dk/Uddannelser/Uddannelser-til-voksne/Overblik-over-voksenuddannelser/Dansk-for-voksne-udlaendinge/Statsborgerskabsproeve
[248] Banting & Kymlicka 2006: 41.
[249] Taylor 1994: 37.
[250] Kis 1996: 202-204.
[251] Kymlicka 1995: 37.

According to multicultural defenders it is doubtful whether the assimilation demanded of ethnic minorities is even possible. Janos Kis argues that successfully joining the majority culture takes more than assimilation. He suggests that the skills needed for complete assimilation are usually leaned by children but not by adults. Therefore changing ones community means loosing ones old one while not fully gaining a new one.[252]

Rather than demanding the minority to assimilate the country should adopt 'moderate' multicultural policies along with policies that nurture an overarching political identity, and build an inclusive national identity:

"*[…]in the presence of such nation-building policies, the same* [multicultural policies] *may in fact enhance solidarity and trust, by reassuring members of the minority group that the larger identity promoted by nation‑building policies is an inclusive one that will fairly accommodate them.*"[253]

Critics fear that the effect of multicultural policy implementation will be a segmented society, where citizens' 'group' identities are stronger than the overarching identity that citizens of national states should share for it to function successfully.[254] But multicultural policies should be implemented alongside integration policies with the effect that citizens can respect each other's differences, but still have the feeling of belonging to the same community with the responsibility to ensure that everyone enjoys equal rights.[255] Multicultural policies should not result in an enlargement of the perceived gap between immigrant groups and the receiving community, and should not transmit the impression that immigrants are under no obligation to adapt to norms and practices of their new society. Miller calls it an 'intelligent' form of multiculturalism where certain advantages are extended to cultural minorities when this has the effect of integrating them into the majority community as equal citizens.[256]

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[252] Kis 1996: 209.
[253] Banting & Kymlicka 2006: 40.
[254] Miller 2006: 325-326.
[255] Miller 2006: 338.
[256] Miller 2006: 335, 337.

4.5. Analysis of the Danish Education Act

The aim of this section is to analyse legislation aimed at ethnic minority children in the school system. The analysis will be based on the theoretical framework presented previously, conclusions from other studies in the field, and seen in light of the analytical conclusions from the previous section.

The main purpose of the school is formulated in the Education Act and is:

"[...]preparing the students to be able to participate, demonstrate mutual responsibility and understand their rights and duties in a free democratic society. The general activities of the school must, therefore, be conducted in the spirit of intellectual freedom, equality, and democracy."[257]

The Danish school is thus built on a principle of equality that should be reflected in all of the school's activities. It will be investigated how the equality principle is enshrined in school activities based on the following analysis of education legislation specifically targeting ethnic minority students in the school system.

The activities of the Danish public primary and lower secondary school 'Folkeskolen' are regulated by the Education Act, in which an overall framework for the school is provided. The Education act outlines the national curriculum, but teachers are left with considerable independence concerning choice of teaching methods and content of their subject.[258]

With the last decade of neo-liberal migration and education strategies[259] the Danish school is moving towards a more curriculum-based approach to education. This development has both advantages and disadvantages: The locally administered school, with the individual teacher in focus, has a high degree of contextualisation and flexibility. But on the contrary the lack of centrally administered standards may lead to

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[257] The Education Act §1.Translation from Jensen et al. 2012: 64.
[258] Jensen et al. 2012: 61.
[259] Jensen et al. 2012: 62.

very different approaches when it comes to dealing with religious, linguistic and cultural differences.[260]

 In 2004 a national canon was implemented for inter alia the subject Danish *Fælles Kanon* [Common/Shared Canon]. This is a common curriculum that includes a list of themes and Danish authors that must be included in the lessons. This curriculum has strengthened the focus on Danish language and culture, whereas minority languages, cultures and religions are ignored.[261] The educational institution has always been an important site for cultural integration of the population.[262] The canon is a step towards more central steering, and it is strengthening the role of the Folkeskole as promoter and producer of a common national culture: of what is recognized and not recognized as 'our' culture.[263]

The Education Act includes a list of consecutive orders. The analysis will look at the most important regarding ethnic minority students, which concern promotion of education in Danish as a second language and tuition for mother-tongue teaching.

4.5.1. Danish as a Second Language

"School policy in Denmark has always, […], been based on Danish values and Danish as a teaching language[…]and it is quite clear that changes will not come from me as long as I am Minister of Education. Based on the majority in the Parliament this Government has in several ways strengthened its support for teaching Danish in a way which does not include bilingualism." (Bertel Haarder while he was Minister of Education, 2006)[264]

The above quote illustrates the context in which the legislation on teaching Danish as a second language was implemented. In the Education Act it is provided that bilingual

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[260] Documentary and Advisory Center on Racial Discrimination (DACoRD) 2004: 32.
[261] Timm 2009: 385.
[262] Gitz-Johansen 2006: 99.
[263] Gitz-Johansen 2006: 39.
[264] Timm 2009: 386.

children who do not know the Danish language sufficiently should be offered classes in 'Danish as a second language':[265]

"Bilingual children are to be understood as children who have a different mother-tongue than Danish, and who only upon contact with the surrounding society, for instance through education in school, learn Danish."[266]

The emphasis on teaching Danish as a second language is criticised for only being emphasised rhetorically as students do not receive nearly as much additional language training as they would actually need.[267] The Danish language support is for example not followed into the later classes to help the students develop academic Danish language proficiency.[268]

The emphasis on the 'bilingualism' of ethnic minority students points to a general reluctance of the Danish state to recognize the ethnic and cultural diversity of the school system: The focal point of integration becomes the language deficiencies and as soon as this is fixed (s)he will be equal to the majority student:

"Within this „integration discourse" ethnic minority children are expected to undergo the same formative processes as ethnic Danish children – acquiring the Danish language – and are thus neutralized as social categories and standardized as students."[269]

There are, however, no measures targeted at satisfying culturally based needs. The education legislation focuses entirely on the children's language deficits, rather than simultaneously emphasising the language strengths of the child: *"Danish language is positioned as 'language as such' and 'the language' thereby ignoring that other languages may exist or have importance."*[270]

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[265] Law announcement no. 665 2014 §5.6.
[266] Law announcement no. 690 2014: §1.2.
[267] Timm 2009: 385. See also OECD 2010: 8.
[268] Jensen et al. 2012: 66.
[269] Ibidem.
[270] Gitz-Johansen & Horst 2010: 144.

While teaching the Danish language is important, from a multicultural perspective, it should be accompanied by for example mother tongue education and the implementation of a multi-cultural curriculum: *"Students do not act as students when schools do not offer relevant teaching which includes student experiences and perspectives."*[271]

Academic research shows that the earlier the child meets its second language; the better chances the child has of obtaining fluency. However, research also show that the language instructions in the new language should be accompanied by carefully supporting the development of the child's first language as well.[272] In the context of education the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities (1992) states in article 4(4):

"States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole."

