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### Conditional belonging

*A legal-philosophical inquiry into integration requirements for immigrants in Europe*

de Waal, T.M.

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# Chapter 1

## From Societal to Individual Integration

The central aim of this dissertation is to understand and normatively evaluate the burgeoning growth of integration requirements in a growing number of EU Member States over the last twenty years. In this first chapter, I will focus on how the proliferation of these public integration policies can be *understood*. What are their formal and informal objectives, legal characteristics and main effects in European societies? To answer these questions, I will, on the one side, expound the legal organization of mandatory integration requirements for family migration and permanent residency and integration requirements for naturalization in Member States. On the other side, I will describe a wider *conceptual* shift unfolding in Europe<sup>33</sup> regarding the general notion of ‘integration’ that, as I see it, intensified and serves to justify the observed ongoing *legal* increase of integration requirements as conditions for obtaining residency and citizenship right for TCNs.<sup>34</sup> This conceptual shift, I argue, has affected and still influences the public perception of what integration is and who is responsible for it.

In essence, I analyze that in Europe ‘integration’ is increasingly understood as what I will call ‘individualized’, that is, as solely applicable to individual members of immigrant groups, in particular those with non-EU and non-Western backgrounds.<sup>35</sup> More specifically, the concept of ‘integration’ is used to assess the *compatibility* of persons with immigrant backgrounds with (idealized) societal standards to determine their *belonging to* ‘the real

33 I do not reflect on the question whether this shift is *exclusively* European, or that it may have also occurred in similar ways in other parts of the world, such as North America, New Zealand or Australia.

34 I do not argue that this conceptual shift towards an individualized interpretation of integration is the *only* factor that explains the proliferation of legal integration requirements in Member States, but merely that it does play a visible role. In Chapter 3, I reflect in length on the features of the liberal state that are crucial to understand the (changing) shape of immigration, integration and citizenship policies in modern democratic states, from the perspective of political science.

35 See e.g. Prins 2011, 67.

society'.<sup>36</sup> However, initially the term 'integration' was coined within the functionalist tradition of sociology and was understood as a 'holistic' notion applicable to society as a whole and describing its *collective functioning*.

In this chapter, I concentrate on the ramifications of this broader conceptual shift on the formation and purposes of integration requirements connected to obtaining residency rights and citizenship for TCNs in EU Member States. Ultimately, I hope to demonstrate that one of the most profound effects of the fact that in Europe 'integration' is increasingly understood as a property of individuals with (non-EU, non-Western) immigrant backgrounds, is that the relationship between European states and their newly arrived TCNs is interpreted and discussed in *contractual* terms. The main purpose of integration requirements became to compel TCNs to fulfill their obligation to individually integrate in order to acquire secure residency rights and/or full citizenship delivered by the receiving state. As a result, the focus of integration requirements in Europe has shifted from their impact on societal goals to judgments of individual merit or desert.

To elucidate this, I will first describe the EU Directives that enable Member States to implement integration measures and examine domestic integration requirements for citizenship. Then, I will describe the conceptual shift in Europe regarding the concept of 'integration', moving from a 'holistic' to an 'individualized' notion. Following that, I will examine its parallels and connections with the enacted legal integration requirements in various EU Member States. Finally, I will summarize the three most crucial outcomes of these developments.

Before proceeding, it is important to first mention three points of clarification. First, several commentators have previously noted that the changes in integration and citizenship policies in Europe included a departure from the idea of naturalization as a *tool* for integration to the idea of naturalization as a *reward* for integration.<sup>37</sup> My analysis broadly confirms this observation, but extends it by highlighting the underlying conceptual shift that reinforced this legal development. This next step is a significant contribution, I contend, as it deepens our understanding of broader tendencies in Europe and allows us to reflect in detail on both the normative legitimacy and empirical outcomes of such integration measures.

Second, this chapter might raise the question of the exact causal relationship between the conceptual shift and the legal shift I discuss. Which one reinforces the other; what is the root cause and what is the effect? This concern touches upon the recurring so-called 'structure vs. culture debate' among social scientists. Do institutions (including public policies and laws) produce a certain culture (including public perceptions and discourses), or is it the other way around? In line with Robert Putnam, I hold that this debate is ultimately 'fruitless' as structures and cultures

36 My analysis here leans on the terminology developed by Willem Schinkel. See Schinkel 2008, 2013, 2017.

37 E.g. Van Oers 2013, 51; Joppke 2008b, 139; Goodman 2010a, 765.

are not reducible to ‘linear causal questions’ but constitute a ‘mutually reinforcing equilibrium’.<sup>38</sup> In this regard, also the relationship between the conceptual and legal shifts in Europe relating to integration that I highlight must be seen as intertwined and indeed mutually reinforcing. These shifts are uneven processes across time and space. Looking back historically, we can retrospectively certainly find political debates and policy documents in which ‘integration’ was applied solely to individual members of certain (immigrant) groups. Conversely, today we can point out examples of where the term is used as a societal-level property. Moreover, the shift from societal to individualized integration has not manifested itself with equal force (yet) in all European countries. Nor do all countries follow exactly the same model. Anita Böcker and Tineke Strik, for example, observe that within recent political discussions on sharpening integration requirements, the (what I call) individualized conception of integration has been invoked most explicitly in the Netherlands, Austria and Denmark.<sup>39</sup> However, as will be demonstrated, public discourses of and policy tendencies towards individualized integration are definitely not limited to these countries. But simultaneously, it must be noted that certain European countries such as Sweden have remained, as Lilian Nygren-Junkin puts it, ‘test-free zones’<sup>40</sup> as they have, so far, not enacted integration requirements for immigrants as conditions to be met in order to attain secure residency rights or citizenship.

Third and last, I do not intend to idealize the holistic perspective on integration or suggest things were better in the past. This chapter does not take sides with either the ‘holistic’ or the ‘individualized’ understanding of integration. Neither one is posed as offering the best sociological explanation or normative metaphor to describe the functioning of a society, for the purposes of academic research or otherwise. Instead, I aim to document larger trends in public orientations, pinpointing laws and policies, and identifying some of their results. In Chapter 5, I return to the question of how to approach issues of integration for the purposes of policy debates.

## 1. The Growth of Integration Requirements in Multiple EU Member States

In this section, I will present the EU directives and national laws that govern the integration requirements in EU Member States for TCNs and summarize, where needed, the relevant case law. This overview does not cover all legal details of the integration trajectories and citizenship schemes in EU countries. Yet at the end of this section, the legal structures and

38 Putnam *et al* 1994, 181.

39 ‘The desire to limit access to permanent residence to ‘well-integrated’ immigrants is a rather manifest aim of the [...civic integration...] tests in all three countries.’ Böcker & Strik 2011, 167.

40 Nygren-Junkin 2009, 57.

constitutional limitations that give EU Member States a measure of discretion to impose (mandatory) integration requirements are clarified. In addition, I will also sketch recent trends in integration requirements for residency rights and naturalization in European countries.

In relation to integration policies and naturalization laws for non-EU immigrants residing in Member States, there is no wide-ranging European harmonization regime in force, but there are several non-binding soft regulatory tools.<sup>41</sup> In November 2003, for instance, the European Commission put forward its view on integration policies with the policy paper entitled *Communication on Immigration, Integration and Employment*<sup>42</sup> and in 2004 the Council of Ministers responsible for integration agreed on the document *Common Basic Principles for Integration*.<sup>43</sup> These non-binding EU documents generally emphasize the importance of integration of TCNs. Amongst other things, the *Common Basic Principles of Integration* states that enabling immigrants to acquire basic knowledge of the receiving society's language, history and institutions is indispensable for integration. In addition, there are EU directives that pressure Member States to facilitate certain integration outcomes. For example, the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 *on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted* (hereinafter: 'Qualification Directive') prescribes that Member States have a best-effort obligation to include refugees in their labor market and economic activities under equivalent conditions as their own nationals and give them the same access to education as other TCNs within their territories.<sup>44</sup> However, there is no specific EU integration policy instrument to monitor this obligation and national approaches vary greatly.<sup>45</sup>

The two pieces of binding supranational legislation that explicitly grant Member States the competence to enact (mandatory) integration requirements are the Council Directive 2003/86/EC of 22 September *on*

41 Lozano *et al.* 2014, 557. Although the Treaty of Lisbon (2007) foresaw EU responsibility for establishing the means to promote integration policies of Member States, it excluded any harmonization of these policies.

42 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment. COM(2003)366 final. Retrieved from: <http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14340> [Accessed 31 May 2017].

43 Council Document 14615/04 of 19 November 2004. Retrieved from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/82745.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf) [Accessed on 31 May 2017] See also, Joppke 2007, 247; International Centre for Migration Policy Development, Scholten *et al* 2012, 106.

44 Article 26.2: 'Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counseling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.' See also UvA, De Lange *et al*, 2017, 45.

45 The UN Refugee Agency 2013, 8.

*the right to family reunification*<sup>46</sup> (hereinafter: ‘Family Directive’) and the Council Directive 2003/109/EC of 25 November 2003 *concerning the status of third-country nationals who are long-term residents* (hereinafter: ‘LTR Directive’).<sup>47</sup> These EU directives give Member States the option to make respectively family reunification and the acquisition of a long-term resident status for TCNs (after five years of uninterrupted residence) conditional on integration requirements. It is left to individual Member States to decide to implement such measures. The European Commission and European Court of Justice (Hereinafter: ‘CJEU’) see to it that national policies respect the rules these directives set.<sup>48</sup>

Since the enactment of these directives, there has been a clear trend towards formalized testing of language skills, national civic knowledge and value commitments as prerequisites for family migration, obtaining permanent residency and also for gaining access to naturalization procedures.<sup>49</sup> For example, before 2000, the only Member State with a language condition for acquiring permanent residency was Germany.<sup>50</sup> These measures have been predominately aimed at family migrants and refugees.<sup>51</sup> More particularly, in response to the Family Directive, the Netherlands, UK, Germany, France and Austria have introduced integration requirements for family migrants.<sup>52</sup> These are so-called ‘pre-departure measures’, which require family members or spouses of TCNs to pass an integration test and/or a language test in their country of origin at the local embassy of the receiving Member State.<sup>53</sup> In addition, according to a report by the International Organization for Migration, in the limited period between 2003 and 2007 no less than thirteen Member States of the European Union introduced new mandatory integration requirements for the

46 Article 7 (2) OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC. Some EU countries, such as Denmark and the UK, are not bound by the Directive but still must comply with other international norms, such as the ECHR, that protect the right to family life. See Guild *et al* 2009, 14.

47 Article 5 (2) OJ L. 16-44; 23. 1. 2004, 2003/109/EC. Denmark is also not bound by this directive.

48 Bonjour 2014, 211.

49 See e.g. Goodman 2010a; Joppke & Eule 2016.

50 See Guild *et al*, 2009, 8.

51 There are virtually no legal venues for non-high-skilled labor to EU countries and high-skilled labor migrants are often exempted from integration measures. Moreover, internal EU immigrants cannot be obliged to undergo integration requirements given their EU citizenship. But in the circumstance that they voluntarily seek the nationality of the EU Member States in which they reside, they must also complete the integration requirements for naturalization. See e.g. Permoser 2012, 186.

