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**Conditional belonging**

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

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## Chapter 2

# Integration Requirements and the Ethics of Migration

In the previous chapter, I clarified the legal frameworks of integration requirements as conditions for attaining increased rights for TCNs in a growing number of Member States. In addition, I discussed a conceptual shift in Europe regarding the notion of ‘integration’. This shift involved that ‘integration’ became increasingly understood as an individualized condition that (non-EU, non-Western) immigrants and their descendants must personally achieve to deserve to belong to their societies, instead of a condition pertaining to the society as a whole. I argued that this conceptual shift has fortified and continues to fuel the observed increase of (mandatory) integration requirements for TCNs in EU states.

My next aim is to find appropriate moral vocabularies and concepts to analyze the legitimacy of the European proliferation of integration requirements and its conceptual underpinnings. In the following three chapters, I will explore several strands of academic literature that might be useful. In this chapter, I begin with the ‘ethics of migration’ as this theoretical academic scholarship has engaged directly with integration requirements for citizenship rights. For this reason, commentators within the ethics of migration literature have also been quick to notice and comment on the recent rise of integration policies in Member States as described in the previous chapter. For example, in 2010, the *European Union Democracy Observatory on Citizenship* published a much-cited EUI Working Paper on the question whether citizenship tests can be defended from a ‘liberal’ perspective.<sup>189</sup> In that Working Paper, Joseph Carens<sup>190</sup> and Dora Kostakopoulou<sup>191</sup> were invited to contribute as well-known political theorists engaging in the ethics of immigration and commenting on border controls and the formation of citizenship laws. Furthermore, social scientists working on the integration requirements in different Member States regularly quote migration

189 EUDO Citizenship Observatory, Bauböck & Joppke, 2010.

190 Carens 2010. See also e.g. 1987, 2013.

191 Kostakopoulou 2010b. See also e.g. 2008, 2009, 2010a.

theorists including Carens and Kostakopoulou to complement and interpret their empirical findings.<sup>192</sup>

Nevertheless, in this chapter I argue that the ethics of migration is ill equipped to reveal, discuss and normatively evaluate most of the legal, political and societal effects of the proliferation of integration requirements for TCNs in Europe as described in the previous chapter. I explain, first, that the lion's share of the ethics of migration literature focuses on two key decisions: decisions about who, under which circumstances, is to be admitted (border control, or territorial admittance) and decisions about who, under which circumstances, can obtain citizenship (naturalization, or civic admittance). In effect, this literature therefore only evaluates policies based on their impact on initial admission and naturalization. However, as we saw in Chapter 1, the novel mandatory integration requirements for family migration and permanent residency in EU Member States formally do not *select* individuals for immigration and secure residence. Rather, these requirements are targeted at TCNs who already have a (legal) right to reside (predominately based on either family migration or asylum) and must facilitate their integration. Moreover, in relation to naturalization, European countries already had integration requirements for citizenship for decades and the ethics of migration commented on those. To fully understand what is at stake in the EU in relation to the significant growth of integration requirements for all types of rights, it is hence not sufficient to solely revisit those existing arguments.

Second, I observe that the ethics of migration centers on abstract questions about whether states have legitimate rights to regulate admission and naturalization and often question whether those rights exist at all. As a result, this literature all too often challenges the legitimacy of the very structure of sovereign nation-states, which is legitimate, but does not address the specificities of real-world state politics and the practical consequences stemming from integration and residency policies such as those that exist in Europe today. Accordingly, I argue, migration theorists have left important questions triggered by the ongoing growth of integration requirements in Member States unsolved.

To demonstrate this, I first sketch the main issues, key questions and research approaches found in the ethics of migration literature. Subsequently, I show that the aspirations and research agenda of this literature and the normative questions generated by the (mandatory) integration requirements in EU Member States are not aligned with each other. Ultimately, I argue that the ethics of migration, though valuable on its own, is unable to provide meticulous and context-sensitive normative analysis on the growth of prescribed integration trajectories for TCNs in multiple European countries.

But before I begin, I wish to emphasize that the analysis in this chapter does not imply that the ethics of migration does not raise valid or urgent questions. On the contrary, I believe it to be crucial and academically

192 See e.g. Van Oers 2013; Hampshire 2011.

fully legitimized for political theorists to only focus on questions regarding immigration and naturalization, or to fundamentally rethink the status quo. However, the point that I want to make is that if we limit our assessments of integration requirements for TCNs in Member States to only applying the theoretical endeavors of the ethics of migration, we overlook some of their most normatively salient features. On that account, the main contribution of this chapter is that the ethics of migration is not as helpful as it is often perceived to be, particularly in its suitability to evaluate the proliferation of integration requirements for immigrants in Europe over the last two decades.

## 1. The Ethics of Migration

This section expounds the broader contours of scholarship on ethics of immigration. This review is not meant to be an exhaustive summary of the literature, but to sketch the type of questions raised and arguments presented that characterize the purposes and methodological framework of this field of academic research. This is sufficient, I believe, to explain why the ethics of immigration is generally unable to reflect on the normative intricacies of the integration requirements for TCNs in Member States.

