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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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Conclusion

This dissertation has been devoted to comprehending and assessing the burgeoning growth of integration requirements for TCNs as conditions for attaining increased rights in several EU Member States over the last two decades. As a starting point, it set out to examine the relationship and potential tensions between the proclaimed commitment of EU states to the core liberal-democratic values of the EU as listed in the Lisbon Treaty (democracy, rule of law, equality, respect for human rights, etc.) and their actual immigration, integration and naturalization practices. Furthermore, this research has adopted an interdisciplinary approach, as it combined legal analysis, political and legal theory and social science research on integration requirements in contemporary Europe. In the closing pages of this inquiry, I will recap its most important findings, draw conclusions based on its results and explore possible directions for future research.

1. Findings

To address the principal aims of this study, it was necessary to start with a description of the proliferation of legal integration requirements in EU states (predominately targeted at family migrants and refugees) and expound the nature of the conceptual shift that fortified it. Based on a combination of legal research, comparative country reports and sociological interpretations of integration and citizenship practices, I established that the notion of ‘integration’ in Europe increasingly describes the *compatibility* of individual members of non-EU and non-Western immigrant groups with an (idealized) image of ‘society’, in order to determine whether they deserve to belong (to society). That being so, the objective of integration requirements in European states progressively became to contractually enforce TCNs to complete their ‘individualized’ integration trajectory, in return for residency and citizenship rights delivered by the state. In other words, the main goal of integration measures in a growing number of Member States, slowly but certainly, narrowed down to

distinguishing who of recently arrived TCNs ‘integrates sufficiently’ to be worthy of belonging.

However, this increasingly prevalent political narrative regarding integration requirements is in practice limited by EU laws and constitutional norms. To begin with, the EU Family Directive and LTR Directive both permit mandatory integration measures for respectively family migration and obtaining permanent residency, but only if these measures effectively facilitate and promote the inclusion and integration of TCNs in their host societies. The suggestion that these integration requirements can serve to monitor deserved belonging, that is, can serve as a tool for *selecting* TCNs who earn secure rights, is therefore at odds with the EU Directives that permit them under the condition that they contribute to emancipatory outcomes. Moreover, due to EU and international law it is impossible for EU states to physically deport TCNs mandated to integrate (i.e. predominately family migrants and refugees) for failing to complete prescribed integration requirements for permanent residency. Instead, the TCNs that do not fulfill these integration requirements often receive fines and must reside with only provisional legal status for longer periods of time. For this reason, despite the fact that integration strategies of EU states increasingly convey the message that integration measures serve to single out those TCNs who integrate and therefore deserve secure rights (versus those who allegedly remain unintegrated), they barely affect who actually resides in society. Rather, these policies affect the types of legal residency status parts of the population possess (for prolonged periods of time). Nonetheless, across Europe the obligation to integrate steadily became perceived as the one-sided responsibility and interest of newcomers. Integration requirements were amended and made more punitive, burdensome, and costly, leading to lower numbers of TCNs obtaining secure rights and/or citizenship.

Nevertheless, given the focus of integration policies to measure the ‘deservingness to belong’ on the part of individuals, they tend to start clashing with upholding certain desirable societal outcomes. Instead of being evaluated and adjusted based on empirical research measuring whether they actually support or compromise emancipatory results, these policies are frequently amended based on (arbitrary) benchmarks of when individual TCNs may have deemed to have personally integrated ‘enough’.

After describing the rapid increase of legal integration requirements and the effects of the shift towards individualized conceptualizations of integration in European countries in the first chapter, my research was able to move forward. In the subsequent chapters, my strategy was to explore existing academic scholarship to find theoretical notions and moral vocabularies to discuss and evaluate the contemporary European integration policies. First, I reviewed the main arguments of the ethics of migration literature. I concluded that this literature is unable to satisfactorily and adequately explain and evaluate the growth of integration requirements in EU countries. Most importantly, I discerned that this literature is so focused on questions of direct admission and naturalization, that it cannot

discuss the normative implications of integration requirements for legal immigrants as conditions for obtaining rights. Nonetheless, this insight helped to further clarify the subject of this study and to identify the gap in the academic literature. In addition, the ethics of migration provided me with a powerful argument: based on the inner logic of democracy, it is desirable that TCNs eventually obtain citizenship.