52 Denmark, that is not bound by the Directive, grants applicants a short-time visa of 28 days to pass a language test on Danish territory. For this exam, nationals from the United States, Canada, Australia, Israel, Japan, New Zealand, Switzerland and South Korea are exempted. See Strik & Pascouau 2012, 400.

53 Groenendijk 2011; De Vries 2013; Bonjour 2014.

acquisition of permanent residency in response to the LTR Directive.<sup>54</sup>

In addition, requirements for naturalization also increased across Europe. At first glance, this might only seem to be a slight increase. In 2010, 22 of the current 28 EU countries had implemented such tests; while 20 of the 28 countries already had language tests in 1998. Yet, on closer comparison, of the 22 countries that used these tests in 2010, 16 had adopted *formalized* language tests, whereas in 1998 only 6 had such formalized tests (see Appendix 1). In addition, citizenship tests (or ‘knowledge of society’ tests) were applied in 6 of the present 28 EU countries in 1999. In 4 countries, these tests were formalized. By 2010, the number increased to 15, of which 11 were formalized (see Appendix 2).<sup>55</sup> And since then, other EU countries including Belgium, France and Spain also introduced formalized language and citizenship tests for naturalization.<sup>56</sup>

That said, in virtually all European countries integration requirements as conditions for attaining increased rights are a remarkably dynamic policy field that is subject to constant changes: national laws on the (number of) requirements, costs, imposed sanctions and time given to complete them are frequently amended.<sup>57</sup> The procedures for TCNs to obtain certain residency and citizenship rights therefore differ between European nation-states and the differences are also subject to constant (minor) adjustments.<sup>58</sup> To obtain permanent residency rights, it may or may not be required to pass language and citizenship tests of varying content

54 International Organization of Migration, Appave & Chelowski 2008; See also Permoser 2012, 174. Today, the EU Member States that have obligatory integration requirements for permanent residency are Austria, Croatia, Cyprus, Czech Republic, Germany, Denmark, Estonia, France, Greece, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Portugal, United Kingdom and Belgium. See Böcker & Strik 2011; European Policy Centre, Pascouau 2014, 92.

Belgium installed a mandatory ‘newcomers declaration’ in 2016 as a condition of permanent residency. See Knack, 2016. *Verplichte nieuwkomersverklaring moet integratiedruk verhogen: ‘niet zomaar een vrijblijvend papiertje*. Retrieved from: <http://www.knack.be/nieuws/belgie/verplichte-nieuwkomersverklaring-moet-integratiedruk-verhogen-niet-zomaar-vrijblijvend-papiertje/article-normal-685615.html> [accessed 16 September 2016] In Belgium the competences to enact integration policies of the federal state and the Flemish and Wallonian regions often overlap. See e.g. Xhardez 2016.

55 EUDO Citizenship Observatory, Goodman 2010b, 16-17.

56 Barbulescu 2013 (Spain); Strik & Pascouau 2012, 403.

57 European Policy Centre, Pascouau 2014, 92.

58 On that account, the prediction of Yasemin Soysal in her book *Limits of Citizenship* (1994) that the nation-state would become less relevant as the generator of rights due to forms of ‘postnational membership’ that would secure equal rights irrespective of national citizenship statuses, has not (yet) been fulfilled in relation to naturalization. However, EU and human rights law and the directives discussed in this chapter do unmistakably weaken the position of the nation-state as the sole center of political decision-making on issues of immigration and the treatment of residing immigrants.

and difficulty. Family reunification<sup>59</sup> is in some countries made contingent on integration requirements, while in others it is not.<sup>60</sup> In relation to naturalization, binding EU standards are wholly absent and integration requirements differ between the Member States. However, no EU country fully blocks the path to naturalization and the *European Convention on Nationality* signed by multiple EU countries provides that the period of residence cannot be more than ten years of lawful and habitual residence.<sup>61</sup>

In any case, the novelty of the legal circumstances triggered by the Family and LTR Directives is that European states increasingly *oblige* certain TCNs to follow a structured path to secure residency, in which integration is utilized as the formal condition to obtain these. Before the 1990s, most European countries worked with vaguely defined qualifications such as a ‘connection to the community’ or a ‘willingness to integrate’ to allocate permanent residency and citizenship rights. These criteria were often based on discretionary decisions by public servants after an informal interview, by completing the relevant paperwork in the language of the host society or merely based on the length of residency.<sup>62</sup> Moreover, in tandem with this tendency to implement a collection of formal instruments to measure an applicant’s obligatory integration, the *sanctions* for non-compliance with integration policies were formalized as well. Increasingly, the integration laws in multiple EU Member States stipulate that the non-fulfillment of mandatory integration requirements by family migrants and refugees may lead to fines, revoking, refusal to issue or denied renewal of residency permits and/or having no access to, or loss of, social benefits.<sup>63</sup> To provide more insight in the outcomes of these policy changes and formalizations, I will discuss the two EU directives that enable Member States to install integration requirements and explore the motives behind their implementation. Subsequently, I will briefly discuss integration requirements for naturalization in EU states.

59 In all Member States, the right to family reunification concentrates on the ‘nuclear family’: spouses and minor children. Other requirements differ. For example: both in Austria and the Netherlands set a minimum age requirement for spouses of 21 years. And Portugal and UK allow family reunification of registered partners or unmarried couples who can prove they have a subsisting relationship, but other states only allow it for registered partners.

60 Koopmans *et al* 2012, 24.

61 Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS, No. 166. This Council of Europe Convention is the most authoritative European document regarding nationality, although it has not been signed and ratified by all European countries.

62 For this reason, it has been argued that the introduction of citizenship tests has made the conditions under which TCNs can obtain civic inclusion more transparent and have limited the state discretion to deny this. See e.g. Miller 2016, 129.

63 Kostakopoulou 2010, 951; European Policy Centre, Pascouau 2014, 58; The INTECT project, Strik *et al* 2010, 21; Cuttitta 2016; Strik & Pascouau 2012, 341.

## Family Reunification

As said, in response to the Family Reunification Directive, five EU countries installed pre-departure integration or ‘integration abroad’ requirements for family migrants. These integration requirements abroad are prescribed for individuals with a bona fide claim to family migration to obtain the relevant paperwork to be allowed to effectively migrate.<sup>64</sup> Mostly, these requirements test minimal levels of language acquisition and/or knowledge of their receiving societies.

The arguments used in political debates on these pre-departure integration requirements and their conditions vary in the various EU countries that installed them and changed through time.<sup>65</sup> Nonetheless, during (national) parliamentary debates they have generally been defended as facilitating the successful integration of those to be included. Particularly migrant (Muslim) women were relatively often mentioned as the specific target group. The pre-departure tests were expected to ensure that fewer of them would eventually become a burden on the receiving welfare state.<sup>66</sup> The UK and Austria decided to apply their ‘integration requirements abroad’ to specific countries based on expected (English/German) language proficiency. Germany and the Netherlands based the applicability of their integration requirements abroad on cultural and political-economic grounds.<sup>67</sup> However, at times, policymakers, legislators and governments also acknowledged that the tests were put in place to deter ‘unwanted immigration’ (France)<sup>68</sup> or as ‘selection criteria’ (the Netherlands).<sup>69</sup>

However, importantly, from a legal perspective, the integration measures abroad for family migrants allowed by the Family Directive are *not* supposed to function as a tool for selecting migrants, but to promote family migration.<sup>70</sup> For this reason, the European Commission was in 2008 critical of how the Family Directive was implemented by some countries and re-emphasized that the aim of these measures should be to ‘facilitate the integration of family members’, not to thwart family migration or prevent legal acceptance into the state structures.<sup>71</sup> Moreover, in 2014, the Commission, again, explained that the Family Directive does not permit integration requirements that are a measure ‘that limits the possibility of

64 These integration requirements are thus not open for all individuals interested in migration, but are a prerequisite for specifically family members or spouses whose right to family migration has already been recognized by the receiving state.

65 See e.g. International Centre for Migration Policy Development, Scholten *et al* 2012; European Policy Centre, Pascouau 2014, 33-50.

66 The INTECT project, Strik *et al* 2010, 41.

67 International Centre for Migration Policy Development, Scholten *et al* 2012, 26 & 89.

68 Nicolas Sarkozy, quoted in *Le Figaro*, 3 May 2006. See Joppke 2007, 11.

69 TK 2003-2004, 2900, nr. 3: 4. See also International Centre for Migration Policy Development, Scholten *et al* 2012, 12.

70 Van Oers 2013, 132.

71 Report from the Commission to the European Parliament and the Council on the Application of Directive 2003/86/EC on the Right to Family Reunification (COM(2008) 610 final). Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008DC0610> [Accessed 31 May 2017] See also Bonjour 2014, 214.

family reunification'. Instead, these measures should contribute to the success of family reunification. It continued that 'integration measures must be proportionate and applied with the necessary flexibility' and are not meant as 'an absolute condition upon which the right to family reunification is dependent'.<sup>72</sup> In addition, the CJEU criticized the Dutch integration requirements abroad in 2015 in its K and A-judgment. In a nutshell, it also ruled that integration requirements should not undermine the objective of the Family Directive, which is to promote family migration.<sup>73</sup> More particularly it stated that: 'integration measures must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but facilitating the integration of such persons within the Member States'.<sup>74</sup> Furthermore, the court stated that although EU Member States may require TCNs to pass an integration examination prior to family reunification, these requirements can 'be considered legitimate only if they are capable of facilitating [...] integration' and if they ensure that the right to family life remains 'exercisable'.<sup>75</sup> For this reason, exemptions must be made in cases in which applicants cannot pass by taking specific matters into account such as age, illiteracy, educational level, economic situation, and health of the family member.<sup>76</sup>

Nevertheless, recent empirical research indicates that the pre-departure tests of EU states do tend to have exclusionary effects: after their installation, the numbers of granted visas for family reunification have significantly decreased.<sup>77</sup> Moreover, it turns out that these integration requirements are more difficult to meet for women, poorly educated people,

72 Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification. (COM(2014) 210 final). Retrieved from: [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/com/com\\_com\(2014\)0210\\_/com\\_com\(2014\)0210\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0210_/com_com(2014)0210_en.pdf) [Accessed 31 May 2017].

73 Case C-153/14 *Minister van Buitenlandse zaken v K and A*, par 51.

74 Case C-153/14 *Minister van Buitenlandse zaken v K and A*, par 52. The Dutch test was, amongst other things, too expensive and insufficient information about the expectations was provided.

75 In 2010, the CJEU reflected a similar positive attitude towards family reunification in its *Chakroun* ruling (Case C-578/08). In this case, the Court ruled on the Dutch income requirement of 120% of the minimum wage for family migration, also permitted by the Family Directive (2003/86/EC). The court stated that the Directive should be interpreted in accordance with human rights (the right to family life in the ECHR and the EU Charter of Fundamental Rights). In addition, it stated Member States must not use their discretion to undercut the objectives of the Directive, which is to allow family migration.

76 Case C-153/14 *Minister van Buitenlandse zaken v K and A.*, par 58. Notably, the European Commission in the case *Imran* took the view that Member States may not refuse an application under the Family Directive if the sole reason that the family member has not complied with the integration measures. See Case C-155/11 PPU *Mohammad Imran*.

77 Groenendijk 2011, 23; The INTECT project, Strik *et al* 2010, 30-3; International Centre for Migration Policy Development, Scholten *et al* 2012, 79-81.