The ethics of migration is a field of academic research that started growing rapidly since the 1990s. Commentators engaging in it repeatedly observe that, traditionally, modern Western political philosophy concerning the limits of legitimized state power has given relatively little attention to the phenomena of international migration, if compared to the attention given to the relationship between the state and its citizens and internal societal affairs.<sup>193</sup> Questions that have been raised are: If all persons are of equal worth, should the government be democratic or oligarchic? Is direct democracy better than representative democracy? What does social justice imply? And so forth. To substantiate this observation, migration theorists often refer to well-known classical texts by Thomas Hobbes (*Leviathan* in 1651) and John Stuart Mill (*Considerations on Representative Government* in 1861), in which issues related to immigration receive no mention at all. And if we move forward in time, also justice thinker John Rawls decided in his books (*Theory of justice* in 1971, *Political Liberalism* in 1999) to conceive society ‘for the time being’ as a ‘closed system isolated from other societies [...] of which the members only enter by birth and

193 See e.g. Carens 2013; 298, Kymlicka 2001b, 249-75; Abizadeh 2010, 148-149; Miller 2016, 13, etc. Arguably, however, this claim is overstated as through history several theorists did reflect extensively on immigration. Most famously, Immanuel Kant discussed in his essay *Perpetual Peace* (1795) the principle of ‘cosmopolitan right’ that requires those who arrive on the territory of a foreign state to be received without hostility. But also others in the historical scholarship on natural law, such as Vitoria and Grotius discussed migration. See e.g. Cavallar 2002. For example, Grotius defended in 1615 that it would be barbaric and ‘unnatural’ to repulse foreigners. See Meijer 1955.

leave by death'.<sup>194</sup> As a result, most of Western political philosophy is explicitly or implicitly grounded in the presupposition that those who form the citizenry of a political community is already established and fixed.<sup>195</sup>

Nonetheless, at the same time, migration theorists note, it is commonplace to also mention that it is of course a fiction that political communities are closed. There is, and always has been, a great deal of movement across borders, and the boundaries of citizenship are never equivalent to the borders of the state.<sup>196</sup> And from that perspective, the fact that most established theories of justice do not provide comprehensive reflections on how states can justly decide upon how to form the demos, or upon how to justly enable or limit the international movement of people, is surprising. Justice theories often state to have the ambition to develop plausible political philosophies grounded in the assumption that all *persons* are of equal worth and deserve equal concern and respect. As a result, it seems that these justice theories are incomplete if they lack extensive reflections on the conditions under which states may prioritize *citizens* over *non-citizens*.<sup>197</sup> So this begs the question: are the assumptions of Western theories of justice grounded in territorial jurisdictions and bounded groups of citizens actually defensible, or are they based on 'contingent psychological and historical circumstances rather than moral principle'?<sup>198</sup> If the latter is the case, not only the involved justice theories are less plausible, but also real-world states proclaiming to adhere to these justice theories struggle with a chronic internal tension. Their public and political institutions are perceived as legitimate based on *universal* discourses of human dignity and fundamental rights, while they simultaneously operate through *confined* theories of citizenship based on the concept of a state with a territory to which only a small fragment of the total world population has access.<sup>199</sup>

That said, at the end of the last century, in the face of globalization, mass migration and the increasingly multicultural fabric of modern societies, a growing group of (predominately liberal) migration theorists picked up the challenge to reassess the assumptions of Western justice

194 E.g. Rawls, 1971, 12.

195 The examples I list are known as more liberal thinkers, but socialist, communitarian and libertarian theories of justice also rely on the concept of pre-established states with bounded groups of citizens.

196 If we focus on Europe alone, statistics show that in 2014 34,3 million people born outside of the EU were living in a EU Member state, while there were 18,5 million persons who had been born in a different EU Member State from the one where they were resident. A total of 3,8 million people immigrated to one of the Member States in 2014: 1,5 million came from non-member countries; 1,6 million had citizenship of a different EU Member State than the one to which they migrated; 870 thousand people returned (home) to a EU Member State of which they had citizenship and 12,4 thousand were stateless people. In 2015 1,3 million migrants applied for asylum in a EU Member State, while this number dropped sharply after the installation of the Turkey Deal in March 2016, which serves as a deterrent for migrants to travel to the EU. See PewResearchCenter 2015, Connor.

197 Kymlicka 2001a, 249.

198 Young 2002, 241.

199 Arendt 1951, Chapter 9.

theories in relation to the legitimacy of states separating ‘political insiders’ from ‘political outsiders’.<sup>200</sup> So far, this literature mainly evolved around two issues. The first one is the question of *immigration*, so under which conditions a state is allowed to control its *territorial* borders. Is a foreigner permitted to immigrate, for instance, simply with the ambition to build up a new life in a new country? The second one is the question of *civic* borders, that is, *naturalization*, so under which conditions must residing immigrants be given the opportunity to become full political members and national citizens of the state. I will summarize a selection of key arguments on both subjects that have been put forward in the ethics of immigration.