This implies that the state must promote knowledge of minority groups in the majority society, and additionally the larger society must be made available for minorities to participate in. The state must also revise the curricula of the national educational institutions to reflect the diversity of the society and hereby enhance intercultural understanding.[273]

A former Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti, noted in one of his reports that article 27 of the ICCPR includes *"[…] a right to respect for minority cultures within the education system."*[274]
Even though article 27 is framed as a negative right it also obliges the state to support

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[271] Timm 2009: 386.
[272] Gitz-Johansen & Horst 2010: 145.
[273] Beiter 2006: 148.
[274] Beiter 2006: 143.

minority groups financially hereby enabling them to preserve their own identity and to enjoy their own culture, language or religion.[275] Since the article also protects minorities in relation to education, it also obliges states to employ positive measures in respect of minority education.[276]

In the current legislation the government denies the importance and resourcefulness of the student's minority background; rather the point is to make the student 'Danish' in the mono-cultural sense:

"The failure to recognize the importance of language and culture in examining and accessing a bilingual child's full capacity inevitably leaves to misjudgement and discrimination, as cultural and linguistic diversity is understood in terms of deficits and special needs."[277]

4.5.2. 'Buzzing'

The right to education is traditionally associated with the social, economic and cultural rights, also referred to as second-generation rights, as the right to education lays a positive obligation upon the state. This entails that the state must do something *actively* to ensure that the right can be enjoyed. However, the right also proscribes 'negative obligations' for the state, as it gives parents the *freedom* to *choose* an education for their children that is aligned with their personal convictions, a freedom that the state may not interfere with.[278]

It is proscribed in the Education Act that if the teachers find the (Danish) language deficits '*non-negligible*' they may refer the child to another school then the district school.[279] (To every school there is a school district. A child is accepted to the school in

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[275] HRC, General Comment No. 23 (Fiftieth Session, 1994) Article 27 ICCPR, para 6.2.
[276] Beiter 2006: 146.
[277] Gitz-Johansen & Horst 2010: 145.
[278] Beiter 2006: 41.
[279] Law announcement no 665 2014: $5.7.

the district where he or she takes residency).[280] Parents are consulted about the decision of moving the child, but do not have the option of vetoing the change.

The strategy of moving ethnic minority children to other schools is called 'buzzing' in the English literature. This practice is legitimised by research on the importance of peer-learning, which in turn has the effect of abolishing the parents' right to a free *choice* of school for their children, provided by Danish law and international law. This practice implies that parents are not seen as capable of choosing the most suitable school for their child, whereas majority parents are, reflecting the majority's view on the minority members as inferior. The minority children are kept in place as 'strangers' and considered in need of being emancipated from 'their' culture.[281]

The ECRI suggests that school segregation (between ethnic Danes and ethnic minorities) should rather be combated through better housing and social policies, as everyone should have equal access to schooling in their own district.[282]

The practice has been criticised for its discriminatory implications. There was indeed a debate in Denmark regarding an idea of implementing a 25 % upper limit of minority students in the Folkeskole. The Danish Education Agency (Uddannelsesstyrelsen) deemed this proposal discriminatory under the principle of equal treatment provided in the Danish constitution and a violation of Article 14 of the ECHR.[283] This idea was then officially disregarded and replaced by this legislation.[284] Therefore, while the official argument for the practice is countering the 'language deficiencies' of the minority children, it may be considered a strategy for controlling the upper limit of minority children in each Folkeskole.

The assumption behind this strategy is that minority children are integrated into the society by interacting with ethnic Danish students and thus learning about traditional 'Danish' language, culture and social practices. The students who are considered

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[280] Law announcement no. 665 2014 §36.2.
[281] Moldenhower & Øland 2013: 415.
[282] ECRI 2012: 22.
[283] Uddannelsesstyrelsen 2004.
[284] Gitz-Johansen & Horst 2010: 145

successfully integrated are those who are considered 'most Danish'.[285] This reconfirms that the government understands integration as assimilation essentially. It is asserted that the linguistic backgrounds of minority students are not considered a resource, but rather a disadvantage for the minority student and the school as a whole.

While some may argue that 'being integrated with majority children' benefit the minority students, this is speaking from an assimilatory perspective where integration means becoming Danish in the sense majority (non-bilingual) students are. However, bilingual students are in many cases Danish. But they are denied this 'Danishness' because they do not have the 'traditional' Danish language, culture or ethnicity that is required for being accepted as Danes, due to the perception of Denmark as a culturally homogenous society where there is a narrow definition of 'us' and 'them'.

4.5.3. Mother-tongue teaching

The law on teaching Danish as a Second Language should also be seen in the context of non-provision of mother-tongue teaching for ethnic minority students. While teaching Danish is important, it should not be seen as a contradiction to learning and maintaining the mother tongue.[286]

Article 4(3) of The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities (1992) is related to the language rights of minorities in education:
 "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue."

If minority children are to maintain fluency in their mother-tongue language, and perform as well in school as native language speakers, it is essential that they have the

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[285] Gitz-Johansen & Horst 2006: 268
[286] Documentary and Advisory Center on Racial Discrimination 2004: 31.

possibility to study the language *and* study in the language at least up until secondary school. [287]

In 2002 the law on mother-tongue teaching was changed with the result that only children of members of the European Economic Area, the Faroe Islands and Greenland are entitled to receive free mother-tongue education. Municipalities may still offer mother tongue teaching to all bilingual children, but they do not receive financial support from the state anymore to support it. Consequently only 5 out of 98 municipalities offered mother-tongue education to children with a non-European background according to the most recent mapping. The law has resulted in a division between children of European origin, who still receive mother-tongue education, and children from third-world countries who do not. It is arguably a compromise of the Danish principle of equality, which is build upon providing equal opportunities for everyone regardless of ethnicity, gender, age etc.[288]

Contrarily, in the 1980's when immigrant children showed up in the school system, the reaction from the government was that the Danish society and schooling needed to adjust to the immigrant too, not just the other way around. Hence mother-tongue teaching was made available for all bilingual students.[289]

The legislation has been criticised, from both academic researchers and international human rights law monitoring mechanisms, for ignoring research and recommendations regarding mother-tongue education and for discriminating against a specific group of children. The ECRI strongly recommended in a report in 2006 that Denmark should offer mother-tongue education on a non-discriminatory basis and apply policies focused on integration rather than assimilation.[290] The UN Committee on the Elimination of Racial discrimination (CERD) also found the mother-tongue legislation to be discriminatory under the ICERD.[291] CERD has also criticised that the school curriculum

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[287] Beiter 2006: 147 & Gitz-Johansen 2006: 155 citing (Collier & Thomas 2001).
[288] Jensen et al. 2012: 65.
[289] Buchardt 2012: 115.
[290] ECRI 2012: 22.
[291] CERD 2010: para. 16

did not reflect the ethnic and cultural diversity of the Danish population, and advised to review and develop education policies to reflect the diversity immediately.[292]

The government has initiated a programme aimed at giving teachers the competences to integrate mother tongue teaching into the regular teaching practice. The purpose is to raise the competences of 'bilingual students' and simultaneously strengthen their well-being, motivation and inclusion in the Folkeskole.[293]

The policy is in fact targeting the racial minority, as (white) European bilingual students already receive mother-tongue education. Therefore, while the 'bilingual student' officially is a linguistic category, a much more complex category is in fact being produced.[294] In this case bilingual students is a category in need of having their 'well-being, motivation and inclusion' strengthened. As a teacher in another study stated: "*[…]you have to come from specific places to be* ['a bilingual student']*[…]*"[295]

The legislation creates a form of racial hierarchical order where white, European, western children are prioritized over non-white, non-western minority students. The government is simultaneously denying recognizing ethnicity and race as meaningful characteristics with real life implications: *"The assumption that we are living in a post racial-world[…]."*[296] In fact race and ethnicity does have significance in the Folkeskole: It is non-western children that are treated unfavourably by this policy, although it is disguised. It is part of the assimilatory approach to integration, which is focused on the individual's level of adaption to the Danish society:

"*The "integration discourse" describes ethnic minority children as children that socially, culturally, linguistically are different and stand outside „normal" Danish society, and need to be integrated in school, and through school integrated into society[…].*"[297]

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[292] CERD 2006: para. 19, 22.
[293] Danish Ministry of Education 2013: 1.
[294] Buchardt 2012: 116.
[295] Ibidem.
[296] Jensen et al. 2012: 70.
[297] Jensen et al. 2012: 63.

Kymlicka argues that there is an underlying racism in the traditional attitude towards immigrant languages, where gaining an additional language besides (English) fosters respect and recognition, while maintaining a non-western language implies disadvantage, poverty, low-achievement and disloyalty, which is reflected in the non-provision of mother tongue education for ethnic minority students. While the requirement that immigrants should learn the new majority language is fair, this should not mean that they should also give up their mother tongue.[298]

5. CHAPTER 5: The Relationship Between Legislation, Policy, Theory, and Practice

In this section it is analysed how the legislation and policies presented above are being implemented, interpreted and reproduced in practice. By complementing the policy analysis with a field study it is possible to discuss what circumstances inside the school, which can make it more difficult for ethnic minority students to succeed.