See also Human Right Watch 2008. The immigration effect is differentiated in terms of nationality: for example, applications from Turkey and Serbia in Germany, and from Morocco and Ghana in the Netherlands have decreased particularly.

certain nationalities and ethnic groups and elderly people.<sup>78</sup> The observed decrease is the result of a combination of, on the one side, people failing to meet the conditions and, on the other side, people refraining from applying for family reunification in the first place. The exact number of this latter (indirect) curtailment of family migration is difficult to measure. But given the immediate decline of applicants after the implementation of these mandatory pre-entry integration requirements, Scholten *et al.* concluded that we may safely assume that it is the case. Accordingly, they wrote in their review of pre-departure integration measures in Germany, the Netherlands, the UK and Austria, that ‘their integration effects thus far seem modest at best, [...and their...] immigration effects more significant’.<sup>79</sup>

In sum, the ‘integration requirements abroad’ enacted by EU Member States based on the Family Reunification Directive should *de jure* not form an impediment on family reunification to Europe, but research suggests that *de facto* they do reduce the number of family migrants to countries that adopted such legislation. Nonetheless, formally, integration measures should not form an obstacle to family reunification, but rather facilitate the integration of the applicant.

### Obtaining Permanent Residency

The LTR Directive gives Member States the discretion to make permanent residency after five years of uninterrupted residence contingent on integration requirements stipulated by national laws. However, in the report of the European Commission to the European Parliament and the Council on the application of the Directive, it clarified that Member States should ensure that the requirements ‘must be in line with the purpose of the Directive’ which is ‘fostering the integration of long-time residents’ and ‘must take due account of the general principles of EU law such as the principle of preserving effectiveness (“effet utile”) and the proportionality principle’.<sup>80</sup> In this context, it is important to also consider the key rule of the Directive that can be found in Article 4, paragraph 1, which provides that ‘long-term resident status shall be granted to third-country nationals who have resided legally and continuously within the territory of a Member State for five years immediately prior to the submission of the relevant application’. This implies that these TCNs receive a secure residency status after five years of continuous legal residence and that there are *only a limited number of grounds* on which this can be withheld or withdrawn (e.g. serious

78 The INTECT project, Strik *et al* 2010, 44.

79 International Centre for Migration Policy Development, Scholten *et al* 2012, 39.

80 Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. COM(2011)585. Retrieved from: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/pdf/long-term-residents/1\\_en\\_act\\_part1\\_v62.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/pdf/long-term-residents/1_en_act_part1_v62.pdf) [Accessed on 31 May 2017].

The CJEU also repeated this consideration in its *Kamberaj* ruling. See C-571/10.. See also Van Oers 2014, 244.

threat to public safety, Article 9, paragraph 1(c)). Arguably, based on EU law, it hence seems a disproportional measure to deny TCNs permanent residency based on the sole reason of failing to meet integration requirements. Nonetheless, as we have seen, after the LTR Directive came into force, a majority of Member States made the acquisition of long-term residency for TCNs strictly dependent on integration requirements, mostly in the form of introduction courses, language and/or citizenship tests and loyalty oaths.<sup>81</sup> In turn, if TCNs fail to meet these conditions, the established sanctions by national laws are the imposition of fines, the lowering or withdrawal of social benefits or the non-renewal or withdrawal of residence permits.

Of these sanctions, the refusal to grant permanent residency or even withdrawal of temporary residence rights and expulsion are obviously most far-reaching. To examine the legal characteristics and limits of these integration requirements, it is therefore informative to start with an assessment of these most significant punitive measures. In Austria, the first policy that enabled deportations on grounds of non-fulfillment of integration requirements was enacted in 2003 and stayed in force until the end of 2010. In these seven years, only three persons were threatened with deportation, of which one left the country voluntarily. The other two appealed or managed to successfully complete the mandatory course after receiving a warning.<sup>82</sup> In the Netherlands, the law states since 2013<sup>83</sup> that failing the 'duty to integrate' due to 'negligence' can lead to a non-renewal or the revoking of temporary residency rights after three years.<sup>84</sup> However, in 2016 it turned out that not a single TCN who failed to pass all integration requirements was actually forced to leave the Netherlands, nor is this expected to change.<sup>85</sup>

How can this be explained? The answer is that the mandatory integration requirements based on the LTR Directive predominately affect family migrants and refugees.<sup>86</sup> However, both family migrants and refugees are strongly protected against deportation by EU laws and international human right norms. Family migrants are admitted and reside based on their right to family life, articulated in *inter alia* article 8 ECHR (and the Family Directive). The residency rights of refugees are protected by the well-known *non-refoulement* principle enshrined in *inter alia* art. 33 of the Refugee

81 Goodman 2010a, 754.

82 Permoser 2012, 193-198. It must be noted that since 2010 a more restrictive integration regime is implemented, but although the effects of this law are not thoroughly researched yet, Permoser deems this bill, first and foremost, to also be a form of 'symbolic politics'.

83 In 2010, obtaining permanent residency was already made contingent on integration requirements. Amsterdam Centre for European Law and Governance, De Besselsen & De Hart 2014, 3.

84 Art 18 (1) sub I, art 9 Vreemdelingenwet 2000.

85 Amsterdam Centre for European Law and Governance, Besselsen & De Hart 2014, 24. 2013, 25; Algemene Rekenkamer, 2017, 25.

86 See footnote 51.

Convention.<sup>87</sup> This makes it impossible for European states to ‘expel a refugee in any manner whatsoever to the frontiers of territories where her life or freedom would be threatened’.<sup>88</sup> In other words, Member States such as Austria and the Netherlands threaten to expulse precisely those TCNs for failing to fulfill integration requirements, who are legally practically undeportable due to protection of EU laws and international treaties.

Remarkably, academic commentators concur that the governments of EU countries that decided to threaten TCNs with deportation in case of non-fulfillment of integration requirements, have always been aware of these constitutional limitations. Julia Permoser, for example, suggests that Austria mainly installed the integration policy to send ‘the restrictive message that the government is controlling and reducing immigration’ and not ‘to achieve these material effects’.<sup>89</sup> She concludes that the seemingly ‘tough’ integration requirements are forms of ‘symbolic politics’ to ‘keep the myth of sovereignty alive’.<sup>90</sup> And indeed, the Austrian government continues to implement these restrictive measures, even though it must now be aware that international law prevents them from actually deporting TCNs. Furthermore, Elles Besselsen and Betty de Hart observe that in 2011 the Dutch minister of Immigration, Integration and Asylum, while defending the law in the Dutch Senate, already reassured that deportations would only occur rarely, if at all, as the affected newcomers were protected from deportation by international and EU law.<sup>91</sup>

This outcome is illuminating as it demonstrates that the most drastic result for TCNs who fail to meet mandatory integration requirements in Europe is not expulsion. Rather, TCNs are, as Sarah Goodman and Matthew Wright put it, ‘not deported’ but ‘placed in a feedback loop of conditionality’.<sup>92</sup> This ‘feedback loop of conditionality’ entails that TCNs that do not complete prescribed integration requirements must reside in provisional legal statuses and with temporary residency rights for longer periods of time. Put differently, integration requirements have the ability to impede residing TCNs to upgrade their temporary residency status to a secure and permanent one. And indeed, for example in Austria, the non-compliance with the Austrian mandatory ‘integration contract’ for TCNs leads to receiving a one-year residency permit (instead of permanent residency), to be renewed annually. While having this permit, TCNs are

87 See also footnote 14.

88 This does not mean refugees can never be sent back to their home countries. Yet, this will never depend on the fulfilment of integration requirements, but on whether the conditions in their home country sustainably improve and/or sources of persecution or danger disappear. In EU Member States, this possibility for forced return remains open up to five years. After that, refugees can apply for a permanent residency permit based on the LTR Directive, although gaining this status, as we have seen, can be made contingent on integration requirements. But if the *non-refoulement* principle applies, the expulsion of a refugee to unsafe territory — for whatever reason — is illegal and would be blocked by (domestic and international) courts.

89 Permoser 2012, 173.

90 Permoser 2012, 197.

91 Amsterdam Centre for European Law and Governance, Besselsen & De Hart 2014, 24.

92 Goodman & Wright 2015, 1903.

‘excluded from the rights to equal treatment granted to long-term residents, including the right to unrestricted labor market access, social security payments, council (social) housing and education assistance’.<sup>93</sup>

Nonetheless, this is not to imply that integration requirements connected to obtaining permanent residency rights are therefore inconsequential, do not affect residency rights and are not punitive. First, these laws can pose a threat to secure residence in exceptional circumstances. Take for example the situation in which a family migrant’s marriage ends before the husband completed his integration trajectory to obtain permanent residency (or naturalization) successfully. In this situation, it is possible that temporary residency rights that were contingent on the relationship with the spouse are revoked, while ‘independent’ residency rights are not yet acquired.<sup>94</sup>

Second, currently, it is an open question what will happen to the residency rights of refugees in the (near) future if the safety conditions of their country of origin improve after, say, nine years, and they have not succeeded in obtaining permanent residency (after five years) due to the non-fulfillment of integration requirements. Will their temporary refugee status then still be terminated, in light of the improved conditions in their country of origin and the failure to obtain a permanent residency permit? It is doubtful whether this outcome would be in line with the EU principle of proportionality. But the current national laws of the Member States that installed integrated requirements for permanent residency do suggest the answer to this question should be affirmative. However, at the same time, we have seen, the LTR Directive also stipulates that after five years of uninterrupted residence TCNs should in principle be able to obtain permanent residency.<sup>95</sup>

Lastly, if TCNs indeed end up in a ‘feedback loop of conditionality’, this is punitive as it delays the moment at which secure residency rights can be obtained. Put differently, these policies have the capacity to extend the period of time in which persons reside with a legally precarious position while lacking predictability about the trajectory of their future life. One of the results of the integration requirements allowed by the LTR Directive is therefore that they produce forms of what can be described as ‘prolonged legal provisionality’ or even ‘permanent legal provisionality’. In the academic literature, this is also described as the institutionalized production of ‘precarity’ through migration status.<sup>96</sup> This involves a form of generalized insecurity and precarious existence, which is often

93 The INTEC project, Perching 2010, 60.

94 In addition, based on the Family Directive, Member States have the discretion to make the temporary residency rights of family migrants perpetually contingent on the income requirement. As a result, if integration requirements hamper TCNs to acquire permanent residency, they are longer at risk of fully losing their residency rights if they, often unexpectedly and unhoped-for, start to earn less than the prescribed income requirement. See e.g. Amsterdam Centre for European Law and Governance, Besselsen & De Hart 2014, 21.