### Immigration

If at all, political theorists tend to briefly claim in their theories of justice that a state should have nearly total, or at least a wide range of, political discretion to unilaterally regulate under what terms foreigners may cross its territorial borders. Given states’ right to self-determination, these statements run, states should also have the freedom to almost completely further their own interests in relation to outsiders. Based on this viewpoint, for instance Michael Walzer holds: ‘Across a considerable range of decisions that are made, states are simply free to take in strangers (or not).’<sup>201</sup>

The ethics of migration mainly consists of arguments that criticize this outlook.<sup>202</sup> But before I turn to these arguments, it must be noted that there are two types of immigrants on which there exists consensus among commentators that ethics of migration should not permit any restrictions on their admission: those of refugees and of family migrants.<sup>203</sup> Across the board, refugees are held to enjoy a special status in immigration policy because any minimal legal bond has been severed between them and a legal order or political community.<sup>204</sup> In reflections on family migrants, the normative question of admittance is often sidestepped by perceiving their inclusion not so much as a question of *migration* but of meeting the interests or subjective of right of residing members of society, whose question of membership has already been settled by birth or earlier migration. The assumption is then that people have a vital interest to be able to live with their immediate family, which creates an obligation for the state to admit immigrants not so much derived from the position of

200 E.g. Carens 1987; Singer 1993, 247-63; Pogge 1997.

201 Walzer 1983, 61. For a more recent and extensive defense, see Wellman 2008.

202 Later in this chapter, on p. 69-70, I do return to an argument that defends border controls based on the empirical concern that receiving countries cannot manage to receive certain numbers of immigrants, while simultaneously protecting their e.g. national culture, welfare state and/or economy.

203 This assumption thus corresponds with the human right treaties and EU laws that enshrine the right to admission and residence for family migrants and refugees.

204 E.g. Walzer 1983; Miller 2016, chapter 5; Ypi 2008; Pevnick 2011; Carens 2013, 195; Oudejans 2010.

those who seek to join, but from those who seek to be joined.<sup>205</sup>

However, if these two types of immigration are set aside, the migration literature that challenges the proposition that states may broadly control their borders as they see fit, can be roughly summarized in three arguments. The first focuses on vast global inequalities between states in the world, the second defends the importance of an (international) human right of freedom of movement and the third addresses the procedural-jurisdictional question *who* has the legitimized authority to determine immigration laws.

The first argument centers on global inequalities and more particularly on severe poverty ('global inequalities argument'). It holds that rich states have a duty to assist people in poor states and, crucially, that this duty under certain circumstances *overrides* the rights of rich countries to control their borders given the fact that immigration restrictions prevent the underprivileged people in the world from improving their lives.<sup>206</sup> However, these scholars tend to disagree on how extensive this duty is. Some argue, from a fundamental egalitarian view, that rich states have a duty to help people in poor states to achieve some form of distributive equality that is comparable with their own citizens.<sup>207</sup> Others argue that rich states should guarantee poor states to reach a 'sufficient' level of well-being, for instance by assisting them in realizing the minimal level of needs for food, medical care, and the like.<sup>208</sup> That being so, as Veit Bader accurately observed, both analyses are underpinned by the idea that citizens of underprivileged countries can legitimately demand more prosperous states to 'open their wallets, or open their borders'.<sup>209</sup> Note that this slogan shows that the global inequality argument does not normatively rule out immigration restrictions, but holds that if rich states fail to meet their duties towards the global poor, these poor people have a *remedial* right to cross international borders.<sup>210</sup>

The second argument is more straightforward and challenges border controls as they restrict the people's freedom of movement ('freedom of movement argument').<sup>211</sup> This argument entails that freedom of movement should, in principle, be granted to everyone.<sup>212</sup> Theorists defending this argument often start with highlighting the importance that is generally given to the right of freedom of movement *within* the territorial borders of a state. Most people would, for instance, find it objectionable if a Frenchman would be forbidden to move from Annecy to Paris, in particular if there are better life opportunities there in terms of jobs or for

205 E.g. Carens 2013, 157; Ypi 2008.

206 See Bader 2005, 342-4; Carens 1992, 26-47; Goodin 1992, 7-9; Kukathas 2005, 211.

207 Beitz 1999, 125-76; Caney 2005, 102-47; Pogge 1989, 240-80.

208 Blake 2001; Miller 2005, 163-200.

209 Bader 2005, 341.

210 Kymlicka 2001, 271; Miller 2005, 195-6; Walzer 1983, 48.

211 Carens 1992; Cole 2000.

212 Hence irrespective of e.g. the economic inequalities or equality between countries.

personal reasons. Moreover, a human right to *domestic* freedom of movement is listed in the Universal Declaration of Human rights and in other international rights documents.<sup>213</sup> On that ground, defenders of freedom of movement assert that normative consistency demands that *if* freedom of movement is important because it gives people access to a range of life options (jobs, persons to marry, access to certain associations) *then* a right of international freedom of movement should be recognized alongside the right to domestic freedom of movement.<sup>214</sup>