The fieldwork was conducted in two schools that can be characterized as typical Danish Folkeskoler. Both of the schools are situated close to an area with public social housing and high unemployment rates, which is quite typical for schools with many ethnic minority students.[299] One of the schools has a majority of ethnic minority students, whereas minority students in the second school presented about 1/3 of the student group observed. The schools are not found to be better nor worse than other schools with a multicultural student population. Therefore, rather then focusing on differences and similarities between the two schools I wish to raise issues that I assume can be relevant for all schools that have ethnic minorities among their pupils. In this way I try to raise a discussion that go beyond the fieldwork's empirical foundation.[300]

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[298] Kymlicka 1995: 97.
[299] See e.g. OECD 2012: 15.
[300] Gitz-Johansen 2006: 14.

5.1. Interviews

It was originally the intention to conduct interviews with 4-6 teachers working with ethnic minority students. However, gaining access to this particular field proved difficult, and in the end I met with three different teachers, and followed them each for one day.

As Horst & Gitz-Johansen uncover, the counter-hegemonic discourse concerning how schools should respond to the *de facto* multiculturalism is especially found within academic research:

"*The challenges to the politically dominant understanding of the minority population as the educational problem come especially from the area of qualitative research[…]*"[301]

This may explain why teachers are reluctant in letting academics observe and analyze their work; they expect criticisms of the job they are doing. Additionally, there is always the fear of being objectified when allowing your work to be scrutinized by a third person. Through the chosen methodology I attempt to unfold an analysis, which takes into account the position of the teachers, the circumstances under which they work, and my position as a researcher.

5.1.1. Methodology

The methodological reflections of the interviews are based on the methodology of Pierre Bourdieu (1930-2002), and are semi-structured, focusing on power relations in the field. Qualitative interviews were conducted because it is considered the best way to gain insight into what goes on in the practical field of education. It was never the intention to carry out a comprehensive 'Bourdieu study', but to use his methodological reflections for a smaller empirical study.

This study aims at investigating how categorisations and power relations are (re)produced in policies and practice, and are contributing to in- and exclusions in the school system. The methodological reflections of Bourdieu are found relevant for this

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[301] Gitz-Johansen & Horst 2010: 146.

study, as his methodology aims at revealing and creating awareness of power relations in the field: Both in the field which is studied, and in the context of the fieldwork it self.

5.1.1.1. *Symbolic Violence*

Bourdieu emphasised that during the production of any form of research one must be aware of how the study is affected by the researcher, and the object, which is studied, which is why complete objectivism, prescribed by positivism, is impossible.[302]

In all social relations, including the interview, there is a risk of committing 'symbolic violence'. In the context of an interview this can affect the results and conclusions of the study. Therefore, one must attempt to master what Bourdieu calls 'reflex reflexivity'. This is trying to monitor on the spot, while the interview takes place, how social structures that are at work during the interview situation affect the conversation. For example: What is acceptable to say, and what is non-acceptable, considering the situation of the respondent?[303]

An example of 'symbolic violence' is if the interviewer dares asking questions, which would not have been asked had it been outside the interview situation: Questions that are asked, not because there has been established trust and mutual consensus, but due to the socially dominating position the interviewer is in. Symbolic violence can never be avoided but by taking all the factors into consideration that may produce distortions, one may reduce the violence, which should always be aspired.[304]

5.1.1.2. *Reflexive Dialogue*

During the interview I did not follow the interview guide strictly, as my questions were also considered a product of my own preconceptions and categorizations of the field. By listening and responding to the answers that were presented, I attempted to let the teachers present their 'truth', or rather let them be presented of the truth.[305] Bourdieu emphasizes that the interview should never be a conversation where the

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[302] Bourdieu 1993: 607-608.
[303] Bourdieu 1993: 608-609.
[304] Bourdieu 1993: 609.
[305] Bourdieu 1993: 621.

interviewer objectifies the respondent by drawing conclusions on his or her behalf, but rather a cooperation between the two participants, where the interviewer helps the respondent recognize certain truths about themselves: *"[…]an induced an accompanied self-analysis."*[306] I tried to avoid objectification by including the respondents in the empirical work during the interview instead of mainly considering them, and their work, objects for my interpretation.

Considering the methodological reflections for the interviews, and my position somewhere in the field of constructivism, with Bourdieu, I must be aware of the constructions the questions, which I ask, produce. Thus, part of the analysis is creating awareness for myself, and the reader, of what can be derived and what cannot be derived from the responses.

5.2. Observations

The observations were motivated by an interest in getting access to the field from another position, and hereby gaining insight into the field free from the teachers' preconceptions and personal attitudes. This is also recognizing that there are certain things the teachers cannot say due their positions as teachers, and their loyalty towards the institution. With the observations I attempted to observe how student categorisations found on the level of policy, and with the teachers themselves, are being reconstructed, and have consequences, during lessons.

Based on the methodology of Bourdieu the observations of the teaching practises should be non-participating. The criticism of a participating approach to observations is that it makes it harder for the researcher to distance herself from the field.

My technique as a field researcher was to be open and take note of what generally happened in and out of the classroom; both the anticipated and the non-anticipated actions.[307] Simultaneously, I already had a focus that was formed by the research question, the theoretical perspective and knowledge of the policy level. Therefore, I

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[306] Bourdieu 1993: 615.
[307] Gitz-Johansen 2006: 19.

particularly paid attention to situations and statements that were found relevant for my research area. It is not necessarily all external categorisations that lead to discrimination, but it is important to assess how categorisations come to be, and what relevance and consequences they have.[308]

5.3. Field Work Analysis

On the level of state policy and legislation it was found that the government has an assimilatory approach to integration motivated by negative perceptions of 'the immigrant' as being anti-democratic, anti-participatory, and 'non-Danish'. The main focus of the analysis is assessing how the principle of equality put forward in the Public School Act is interpreted in practice, and additionally how, and with what consequences, the assimilatory approach to integration and negative constructions of the 'immigrant' in integration and education policies are reproduced on the local level.

5.3.1. The Principle of Equality

In daily speech the term 'integration' is often used to 'measure' a group or an individual's level of adaption to the dominating norms of society.[309] This is for example illustrated by Gitz-Johansen's finding, which shows that when teachers refer to 'well-integrated students' they talk about the students who are 'most Danish'. Additionally it was illustrated in the previous analysis where it was emphasized that the government describes well-integrated immigrants as being the ones who have adopted the norms and values of the majority population. But in literature the term has different meanings and explanations, and is more complex than this more narrow definition.[310]

Theoretically, there is no correct way to approach diversity; the discussion about integration is grounded in the concept of equality, and in different perceptions of how to reach equality. However, one can analyse *how* the state and state institutions manage diversity, and apply a normative theory through which it is possible to analyse and criticise.

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[308] Krag 1992: 312.
[309] Gitz-Johansen 2006: 27.
[310] Ibidem.

5.3.1.1. Reaching Equality through 'Equal Treatment'

On the local level the respondents also refer to ethnic minorities as 'bilingual students'. Referring to ethnic minority students as merely a linguistic category implies that there are no cultural differences requiring recognition or accommodation.