95 See also Stronks 2017, 38-39.

96 See e.g. Goldring *et al* 2009.

psychologically burdensome, due to living in a state of unpredictability caused by, in this case, residential insecurity. Future prospects remain perpetually contingent on the non-fulfilment of integration requirements. However, crucially, these forms of precarity barely have effect on the *physical composition* of the residing population as deportations are blocked by EU and human right laws. The integration requirements mainly affect the types of legal residency status (often connected to packages of social rights) that parts of the residing population have, but do not change who actually lives within society at large.<sup>97</sup>

Nevertheless, the exact legal limitations of integration requirements for permanent residency authorized by the LTR Directive remain to a degree elusive. Are all forms of ‘legal provisionality’ and precarity in breach of the principles of effectiveness and proportionally referred to by the European Commission, or is this to a degree legally permissible? On this question, the CJEU formulated some guidelines, when it ruled in 2015 on the P and S case that ‘the Directive does not preclude the imposition of the obligation to pass a civic integration examination, provided that the means of implementing that obligation are not liable to jeopardize the achievement of the objectives pursued by the Directive’<sup>98</sup>, of which the principal objective is ‘the integration of third country nationals who are settled on a long-term basis in the Member State’<sup>99</sup>. To ensure this, it continued, the Member States should take into account ‘the level of knowledge required to pass the examination, [...] the accessibility of the courses and material necessary to prepare for that examination, [...] the amount of registration fees, or [...] the consideration of specific individual circumstances, such as age, illiteracy or level of education’.<sup>100</sup> More particularly, the Court gave the instruction to verify if the costs incurred by integration examinations are liable to jeopardize the achievement of the objectives pursued by the Directive and, therefore, deprive it of its effectiveness.

Ergo, the perspective of the CJEU involves that Member States are legally authorized by the LTR Directive to prescribe integration requirements for TCNs as conditions for permanent residency as these are, in principle, beneficial and support the inclusionary purposes of the Directive. However, as soon as integration requirements become overly demanding or expensive and in fact start to undermine these purposes, they are legally not compliant with the LTR Directive. From a legal perspective, these integration requirements should thus not serve as *criteria* for whether TCNs may attain permanent residency in the first place. Instead, they should function as *means* to facilitate that long-term residents acquire knowledge of the language and society relevant to successfully participate and function in the receiving Member State.

97 Lægaard 2010, 459.

98 Case 579/13 P and S v Commissie Sociale Zekerheid Breda, College van Burgermeester en Wethouders van de gemeente Amstelveen, par 66.

99 Case 579/13 P and S v Commissie Sociale Zekerheid Breda, College van Burgermeester en Wethouders van de gemeente Amstelveen, par 44.

100 Case 579/13 P and S v Commissie Sociale Zekerheid Breda, College van Burgermeester en Wethouders van de gemeente Amstelveen, par 81.

On that account, if integration requirements lead to situations in which TCNs perpetually fail to obtain permanent residency rights or refrain from applying for increased rights and permanent residency, these forms of ‘permanent legal provisionality’ clearly undermine the objectives of the Directive. The *legality* of integration requirements for TCNs for permanent residency depends on their *effectiveness* in supporting the wider integration of TCNs. Or phrased differently, if integration requirements prevent, rather than facilitate, the effective integration of TCNs, they violate the Directive.

### Naturalization

As noted, there is no overarching set of EU regulations for citizenship that apply to all European Member States. So far, naturalization remains carefully protected as ‘the last bastion of national state sovereignty’ for nation-states in the EU.<sup>101</sup> As a result, understanding who can become a national within a Member State requires analysis and case studies of specific national laws.<sup>102</sup> Nevertheless, the explanatory report of the European Convention on Nationality stresses that its provision stipulating that the permissible period of ten years of lawful and habitual residence before naturalization, reflects a common European standard, as most European countries already require a period between five and ten years of residence.<sup>103</sup> Additionally, during the last fifty years EU countries have, overall, liberalized their naturalization schemes, for example by increasingly tolerating dual citizenship and complementing their *jus sanguinis* citizenship with *jus soli* citizenship regimes.<sup>104</sup>

However, for TCNs in EU states it is never obligatory to naturalize, as they can choose to (merely) obtain or retain permanent residency. It is not attractive for persons to naturalize, for example, if they want to keep the citizenship of their country of birth and the receiving state does not tolerate dual citizenship<sup>105</sup> or if (integration) requirements for naturalization are deemed to be too onerous. Yet if a TCN naturalizes, she obtains equal citizenship and becomes a formal equal member of the state. She loses her lesser legal status of ‘(permanent) resident’, and receives the same package of rights as other citizens, including the right to vote at national elections and to hold a passport. In principle, naturalization is perceived as irreversible.

101 Brubaker 1992, 180.

102 See e.g. Bauböck *et al* 2006; Goodman 2010. For country reports, see <http://eu-do-citizenship.eu/country-profiles>.

103 European Convention on Nationality, Explanatory Report, par 51. Retrieved from: <https://rm.coe.int/16800ccde7> [Accessed on 31 May 2017].

104 Joppke 2010a, Ch 2. *Jus sanguinis* (Latin for ‘right of blood’) is a principle of nationality law by which citizenship is determined by having one or both parents who are parents of the state. *Jus Soli* (Latin for ‘right of the soil’) is a principle of nationality by which citizenship is determined by being born within the territory of a state.

105 In the EU, 12 Member States require renunciation of a previous nationality. See EUDO Citizenship Observatory, Bauböck & Goodman 2010.

Most Member States have applied language or integration conditions for naturalization for more than fifty years.<sup>106</sup> Nonetheless, we have seen, in the last quarter of a century more formalized integration requirements were installed because in multiple European countries the perception grew that it had been ‘too easy’ to naturalize.<sup>107</sup> Access to citizenship should only be possible, it was argued, at the end of a completed integration process. Naturalization should be seen as ‘very special’<sup>108</sup> and the ‘first prize’<sup>109</sup> for immigrants in society and something to be ‘earned’.<sup>110</sup>

In this context, Ricky van Oers conducted research on the effects of citizenship tests in Germany, the Netherlands and the UK. She observed that in all these countries the introduction of formalized language and knowledge of society requirements have led to a decrease in the number of naturalizations (both in terms of the absolute number of TCNs that apply for citizenship and the relative number of applicants who successfully pass a citizenship test).<sup>111</sup> On that account, she concludes:

*Despite the difference in the way the tests are shaped and implemented, formalized language and integration tests are destined to lead to lower numbers of citizenship acquisitions. Hence, no matter what context the tests have, what the scope of the rules on exemption is, what possibilities for preparation are provided, and in what way the test is taken, a certain part of the immigrant population was excluded from citizenship and the accompanying rights the moment formalized language and integration tests were introduced.<sup>112</sup>*

In the same line, Stella Burch Elias observes that while the number of long-term immigrants to Germany, the Netherlands and France has remained relatively constant over the last two decades, the number of naturalizations decreased due to restrictions on naturalization in the form of integration requirements and citizenship tests. For example, in the United Kingdom the number of naturalization applicants decreased from nearly 37,000 in 2002 to only fifty percent of this number in 2006.<sup>113</sup>

106 Guild *et al* 2009, 8.

107 Van Oers *et al* 2010, 307.

108 In Denmark, the minister of Integration insisted that ‘citizenship is not just a piece of paper, but a declaration of belonging’ and defended the new citizenship tests as a means to ‘make sure that they [...] new citizens love Denmark and prefer Denmark’. Mouritsen 2012, 98.

109 See e.g. Van Oers 2013, 51.

110 See e.g. Van Houdt *et al* 2011.

111 Van Oers 2013, 276.

112 Van Oers 2013, 277.

113 Elias 2016, 2131.

## 2. Integration: Old and New

In the previous section, we have seen that the legal trends in EU Member States regarding integration requirements have changed significantly over the past two decades. In this section, I describe the conceptual shift that supported these legal changes and that changed the very idea of how integration is understood in public policy, public debate and daily speech. Indeed, the concept of ‘integration’ is not a new one in European debate — in fact, concerns about integration have been a perennial issue for social scientists and policy makers for over two centuries. However, as we will see, the meaning of integration has changed from being a property of society as a whole to being a condition of particular individuals. In later chapters, I will focus on how we should normatively evaluate policies that impose obligations on those who are already in a precarious legal position (Chapter 3) and their effects on the ambition of liberal-democratic states to uphold a ‘community of equals’ (Chapter 4). In this section, however, my aim is to introduce these two different conceptions of integration, to be able to show in the next section that the proliferation of legal integration requirements in multiple EU Member States is tied up with the increased visibility and salience of an individualized conception of integration.

### Integration as a Condition of Society

The term and notion of ‘integration’ traditionally resonated with how the concept was broadly employed in the functionalist tradition in sociology as propagated by scholars such as Émile Durkheim and Talcott Parsons. To be clear, this does not mean that public commentators or policy makers referred to these specific thinkers (nor that these thinkers themselves agreed on what integration entails<sup>114</sup>), but that they discussed integration as a notion applicable to collectives. To be more specific, ‘integration’ was used to discuss how *societies* maintain their social cohesion and keep individuals and groups connected in networks of social relations. It rested on the assumption that modern societies form a unity, that is, a collective ensemble pertaining a combination of individuals and subgroups that are in constant reciprocal processes of communal socialization. Within these processes, the state was often seen as the center of coordination.<sup>115</sup> About this perspective on integration Michel Wieviorka writes:

*This sociology [...] regards social integration and subscription to shared values and the density of interaction between*

114 Durkheim, for example, searched strongly for shared *normative* values such as ‘a common will to live together’ (see Allan 2005, 136), while others (such as Parsons) searched more empirically how subgroups systematically interacted in various spheres of society. See Gerhardt 2016, 33-34. Another example is David Lockwood’s ‘system integration’. See Lockwood 1964.

115 Bader 2001, 132.

*members of the groups or society as far more important than the analysis of individuals as such. [...] Durkheimian or functionalist sociology, as Dominique Schnapper (2007) has written, aims at the integration of individuals in society and the integration of society as a whole.*<sup>116</sup>

Theoretically, the term 'integration' was therefore opposed to social distances, group segregations or forms of personal alienation and anomie.<sup>117</sup> Note that this implies that, from this holistic perspective, both groups and individuals would surely be relevant to debates on integration. However, crucially, it discussed them as (potentially) participating in societal systems, in such a way that society is perceived as functioning as an organic holistic entity.<sup>118</sup> Put differently, from this perspective, integration concerns individuals and subgroups and their position in societal networks, yet not in the sense that only *they* should be influenced separately (or 'individually integrated'). Integration describes the social mechanisms that keep individuals and groups interacting as a whole, which is always more than the sum of its parts.

Admittedly, it is debatable whether societies were ever factually reducible to such organic images of societies and it is particularly doubtful whether modern pluralistic societies are driven by only a few general mechanisms of coordination, operating in ways comparable to 'machines' or 'organic entities'.<sup>119</sup> Instead, it might be more accurate to describe 'societies' in terms of loosely connected 'patchworks' or even as detached 'heaps of sand'.<sup>120</sup> However, whether accurate or not, for decades this holistic interpretation of integration (and connected interpretations of disintegration) created a fertile academic research agenda and public vocabulary to consider degrees of social cohesion, together with all sorts of societal distances, social exclusions and group segregations that often affected a variety of vulnerable, marginalized and disadvantaged groups. This research, for instance, highlighted the position of single women, the disabled, the elderly and the young in relation to their access to housing, education or work. Integration concerns hence did *not* exclusively pertain to immigrants as 'immigrants, much like everyone else, are always excluded and included at the same time, [...] as sectorial players or agents with specific assets and habitual dispositions within specific fields or systems'.<sup>121</sup>

116 Wiewiorka 2014, 635.

117 Durkheim popularized the term 'anomie' in this influential book *Suicide* in 1897. It occurs if 'society provides little moral guidance to individuals' (Gerber & Linda, 1999, 97), for example due to the fragmentation of social identity and the rejection of self-regulatory values. Karl Marx described 'alienation' as a form of *Entfremdung* (estrangement) that is the consequence of being a mechanistic part of a social class and living in a heavily class stratified society. See, *inter alia*, his *Economic and Philosophical Manuscripts* (1844).