Nonetheless, theorists who advocate this line of thought generally do not hold that this international freedom of movement should be regarded as absolute right. Instead, they argue it should be seen as a basic right that — just as other basic rights — may be outweighed by the protection of other basic rights, for instance if severe social or public costs cannot be prevented otherwise. After all, for the same reason, the domestic freedom of movement is also not absolute. It is often forbidden to trespass privately owned land and landowners at times lose their property rights when, for example, a public railway is being built. However, in these cases, respecting individual basic freedoms is for states the *default decision*, while they have to *justify* when they decide to restrict individual freedoms. Analogously, theorists that defend the ‘freedom of movement argument’ argue that borders should *in principle* be open (as immigration restrictions clearly restrict the freedom of individuals) unless forms of border control can be reasonably legitimized for the sake of enhancing basic liberties themselves.<sup>215</sup>

The third argument that challenges traditional conceptions of migration regulations is formulated by Arash Abizadeh and relies on the normative principles of democracy (‘democracy argument’). In its conceptual form, it differs from the two arguments against current border controls summarized above. The democracy argument does not substantively balance moral arguments, but touches on the *procedural* political question of who is legitimately allowed to exercise the political power to enforce immigration controls. In other words, it does not reflect upon the best normative arguments that should guide existing state’s border policies, but challenges under which conditions a state is legitimized to determine border policies at all.

According to this argument, people subjected to political power must also, in some sense, be the author of the laws through which this if parts of the electorate disagree with certain political decisions, as all subjected citizens were able to participate in the procedures of making these laws. However, Abizadeh asserts that this line of reasoning has politically a radical outcome when it comes to the creation of the laws that regulate border control, as this is a unique exercise of political power. It raises a, so to say, pre-political question (i.e. a question that precedes political deliberations of

213 Art. 13 of the Universal Declaration of Human Rights (non-binding) and art. 12 of the International Covenant on Civil and Political rights (binding).

214 E.g. Carens 1987, 258; Dummett 1992, 173.

215 See e.g. Bader 2005, 339; Schotel 2013, Bauböck 2009,12; Carens 2013, 227.



an established demos on specific issues) how to determine the boundaries of the political community, which greatly affects both citizens and non-citizens:

*Constituting and enforcing them [territorial boundaries against foreigners — TdW] always necessarily subjects both insiders and outsiders to the exercise of political power [...] The question is how to democratically legitimate such an exercise of power, which subjects individuals to state power in the very act of constituting them as noncitizens who are deprived of the associated civil, social, or political rights.<sup>216</sup>*

To prevent this democratic deficit, Abizadeh concludes, ‘cosmopolitan or transnational political institutions should be adopted’<sup>217</sup> that give voice to both citizens and foreigners. The inner logic of democracy dictates that both these groups are entitled to participate in the democratic procedures that determine immigration laws as both are subjected to their coercive political powers.

These three arguments (against the general assumption that states can control their borders as they see fit) all received specific and extensive replies. For instance, Kieran Oberman gave a powerful reply to the global inequalities argument. In his opinion, the slogan ‘open your wallets, or open your borders’ is wrong. It permits rich states to *choose* for an immigration-based solution to neutralize the economic injustices done to people in poor states, while the poor are then *forced* by poverty to immigrate to obtain their just entitlements. To address global poverty using immigration is therefore to commit an injustice, coined by Oberman as a failure to protect people’s ‘human right to stay’ in their own home state. The conclusion is that, in face of global inequalities, rich countries should not have an *equal* choice to open either their borders or wallets. Rather: ‘If rich states can, without severe cost, assist poor people in their home states, then rich states must do so.’<sup>218</sup> In reply to the freedom of movement argument it has been observed that it can also endorse a ‘remedial only conception’.<sup>219</sup> This entails that if persons can enjoy a wide range of opportunities in their own country (so without moving), they do not have a reasonable claim for a right to free movement. Along these lines, David Miller for example observes that ‘liberal societies in general offer their members sufficient freedom of movement to protect the interests that the human right to free movement is intended to protect’.<sup>220</sup> Miller also criticizes the democracy argument by Abizadeh and challenges the proposition that border controls are ‘coercive’ in such a sense that they

216 Abizadeh 2008, 158.

217 Abizadeh 2008, 160.

218 Oberman 2011, 253.

219 Bauböck 2009, 6.

220 Miller 2005, 195.

give rise to democratic entitlements. In short, Miller argues that although border controls may restrict individuals' autonomy and be coercive, they can also be acts of 'prevention'. In this picture, the difference between coercion and prevention is that coercion involves forcing an individual to do a relatively specific thing, whereas prevention forces a person not to do some relatively specific thing (entering a particular country), while leaving other options open (living in other areas).<sup>221</sup>