This reflects an interpretation of the Danish state as a culturally homogenous state building on welfare state universalism, where treating people equally means treating everyone the same, referred to previously as 'the politics of universalism'.[311] Based on this idea of 'welfare state universalism'[312] the teachers believe that by providing all Danish students with the same primary education nobody are ill treated or discriminated against:

"I have worked a lot with[…]getting the students to develop sympathy for each other[…]We just understand that we are all different. And this I have focused on a lot; well 'you are also different from him even though you feel like you are the same. Just as he is different from you." And later in the conversation: *"But democracy is about understanding that we are all different..and we are all equal. That we have **equal opportunities**, if only we take advantage of them."*

The respondent fails to acknowledge, motivated by a traditional liberal approach to equality, that by focusing on *individual* differences, or sameness, the reasons for why ethnic minorities perform worse than majority students are also to be found *inside* the individual rather than inside the institution. Thus the respondent is neglecting the differentiating mechanisms of the educational institutions, which work by selecting Danish nationals before ethnic minorities (for example by rewarding speaking the Danish language very well, rather than the ability to speak two languages).

Rather than focusing on 'group' differences the respondent perceives the student population as consisting of individuals who are equal - in the sense that they are all equally different. In fact, the respondent seems eager to ascertain that there are no

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[311] Taylor 1994: 37.
[312] See definition in Chapter 3.6.

'group' differences, and emphasises that all students are perceived as 'equal', and have *equal opportunities*.

This reflects the tension, which, theoretically, can be found between the two different liberal approaches to the principle of equality: 1) Welfare state universalism, built on the traditional approach to equal citizenship, and 2) the theory of multiculturalism, which, unlike the former, is oriented towards recognizing group differences. The tension is produced as defenders of welfare state universalism fear that recognizing group differences will undermine equal citizenship, and the equal enjoyment of social and economic rights, that the welfare state is supposed to secure.[313] As everyone has 'equal opportunities' from a starting point, there is no need for recognizing inequalities deriving from a specific group membership.

The teachers' perception of universal equality in the school reflects the values of equality and equity, which shape the public discourse in Denmark.[314] However, writers such as Taylor, Kymlicka and Young, who can all be placed somewhere within the theory of multiculturalism, emphasise that there us no such thing as equal universal citizenship: Citizenship is gendered, ethnicised, racialised and shaped by socio-economic conditions*: "[...]there are various dimensions on which ethnic groups can face injustice -including race, class, and culture - and groups are often located on different places on these different dimensions."*[315]

For a long time the education system has been supposed to create equality between groups, but there is no evidence that education equalizes. It rather contributes to the reproduction of social power relations on the lines of class, gender, race, ethnicity etc.[316]

5.3.2. The 'Bilingual Student'

Previous research prepared me to find some striking discourses about the different ethnic groups in the school system, which would be relevant to analyze and discuss,

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[313] Miller 2006: 323.
[314] Zentai 2014: 93.
[315] Banting & Kymlica 2006: 19.
[316] Young 1990: 206.

because discrimination, marginalization and stereotypes are build upon such discourses.[317]

However, considering the 'politics of universalism' found on the local level, I was not surprised to discover that teachers rarely differentiate between students in ethnic or racial terms.[318] This reflects the good intentions of the teachers, which are, as I understood from our conversations, *not* to reproduce the differentiating discourse about ethnic minorities found on the political level. However, I found that the teachers *do* have certain negative preconceptions of ethnic minority students that have consequences in practice.

This confirms that one cannot think or act outside of a dominating discourse because the power and dominance of the majority is reproduced through control of discourse, and hence control over the public's way of thinking of certain societal topics.[319] Defenders of multicultural policies believe that affirmative action can help remove such barriers and contesting stigmas that disadvantage members of ethnic and racial groups, and hereby enhance equality.[320] Although the teachers prefer not to talk in racialising/ethnifying discourses, talking about 'social differences' instead actually legitimizes ethnifying discourses by keeping it hidden, making it even harder to problematise and criticise.[321]

Officially, 'bilingual students' is merely a linguistic category, which actually implies a category of resourceful students: students who have two languages. But, as on the political and legislative level, in the educational practice 'bilingual students' is constructed as a much more complicated category. In fact the teachers share a preconception of the 'bilingual student' as, quite the opposite, namely *less* resourceful.

The students' linguistic abilities are considered the problem, rather than regarded in terms of resourcefulness, and actually the students' abilities in their mother-tongue

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[317] Gitz-Johansen 2006: 48.
[318] Ibidem.
[319] Gitz-Johansen & Horst 2010: 137.
[320] Banting & Kymlicka 2006: 2.
[321] Gitz-Johansen 2006: 70.

languages is not recognized:*"[…]the biggest problem concerning bilingual students is their language[…] They only know half of two languages."* Later the respondent reveals that minority languages are not even recognized as languages in the school, by stating that if the student has a different mother-tongue than Danish *"[…]they don't know anything."*

These statements confirm that it is the Danish language that is recognized as a legitimate language in the educational system, which reflects the nationalist approach to 'integration' where the goal is to assimilate 'the stranger within' hereby removing all ties minority members may have with their own ethnic or cultural groups. It proves that Denmark is perceived in terms of monoculturalism where the Danish language and culture is considered the unifying centre of society. This perception leads to languages, cultures and ethnicities deferring from the 'Danish' to be considered threatening to the social cohesion of the state, and therefore these differences are sought eliminated: *"[…]liberal democracies must prevent ethnic identities for becoming politicized by rejecting any minority rights or multiculturalism policies[…]."*[322]

From this perspective it is argued that the adoption of multicultural policies would only enhance divisions along ethnic lines and promote separate political identities and thus diminish national solidarity. However, this assumes that prior to a potential adoption of the multicultural ideology social cohesion across ethnic lines existed. But western states have adopted assimilating policies exactly because of little solidarity across ethnic lines. Dominating groups feel threatened by minorities, or even superior to them, which leads to assimilation, exploitation and exclusion, and from the minorities' perspective; ethnic distrust of the dominating group. Thus multicultural policies should be adopted *because* of the existing lack of trust, and should not be considered as the cause of it.[323]

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[322] Kymlicka 2000: 11.
[323] Banting & Kymlicka 2006: 17.

5.3.2.1. Non-Danishness

The school does not succeed in avoiding generalisations based on ethnicity.[324] I ask about the general performance level of the students whereto the respondent emphasises that *"[t]he two Danish students are in top of their class [...].The Danish students have advantages in all subjects[...]."* The respondent continues by stating that *"[...]non of the bilingual students are resourceful"* and*"[a]ll the students from the school come from the lower social class".*

The 'Danish students' are two white, ethnic Danish students who are, through this discourse, opposed to the racialised 'other'. Hereby minority students are categorized as 'non-Danish' although they may be Danish citizens officially. In fact the respondent confirms: *"All students are born and raised in Denmark, but are bilingual."*

The respondent hereby constructs and 'us' and 'them', which does not build on groups that exist in an essentialist sense, but which are socially defined based on preconceptions of what it entails to be part of 'us' and 'them'; essentially building on a narrow conception of what it entails to be part of the Danish national community. This is an example of how groups can be constructed based on exclusion from another group, in this case the majority group, which has the consequence of removing the power of members of minority groups to define themselves. Although the category 'immigrants' already exist in an essentialist sense, it is the categorisation as being different, and deviant, from the majority, which renders 'immigrants' as a minority group in more than the numerical sense.[325]

Gitz-Johansen refers to this kind of categorisation (*Danish* and *non-Danish students*) as 'disintegrating processes', which work to exclude rather than include minorities in the national community.[326] According to Taylor the aim of multiculturalism should be premised on every individual's need for recognition,[327] as positive recognition is

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324 Moldenhower & Øland 2013: 413.
325 Young 1990: 46.
326 Gitz-Johansen 2006: 30.
327 Banting & Kymlicka 2006: 9.

essential for forming a positive self-image and identity.[328] In the Danish school ethnic minorities are not recognized as Danish, but simultaneously not recognized as a (culturally) resourceful group of their own. The lack of recognition has the danger of leading to a form of oppression, as it deprives the individual of living its true self.[329]

5.3.2.2.   Ethnic Minority Students as 'Resource-less'

The 'bilingual students', actually referring to an ethnic category (cf. above), are connected with being less resourceful and from 'the lower class' Generally, the respondents are much more comfortable talking about 'social differences' as being an important factor when it comes to explaining why groups of students perform differently: "*[a]ll the students from the school come from the lower social class.*"