118 Repstad 2006, 34.

119 Bader 2001, 133.

120 Bader 2001, 133.

121 Morawska & Joppke 2003, 3.

Within this framework, integration was thus something to be achieved at the collective level of society, not at the level of subgroups or individuals. Therefore, the political ideal of ‘integration’ initially had two crucial elements. First, the notion entailed a process of *communal socialization of all its members*. Second, the notion was applied to and a property of *society as a whole*.

### Integration as a condition of individuals

These two elements of integration have gradually moved to the background in policy documents, public debates and daily speech. Today, on the one side, ‘integration’ predominately involves a personal condition that individuals with non-EU and non-Western migrant backgrounds<sup>122</sup> and their descendants should achieve and, on the other side, serves as a criterion for assessing whether these individuals belong to the society in which they reside. As a result, it became uncommon (or even strange) to discuss whether, say, the ‘Dutch society’ or ‘Austrian society’ is integrated or not, while it became rather common to discuss the personal integration of, for example, Hussein, Mohammad or Fatima.<sup>123</sup> If nowadays integration is discussed, it is most likely that the conversation is about non-Western, non-EU immigrants and/or their descendants and focuses on their *compatibility* with (a created image of) ‘society’.<sup>124</sup>

Consequently, today, for instance sociologists Evelyn Ersanilli and Ruud Koopmans consider Muslim practices such as ‘eating halal food’, ‘participating in the Ramadan’ and ‘wearing a headscarf’ as indications of non-integration for Turkish immigrants in Germany, France and the Netherlands.<sup>125</sup> This is merely one example (focusing on religious practices<sup>126</sup>), but it does show several important aspects of the expanding contemporary perspective on integration and what it expects of whom. First, integration is fully measured at the individual level and evaluated based on

122 Christian Joppke argues that the targeted population of civic integration policies is mostly Muslim, but this is difficult to substantiate because this is, to my knowledge, not made explicit in policy documents. See e.g. Joppke 2009. However, see also Prins 2011, 67; FitzGerard *et al.* 2017.

123 Schinkel 2008, 151. It must be noted that it is also common to say that certain immigrant *groups* are not integrated. Moreover, the integration standards are applied on individuals due to their group memberships to non-EU, non-Western immigrant groups. However, as I see it, if one argues that ‘Dutch-Moroccans are not very well integrated’ this means that this group exists of an accumulation of non-integrated, non-Western individuals.

124 Schinkel 2009, 25. See also WRR, Driouchi 2007. She discerned this shift in her study on the Dutch integration policies and nationality laws since WWII.

125 See Ersanilli & Koopmans 2011, 217. To defend this research framework, their analysis states that they ‘treat Islamic religiosity as part of cultural retention since Islam is the dominant religion in Turkey but not in any of the host countries’.

126 In this research, Ersanilli and Koopmans measure four aspects of ‘ethnic retention’: identification with Turks, Turkish language proficiency, identification of Muslims and observance of religious practices. In addition, they measure four aspects of ‘host culture adoption’: identification with the host country, host country language proficiency, host country language use and social contacts with host country ethnics. See Ersanilli & Koopmans 2011, 217.

personal characteristics, acts, habits and outlooks. Ersanilli and Koopmans contend that if a person with an (non-EU) immigrant background adheres to certain Islamic traditions, this fact *in itself* provides information about the lesser degree of integration of this person. However, from a societal perspective on integration, compliance with Islamic norms as such, does not tell much about integration outcomes. It would, in this context, be more informative to measure whether (non-EU) newcomers are socially isolated or segregated, individually or at the level of their subgroup, and whether their religious practices have positive or negative effects on this. In other words, from a societal perspective on integration, characteristics of groups and individuals are relevant to the extent that they have an impact on societal mechanisms that keep groups and individuals interacting as a whole that is more than it parts.<sup>127</sup> However, Ersanilli and Koopmans are silent on the possible relationships between the personal characteristics they measure and broader social mechanisms. Moreover, they fully disregard the possibility that adherence to certain Islamic religious traditions may in fact lead to positive (societal) integration outcomes, for example by increasing participation in education or the labor market and/or by lessening societal distances between groups. Second, the research of Ersanilli and Koopmans illustrates that the contemporary perspective on integration focuses one-sidedly on the degree of integration of individual immigrants (or citizens with immigrant backgrounds), implying that members of society without immigrant backgrounds are always already integrated. By contrast, advocates of the more societal perspective would stress that for meaningful assessments of integration it is insufficient to solely map the habits, acts and orientations (etc.) of immigrants as those of all other groups in society are equally relevant. It is, after all, impossible to describe, understand and evaluate communal processes of socialization on the basis of data regarding only one part of the whole population.

Seen from societal perspective on integration, the approach Ersanilli and Koopmans is therefore impoverished and inadequate. Essentially, their framework rests on the perception that persons with non-EU and non-Western backgrounds (and presumably Muslim), - citizen or not - who engage in Islamic customs do not truly *match with* and *belong to* the European societies they reside in, which are thus presumed to be and remain Islam-free.<sup>128</sup>

On a more abstract level, the concept of 'integration' within contemporary European states became an umbrella term for the idea that (non-EU, non-Western) immigrants and their descendants have 'to be' integrated, perceived as a personal condition, in order to deserve a rightful place

127 If we look at the measured aspects by Ersanilli and Koopmans as listed in the previous footnote, all these aspects one-sidedly ask personal attitudes or orientations on the side of Turkish immigrants without empirically connecting these to broader societal mechanisms that would prevent or nurture, for example, social distances, group segregation and forms of personal anomie.

128 Tonkens *et al* 2008, describe this last point as the 'culturalization of citizenship'. See also Schinkel 2013. I return to this notion in Chapter 4, section 4.

‘inside’ society. This conceptual shift regarding integration has multiple consequences, varying from, *inter alia*, the framing of immigration issues in public debate and how the media covers news on multiculturalism, to the self-perception of both native and naturalized citizens. However, in the following, I will focus on three of its (interconnected) implications that are most relevant for the purposes of this chapter, that is, to understand the relationship between the redefinition of integration and the proliferation of (mandatory) integration requirements as conditions for obtaining increased rights in an increasing number of Member States.

The first implication is that it creates an image of society in which certain persons may be perpetually *physically* present in society, but — even after decades — can nevertheless *symbolically* stand outside of society as non-integrated.<sup>129</sup> In the terminology of Bridget Anderson, this symbolic exclusion suggests that within society — seen as the mere sum of all residing individuals —, a ‘moral community’ exists of persons who are naturally perceived as ‘the protectors of good citizenship’<sup>130</sup>, while others are only contingently recognized as equal members of society based on standards of worthiness, selectively applied to them. In the context I am concerned with, this entails that citizens *without* (non-EU, non-Western) immigrant backgrounds are seen as automatically belonging to their society and as unconditionally entitled to their citizenship status, while persons *with* (non-EU, non-Western) immigrant backgrounds are perpetually deemed inside or outside of society based on individualized standards of integration. Within this modern conceptualization and discourse of integration, it is thus not most relevant whether the evaluated persons with non-EU, non-Western origins have citizenship rights or not: in public discourses, *citizens* with such backgrounds also can be framed in terms of successfully integrated or not, in other words, as standing inside or outside of society.<sup>131</sup> And if these citizens are seen as ‘integrated’ they are perceived as *deserving* the legal citizenship rights they possess. However, the inclusion of (non-EU, non-Western) immigrants into, in the terminology of Anderson, the ‘moral community’ of ‘real citizens’ can always still be revoked. If citizens with immigrant backgrounds, for example, develop undemocratic or illiberal political views or (suddenly) engage in undesirable or criminal behavior, they are perceived as personally non-integrated and no longer belonging to society.

The second implication is that by creating the symbolic possibility that whole groups of individuals with (non-EU, non-Western) immigrant backgrounds can ‘stand outside of society’ due to their personal lack of integration, an image is created of the ‘real society’ that is harmonious, democratic, secular<sup>132</sup> and reinforced by a list of (supposedly) unchangeable

129 Schinkel 2008, 58.

130 Anderson 2013, 6.

131 Schinkel therefore describes the new perspective on ‘integration’ as a ‘extra-legal normative concept’. Schinkel 2010, 268.

132 Or, at least, culturally based on a (secularized) Western strand of Christianity. See e.g. Joppke 2008b, 540; Mouritsen & Olsen 2013, 703.

national traditions, values and customs.<sup>133</sup> To put it differently, non-EU, non-Western immigrants and their descendants are considered to be entering a complete, fixed and pre-established society in which they may or may not ‘fit’.<sup>134</sup> To be sure, European receiving countries do acknowledge that they have had their historical struggles regarding the equal treatment of women, LGBT+ persons, ethnic minorities and establishing the separation of church and state within a secular framework. But within debates on integration, these struggles are (suddenly) presumed to entirely belong to the past. Modern societies are described as constituting a condition in which all these inequalities have been overcome. This presumption remains empirically unverified however, as citizens without immigrant backgrounds are assumed to be integrated. Questioning, for example, the degree of gender equality of ‘nonimmigrant citizens’ in terms of integration is simply puzzling. Likewise, general functionalist sociological questions concerning the integration of society, for example the degree of social cohesion or equal participation of all groups before and after the arrival of a particular group of immigrants, are raised much less when looking through the lens of individual integration.

Additionally, this second implication (that is, the creation of a fixed and complete society into which immigrants potentially can integrate) facilitates a trend in which negative societal outcomes or statistics regarding immigrants and their descendants are qualified as *integration* issues pertaining exclusively to (subgroups of) individuals rather as *societal* issues. This is a powerful mechanism that is the result of assessing the belonging of members of (non-EU, non-Western) immigrant groups against an idealized (complete, pre-established, etc.) image of the ‘real society’. To explain, the contemporary conception of integration thus presumes that if persons with non-EU and non-Western backgrounds are, for instance, unemployed, homophobic, criminal, a school dropout or an (religious) extremist that they are insufficiently integrated and therefore stand outside of the society they reside in. Consequently — although obviously untrue — it is implicitly presupposed that ‘inside the real society’ no unemployment, no homophobia, no crime, no school dropouts and no (religious) extremism exist.<sup>135</sup> As a result, a standard emerges that recognizes undesirable statistics, such as high percentages of crime, undemocratic attitudes or unemployment rates, *if* among under (non-EU, non-Western) immigrants and their descendants, not as *societal* issues that deserve public concern, but as *individual integration* issues pertaining to certain persons who do not belong to society. The qualification of non-integration therefore often leads to *less* rather than *more* public concern to improve the observed negative and undesirable statistics, as the qualification discursively establishes that the involved (non-EU,

133 Schinkel 2008, 58.

134 In the aforementioned research of Ersallini and Koopmans, it is thus implied that in the pre-established ‘real’ societies of Europe do not contain individuals with Islamic orientations or customs that fully belong to their European society.