Nonetheless, on the whole, the most common response to all three proposals for less restrictive migration regimes — also in public debate — is the apprehension that (rich) states may be forced to open their borders to unfeasible degrees. This concern entails that a (rapid) influx of immigrants may diminish the sense of national solidarity that is necessary to sustain liberal democratic ideals, for instance by upholding a form of nationhood that gives citizens a sense of collective belonging and enables them to participate as equals in democratic deliberations and societal life.<sup>222</sup> Within these arguments, immigration is not described as inherently problematic. Instead, the question of the desirability of immigration is approached through an instrumental perspective. Certain *levels* of immigration to (prosperous industrialized) states are taken to be unacceptable, if it would make it impossible for this state to uphold a certain X. This X then can be the welfare state, the national economy, national culture and the state capacity to protect the civil and social rights of citizens.<sup>223</sup> This concern thus in principle does not refute the substantive moral analysis of for instance the freedom of equality or global inequalities arguments, but emphasizes that normative weight should be given as well to the *manageability* of states to receive immigrants. No state can be normatively bound to adopt immigration policies leading to its collapse, or to the collapse of its welfare system, economy, etc. Moreover, destroying the capacity of states to function would eventually also offer no relief for the prospective immigrants. As a result, debates on border controls often quickly shift from a normative debate towards more empirical discussions about what levels of migration would be, positively, unobtrusive or even profitable for a receiving country, or, negatively, push it towards the threshold of breaking down its social cohesion, economy, welfare rights and so forth.

Within this approach, a couple of thresholds need to be settled to evaluate the desirability of migration. First, it is required to settle in which circumstances the admittance of immigrants would indeed disrupt the stable continuation of a specific (liberal-democratic) state and its capacity to function and uphold its commitments towards its citizens. Second, it should be sorted out whether there are perhaps forms of public policies available to counterbalance certain potential negative effects of

221 Miller 2010, 114.

222 David Miller for example argues that a common national culture is required to generate the levels of social cohesion necessary to implement a just distribution of resources. See Miller 1995, 24-9.

223 See e.g. Isbister 2000.

immigration, such as public programs combatting spatial segregation, providing effective integration programs, or protective welfare regulations.<sup>224</sup> However, answering these questions is a complicated task. This is difficult, in part because characteristics of societies always change over time. After all, even if we put the phenomena of international migration aside, all modern (European) countries have changed significantly over the last 100 years due to technological revolutions, reformed wealth distributions, alterations in demographics, economic prosperity, processes of emancipation and broader cultural modifications of lifestyle and religious traditions.<sup>225</sup> So under which circumstances can we say that specifically an increase of immigrants cardinally and dangerously disrupts the foundational *structure* of a particular nation-state and when can we say that it leads to changing some of its *characteristics* in a non-injurious and manageable manner?<sup>226</sup> Unsurprisingly, opinions on such tipping points vary greatly.

### Naturalization

After an individual has crossed the *territorial* borders of a state, the next question that arises for migration theorists is under which conditions an immigrant should be able to cross its *civic* borders as well, that is, to 'naturalize' to become a national citizen. We have seen that considerable disagreement exists between scholars regarding the question why to admit immigrants in the first place. However, regarding the question of naturalization, thus how to legally treat immigrants that are already present on the territory, a remarkable consensus exists (for political theory standards). This consensus entails that residing immigrants should not perpetually remain excluded from citizenship and should have the option to naturalize sooner or later. Views do vary on *when* and *how* naturalization should be possible, but not on *whether* it should be obtainable at some point. Importantly, the stipulation that is generally made is that this argument only applies to long-term immigrants, so those who are - or eventually become - 'permanent settlers' and reside within a territory for an extended period of time, not to those who are obviously 'guests', such as tourists and exchange students.

Different versions of this argument can be found in established scholarship.<sup>227</sup> Nonetheless, its general rationale resonates with the analysis of Abizadeh on the democratic legitimacy of border controls. The heart of the argument is that liberal democracies, based on their own inner moral logic, should treat all permanent members of society that are

224 Holtug 2010.

225 Scheffler 2007.

226 Wilcox 2004, 567; Kymlicka 1991, 166.

227 E.g. the 'stakeholders doctrine', Bauböck 2009; the *jus nexi* membership allocation, Shachar 2009, chapter 6; 'Social membership theory', Carens 2013, 160-168. For a legal account, see Ballin 2014, Ch 4.

continuously subject to the laws of the state as equals with rights and include them in political decision-making procedures. Or conversely, it is argued that for a liberal democracy to allow a group of permanent members in society that is subject to the political and coercive powers of the state but unable to participate in determining the political authority or processes of lawmaking, is to create a caste system that undermines the credentials of the state.<sup>228</sup>

At first glance, this line of reasoning seems to put restrictions on the sovereignty of the democratic state to decide, for example by a majority vote, whom of those residing on its territory can become citizens. According to Robert Dahl, however, the ‘full inclusion’ of ‘all persons subject to the laws of the state’ is in fact the very *basis* of democratic sovereignty.<sup>229</sup> Indeed, he holds that this principle is the key feature that makes democracy a form of government distinguishable from other forms such as aristocracy or oligarchy (in which small groups of people perpetually hold all political power). He explains that it is impermissible for a democracy that a self-defined group of ‘political insiders’ monopolizes the power to determine which ‘political outsiders’ are allowed to join the political community, because that gives this confined group of insiders *all* political power - potentially forever. Take woman suffrage. If in a political community only male members are granted political rights and the right to vote, this male group could surely in principle democratically decide to permit women to vote, but could also enduringly decide not to. This is an unacceptable outcome for a democracy, Dahl reasons, because it enables the possibility of a permanent democratic deficit. If the male part of society keeps rejecting woman suffrage, the women in that society, although continuously subject to the state and its laws, will *never* obtain full and equal political membership rights. For this reason, within a democracy, the procedures that uphold universal suffrage cannot depend on citizenship rights being granted by a particular group, but should be assured *entitlements* for all who continually reside on the territory and are present in society. Phrased more radically, the creation of ‘the people’ of a democracy should follow social reality, which makes the democratic state continuously dutiful to a pre-existing ‘demos’.<sup>230</sup>

