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Conditional belonging

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

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Abstract

This is a dissertation in legal and political philosophy. It is dedicated to understanding and evaluating the proliferation of integration requirements for TCNs in EU Member States over the last two decades. It examines the relationship and potential tensions between the proclaimed commitment of EU states to the core liberal-democratic values of the EU (democracy, rule of law, equality, respect for human rights, etc.) and their actual immigration, integration and naturalization practices.

Overall, this dissertation demonstrates that EU Member States progressively install(ed) integration requirements 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. Indeed, it describes how integration requirements for TCNs as conditions for attaining increased rights (i.e. family migration, permanent residency and citizenship) in EU countries are increasingly legally misunderstood, misused and predisposed to have counterproductive societal outcomes, often contradicting their formal policy objectives. Moreover, it contends that these integration requirements reinforce problematic status hierarchies between citizens. In particular, they nurture the social perception that the entitlement of citizens with (non-EU, non-Western) backgrounds to their legal citizenship is conditional and contingent on certain desirable competences, attitudes and efforts, while citizens without immigrant backgrounds are perceived as having a natural right to the legal status of unconditional citizenship.

Chapter 1 examines EU directives, international treaties, domestic laws and case law to analyze the legal formation of the proliferation of (mandatory) integration requirements in EU states, which are predominately targeted at refugees and family migrants. Furthermore, based on comparative country reports and sociological interpretations of integration and citizenship practices, it outlines a conceptual shift regarding the notion

of 'integration' in Europe. It is argued that the increase of legal integration requirements testifies to this broader conceptual shift regarding integration. More specifically, Chapter 1 establishes that today 'integration' in European societies 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 personally *belong* to it. As a result, the objective of integration requirements in EU states progressively became 'contractualized'; they demand TCNs to complete their 'individual integration' by fulfilling formalized integration requirements, in return for residency and citizenship rights delivered by the state. Or put differently, 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 (and, thus, secure rights).

However, this increasingly prevalent understanding of integration requirements is in practice limited by EU laws and constitutional norms. First, the EU Family Directive and LTR Directive both permit mandatory integration requirements for respectively family migration and obtaining permanent residency, *but only if* these measures facilitate and promote the inclusionary purposes of these directives (i.e. to enable family migration and the integration of long-term residents). For this reason, the suggestion that integration requirements can permanently exclude TCNs who are (allegedly) 'personally unintegrated' is at odds with the EU directives that permit them. Second, EU and international laws make it virtually impossible for EU states to physically expel the TCNs mandated to integrate (i.e. predominately family migrants and refugees) for failing to complete integration requirements. Consequently, the restrictive integration measures for TCNs in Europe barely affect who actually resides in society. Rather, they restrict the packages of (residency, social and citizenship) rights that parts of the population possess for prolonged periods of time.

Nevertheless, across Europe, the responsibility for integration increasingly became framed and understood as the sole responsibility and interest of the newcomer. Accordingly, Member States have structurally made their integration requirements more punitive, burdensome and costly, with the result that the numbers of TCNs who successfully obtain secure residency rights and/or citizenship has diminished. On that account, Chapter 1 ultimately establishes that integration requirements in Europe are currently predisposed to have counterproductive effects on integration, seen from a more long-term and societal perspective. Given their focus on measuring who 'deserves to belong' (and, as a corollary, preventing 'belonging' of newcomers who do not deserve it), these state policies are less evaluated based on whether they in fact support or compromise certain desirable societal outcomes. Instead, they are constantly amended based on the (arbitrary) benchmark when individual TCNs are deemed as having integrated 'enough'.

Chapter 2 tries to apply the key arguments developed in the theoretical scholarship on the ethics of migration to the main insights of Chapter 1.

However, it observes that the ethics of migration — although generally perceived as the best applicable normative literature to discuss integration requirements as conditions for increased rights for immigrants — is ill-equipped to unravel and evaluate most of the legal, political and societal ramifications of the current integration requirements for TCNs in Member States. The ethics of migration chiefly focuses on two key decisions: decisions about who, under which circumstances, is to be admitted to the territory (immigration) and decisions about who, under which circumstances, can obtain citizenship (naturalization). However, the integration measures in EU countries formally do not serve to select TCNs at the border or for permanent residency. Rather, they monitor the process of residential inclusion of already selected TCNs in Europe (i.e. predominately refugees and family migrants). As a result, the ethics of migration does not offer much normative guidance within assessments of these integration requirements. Being so focused on questions of direct admission and naturalization, it lacks theoretical concepts to evaluate integration policies applied to legal immigrants and their real-world consequences. Nonetheless, this body of literature does provide the powerful normative argument stipulating that TCNs should eventually obtain citizenship according to the inner logic of democracy.