135 Schinkel 2013.

non-Western) immigrants are alienated from the 'real society'. If in Denmark an immigrant turns out to be not-integrated because he or she is a criminal, this individual simultaneously becomes *less Danish*, or, as Mikkel Rytter phrases it, 'not-quite-a-real' Dane.<sup>136</sup> As a result, the 'real Danish society' is not affected in terms of integration by these statistics, let alone to be held accountable or co-responsible for the social conditions that produced this kind of behavior. *Integration* problems concern individuals who stand outside of society, so it cannot be a (shared) problem of 'Us'.

The third and last implication of perceiving integration as an individualized condition of (non-EU, non-Western) immigrants and their descendants is that it attributes the success or failure of integration one-sidedly to the behavior, attitudes, efforts or qualities of (non-EU, non-Western) immigrants and their descendants. Given that integration is not a property of society, but a personal condition to be met by (non-Western, non-EU) immigrants, their potential successful participation in public and social life demonstrates *their* personal degree of integration. So, for instance, if an immigrant (or the child, grandchild etc. of an immigrant) has many friends that are natives, or has an 'intercultural' marriage, this is perceived and registered as a demonstration of her successful integration, yet *not* of her native friends, native husband or society. Or when a child of an immigrant turns out to be a straight-A student, it is perfectly normal to state that she is 'very well integrated' (as if in the 'real society', inhabited by the natives, all children receive only A's in school). But when she drops out of school, this one-sidedly demonstrates her lack of integration and displays her alienation from 'society'.

In contrast, citizens without immigrant backgrounds can *never* fall outside of society in a comparable way. The contemporary interpretation of integration therefore leads to the situation in which citizens without immigrant backgrounds who, for example, are (religious) bigots or commit crimes are condemned as bigots, racists or criminals, but in which non-EU, non-Western immigrants who engage in the same behavior are not *only* condemned as bigots, racists or criminals but *also* as non-integrated individuals who do not belong and are excluded from society. This can also happen retrospectively (see implication 1). Thus, even those individuals who seemingly are 'well integrated' can suddenly still prove to be excluded in retrospect, due to certain undesirable acts or opinions, such as voicing undemocratic opinions, committing a crime or dropping out of school.

Therefore, the new or modern conceptual understanding of 'integration' or 'being integrated' contains two crucial aspects as well. First, it is an *individualized* condition predominately personally applicable to non-EU immigrants with non-Western origins and their descendants. Second, it is used to evaluate and express whether they have managed *to deserve to belong* to the European societies in which they live based on their *compatibility* with idealized societal standards attributed to the 'real society'.

### 3. Individualized Integration and Integration Requirements in Europe: Exploring the Links

In the previous section, I described the conceptual shift in Europe regarding the notion of ‘integration’ from a societal concept to a more individualized and selectively applied notion. As I see it, this conceptual shift deserves more academic attention than it has received so far. It suggests that in Europe the gap between citizens without and with migrant backgrounds is gradually viewed and discussed in a different light. The full membership of ‘Western’ citizens to European countries remains fundamentally unquestioned, while the belonging of citizens with non-Western immigrant backgrounds and non-EU newcomers is increasingly questioned. Their full membership in their European societies is only contingently acknowledged and remains vulnerable of being problematized in a discourse of integration that potentially positions them as symbolically standing outside of society.

In this section, I focus on the relationship between this changing public perception and discourse of integration as described in section 2 and the changing mandatory integration requirements in EU countries as discussed in section 1. Can we see evidence that this new understanding of integration is present within these legal reforms? I will start with the case of the Netherlands, because it is, as mentioned in the Introduction, one of the better-documented EU countries, but also because the Dutch shift to the individualized conception of integration over the last two decades has been particularly clear.<sup>137</sup> Initially, this country adopted integration measures on the basis of a (holistic) understanding of integration as a societal issue, that is, as a matter of collective responsibility. Later, the introduction of integration requirements progressively transformed public measures to evaluate whether immigrants have individually ‘integrated enough’ to be entitled to entry, permanent residency and/or naturalization. After examining the case of the Netherlands, I will highlight developments in other states that also illustrate the relationship between the conceptual and legal shifts on integration in Europe.

The Netherlands was the first European country to implement an integration test with the introduction of the *Newcomers Integration Act* in 1998.<sup>138</sup> This test was only for educational purposes and part of a mandatory integration course for new immigrants from outside the EU — who were, at that time, chiefly family migrants — who settled in the Netherlands for a non-temporary purpose. This program was provided by the government at no cost and consisted of a 500-hour course of language education and a 100-hour orientation course regarding the labor market and society.<sup>139</sup> The courses were also open to already residing immigrants that arrived before 1998 (‘old comers’) but for them it was not mandatory.

137 See e.g. Böcker & Strik 2011, 167; Schinkel & Van Houdt 2010.

138 Wet inburgering nieuwkomers, *Stb.* 1998, 261.

139 Van Oers 2013, 14.

This bill was a response to a report by the Dutch Scientific Council of Government Policy, the WRR,<sup>140</sup> which concluded in 1989 that some form of mandatory education for newcomers should be enacted to stimulate their participation in society, because: ‘too many allochtonous live in a marginal position; their participation in society is insufficient. Therefore, it is unacceptable that this situation endures [...] based on reasons of social justice [...] for all residents’.<sup>141</sup> The relevant policy documents hence recognized that the general welfare and lack of emancipation of immigrants was a *public* concern based on the broader *societal* reason of ‘social justice for all residents’. As a result, state-funded courses were offered both to newly arrived immigrants and to already ‘settled immigrants’ including both naturalized immigrants and long-term residents.<sup>142</sup> Moreover, although the integration demands were mandatory, they were not tied to rights of entry, renewals of visas or naturalization. The integration demands were defended as emancipating and improving the (too long neglected) position of certain immigrant groups in the whole of society.

However, due to a combination of electoral dynamics and the introduction of the EU directives that legally permitted integration requirements for family migration and permanent residency, the purposes and legal formation and content of the Dutch integration requirements changed rapidly. In 2003, the legal link was established between civic integration requirements and issues of citizenship with the introduction of a formalized naturalization test.<sup>143</sup> In the ‘Note of explanation’ the Minister of Justice explained that:

*One of the requirements for naturalization and becoming Dutch is that the applicant can be deemed as integrated in the Dutch [...] society [...] With integration [...] is meant that the applicant has reasonable knowledge of the Dutch language and [...] the Dutch state-structure and society.*<sup>144</sup>

Soon after, in 2006 the *Newcomers Integration Act* and naturalization test were replaced by a new integration law that prescribed a series of civic integration exams that monitor obtaining or renewing (permanent) residency rights.<sup>145</sup> These tests are obligatory for non-EU immigrants and must be completed within three and a half years after arrival (later this would be shortened to three years). With this integration law of 2006, the integration programs were closed off for immigrant citizens who could not be compelled to integrate through punitive measures.

140 The WRR (‘Wetenschappelijke Raad voor het Regeringsbeleid’) is an independent advisory body for the Dutch Government and is concerned with the direction of government policy in the longer term.

141 WRR, *Albeda et al* 1989, 10.

142 Vluchtelingenwerk IntegratieBarometer, *Klaver et al* 2005, 6.

143 Van Oers 2013, 60.

144 Besluit naturalisatietoets. *Stb.* 2002, 197.

145 Wet inburgering, *Stb.* 2006, 625.

During the same period (in 2006), the Dutch government was the first to develop a ‘civic integration exam abroad’ for family migrants.<sup>146</sup> The Netherlands decided to exempt ‘Western Countries’, meaning that non-EU citizens from EEA States<sup>147</sup>, the United States, Australia, Canada, New Zealand, Japan and South Korea are not required to fulfill an integration and language exam before departure.<sup>148</sup> Subsequently, in 2013 the Dutch state again heavily revised its integration trajectory.<sup>149</sup> Not only did it stop monitoring and publicly funding integration courses to prepare for the integration exams. Also it created the possibility that not completing the required integration demands would lead to losing residency rights and deportation from the territory.<sup>150</sup> In addition, in 2013 the Dutch state also decided to, from then on, provide virtually all information for TCNs (in letters, online, etc.) about integration courses and requirements only in Dutch, including details about the potential sanctions that would follow the non-fulfillment of the prescribed integration requirements.<sup>151</sup> Additionally, in 2017 the Dutch Government extended the ‘duty to integrate’ with the signing of an obligatory ‘Participation Declaration’. This declaration was defended as a non-optional requirement for newcomers to become familiar with and commit themselves to the core values of the Netherlands, such as freedom, equality and solidarity. Not signing the declaration leads to fines (between €340 and €1250).<sup>152</sup> Accordingly, today, in the Netherlands, family migrants must pass a civic and language test abroad and all arrived TCNs with an obligation to integrate must pass four<sup>153</sup> language tests, a labor market portfolio, a knowledge-of-society test and sign a declaration to obtain permanent residency (or, if desired, naturalization).<sup>154</sup> To prepare for these requirements, TCNs have to find language and integration lessons at private companies and pay for this education themselves. To be able to afford the integration trajectory, TCNs can apply for a social loan up to €10.000. If refugees pass all requirements within the given three years, their debts are cancelled. However,

146 Wet inburgering in het buitenland, *Stb.* 2006, 28.

147 Iceland, Liechtenstein, Norway, and Switzerland.

148 De Vries 2013; Groenenrijk 2011.

149 Wijzigingswet Wet inburgering, *Stb.* 2013, 226.

150 Amsterdam Centre for European Law and Governance, Besselsen & De Hart 2014. In 2010, integration requirements already became a condition of *obtaining* permanent residency.

151 In face of the refugee crisis, the Dutch state translated the letters and websites about integration requirements, and the procedure for obtaining permanent residency and naturalization were translated in several languages, including English, Arabic and Farsi in 2015.

152 Participatieverklaring verplicht onderdeel inburgeringsexamen. Retrieved from Dutch government website: <https://www.rijksoverheid.nl/actueel/nieuws/2016/07/08/participatieverklaring-verplicht-onderdeel-inburgeringsexamen> [Accessed 31 May 2017]

153 1) Reading Dutch 2) listening Dutch 3) writing Dutch 4) speaking Dutch.

154 Wijziging van de Wet inburgering en enkele andere wetten in verband met de versterking van de eigen verantwoordelijkheid van de inburgeringsplichtige. *Stb.* 2012, 519.

for family migrants, this is never the case: they always have to pay this integration loan. The path to permanent residency and naturalization has thereby undeniably become more burdensome and conditional. Moreover, the new integration laws were presented with slogans such as ‘Make sure you belong!’<sup>155</sup> and ‘To stay is to participate’.<sup>156</sup> These slogans, as I see it, convey what became the new narrative behind the Dutch integration trajectory: TCNs must prove *their* personal integration by fulfilling a series of requirements prescribed by the receiving state, to *deserve to belong*. Secure residency and full rights are regarded as a privilege for those that can be deemed personally ‘well integrated’.<sup>157</sup> However, we have seen, integration trajectories started out as being non-punitive and available for both residing members of society and newcomers and were defended as supporting broader societal values and notions such as ‘social justice for all residents’ and ‘equal participation’.<sup>158</sup>

In the Netherlands the individualized concept of integration hence became highly visible. The eligibility of newcomers to be entitled to full legal membership rights became connected to a concept of individualized integration that must be personally achieved, without much outside help or public support. The political narrative behind the current integration trajectory is: first demonstrate that you can integrate, that is, that you are compatible with ‘Us’— then you may belong.