If we connect this argument to the phenomenon of international migration, this leads to the conclusion that receiving liberal-democratic states are obligated to include (*de facto*) permanent immigrants into their political communities, if their commitments to their own principles are to be taken seriously. To operationalize these principles, it is important to think of procedures to fairly establish when an immigrant should be qualified as ‘a permanent immigrant’ and is significantly and relevantly affected by the coercive laws of the state and consequently entitled to (apply for) citizenship. How to determine this is not set in stone, but most scholars

228 E.g. Carens 2013; Walzer 1983; Rubio-Marín 2000; Dahl 1989; Kostakopoulou 2008; De Schutter & Ypi 2015.

229 Dahl 1989, 78.

230 See also Rubio-Marín 2000, 26.

concur that, at the end of the day, simply living in a society on an ongoing basis makes one a member of that society.<sup>231</sup>

As stated, to my knowledge, the foundations of the argument that those residing on the territory should eventually be allowed to naturalize are virtually not refuted in the literature of political and legal theory. Also communitarian thinkers such as Michael Walzer, advocating restrictive border controls, argue that admitting immigrants to the territory without offering them an assured path to naturalization amounts to an ‘enduring rule of citizens over non-citizens’ which is a form of ‘political tyranny’.<sup>232</sup> There is, however, disagreement on one issue. This entails the question whether permanent immigrants should be able to apply for citizenship, or whether citizenship should be *mandatorily bestowed* upon them. Rainer Bauböck and David Miller, for example, argue that long-term immigrants have a right to receive citizenship if they choose to apply for it.<sup>233</sup> In contrast, Helder de Schutter and Lea Ypi, in line with Rubio-Marín, defend mandatory citizenship for immigrants. In their view, possessing the national citizenship of the country in which you reside should not be voluntary for anyone: not for native-born citizens and not for permanent immigrants, as that would result in an unjustifiable asymmetry. The rights and burdens associated with citizenship should simply be allocated equally between all members of society.<sup>234</sup>

### 3. Integrating TCNs and the Ethics of Migration

If we evaluate the legal frameworks of the integration requirements as conditions for attaining increased rights in multiple European states as expounded in the previous chapter against this overview of the main arguments in the ethics of migration, it becomes apparent that this literature has difficulties with making visible and addressing some of the main characteristics and outcomes of these public policies. Given its focus on admissions and naturalization, the ethics of migration approach would (only) ask two questions about integration policies: (a) do they unfairly exclude people from entering; and (b) do they unfairly exclude people from naturalizing? To be sure, at this point, we know there are grounds for the concern that existing integration requirements in EU Member States could have one or both of these implications. However, these concerns are not the heart of the dilemmas and issues raised by these integration policies targeted predominately at family migrants and refugees, and the exclusive focus on admissions and naturalization has led theorists in this field to misrepresent the issues involved. To restate, this does not imply

231 E.g. Carens 2013, 160.

232 Walzer 1983, 52-61.

233 Bauböck 1994, Miller 2016, Ch 8.

234 De Schutter & Ypi 2015; Rubio-Marín 2000.

that the ethics of migration does not enhance our (academic) thinking on (global governance) and rights to immigration and naturalization. But at the same time, our thinking on migration falls short if it, in addition to thought-provoking and pioneering forms of moral reasoning, is largely unable to comment on salient contemporary developments regarding laws affecting immigrants. And unfortunately, I believe this is the case for the ethics of immigration, lacking theoretical concepts to closely discuss most of the ramifications of the significant growth of integration requirements for immigrants in Europe.

Take the ‘integration requirements abroad’ that regulate the territorial admittance of family migrants based on the Family Directive (p. 29). To some extent, migration theorists are certainly able to reflect on these requirements. Now that it turns out that these requirements at times exclude (particularly poor, poorly-educated, female, elderly) family migrants from entering the territory, advocates of the ‘freedom of movement’ or ‘global inequalities’ arguments can condemn this outcome based on their particular range of ideas.<sup>235</sup> However, as we have seen, the exclusion of family migrants is not the formal purpose of these integration requirements nor their *main* actual result.<sup>236</sup> Instead, they affect the moments and conditions under which family migrants — as a legal type of migration — receive their residency rights. For this reason, there is a discrepancy between the problems with the integration requirements abroad enacted by five EU Member States and the arguments developed in the ethics of migration in relation to border controls and immigration. Whereas the analyses in the ethics of migration debates concentrate on decisions of direct immigration, the integration requirements abroad are formally not immigration *criteria* but are applied to family migration applicants to facilitate their integration. As a result, the ethics of migration does not criticize particularly the integration requirements for family migration in Europe, but rather challenges virtually all legal rules to regulate territorial admissions (often based on wide cosmopolitan ideals). And of course, from the normative viewpoint that most of the current-world immigration regulations are unjust, integration requirements abroad should also be rejected. But this is hardly surprising, for if one’s ambition is to challenge the foundations of the current world order, the fact that certain integration requirements for TCNs of EU countries indirectly function as gate keeping mechanisms to illegally curb family migration is a (tiny) part of a much larger institutional injustice. From this perspective, immigration policies *as such* are the real issue — not (only) practicalities of certain integration policies for legal immigrants! Therefore, the ambitions of the arguments summarized in this chapter that advocate for

235 In addition, Abizadeh could argue that if potential immigrants are effectively denied the possibility to actually migrate due to failing a test that has been imposed on them, even though they have not been consulted about the procedure, this boils down to a fundamental problem from the perspective of democracy.