Multicultural defenders oppose the idea that all inequalities can be reduced to *one* inequality, and arguably multiculturalism grew out of the political left arguing that class is not the *only* problem, hence the need for opening the debate on multiculturalism.[330]

Referring to class, rather than culture or ethnicity, does not actually explain much, as there is still a need for explaining the connection between social factors and the conditions for performing well in school. Statistically speaking the social economic background can explain about 50 % of the distance between ethnic groups' results in the PISA test, which means that even after having looked for differences in socio economic status there is still a significant difference in the performances of ethnic Danish students, and non-ethnic Danish students.[331]

"*The problem is that the parents do not have resources. They do not talk with the students and therefore the language of the student does not develop[…]it does not benefit anyone to send the students home with assignments, there are no conversations in their homes.[…]When you came home from school you spoke with your mother and*

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[328] Taylor 1994: 32-33.
[329] Taylor 1994: 65.
[330] Banting & Kymlicka 2006: 20.
[331] Gitz-Johansen 2006: 11.

father about your day. This does not happen for these pupils. So the school has an extra burden to carry."

The respondent considers 'bilingual students' as a burden due to a stereotypical conception of minority parents as less resourceful. Simultaneously, the respondent reveals positive preconceptions of the ethnic Dane, which is the category to which I belong. As you cannot determine my social background simply by looking at me, in reality the respondent is building this preconception on 'ethnicity' rather than 'social background' hereby proving that ethnicised preconceptions do exist in the school.

Consequently, although the respondent prefers to speak about 'social differences' the minority is simultaneously produced as an ethnic category, which is met with lower expectations, as opposed to the white, Dane, whom is met with positive preconceptions. As a consequence the bilingual family is (re)produced as a problematic category, which is a recurrent categorisation throughout policies and practice.

5.3.2.3.   'Social Deprivation' and Blaming the Victim

The negative perception of minority families is established in another quote by a teacher who joined a conversation I had with a respondent in one of the schools. The topic of the conversation was the particularly 'problematic' minority students who, according to the teachers in this conversation, perform worse in school because they do not attend Danish kinder garden:

"[…]and why don't you go to kinder garden? If you are home all day on social benefit support you don't need kinder garden. If you are working and get a pay check, then you need it and send your children to kinder garden."

The teacher in this quote is implying that it is the parents' fault that their children have difficulties in school because the parents could 'simply work, get a pay check and send their children to kinder garden' instead of choosing to keep their children home and hereby hamper the children's integration. This negative perception of immigrant parents result in the teacher finding the environment of the family inefficient in supporting a development of the child that enables it to perform well in school. Hereby the teacher

adopts an understanding of integration as 'assimilation', where ethnic minority students 'integrate' when interacting with Danish children, learning about the Danish language, society and political system.[332]

The respondent's perception of integration as assimilation, rather than regarding multicultural policies as promoting integration, is in conformity with research, which shows that the majority population's opinion of multicultural policies tend to be more critical if immigrants are seen as taking advantage of welfare-state policies for example by not trying to get a job. This is even though, in reality, exclusion from the job market may have more to do with labour market policies that make it harder for immigrants to get employed. Nevertheless, when this (negative) perception is produced there will be less support in the society for redistributing policies,[333] which evidently is the situation prevailing in Denmark.

Thus the teacher blames something *within* the family for ethnic minority children's difficulties in the school, instead of looking at the institution as (culturally) deprived and therefore in need of multicultural policies. Another teacher shares this negative perception of immigrant parents and questions what you may call their 'intelligence', as the respondent does not expect that the parents can even 'talk in Arabic about what the students learn in school.'

This supports Gitz-Johansen's conclusion that in the context of under achievements of ethnic minority students in the Danish school, the family, and the culture of the family, is considered both the root of the problem and part of the solution (referred to previously as the 'deprivation paradigm'). The children's different backgrounds are constructed as the primary obstacle for their educational achievements, and thus assimilatory practises aimed at the whole family are legitimatized. There is a recurrent non-recognition of non-majority cultural and linguistic recourses.[334] Gitz-Johansen identifies this as a process of blaming the victim instead of explaining inequality with

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[332] Jensen et al. 2012: 67.
[333] Miller 2006: 334.
[334] Gitz-Johansen & Horst 2010: 142-143.

structural and institutional factors such as *"discrimination, institutional racism, ethnocentrism, exclusion of minority languages, stereotypes and other mechanisms of reproduction and selection[…]"*.[335]

In conclusion the category 'bilingual student' works as a fluid denominator. It refers to students who have two languages, but has also become a complicated category in itself, which refers to students with deficits, lack of social, cultural and linguistic resources, and, as will be shown in a later section below, as being 'Muslim'. Although the respondents are reluctant towards categorizing students into ethnic or cultural groups, *"[i]t is 'social classes' that have implications for the results of the students"*, the lack of bilingual students is used as an explanation for high academia and good behaviour among students in another school:

"I have also worked in [a private school], *which was a huge contrast, there was not a single bilingual student. Here, academia really came first, and when the bell rang the students sat in their chairs ready for the lesson to begin.[…]The parents and students I have here are, as you know, in some ways not very resourceful."*

Therefore, the discourse of 'social' rather than 'ethnic' or 'cultural' differences has the same outcome in the end. It is viewing something within the individual, and the family of the individual, as the source of the problem, rather than the institutions. It is denying that institutions of the state are not colour-blind and that institutional, rather than family, reforms are needed to combat inequality. The problem with reproducing negative stereotypes about ethnic minorities is that it allows integration policies, inside and outside the school system, to be used as an excuse to rear undesirable aspects of minority behaviour.[336] Additionally, the lack of recognition of the children's resources also has the danger of leading to a form of self-oppression, as the children have to form their identities in the struggle against their teachers' negative perceptions of them.[337]

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[335] Gitz-Johansen 2010: 141.
[336] Kymlicka 2000: 12.
[337] Taylor 1994: 32-33.

5.3.3. Mono-cultural Curriculum

"The only things they hear about, from the Arab world, are the pyramids and 9/11."

Scholar in post-colonialism Franz Fanon argued that that the major weapon of the colonizers was the imposition of their demeaning image of the colonised on the subjugated people. In order for them to be freed, they must free themselves of these images. This is what defenders of multiculturalism withhold; that a lack of recognition can be a form of oppression, as it deprives the individual of living its true self. In the context of blacks in the US an attempt has been made to include Afro-centric curricula for pupils in black majority schools. The idea is that without this black students are given the idea that all valuable creativity stems from white males.[338]

As mentioned above the former government strengthened the focus on Danish culture and language in the school curriculum. During the research no counter-political discourses were found on the policy level, the conclusion thus being that the government has continued with this strategy. This supports the criticism coming from anti-discrimination research arguing that the Danish educational system has remained more or less unchanged the last 30 years despite the growing diversity of the student population. As a result the ethnic minority students are left with the only choice of adapting to the prevailing conditions do they wish to succeed.[339]

5.3.3.1.   Constructing Sameness

"We always try to draw on their culture and knowledge. In an English lesson where the topic was 'Thanks Giving' which, you know, originally come from those pilgrims, and that is just an example. Then we talked a lot about, 'well, where else do we know these pilgrims from? Ah, but as you will remember, you know this from Islam, and do you know anyone who has been on a pilgrimage?' [...]That is not so different from what the Christians did and still do. So in that sense we draw a lot on it."

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[338] Taylor 1994: 65.
[339] Jensen et al. 2012: 67.

In this quote the diverse group of ethnic minority students is referred to as one group, who is defined by sharing a common 'culture and knowledge'. This group is compared to the 'Christians', representing the majority, 'who are not so different'. The respondent presents this as an example of recognising and accommodating cultural diversity, but simultaneously emphasises that the tradition of this other culture, is actually quite similar to what 'Christians' do. The point of the inclusion seems to be, in the end, to construct 'sameness' rather then recognizing difference.