I then turned to the literature on liberal nationalism and found that liberal nationalists claim that integration requirements can be defended as a form of nation-building, as long as the goal of these requirements is to integrate newcomers into a nation that is defined in a ‘thin’ and inclusive way. Interestingly, this approach is very similar to how social science research tends to engage with the growth of integration requirements in Europe. That is, it maps and categorizes permissible and impermissible requirements based on their inclusive or exclusionary effects and/or content. Moreover, the European Commission and the CJEU also adopt this approach to determine the (legal) permissibility of integration requirements for family migration and permanent residency. It assumes that countries may have legitimate reasons and good intentions to install integration requirements for TCNs for obtaining family migration and permanent residency and then sees if actual integration policies can be seen as a reflection of those good intentions.

However, I argued that this ‘idealized’ perspective on integration requirements is incomplete. It gives too little normative weight to the ease with which anti-immigrant attitudes in (European) societies can mobilize and capitalize on the precarious position of TCNs as legal non-citizens, lacking secure and equal positions in the legal order and political community of their receiving state. Or, phrased differently, these approaches fail to grasp that the Achilles’ heel of the integration requirements in EU states is that they grant states the discretion to impose requirements on individuals for obtaining more secure rights, even though they are in a vulnerable position and are not in the position to object against any terms for legal inclusion imposed on them. On that account, I held that we must go beyond the (liberal nationalist) approach that asks whether liberal-democratic states may have legitimate motivations to install integration requirements for obtaining increased rights. In particular, it should be complemented with normative analyses that evaluate these public policies in light of (1) the power asymmetry between receiving states and TCNs and (b) the real-world political and societal forces that shape these state policies and assess them based on their structural risks for misuse. Furthermore, from this ‘non-idealized’ perspective, I asserted that we should also search for (institutional) solutions as to how to *prevent* that state policies — intended to promote integration and regulate the successful incorporation of newcomers — can be misemployed as instruments for effectively preventing the inclusion of newcomers.

The last body of literature I explored addresses social equality. This helped me to identify additional aspects of integration requirements as conditions for attaining increased rights that deserve normative attention. I concluded that the social equality literature has to date failed to

discuss the terms on which immigrants can or should become members of the ‘communities of equals’ it tries to envision. Nonetheless, the (‘negative’) methodology of theories of social equality still provided a theoretical vocabulary to describe and pinpoint potential ramifications of integration requirements that contribute to social hierarchies (that evidently should be avoided in a community of equals). For example, I explained that certain integration requirements in European countries foster the idea that citizens with immigrant backgrounds have a type of citizenship that is earned and remains conditional, while citizens without immigrant backgrounds possess a type of citizenship that is unconditional. As a result, immigrant citizens are never fully released from the burden of proof that they are indeed ‘integrated’ citizens. Furthermore, I gave attention to state-backed discourses of integration that emphasize that the dominant culture in society has privileged access to the universal values that underpin the state. These suggest that immigrant citizens are not naturally regarded as equal political members, but must culturally adapt before they may be recognized as equals in democratic deliberations and equal co-authors of the law. The social equality perspective is hence valuable, as it brought forward the importance of not only assessing integration requirements from the perspective of the (still) excluded newcomers, but also according to their impact on included citizens and society at large.

In the last chapter, I merged the relevant normative arguments and concerns I gathered while exploring academic studies on integration requirements, in the hope to find an adequate normative response for the proliferation of such requirements in EU countries. I reasoned that an institutional precautionary measure is required that ensures that integration policies (a) cannot be used to exploit the vulnerable position of TCNs that must integrate (i.e. recognizes the potential misuse of — in principle legitimate — integration policies for exclusionary purposes) (b) sustain an ethos of social equality (c) cannot be used as an instrument to decrease access to citizenship (d) are measurably effective in supporting a set of societal outcomes that are decided to be their policy objectives. Accordingly, I proposed that European states should install a ‘firewall’, structurally and effectively dividing (mandatory) integration strategies from laws that regulate the allocation of residency and citizenship rights to refugees and family migrants. Certainly, the firewall proposal, building in a buffer to protect citizenship and residency rights, still recognizes that receiving states may have legitimate interests to provide and demand integration trajectories, such as language courses. In fact, this separation of integration and citizenship offers the opportunity for states to implement such policies for wider groups of people residing in society who are excluded from participation for any reason whatsoever. However, it will preclude states from misusing integration requirements by capitalizing on the position of legal and political precarity that TCNs are in; limiting the capacity of states to instigate social inequalities by introducing models of earned or conditional citizenship; or imposing such strict integration conditions that it becomes virtually impossible, unfeasible, unlikely, or at least discouraged for TCNs to have the perspective of obtaining citizenship.