As stated, this Dutch history regarding integration policies does not stand on its own. For example, if we look at Austria we see similar developments. Though originating from heated political debates,<sup>159</sup> in 2002 the first version of the *Integrationsvereinbarung* stated that it aimed at offering TCNs sufficient knowledge of the German language ‘in order to be able to participate in the social, economic and cultural life in Austria’.<sup>160</sup> The first bill required the attendance of a subsidized (fully, if completed

155 Zorg dat je erbij hoort!, 2007. Retrieved from: <https://www.rijksoverheid.nl/documenten/brochures/2007/11/01/integratienota-2007-2011-zorg-dat-je-erbij-hoort> [Accessed on 31 May 2017]

156 Blijven is meedoen, 2015. Retrieved from: <https://www.rijksoverheid.nl/actueel/nieuws/2015/11/27/kabinet-blijven-is-meedoen> [Accessed on 31 May 2017]

157 Böcker & Strik 2011, 167. Note that the fact that the Dutch integration requirements abroad are explicitly targeted at non-Western immigrants shows that individualized standards of integration are most strongly applied to persons with non-Western backgrounds.

158 WRR, Albeda *et al* 1989, 10.

159 During these political debates, the far-right FPÖ already approached the necessity of integration requirements entirely through the individualized view. Amongst other things, the head of their parliamentary faction stated ‘We want to know within three years who came to Austria after 1998 is at all willing and able to integrate! [...] After three years, we must be able to ask those people who do not want to integrate why they are in this country in the first place. If they cannot answer, then it is clear what shall happen: they will no longer be allowed to stay here!’ The INTEC project, Perching 2010, 12.

160 Fassung vom 31.12.2002. BGBl. I Nr. 75/1997 zuletzt geändert durch das Bundesgesetz BGBl. I Nr. 134/2002; Verordnung des Bundesministers für Inneres über die Integrationsvereinbarung (IV-V). BGBl. Nr. 338/2002. Juli 2002. See also Permoser 2012, 185.

within one-and-a-half years) 100-hour integration course. By 2011, however, Austria had three different language tests and requirements, and today immigrants must pass a pre-departure test, a test after two years of residence and one after five years as a condition for the acquisition of a long-term residence permit. After entry, if the immigrant fails to pass the second test within two years, financial sanctions follow and eventually (allegedly) deportation. Moreover, according to this integration law, the government no longer provides for subsidized courses or materials.<sup>161</sup>

In France, in 1998 voluntary half-day classes for certain categories of newcomers (mostly non-Western family migrants) were introduced by the socialist Jospin government, which were replaced in 2003 by the *Contrats d'accueil et de l'intégration*, entailing 500 hours of French language instruction.<sup>162</sup> Today, passing the requirements of this 'integration contract' is obligatory for the renewal of residence permits, including obtaining a 10-year card that establishes permanent residency rights. In the political debate, this policy was defended with the argument that a newcomer (particularly if a family migrant) should be obliged to 'insert herself in our society'.<sup>163</sup> Also here, integration became a personal responsibility and condition for deserving to belong to the nation.

Paolo Cuttitta writes that Italy 'followed the example of other European countries' as well by shifting from 'structural integration of immigrants' to policies concerning *their* cultural integration including 'the acceptance of purported national and European values'.<sup>164</sup> Italy now requires residents with temporary residency to sign an 'integration contract' and meet a certain level of integration within a period of 2 or 3 years. If TCNs do not succeed, they are (allegedly) sanctioned with expulsion.<sup>165</sup> In the UK a comparable series of policy changes can be observed and academic commentators concur that Britain increasingly works with models of 'earned' citizenship for integration.<sup>166</sup> The growth of civic integration demands has also been clearly contemporaneous with a 'social downturn'.<sup>167</sup> This means that the number of integration demands to be eligible for social programs and welfare has been gradually increasing since the 1990s. On that account, the message that the UK increasingly communicates is that non-Western TCNs have to demonstrate a certain degree of integration to deserve unconditional citizenship and are strictly

161 Verordnung der Bundesministerin für Inneres, mit der die Verordnung über die Integrationsvereinbarung verändert wird. BGBl. II Nr.205/2011. See also Permoser 2012, 187.

162 Haut Conseil à l'Intégration (HCI) (2001). *Les parcours d'intégration*. Paris: La documentation française. See also Joppke also 2007, 2.

163 Haut Conseil à l'Intégration (HCI) (2003). *Le contrat et l'intégration*. Paris: La documentation française. See also Joppke 2007, 9; Goodman 2010a, 760.

164 E.g. Decree of the President of the Republic 179 of 14 September 2011 ("Regolamento concernente la disciplina dell'accordo di integrazione tra lo straniero e lo stato") See also Cuttitta, 2016, 289-290.

165 Cuttitta 2016, 290.

166 E.g. Byrne 2016, 12-13; Van Houdt *et al* 2010, 412-413; Kostakopoulou 2010, 935.

167 Baldi and Goodman 2015, 4.

not members of society with entitlements to social benefits before achieving this. Moreover, Bridget Byrne observes that the integration tests in the UK are, in my terms, clearly underpinned by the individualized conception of integration as they are meant to assess ‘a display of the suitability and propriety of potential citizens who have shown a commitment to learning and the potential to integrate’ and ‘are often regarded in popular discourse as a test of Britishness’.<sup>168</sup>

In Germany, in the parliamentary debates on formalized language requirements and other integration requirements in 2000 and 2007, politicians referred to naturalization as the end point of the process of integration and only available to those ‘who had obviously adapted to the German way of life’, or had ‘converted’ to Germany.<sup>169</sup> Moreover, in 2016 Germany altered its integration requirements once again after admitting over a million refugees to send the political message that obtaining permanent residency is not possible for refugees who do not integrate well.<sup>170</sup> In this context, minister Thomas Maizere (CDU) said ‘language, work and saying “yes” to our system of values: those are the three crucial factors for integration’.<sup>171</sup> Again, integration was defined as an individual condition of immigrants contingent on their characteristics, behavior and outlook *and* as determining their (legal) entitlement to stay.

Finally, in Denmark the conditions for naturalization also clearly became stricter since the 2000s.<sup>172</sup> To be more specific, the Danish language requirements for TCNs have been made more stringent in 2002, 2005, 2008 and 2013 and have been installed alongside with the obligation to sign a declaration of faithfulness and loyalty to Denmark as well as a citizenship test.<sup>173</sup> Remarkably, in 2011 a new government revised certain parts of integration requirements as it concluded that some of them had become overly restrictive. However, at the core, it did not abandon the shift to the individualized perspective of integration, as this government too emphasized it intended to send the signal ‘that foreigners [...] whose integration has been successful, can become Danish citizens. The requirements must be high, as Danish citizenship is something special [...]’.<sup>174</sup> Integration remained something to be assessed solely on the individual level and is described as the standard for TCNs to deserve to belong and be allowed to obtain citizenship.

168 Byrne 2016, 6.

169 Van Oers 2013, 75. These politicians belonged to the Union Parties (CDU&CSU) and FDP.

170 Paul Carrel, 2016, March 28, Germany wants refugees to integrate or lose residency rights. *Reuters*. Retrieved from: <http://www.reuters.com/article/us-europe-migrants-germany-integration-idUSKCN0WU147> [Accessed on 31 May 2017].

171 Janosch Delcker, 2016, May 25, Angela Merkel to refugees: Integration is a must. *Politico*. Retrieved: <http://www.politico.eu/article/angela-merkel-to-refugees-integration-is-a-must-germany/> [Accessed on 31 May 2017].

172 Howard 2009, 103.

173 EUDO Citizenship Observatory, Ersbøll 2015, 24-27.

174 EUDO Citizenship Observatory, Ersbøll 2015, 29.

This list of examples could be extended or described in more detail. And indeed, over the subsequent chapters I will repeatedly return to the different integration trajectories and requirements in above-mentioned Member States and others. However, for the purposes of this chapter I hope that I have clearly demonstrated the legal tendency played out in various Member States. And if we compare the shift in legal integration policies in Member States as described in section 3 with the conceptual shift on integration as expounded in section 2, we see that the parallel is striking. In a nutshell, the bulk of the changes in integration and citizenship policies in a growing number of European countries increasingly corresponds with the following framework: TCNs after arrival are perceived as non-integrated individuals that are positioned ‘outside of society’ and initially trigger only minor public responsibility. However, by their own effort, they may undergo a personal transformation and achieve a degree of ‘individualized integration’ that can and should be tested by obliging them to pass examinations that assess their loyalty, behavior and knowledge of the receiving state’s language(s), history, values and political institutions. Put differently, increasingly, integration measures monitor, one might say, a *test phase* in which TCNs should invest in and demonstrate their personal integration (i.e. prove their compatibility to a fixed and idealized image of their receiving society). And if they succeed, they have individually managed to become integrated, ‘to stand inside society’, earn their rights and to deserve to belong.

Through this conceptualization, several trends in the integration policies of multiple European countries become understandable. Take the tendency in Member States to increasingly threaten TCNs with the loss of residency rights when they fail to fulfill integration conditions. This is a logical result of the political narrative that only those TCNs that personally integrate deserve secure residency and equal rights. After all, if that is the case, the ultimate consequence *must* be that those TCNs that fail to personally integrate (and are deemed incompatible with society) must leave the territory. Otherwise the political narrative that only integrated persons deserve belonging makes little sense.<sup>175</sup>

Furthermore, the trend to limit the access of TCNs that are in their ‘test phase’ to integrate to social benefits<sup>176</sup> is also merely a coherent decision for governments operating within the framework predicated on the presumption that only integrated immigrants belong to society. The rejection of the Dutch state of public responsibility for offering state-funded integration schemes to prepare for integration tests can also be apprehended in this context. There is no reason, in the sense of a public responsibility (except for charity) to spend public money on or provide social security to TCNs that still have to demonstrate their capacity to ‘fit in’.

175 Of course, the actual expulsion of TCNs is virtually always blocked by constitutional and EU norms, but this is only scarcely highlighted in public debate by legal experts and does not strongly affect the symbolism behind these integration policies. Permoser 2012; Van Klink 2016.

176 Hampshire 2013, 113.

Rather, in fact, any investment in TCNs who might turn out to be unwilling or incapable to integrate is an unnecessary financial risk. It remains to be seen whether they manage to integrate, which is *their* personal condition (and, with that, responsibility). On top of that, given that secure residency, citizenship and the right to belong should be earned; there is nothing wrong with asking *them* to carry this financial burden.<sup>177</sup>

Lastly, integration requirements and education are in Member States increasingly exclusively aimed at non-EU newcomers in society that can be obliged to integrate on pain of punitive measures. From a holistic perspective, this is not most pragmatic: if already naturalized immigrants (an ‘old comer’) might also benefit from language education, there is no reason to limit their access to an integration trajectory. However, if integration is individualized and is associated with deserving a right to belong, the focus of integration policies automatically shifts to TCNs who have not yet obtained secure residency rights. Only they can be compelled to integrate to obtain increased rights or supposedly send ‘back’ to their country of origin (even though in practice this is prevented by EU and international law).