This reflects the general reluctance on all levels of the school system towards recognizing cultural differences as part of the modern Danish society, a fear that flows from a monocultural interpretation of the Danish society that results in a need for assimilating the minority to secure social cohesion. The construction of 'sameness', rather than recognizing difference, is also connected to the equality principle found on the local level, according to which all students should be treated *the same* because of a perception of the battlefield as equalized from a starting point. If the teachers really begin to acknowledge cultural differences as institutionally important, then the egalitarian principle, which their teaching builds upon, has to be reinvented.

Another point relevant to this quote is that it illustrates that even when 'other' cultures and religions are included in the curriculum it is not as something part of Danish culture but as something *other*, in this context Islam as opposed to Christianity. The culture of ethnic minority students is thus, although they are Danish officially, not considered part of the Danish culture. Ethnic minority students are constructed and reconstructed as the 'strangers' within, due to the narrow perception of what it entails to be Danish, and what 'Danish culture' is. A similar conclusion is found in (Jensen 2012) namely in the school there is a perception of these children as something 'other' than Danish. Even when policies recommend 'their' culture to be recognized, it is always as something 'other' than the Danish.[340]

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[340] Jensen et. al 2012: 78.

In conclusion the national project of constructing 'sameness' has infiltrated the level of practice, where 'difference' is constructed in negative terms. Constructing sameness, rather than focusing on differences, legitimizes the traditional national-liberal approach to equality where treating everyone the same means treating everyone equally. The respondent reproduces the perception of Denmark as a homogenous society, where concepts of social egalitarianism and universalism are constitutive elements:[341]

"This ideology leads people to avoid differences and focus on things they have in common, resulting in fear of the great differences because they are seen as a threat to community; the social order of sameness"[342]

The focus on 'sameness' rather than recognizing the existence, and value, of differences, is dangerous because it leads to a fear of talking about differences altogether, which in turn leads to a failure in acknowledging the discrimination that derives from those differences.[343]

5.3.4. Constructions of the 'Muslim' Student

In both of the above quotes the teachers shared an understanding of the ethnic minority group as being from the Arab world, and of this fact being meaningful. One connected 'their' culture with Islam directly, a categorisation, which, although it may be factually true or not true, comes with preconceptions of how this group of 'Islamic' or 'Arab' students should contribute to the lessons.

While the respondents, in good faith, did acknowledge the students' diverse backgrounds, the categorization of the 'Muslim' student also produces certain expectations that lead to a devaluation of the students' resources and abilities, when the student does not meet the expectations. Later in the conversation the former respondent explained:

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[341] Kymlicka 1995: 174-175.
[342] Jensen et al. 2012: 73.
[343] Jensen et al. 2012: 75.

"But often I experience that they <u>also</u> do not know enough about that. If you for example ask them why you go on a pilgrimage, then it is not certain they know this. They just know that you do this and that. And the same with religious scripts that all of a sudden appear [in the lesson], *or stuff like this, and you try to draw on their religion, which, as you know, they practice, then again it is really hard for them to explain why. In that sense maybe the level of reflection is not that high."*

The respondent produces the minority student as a 'Muslim' student, and students categorized as 'Muslims' are expected to contribute as Muslims by knowing relevant and legitimate knowledge about Islam.[344] As the quote illustrated, when 'they' fail to do so they are devaluated, and a preconception of the minority student as having a 'lower level of reflection' takes form. The majority student, on the other hand, is not evaluated on his or her knowledge on this subject.

This conception of the minority student is reproduced when, in the context of reading the Koran, the respondent finds the knowledge the students gain from this exercise inefficient: *"It is learning by heart, without any reflections whatsoever. That, you can sense.[…]. They are not used to asking questions at all."*

The respondent reveals having lower expectations of the 'Muslim' student, where 'you can sense' that there is no reflection and 'no questions being asked'. Thus the categorisation of 'Muslim students' produces the diverse group of ethnic minority students as one group, and not just a group; a group which is deviant from the majority group. 'They' are not used to asking questions, whereas on the other hand, 'we' are? This devaluation of the alleged cultural background of minority students is by multicultural defenders seen as threatening to the self-esteem of minority students, which contributes to the institutional oppression that members of ethnic minority groups are arguably subjected to:[345]

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[344] Buchardt 2011: 121.
[345] Young 1990: 195.

"*Their self-respect is tied to the esteem in which the national or ethnic group is held. If the culture is not generally respected, the dignity and self-respect of its members will also be threatened (Margalit and Raz 1990: 447-9).*"[346]

On this basis I argue that, similar to the policy level, the respondent expresses non-recognition of ethnic diversity as resource for either the individuals themselves or the school as a whole, but rather connects the 'Muslim' student with having certain deficits due to 'their' background. Constructing a group as inferior legitimizes, as was proven by the analysis of the policy level, assimilating policies as a way of 'levelling' the minority group with the majority.

5.3.4.1.   Non-Recognition of Minority Merits

Before moving on I return briefly to the above quote where the respondent mentions the students studying the Koran:

 "*[…]they just read it like it is written, and they do not ask questions. There are many of my students who, at a specific time everyday, have to read half an hour or an hour of the Koran. And this tells me that they do not question what they read. Then they would know why.[…]it is learning by heart and no reflections whatsoever.*"

This supports the argument that students who come from homes where they have traditional Danish authors in the bookshelves have an advantage in the school, while minority students who come from homes with other books, e.g. the Koran, do not.[347] It is not enough that students read, it is important *what* and in this case also *how* students read, and with what purpose.

According to Young the oppression of minority groups is being reproduced through education policies and standards for evaluation that favour one group of students to another. It is students with specific social, cultural and linguistic backgrounds who are favoured, and students who have different resources due to an upbringing in another social, cultural and linguistic environment are recognized as less intelligent. The kind of

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[346] Kymlicka 1995: 89.
[347] Gitz-Johansen 2006: 103.

knowledge and skills you need to do well, and the way it is tested, reflects the competences of the majority.[348] In reality, Young argues, non-normative, non-cultural technical merits do not exist.[349] In reality *"[a] class of powerful people establishes normative criteria, some of which have the function of affirming its own power and reinforcing the organizational system that makes it possible."*[350]

In this context it is important to acknowledge that the teacher is not consciously discriminating against ethnic minority students: The oppression is hidden in policies that aim at reproducing a society that continues to be easier for the white (heterosexual man).[351] The teacher is merely evaluating based on what is constructed, in society, as non-culturally normative evaluation criteria.[352] In this way the nation state and the national culture is being reproduced, while simultaneously oppressing, through exclusion and devaluation, non-national citizens.

5.3.5. Mother-tongue Education

Within the theory of multiculturalism the inclusion of mother-tongue education in the school system is an important way of recognising the cultural and linguistic background of a *de facto* multicultural population. It is considered harmful to cut immigrants and their families off from their cultural heritage, and it also deprives the majority society of a valuable resource in a growing globalised economy. It has also shown to be counter-productive in the context of promoting integration, as it has been proven that people learn [Danish] most successfully when it is considered a supplement to ones own language.[353] Despite these recommendations the politicians continue to question the importance of mother tongue education.

I asked the teachers to reflect on the inclusion of mother-tongue education and to give examples of how it is implemented in practice:

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[348] Young 1990: 208.
[349] Young 1990: 202.
[350] Young 1990: 212.
[351] Young 1990: 197.
[352] Young 1990: 200.
[353] Kymlicka 1995: 97.