236 Notwithstanding that a percentage of family migrants is prevented from migrating, see p. 33-34.

more open borders — whether focused on global inequalities, the freedom of movement or democratic legitimacy — are in fact widely disconnected from the objective to provide an in-depth analysis of the outcomes of the current integration requirements enacted in Europe in response to the Family Directive.

To illustrate this, the work of Dora Kostakopoulou is a good example. Perhaps more than any scholar, Kostakopoulou has critically scrutinized the (mandatory) integration requirements that are the main topic of this dissertation.<sup>237</sup> She raises many important points, for instance relating to the ‘contractual frame’ that increasingly underpins the current integration schemes in European countries — an observation I also mentioned in the conclusion of Chapter 1 and to which I will return in Chapter 4 and 5. However, her fundamental critique on the novel integration requirements within EU Member States originates from her defense of a revolutionary model of ‘anational citizenship’.<sup>238</sup> She calls for comprehensive processes of institutional change, proposes new criteria to establish citizenship and hence heavily challenges the hegemonic position of the nation-state and its governmental rule in questions of immigration, citizenship and beyond. In other words, her fierce critique on the current mandatory integration requirements in EU countries is grounded in an advanced ‘post-national’ perspective. Again, this does not make the philosophical argumentation provided by Kostakopoulou academically less important. But it does make her solutions for the current integration requirements for TCNs in EU Member States strongly detached from existing policies and legal practices of integration. Moreover, given that she challenges the legitimacy of states to control their borders *tout court*, it is not unexpected that she also rejects the integration requirements permitted by the Family Directive (and the LTR Directive). Her approach would barely accept *any* integration, immigration and citizenship scheme, as long as the nation-state — recognizable as the political entity as we know it today — has a key role in its implementation and enforcement.

If we turn to the question of naturalization, we have seen that the ethics of immigration, ultimately, offers solely one argument on this issue: receiving states should not *indefinitely* block the ‘path to citizenship’ for *de facto* permanent members of society. And from this position, the ethics of migration is again surely able to take a stance on the integration requirements in EU countries: if integration requirements structurally obstruct or discourage immigrants such as family migrants and refugees to obtain full citizenship, this is problematic, as based on the inner logic of liberal democracy, all long-term residing immigrants should be able to obtain citizenship at some point. And indeed, in his contribution to the aforementioned Working Paper for the *EUDO*, Joseph Carens highlights exactly

237 See e.g. Kostakopoulou 2008, 2009, 2010a, 2010b.

238 Kostakopoulou 2009. Citizenship, she argues, should be seen as a ‘network good’ based on domicile and equal participation instead of an ‘oligarchic good’ based on national membership and naturalization.

this argument and concludes that the best option for liberal states is to have ‘no citizenship test at all’.<sup>239</sup> However, he also acknowledges that the legitimacy of a citizenship tests is contingent on their inclusionary or exclusionary outcomes. If these tests, Carens writes, are a part of a ‘fairly welcoming’ naturalization trajectory that ‘almost all applicants pass’, he would still oppose them out of democratic principle, but simultaneously not find them ‘equally objectionable in practice’.<sup>240</sup> As long as integration and naturalization trajectories ensure that, at the end of the day, practically all long-term residents acquire legal citizenship, they are normatively permissible.

This provides some normative guidance. However, I believe that with this strategy the ethics of migration leaves a range of more specific questions unaddressed. For example, migration theorists do not distinguish between the mandatory integration requirements for permanent residency and integration requirements for (optional) naturalization. However, can TCNs be asked to integrate for obtaining the status of permanent residency? The ethics of migration does not address this question, as it does not provide moral guidelines for when and how permanent residency rights must be obtained by immigrants. In the same line, how to normatively evaluate the policies of European countries that do not block the ‘path to citizenship’ for TCNs, yet delay and burden their political inclusion? If we indeed establish that ‘*permanent* provisionality’ caused by integration requirements is troublesome, how should we respond to those that solely lead to ‘*prolonged* provisionality’ (e.g. by creating all sorts of in-between legal statuses before citizenship can be obtained)? The ethics of migration does not address this issue either.<sup>241</sup> Furthermore, notwithstanding that Carens writes that citizenship tests should be assessed on their empirical outcomes, he does not reflect on the structural risks of giving states the discretion to impose additional obligations on immigrants lacking political voice and full constitutional protection provided by citizenship.