To fully pin down this analysis, I briefly return to the Netherlands as the European forerunner in this field of public policy. In the Dutch case, I believe that the difference between the mandatory integration *courses* that were enacted in 1998 and the mandatory naturalization *test* enacted in 2003 deserves close attention. While most commentators date the rise of the ‘about-face’<sup>178</sup> by the Dutch state regarding integration to 1998 — quickly followed by other European countries — I believe the conception that I highlight, which perceives integration as a personal condition for being entitled to belong to the fixed ‘moral community’ of ‘society’ that is ‘Us’, actually became dominant in and after the 2003 reforms. This reform made passing the naturalization test a *prerequisite* for legal inclusion and inaugurated a tendency in which individual migrants with non-EU origins must *deserve* the privilege to be a member of ‘society’ based on individualized integration standards. ‘If you integrate, you may stay’ became the central message behind integration requirements, particularly directed at non-EU immigrants from non-Western countries. This was, to be sure, not an implicit or tacit policy change. Rather, it was publically announced that the perspective on integration became that naturalization should be seen as ‘the ‘first prize’<sup>179</sup> for those who integrated. Furthermore, not long afterwards, in 2006 the Netherlands was also the first country to implement the ‘integration requirements abroad’ for family migration. In parliament, the Dutch government described these requirements, we

177 The same is true for only offering information about integration requirements in Dutch. In principle, TCNs have to manage to understand e.g. the official letters they receive, while there is little public responsibility on the side of the receiving state to accommodate the integration of TCNs that still stand outside of society.

178 E.g. Spijkerboer 2007; Kostakopoulou 2010.

179 Van Oers 2013, 51.

have seen, explicitly as ‘selection criteria’ with the purpose not to admit those who fail them, to restrict the immigration of ‘non-integratable’<sup>180</sup> migrants. This last ambition and formulation, in my view, clearly demonstrates the individualized perception of integration, in which instead of society, individual persons can (and must be) integrated. If one speaks of the degree of the ‘integrability’ of persons, the shift to the individual conception of integration is simply complete. And indeed, since then, virtually all of the changes in integration requirements in the Netherlands — which changed no less than ten times since 2007 — have heavily relied on the individualized interpretation of integration. Consider, again, the fact that from 2007 onwards Dutch integration programs were not made available anymore for immigrant citizens (who already possessed secure rights). This shows that the focus of integration policies indeed shifted from supporting societal integration towards regulating admission by measuring whether immigrants deserve to belong. And in a similar vein, other Member States also gradually shifted the focus of their integration requirements towards the question: how to assess whether individual immigrants have ‘integrated enough’ to merit secure residence and/or citizenship?

Finally, it is important to highlight that the individualized perspective on integration also manifests itself in how European states interpret the outcomes of their integration trajectories. In the Netherlands, for example, research indicated that only 50% of the TCNs that started with their prescribed ‘test phase’ in 2013 completed all the integration requirements in 2016 (so within their three-year deadline). Refugees, it turned out, were relatively unsuccessful: of this group only around 30% managed to fulfill their integration duty within the given timeframe.<sup>181</sup> Although the press gave a lot of attention to these statistics, they did not result in the Dutch government revising and improving the Dutch integration trajectory. In principle, the TCNs that failed the integration requirements must still find and pay their own education, retake their exams, receive fines and are deemed as not deserving access to permanent residency (yet). Moreover, the Dutch liberal party (largest party in cabinet and also winner of the 2017 parliamentary election) merely re-emphasized that permanent residency and citizenship should be *earned* and promised to find legal ways to circumvent existing EU and constitutional laws that prevent deportation and proceed to actually expel TCNs that fail to fulfill the integration conditions, as soon as possible. In addition, it proposed to add another integration requirement to the Dutch integration trajectory: TCNs should also find a job (including the possibility of volunteer work) in order to obtain permanent residency.<sup>182</sup>

180 International Centre for Migration Policy Development, Scholten *et al* 2012, 10.

181 Algemene Rekenkamer 2017, 28.

182 ‘Integratie Agenda VVD’ [Integration Agenda VVD]. Retrieved from: <https://vvd.nl/content/uploads/2017/02/VVD-Integratie-Agenda-Malik-Azmani.pdf> [Accessed 31 May 2017].

Also in Denmark, it was recently confirmed that only 31.2% of the newcomers that took the Danish citizenship test in June 2016 passed it. Not long after, the responsible Danish minister repeated once more that the low passing rate indicates that being Danish is ‘very special’ and that ‘citizenship is something you have to earn’.<sup>183</sup> Hence, also here, low passing rates of integration requirements and citizenship tests are not discussed in terms of *societal* (collective, functionalist) integration — even though the newcomers that have failed their exams remain physically present in society — but instead as *integration* problems of TCNs who do not belong, which is laid bare by well-constructed integration policies.

#### 4. Conclusion

In this chapter, I demonstrated that the recent and ongoing proliferation of mandatory integration requirements for TCNs in Europe testifies to a broader conceptual shift regarding the notion of ‘integration’ in Europe. First, I described the EU directives and domestic laws relevant for the integration requirements that many European countries adopted. Second, I addressed an underlying conceptual shift in the public understanding of integration in Europe that, I argue, must be taken into account to fully grasp the mechanisms behind the observed growth of legal integration requirements. In closing, let me review the three main consequences of these developments.

First, a notion of individualized ‘integration’ became the standard for persons with (non-Western) immigrant backgrounds for determining their *compatibility with and belonging to* society. This consequence is implicitly rooted in the idea that personal integration is quantifiable and measurable and can be achieved in a prescribed time period. However, at the same time, the exact traits of a person who may be considered to be an ‘integrated individual’ compatible with society are often redefined.<sup>184</sup> On occasion, we have seen, it entails not having certain religious orientations or not engaging in certain religious practices. At other moments, it (additionally) entails acquiring certain language levels or demonstrating certain behavior or adhering to certain (liberal-democratic) convictions. In any event, standards of individual integration are only applied *selectively* as citizens without immigrant backgrounds are not demanded to meet them. As a result, solely TCNs and citizens with (non-EU, non-Western) immigrant backgrounds are perpetually evaluated as being personally integrated or not-integrated and hence judged as standing either within or outside of society.

183 Dan Bilefsky, July 2016, Denmark’s Tougher Citizenship Tests Stumps Even its Natives, *New York Times*. Retrieved from: [http://www.nytimes.com/2016/07/08/world/europe/denmark-citizenship-test.html?\\_r=0](http://www.nytimes.com/2016/07/08/world/europe/denmark-citizenship-test.html?_r=0) [Accessed 31 May 2017].

184 See also Chapter 3, p. 104-106.

Second, the conceptualization that ‘integration’ is a condition of individuals (and not of the society as a whole) facilitates a tendency to interpret the relationship between European states and TCNs and citizens with non-EU immigrant backgrounds as *contractual*.<sup>185</sup> This is the case, because it is counterintuitive and infeasible to expect from individual TCNs to completely guarantee and uphold successful societal integration. However, it is imaginable to (contractually) demand the deliverance of individualized integration seen as a personal condition, particularly when the state delivers secure residency and citizenship rights in return. As a result, we have seen, several European countries including France, Italy and Austria explicitly require arriving TCNs to sign integration contracts that lay down the requirements (oaths, tests, etc.) newcomers must pass to eventually acquire permanent residency and/or citizenship.<sup>186</sup> But also in other EU countries, the notion that ‘new immigrants accept the responsibilities that need to be undertaken in order to acquire national citizenship’<sup>187</sup> has become an important aspect of integration regimes. Citizenship is increasingly seen as a reward that needs to be contractually ‘deserved’ or ‘earned’ by TCNs by performing growing series of duties, tasks and investments that prove individual integration.

However, legally seen, based on EU law the integration requirements for family migration and permanent residency must have inclusionary effects. For this reason, the contractual discourses surrounding integration policies that suggest that obtaining increased rights for immigrants becomes more conditional on certain efforts and investments, are increasingly strained, or even at odds, with the stated inclusionary objectives of the Family and LTR Directives, which in fact *limited* the control of Member States regarding the regulation of family migration or permanent residency rights that TCNs are entitled to.<sup>188</sup>

Finally, the trend to understand integration as an individualized condition that can be demanded and instrumentalized within immigration and citizenship policies, creates disorientation and confusion about how to *evaluate* the quality of integration policies. If integration requirements are built on a more collective perspective on integration, they are enacted to further broader (emancipatory) societal goals — such as reducing social distances or stimulating equal participation. Therefore, the method to assess

185 Several academic commentators observed that in Europe there are salient broader tendencies in public debate and policy shifting to ‘contractualize’ the citizenship of immigrants. See e.g. Somers 2006, 2; Joppke 2010a, 60; Kostakopoulou 2010a; Van Houdt et al 2011; Suvarierol & Kirk 2015.

186 To be sure, David Miller has developed a ‘quasi-contractual approach’ to integration in his theoretical work. See e.g. Miller 2008, 373. In his analysis he uses the notion of a ‘contract’ as exhibiting the same duality as ‘integration’, in the sense that it can be understood as a ‘social contract’ that covers *all members of society* and that enshrines norms of reciprocity. However, this differs from the ‘contractualization’ I observe here, which entails that newcomers have to *individually* prove that they are deserving to belong and to earn secure rights.

187 Suvarierol & Kirk 2015, 250.

188 Permoser 2012, 197.

the quality of such policies is quite straightforward: if one is concerned with fostering certain social mechanisms, it follows that integration policies should be evaluated based on careful empirical research exploring whether they in fact promote or jeopardize these specified mechanisms. So if it, for example, turns out that certain integration requirements clearly hamper the inclusion of TCNs into the labor market, or that much better outcomes could be achieved through alternative public integration strategies, the policies should be assessed as counterproductive and altered.

However, the new integration policies in European countries are based on individualized conceptions of integration and focus on something else, namely on whether individual TCNs *deserve to belong*, and so measure success or aim to prevent undeserved access to belonging. But the pursuit of this goal — limiting belonging to those who earn it — can (paradoxically) conflict with broader societal goals, for instance when integration requirements become burdensome and exclusionary. Nonetheless, since European states shifted to an individualized perspective of integration, most of their governments (can only) respond to disappointing outcomes of integration policies through individualized integration rhetoric. Yet at the same time, it takes little common sense to see that counterproductive integration requirements — or requirements that evidently do not enhance societal integration outcomes as effectively as other institutional configurations would — are a missed opportunity for receiving states to facilitate the successful incorporation of immigrants into their societies. Put differently, it will only be a matter of time before the alleged personal integration problems of TCNs who do not deserve to belong, will result in broader societal problems, not in the least because the TCNs that fail to integrate are not actually deported but will remain members of society, albeit with precarious legal rights. Nevertheless, by shifting to personal integration standards, Member States have lost their method to effectively adjust their integration requirements based on their factual impact on societal goals. Rather, they now constantly modify their integration policies based on the question: have TCNs *integrated enough* to deserve to belong?

Having described both the legal and conceptual trends regarding integration and integration policies in EU Member States, the task for the remainder of this dissertation is to engage in a normative evaluation of these trends. Are these policies consistent with basic principles of justice and democracy? Do they pursue legitimate aims, using legitimate means? To help answer these normative questions, I will look at three separate bodies of literature in normative political theory, each of which has addressed (if only in passing) or is able to address integration policies: the ethics of migration literature; the liberal nationalism literature; and the social equality literature. As we will see, each offers some valuable insights into the normative dimensions of these policies, but I will argue that none offers a complete and satisfactory account. I begin in the next chapter by engaging with literature on the ethics of migration.