"[…]Then you talk about 'what is it called in your language', so they have their mother-tongue education, or their mother-tongue, included in the school. But ehm.. It is not something that I practiced a lot. I have to admit. […] Well we have 25 pupils and maybe 7-8 bilinguals.. So if I should take time, and the other students would have to listen to it and get confused by it, then I have to consider, well, I have to consider if it is something I will spend time on, considering the limited time we already have. This is probably the consideration I really make. But if there is a situation where I catch it, then I may ask what they know about it. But the rest of the students, 15 students or more, are just sitting like this [respondent makes 'clueless' facial expression]. *So the 15 minutes or more I spend on working with the mother-tongue languages I completely ignore the majority."*

The respondent explains that if the pupils only know their mother-tongue language when they enter the school, they will be put in special classes where focus is on teaching Danish. According to the respondent this is for example the case if the student has not gone to Danish kinder garden: *"Then they don't know <u>anything</u>."*

Another respondent also shows reluctance towards prioritizing mother-tongue education:

"Mother-tongue education can be included in the teaching as part of the 'social work', but I do not see the value in doing so. In Denmark they have to know Danish. […]There are no rooms for dialects in the Danish society. I do ask from time to time what something is called in Arabic, and I think it gives the student the experience that while they learn something from me, I also learn something from them. But I think that, in reality, mother-tongue education should finish in 5th grade. What can they use it for? The language they know, is not the language they need."

The respondent also finds the reasoning behind the implementation of mother-tongue education, for example the assumption that it enables the pupils to communicate with their parents in the (only) language the parents speak, as misconceived, as the respondent expects that the parents cannot even speak in 'Arabic' about the subjects they discuss in class. This is connected to the preconception, also found on the level of

policy, of minority families, and parents particularly, as lacking in knowledge and resources.

The quotes are evidence that the teachers share reluctance towards including mother-tongue education in the school. The former respondent considers having an additional language to Danish as primarily a deficit, as the students, who do not know the Danish language when they enter school, are described as *'not knowing anything'*. In reality, this is not true, as the students do speak one whole language.

This is evidence of what Gitz-Johansen refers to as the education system's institutional ethnocentrism, where ethnic minority students' cultural and linguistic resources are not recognized.[354] Even though the school is a field where knowing languages is generally considered a resource, this is not the case of minority languages, however.[355] This has the effect of maintaining the linguistic hierarchy, where competent users of the national language preserve the advantages that come with being competent users.

But although this structuring is happening with a certain naturalness; *"in Denmark they have to know Danish"*, this has the affect of robbing the students of their linguistic resources. This is not a necessary approach, and not necessarily the best approach. Research have shown that the most effective way of teaching linguistic minorities is giving their mother-tongue status as a legitimate and official language in the school by providing them language lessons in their mother-tongue, and also by teaching other subjects in their mother-tongue.[356] The lack of mother-tongue education, together with the focus on teaching the Danish language, is evidence of a prevailing reluctance towards the multicultural ideology in the Danish society.[357]

The school clearly plays a significant role in the reproduction of specific linguistic and cultural norms, and in the project of 'integrating' ethnic minorities. Building on the premise of Danish being the only legitimate language in the school, the minority is

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[354] Gitz-Johansen 2006: 105.
[355] Gitz-Johansen 2006: 152.
[356] Gitz-Johansen 2006. 192.
[357] Banting & Kymlicka 2006: 40-41.

being pushed to assimilate to the majority, and over time give up their minority languages completely. It seems that after the implementation of a stronger national curriculum, and with the increased focus on teaching Danish as a second language rather than prioritizing the provision of mother tongue education, the school's role as producer of a monocultural national culture has become even stronger. It intakes a central role in (re)creating national unity, which is an ultimate goal for traditional national-liberals.

One teacher told me that according to school rules the children are allowed to speak their mother-tongue languages, but the administration has motivated them to speak Danish. According to the liberal-nationalist ideology this is a legitimate aim. They recognize that the majority have an advantage in having their language spoken in the public sphere, but argue that this still does not violate the principles of freedom and equality, as the minority could simply change to the official language. This assimilation would slowly create a one nation state, which is equally advantageous for everyone.[358]

However, as was established previously, this is not a morally indifferent process, and it is the minority who pays the price. Assimilation means turning your back on the old community, without fully gaining a new one, as complete assimilation is impossible. With assimilation comes the risk of loosing ones identity and jeopardizing one's self-esteem. Abandoning one's ethno-linguistic community can ultimately cause a serious crisis of conscience and personality.[359]

5.3.5.1.   (Mis)recognition of Resourcefulness

I made an observation, which added to my impression that while the additional language of ethnic minorities is considered a deficit, knowing a western language in addition to Danish is, on the other hand, considered a resource. This was the approach to languages that was found on the policy level, and therefore I was paying attention to how languages are (non)recognized in the educational practice.

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[358] Kis 1996: 209.
[359] Kis 1996: 211-212.

In one lesson I paid attention to an ethnic Danish girl, Maria, who was not participating in the organised class activity. The teacher is giving the whole group of students instructions, but is interrupting himself several times in order to discipline students who are not paying attention. I notice that especially one ethnic minority student, Hassan, is on what you may call 'a short leash'. This student I will return to later. Maria is sitting in the middle of the classroom on an office chair, spinning around while playing with her Ipad. Maria's non-participation does not seem to bother the teacher.

In the break I listen to a conversation between three teachers. I do not participate in the conversation, nor do I ask questions. I listen and pay attention to the categorisations and preconceptions that are being revealed through the teachers' conversation:

They are discussing a student who is categorized as 'highly resourceful', whom I realize is the student Maria. They describe her family as a [socially] *resourceful family who have only chosen this school, because they could not afford a private school. I learn that Maria has lived in Canada, and therefore she speaks English fluently. Her language abilities are verbalised as her primary asset, and the reason she differentiates positively from all the other students. The teachers are frustrated that the school administration will not let Maria participate in the English lessons of the older students in order for her to maintain her English language. They feel bad for Maria that she came from Canada to this school, and explains that she does not participate in class activities because she is bored, as it is too easy for her.*

This example illustrates how teachers categorise 'bilingual students' differently: The first language of ethnic minority students is constructed as a deficit, which is not considered important to maintain or develop. On the other hand a student who has English as an additional language, is considered highly resourceful. This perception is, according to multicultural defenders, evidence of an underlying racism towards immigrant groups:

"[…] 'Adding a foreign language to English is associated with erudition, social and economic status and, perhaps, even patriotism . . .but maintaining a non-English

language implies disadvantage, poverty, low achievement and disloyalty' (Ruiz 1983: 55)."[360]

It results in one group of 'bilingual students' being met with preconceptions of lower levels of performance and lack of resources, while the other is expected to perform extremely well.

These preconceptions were mirrored in the classroom where Maria was only met with support and recognition, although she actually did not participate in the assignment, while Hassan, who actually performed extremely well in the specific exercise, was met with disciplining, sanctions and mis-recognition. He was continuously being disciplined during the lessons because 'he was not paying attention'. In fact Hassan had already begun working, and showed off very good understanding of the IT exercise they were instructed in. These are my exact impressions from the field:
While Hassan receives no recognition for what he is doing well, he is constantly being disciplined for everything he is 'doing wrong'. In fact he has been the 'driving force' of his student group the whole day.

By the end of the day Hassan finally broke a school rule during recess, hereby fulfilling the teachers' prophecies. The teachers received the student's misbehaviour as reassurance of the student's un-resourcefulness. One teacher stated, directed to the student, that *'nothing more could be expected from you, but this behaviour has to end now. Or else we cannot trust you ever again[...]".* What the teachers considered 'a final blow' after a whole day of misbehaving was in fact evidence of a mis-recognized pupil internalising the majority's demeaning picture of him, and thus acting accordingly.

6. Chapter 6: Conclusion: The Right to Education for Ethnic Minority Students in Denmark

In this closing chapter the final conclusions that can be drawn from the analysis of the Danish education and integration policies, legislation and practice are presented.