In addition, I argued, the firewall model will pressure EU states to adopt a ‘disaggregated’ perspective on integration, which entails that it is an ongoing and multidimensional societal process (e.g. economical, educational, attitudinal) that involves and affects both immigrant and non-immigrant members of society. In a nutshell, I explained that if the firewall fully disconnects laws that pertain to the allocation of residency and citizenship rights to refugees and family migrants and public strategies to promote integration, they cannot conceal that there is a public responsibility, or at least a public interest, to carefully regulate, supervise and invest in the integration processes of these newcomers in society. As a consequence, integration policies will no longer be about monitoring whether individual newcomers have integrated sufficiently to deserve secure rights. Rather, the purpose of integration policies will become to measurably promote a set of desirable societal goals.

2. Conclusions

While in all European countries immigrant integration became one of the most significant and hotly debated features of political life over the last quarter of a century, Member States increasingly install(ed) public policies that invest *less* rather than *more* in integration, particularly in relation to newcomers that they are required to admit, based on EU and international laws. The most important contribution of this dissertation is that it has disentangled this paradoxical development. Indeed, despite the concerns of a majority of European citizens about immigrant integration, the public response of Member States has been to delay the legal inclusion of refugees and family migrants, to jeopardize the value of equal citizenship and to enact integration requirements that increasingly hamper, rather than facilitate, integration processes. In other words, integration measures have proliferated across European states. Yet, taking a closer look, these policies have only to a limited extent been the result of careful policy making with the purpose to genuinely promote the integration — in terms of a set of societal processes — of newcomers who will most likely permanently settle.

This outcome, at the core, is the result of the underlying development discussed in Chapter 1. European countries have started to discuss and conceptualize (potential) public problems that arise if newcomers arrive in society, through individualized integration conceptualizations: TCNs must first ‘integrate’ to be seen as meriting (full) public concern. This development increasingly connects societal challenges related to immigration to matters of personal identity and belonging (e.g. ‘Has Farid become a real Dane or not?’), instead of recognizing integration as a societal process, that is, as a set of shared issues that require proactive public attention.

For this reason, the findings of this study are highly critical of the current developments concerning integration in Europe, on multiple levels: regarding the political and rhetorical tendency to operate from individualized understandings of integration, as well as the societal ramifications of the implementation of public policies based on this understanding. It indicates that EU states should fundamentally rethink their perceptions of what ‘integration’ is and who is responsible for it. Currently, integration policies are increasingly framed as the sole responsibility of individuals with non-EU and non-Western backgrounds (instead of a shared responsibility of the receiving state *and* the newcomer). However, the main societal result of this integration strategy is that it preserves a subclass of vulnerable TCNs (e.g. traumatized refugees, illiterates), who remain within society, but without equal rights and the public supervision that could ameliorate their positions of disadvantage and enable their integration processes. Moreover, this group is stigmatized as having personally failed to integrate.

A case in point is the frame of mind that integration requirements are public instruments to select ‘integrated immigrants’, a rigid attitude which limits the imagination and capacities of receiving states to implement customized integration strategies for different types of newcomers. If integration policies are installed as an examination after a prescribed ‘test phase’, this pressures states to install standardized integration requirements for all newcomers, as all people should obtain rights (to belong) under the same conditions. However, if we relinquish the idea that public strategies of integration focus on whether individuals merit inclusion, customized integration policies become conceivable that are adjusted to the needs of particular newcomers, immigrant groups and citizens. (For example, public language lessons could also address functional illiteracy at the side of citizens.) Seen this way, from a more pragmatic and consequentialist perspective, it is even pivotal that European countries will soon recognize that the shift towards individualized integration (has) led to integration programs that are ineffective and even counterproductive — or, at least, that their current integration policies are not as effective as they could potentially be. This will allow installing integration policies based on their actual effects on broader policy objectives (e.g. increasing language levels, stimulating participation in the labor market, nurturing senses of belonging, etc.).

In this context, it is important to point out that if the firewall solution I propose would be installed, it is quite likely that European states will spend more public supervision and budget on immigrant integration than they do within their current policy schemes. Since, as I see it, one of the aspects that make this firewall an appealing institutional measure, is that it straightforwardly forces European states to shift from individualized to disaggregated conceptualizations of integration and integration policies. Nonetheless, *prima facie*, I can imagine that people might fear that if states disconnect their integration strategies from laws regulating the residency rights and citizenship rights of newcomers, this will make integration policies too ‘soft’. However, I hope to have convincingly

demonstrated that this perspective is misguided. In fact, I contend that if it is impermissible for states to suggest that (alleged) unintegrated refugees and family migrants can be removed from their territory (which is impossible under current EU and international law), this will lead to better monitored, customized and measurably more effective integration strategies. In addition, integration trajectories can still be made mandatory for newcomers. Yet, essentially, the crux is that if it is clear from the outset that certain newcomers will most likely permanently remain in society, this demands a more proactive stance on the part of the receiving state to make sure their incorporation process turns out well, adopting the shared responsibility to create the conditions that will optimally enable them to contribute to society.