Lastly, given the ethics of migration is so centered on the formal access to citizenship rights, it also fails to reflect on the potential social and stigmatizing repercussions of integration requirements that exceed the legal monitoring of the precise allocations of rights in individual cases. For example, in Chapter 1, I highlighted that the proliferation of (mandatory) integration requirements in Member States stands in a relationship with and reflects a conceptual shift on the notion ‘integration’ in Europe. Nonetheless, the ethics of migration is unable to incorporate the significance of the impact of such a development, as it barely reflects on (more) societal implications of integration policies for the reason that

239 Carens 2010, 19.

240 Carens 2010, 19.

241 In the ethics of migration there is a debate on the rights of irregular and temporary workers and this debate, one could argue, touches on issues of forms of ‘provisionality’ and ‘precarity’. See e.g. Carens 2008. However, this discussion does not touch upon the potential positions of ‘permanent provisionality’ for long-term migrants such as family migrants and refugees.



it is solely focuses on claims of individuals to migrate or naturalize. In a similar vein, the democratic argument that stresses that all permanent residents should ultimately be able to naturalize, offers no recommendations on how to assess ('individualized') integration requirements for residency and citizenship rights that hamper broader social processes of integration. Indeed, this literature is not able to include the effectiveness of these requirements into their normative assessments of these policies *at all*, even though, we have seen, the European Commission and CJEU point out that the effectiveness of these policies is decisive for assessing their legality (see p. 32-39). Nevertheless, migration theorists have not developed frameworks to discuss when such policy outcomes would be problematic and why.

Therefore, considering the outcomes of both the legal and conceptual shifts described in the previous chapter, I think that the ethics of migration leaves many pressing questions unresolved in relation to the integration requirements in EU Member States. As I see it, normative analysis and assessments of these requirements should reach beyond direct questions of territorial and civic inclusion. Rather, they should aim to solve the puzzle of intertwined layers of inclusionary and exclusionary discourses, constitutional limits and empirical outcomes of these requirements. However, most parts of this puzzle cannot be revealed by the ethics of migration, which makes it an unhelpful resource to solve it.

#### 4. Conclusion

In this chapter, I signaled that the ethics of migration is in general unable to comment in detail on the consequences of the integration requirements as conditions for attaining increased rights for TCNs in multiple European countries as described in Chapter 1. If we take a step back, the 'mismatch' between the ethics of migration and the integration requirements for TCNs in Europe involves that the latter monitor the *process* of residential inclusion of certain legal immigrants in European countries. However, the ethics of migration breaks the process of migration down into two key moments — namely territorial admittance and obtaining citizenship — and tries to find justification for granting individuals a right to immigration or naturalization. However, and this makes it misleading, while the integration requirements in EU states revolve around the moment of immigration and structure the path to (potential) naturalization, they formally do not single out TCNs at the border or select who is eligible for permanent residency. These integration requirements are predominately prescribed for immigrants whose rights to immigrate and residence have already been legally settled based on international legal norms (i.e. refugees and family migrants). As a result, the ethics of migration does not provide much normative guidelines in debates on these integration requirements, besides the general position that settled immigrants should eventually obtain (access to) full citizenship.

That being the case, in the subsequent chapters, I will not further explore normative principles that should guide questions of immigration, or pleas for a different political world order. Instead, I will scrutinize the real-world outcomes and difficulties of the (mandatory) integration requirements applied to certain groups of TCNs in EU Member States. To be sure, this contained approach will enable me to incorporate the outcomes of empirical research that indicate that certain integration requirements decrease the accessibility to family migration (see p. 32-34). But I will address these outcomes as violations of EU laws — not as violations of (cosmopolitan) theories of justice.

In relation to permanent residency, I will, in line with the LTR Directive, assume that it is in principle legally required that TCNs obtain secure residency after five years of uninterrupted residence (see p. 34-39). Moreover, I will take into account that it is desirable from a democratic perspective that long-term immigrants naturalize, obtain equal citizenship and become part of 'the people' in whose name the state governs. Nevertheless, I believe it is insufficient to *only* assess these policies based on whether TCNs eventually acquire citizenship. Rather, I regard it as pivotal to also delve into normative questions concerning the forms of precarity these policies produce, by zooming in on the vulnerable position of TCNs without secure residency or full citizenship rights (Chapter 3). Moreover, I will examine the potential stigmatizing consequences of the conceptual shift towards individualized integration and their impact on the equal standing of all citizens (Chapter 4). Finally, I also believe it is important that integration trajectories are assessed and improved based on empirical research on their impact on broader societal values and goals (Chapter 5).

The ethics of migration is, however, only to a minimal degree equipped to engage with all these issues. In essence, it searches for abstract moral principles about direct immigration and naturalization that all liberal democracies across time and space should honor and respect, without giving normative weight to particular systems of law, national (or continental) histories, historical circumstances and so forth. This leaves us in need to find other sources of theory and research approaches to better evaluate (the increase of) integration requirements in EU Member States.

Accordingly, in the next chapter, I will examine the normative literature on 'liberal nationalism', together with social science scholarship on the proliferation of integration requirements in Europe and on the political and societal dynamics that shape laws that affect immigration and immigrants in liberal states.