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[360] Kymlicka 1995: 97

6.1. *De Facto* Inequality

Based on this research it is concluded that ethnic minority students' under achievements in the school are the result of politics of integration and education that fail in recognizing the linguistic and cultural differences of some students, but rather aim at assimilating everyone to the majority culture. Consequently, problems stemming from linguistic and cultural differences are considered individual inadequacies belonging to students who do not perform well. On the level of policy and legislation negative stereotypes about ethnic minority members are formed, which produce negative expectations of this group in the school system. This implies unequal opportunities for majority - and minority students to perform well in school, which is a violation of the principle of equality, which is provided by the Danish Education Act, the Danish constitution, and Danish anti-discrimination legislation.

These negative stereotypes and categorisations are criticisable because the principle of equality, which the educational system is build upon, does not recognize group differences, but is based on a conception of the student group as 'equal' from a starting point. But the negative preconceptions of the minority renders the minority unequal to the majority, and therefore affirmative action should be employed to make up for this inequality. When the teachers are basing their expectations of students, not on knowledge of the individual's academic talents, but on prejudiced and stereotypical categorisations, this renders discrimination as minority students do not have an equal opportunity *de facto* for performing well.[361]

It is this pattern of unintended discrimination that is referred to as 'institutional racism' or institutional oppression. Institutional racism is not about explicit ideas of biological or cultural superiority that you usually connect to racism. The concept 'institutional racism' refers to the different ways whereupon prejudices and ethnocentric positions

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[361] The Danish Institute for Human Rights 2013: 17.

contribute to the creation of different circumstances for different students, from different groups, in the school.[362]

It is exactly this form of institutional racism that multicultural policies attempt to counter by acknowledging that ethnic minorities are entitled to certain forms of recognition due to the unequal position that is created and recreated on the level of policy and practice. Affirmative action policies, for instance in the shape of granting competitive advantages for minorities in the school system or including minorities in decision making bodies, can be justified because they make up for this kind of institutional biases. Rather than denying this injustice the state, and state actors, should accept that feelings of contempt and prejudice exist against minority members, and accept it as a public duty to fight against them. This would create the sense of trust and solidarity among all people residing within the Danish territory, which is needed for the survival of the state.[363]

6.2. The Human Right to Education Free from Discrimination

According to universal and European human rights law, the state has a positive duty to combat this form of institutional discrimination, which keeps the majority in a powerful position by failing to implement positive measures enhancing the position of ethnic and racial groups in society.

Denmark also has an obligation under the EU Racial Equality Directive for ensuring equal access to education free from racial discrimination, including the obligation to apply positive measures aimed at enhancing the situation of minority groups. This directive has been incorporated into Danish legislation, which prohibits racial discrimination in the context of education. Thus children of immigrant descent have the opportunity to take their case before the Danish Board of Equal Treatment.

Taking this case of structural discrimination to the Danish Board of Equal treatment may prove difficult. The ECRI reports that the Board is allegedly not very active or

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[362] Gitz-Johansen 2006: 73.
[363] Banting & Kymlicka 2006: 17.

visible and has a lack of resources. According to civil society actors the board is strong on gender related issues but is lacking knowledge on racial discrimination issues.[364] Thus the Board may fail in recognizing the inequality that stems from assimilating policy implementation in the context of integration and education in Denmark. The discourse of 'deprivation' that was referred to in the analysis, seems to be so widespread that also the Board, despite the Board members alleged expertise in the field, may not recognise it as a case of structural discrimination.

According to ICERD the obligations proscribed for the state include the obligation to employ positive measures in the form of affirmative actions ensuring that vulnerable racial groups have equal access and equal enjoyment of the right to education (article 2(2)).[365] This includes the possibility of mother-tongue education and the promotion of intercultural education,[366] which, as stated previously, the Danish state fails in providing. In the context of non-provision of mother tongue education the OECD has stated:

"Trough the complete exclusion of immigrant languages in school life, the education system is missing a chance to affirm immigrants' additional knowledge and cultural and linguistic background in a positive way, as an opportunity and not just a challenge."[367]

General Comment No. 1 to the ICESCR, on the objectives of the state reporting system, confirms that state parties should monitor the *actual* situation of the enjoyment of any of the given human rights and freedoms, and that attention should especially be given to vulnerable groups.[368] From this it can be interpreted that state parties are obliged to fight *de facto* discrimination through positive actions.[369] Additionally, in General Comment No. 13 the committee states that parties must *"[…]monitor education – including all relevant policies, institutions, programmes, spending patterns and other*

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[364] ECRI 2012: 7.
[365] See General Recommendation No. 32 on the meaning and scope of special measures.
[366] Beiter 2006: 108.
[367] OECD 2010: 35.
[368] CESCR, General Comment No. 1 (Third Session, 1989) [UN Doc. E/1989/22] Reporting by States parties [Compilation, 2004, pp. 9–11], para. 3.
[369] Beiter 2006: 405.

practices – so as to indentify and take measure to redress de facto discrimination."[370] On this basis it can be concluded that it can be interpreted out of article 2(2) that state parties must ensure substantive equality, referring to equality of opportunity and treatment, in the enjoyment of all rights of the convention including the right to education.[371]

In the case *Horváth and Kiss v. Hungary* the ECtHR confirmed that CoE member states have an obligation to implement positive measures aimed at enhancing the situation of minorities suffering from discrimination. Considering the statistical evidence that proves that children with a non-Danish ethnic background perform lower as a group in the Danish school system, and the analysis of this research which indicates that, rather than being due to individual inadequacies, the lower results are due to monocultural policy implementation and negative preconceptions of ethnic minority children, it may be argued that the Danish state is violating its obligation under the ECHR to employ positive measures promoting substantial equality. The evaluation of children in the school is far from culturally normative and is biased by majority preconceptions, which leaves minority children in an unfavourable position.

The question is how wide the obligations of the Danish state are for minority protection in the context of the rights of immigrant groups. The UN Committee on the Rights of the Child have expressed concern that the strict Danish immigration and integration laws may have the effect of violating immigrant children's equal right to education,[372] and are *"[s]tressing that measures to ensure the integration of children from minority groups in the school system must not in fact lead to forcible assimilation"*.[373]

From the perspective of multiculturalism the danger of adopting an assimilating, rather than a multicultural, response to a culturally diverse population is that the inherent inequality of minority groups is maintained, rather than combated through affirmative action initiatives, because of a misconception of the battlefield as 'equalised' from the

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[370] General Comment No. 13, see note 70, para. 37.
[371] Beiter 2006: 405
[372] Committee on the Rights of the Child 2011: para. 31.
[373] ECRI Generel Policy Recommendation no. 10: CRI(2007)6 p. 4.

point of departure; a conception that the actors on the level of policy and practice seem to have adopted: *"[…]thereby missing the point that the playing field is not a level one and that equal treatment does not guarantee equitable outcomes (Aveling, 2007: 79)."*[374]

Kymlicka argues that the only realistic long-term solution for immigrant groups is for states to have a primary concern for ensuring that the majority culture is accessible to immigrants, and ensure that it is possible for them to express their ethnic identities *within* the mainstream culture.[375] It seems, however, that migrant children are forced to choose between the ethnic, cultural and linguistic identity, which they share with their parents, and a white, 'Danish' identity that may secure them inclusion into the majority society. Joseph Raz, who also promotes a multicultural approach to diversity, emphasises the essentiality of having a common culture for our close relations. Thus policies that detach children from the culture of their parents take away the deepest desire of a parent, which is to be close to – and to understand his or her child.[376]

6.3. Concluding Remarks

Denmark has a history of perceiving the school system as an institution where equality between groups can be created, and the Education Act obtains an equality provision in itself. However, considering the lower results of ethnic minority students in the school system, it may be questioned whether the educational system has the ability to enhance societal equality or if the school system is in fact contributing to the existence of inequality by denying ethnic minority students equal access to education. There seems to be some inconsistency between the focus on equality and equity, and the overall performances of ethnic minority students.

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[374] Jensen et al. 2012: 71.
[375] Kymlicka 1995: 96.
[376] Raz 1994: 71.

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