Chapter 3 turns to the theoretical literature on liberal nationalism. It finds that liberal nationalists claim that integration requirements for citizenship 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, it is observed, social science scholars engaging with the growth of integration requirements for TCNs in Europe use a similar research framework. That is, they map and categorize 'liberal' and 'restrictive' integration requirements based on their inclusive or exclusionary formation and outcomes. Nonetheless, the main argument of Chapter 3 is to demonstrate that this research approach is insufficient. More particularly, it argues that normative analyses of the integration requirements in Member States should be supplemented with reflections on the structural risks of these policies. They give states the power to impose additional requirements on individuals — for obtaining more secure rights —, who are not equal members of the legal and political order yet and therefore not in a position to object to any term for legal inclusion. Moreover, if normative research on integration requirements remains limited to distinguishing which integration requirements are permissible, it disregards the ease with which these policies can capitalize on the position of precarity of TCNs when anti-immigrant attitudes in societies are mobilized. For this reason, it is concluded that integration policies in Member States should also be assessed in light of (1) the inherent power inequality between receiving EU states and TCNs and (2) the real-world political and legal forces that shape them. Furthermore, academic attention should be given to searching for (institutional) solutions as to how to *prevent* that integration policies can be exploited for exclusionary purposes. (For the latter, see Chapter 5.)

To substantiate these conclusions, this chapter ends with applying its analysis to the main findings of Chapter 1. Accordingly, it, first, establishes that the (discursive) *contractualization* of integration measures in Europe is problematic, as it clouds the vast power asymmetry between receiving states and TCNs. More specifically, it conceals that the risk of these integration requirements is that they grant the *strong party* of this relationship, that is the state, the power to constantly impose a stricter set of performances, achievements, efforts and costs. The *weak party*, that is the TCN (without secure residency and political voice), must then demonstrate and fulfill these requirements to be released from residential unpredictability.

Second, it establishes that the ‘individualized’ conceptualization of integration that is utilized within integration policies is also problematic. It is factually impossible to pin down the exact traits of persons who would be considered as ‘individually integrated’ – and would *therefore* deserve citizenship rights – in liberal democracies characterized by all sorts of diversity. As a result, ‘individual integration’ provides (already very powerful) EU states an open-ended standard to allocate residency and citizenship rights to TCNs, which gives it the opportunity to constantly redefine the conditions for legal inclusion (upwards).

Chapter 4 engages with the integration requirements for TCNs in European states through a social equality perspective. It examines the potential ramifications of these requirements on relationships between citizens *with* and *without* immigrant backgrounds, as such policies can result in reinforcing hierarchal differences between these groups in terms of their status as *equal citizens*.

The chapter explains that liberal-democratic states have the distinctive responsibility to promote the ideal of equal citizenship. From this theoretical angle, it draws attention to two types of integration requirements installed in several EU countries today. First, it describes integration requirements that convey the symbolic message that (certain) immigrants and forms of diversity are altogether unwanted, unwelcome or unsuited for territorial or civic inclusion. This leads to state endorsed social divisions between citizens who are preferred and ‘wanted’, and citizens with (certain) immigrant backgrounds who are less preferred and ‘unwanted’.

Second, integration policies are highlighted communicating that persons with immigrant backgrounds must *earn* their national citizenship. These policies cultivate public perceptions and societal standards in which immigrant citizens have to (perpetually) demonstrate their entitlement to their equal citizenship. More particularly, it fuels a social inequality between first-class native citizens who *are* citizens irrespective of their behavior, and second-class immigrant citizens who only *have* citizenship — and can lose this entitlement. As a result, ‘native’ citizens always automatically belong, while immigrant citizens are (socially) never fully released from the burden of proof that they are sufficiently integrated to deserve equal citizenship. In this context, the chapter gives special 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. This suggests 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.

Chapter 5 combines the normative arguments and concerns gathered over the previous chapters and suggests that EU Member States should install a 'firewall' between, on the one hand, laws that regulate residency and citizenship rights for refugees and family migrants and, on the other hand, public policies that facilitate integration outcomes (including, if wanted, mandatory integration trajectories for newcomers). It argues that this institutional precautionary measure is required to ensure that integration policies (a) do not exploit the vulnerable position of TCNs (as legal non-citizens) that must integrate (b) cannot insinuate that newcomers must earn secure rights or citizenship (c) cannot serve as an instrument to decrease access to citizenship (d) are measurably effective in supporting a set of societal outcomes that are specified to be their policy objectives.

In particular, this chapter argues that 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. If the firewall fully disconnects public strategies to promote integration and laws that pertain to the allocation of residency and citizenship rights to refugees and family migrants, states cannot conceal that there is a public responsibility, or at least a public interest, to carefully regulate, supervise and invest in the integration processes. Essentially, 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 other words, with the firewall installed, integration policies will no longer be about monitoring whether individual newcomers have 'integrated sufficiently' to deserve belonging and secure rights. Rather, the purpose of integration policies will become to measurably promote a set of desirable societal goals. In addition, the disaggregated perspective on integration will make innovative and constructive integration trajectories possible. These integration strategies will address the specific needs of members of society including family migrants and refugees, but potentially also other groups such as internal EU-migrants, citizens in positions of disadvantage and asylum seekers.

The Conclusion recaps the most important findings of this dissertation, drawing conclusions based on its results and exploring possible directions for further research. It signals the warning that integration requirements in Europe are under influence of political and societal forces that tend to make them deficient and counterproductive. Strategies of integration in

Europe should become less associated with the question: ‘Who deserves to belong here?’ Instead, their focus should be redirected towards addressing public concerns (that may rise if newcomers join society), and effectively enabling integration.