In addition, a further advantage of the firewall is that it will make it more difficult for European states to cultivate the perception that the universal values that underpin their liberal-democratic states are only accessible through the dominant culture of the receiving state. In other words, it takes away an instrument for states to suggest that newcomers must first culturally adapt to the 'native' culture before they may be recognized as 'real' citizens and equal political members and co-authors of the law. This is important, as based on the universal liberal-democratic values underpinning European states, state policies should never deviate from the firm commitment to endorsing and fostering equal citizenship for all citizens, irrespective of their (cultural, religious, ethnic, etc.) backgrounds. Moreover, from a practical point of view, if a state promotes its values as inclusive, universal and equally accessible to all citizens, this can help create the conditions under which all citizens can be(come) committed to nurturing a shared society and can recognize each other as equally belonging to it.

In sum, this study signals the warning that integration strategies in Europe are under the influence of societal and political forces that tend to make them deficient and skew their social impact in ways that are undesirable, both for newcomers and for native citizens. Moreover, it showed that the current legal and political configuration of EU legislation structurally provides Member States with the opportunity to install counterproductive integration requirements. For this reason, this admonishment applies both to Member States that already enacted (excessively individualized) integration requirements connected to rights, as well as to Member States that did not (yet) enact such requirements. The tendency in Europe to invest less in integration trajectories (because it is increasingly seen as the contractual personal duty of newcomers to integrate) is a public strategy that will lead to a variety of negative consequences that are prone to require public investments in the future. More particularly, if integration requirements are broadly ineffective or even have negative impacts on societal processes, this will result in increased poverty, crime, welfare dependency, unemployment, deficient language skills and potentially even distrust between newcomers and citizens and segregation. For this reason, to invest in (disaggregated) integration programs — in times of

humanitarian refugee crisis but also in general — is by no means a ‘soft’ policy. Instead, it is enacting public policies that are in accordance with the long-term interests of receiving EU states.

However, the prevalence of the individualized conceptualization of integration clouds this pragmatic perspective on integration policies and, with that, also draws public and political discussions away from the fundamental shortcomings of current integration measures in EU Member States. Within this individualized framework, disappointing policy outcomes of integration strategies can be defended with the explanation that these policies merely indicate the personal failings of certain newcomers. Additionally, installing additional (arbitrary) integration requirements as conditions for attaining rights remains attractive as it accommodates voters, while TCNs are not in a position to object to the terms imposed on them for obtaining full residential security.

3. Future Research

A variety of possible future work arises from the investigations of this project. From a more normative perspective, for example, it would be interesting to explore whether the firewall I proposed in Chapter 5 to separate integration strategies from laws monitoring the allocation of residency and citizenship rights to refugees and family migrants, should also apply to other types of immigrants. For instance, should it be permissible to ask TCNs that came legally to European countries on work or student visas to pass an integration exam, if they are interested in obtaining permanent residency? It seems, *prima facie*, that my normative arguments on precarity and social equality suggest that there would also be something normatively wrong with such sorts of integration requirements. However, at the same time, there may also be countervailing considerations, given that these TCNs were initially permitted to the country as temporary migrants and do not have strong residency rights based on EU and international laws.

In addition, it could be useful to examine further the potential links and reinforcing relationship of the shift towards individualized integration with wider ‘neoliberal’ tendencies in welfare states. Notwithstanding that the shift towards individualized integration has particular consequences for TCNs given, in Bosniak’s terminology, the Janus face of citizenship, there is undeniably a broader trend in developed states to assume that citizens are responsible for their own better participation, for example in relation to the labor market or education. What is the impact of this trend on designing effective integration strategies?

Furthermore, if feasible, it could be of value if empirical research would be conducted on the attitudinal ramifications of the reward paradigm of naturalization on senses of belonging, the self-image of political communities and migrants themselves, levels of generalized trust, levels of trust in public institutions, etc. If states increasingly treat certain

citizens as having conditional citizenship and others having unconditional citizenship, what will be the consequences of that in the long-term?

Lastly, a fascinating opening for further research could also involve cost-profit analyses of different types of integration strategies. For example, in both Chapter 5 and in this Conclusion, I introduced the hypothesis that publically investing in immigrant integration is likely to be economically lucrative on the long term (compared to when integration requirements are defective). It would be valuable to gather data to see if this claim would be substantiated according to evidence-based research.