Capricious Games of Snakes and Ladders: The Nexus of Migration and Integration in light of Human Rights Norms

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The 'journey' to admission, settlement and, eventually, citizenship in Western Europe has become tightly controlled by governmental authorities and ridden with hurdles in the new millennium. Reforms in several EU Member States, such as the Netherlands, the United Kingdom, Denmark, France, Austria, Germany, Luxembourg, Italy, Portugal, Greece, Cyprus, Lithuania, Slovakia, Czech Republic, Estonia, Latvia, Romania, the Flemish Community in Belgium and Ireland, require migrants to attend language tuition and civic orientation courses and to take part in integration examinations. Integration programmes and tests have also migrated abroad; they have now become part of a pre-departure phase that commences in home countries for spouses seeking reunification with their loved ones.[1] These civic integration measures have

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[1] See C. Joppke 'Beyond National Models: Civic Integration Policies for Immigrants in Western Europe' (2007) 30(1) *Western European Politics* 1; A. Etzioni, 'Citizenship Tests: A Comparative Communitarian Perspective' (2007) 78(3) *The Political Quarterly* 353; E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate: Hampshire, 2009); A, Blackledge 'As a Country we Expect': The Further Extension of Language Testing Regimes in the United Kingdom' (2009) 6(1) *Language Assessment Quarterly* 6; L. Orgad 'Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe', *The American Journal of Comparative Law*, Vol. 58, 53-106; S, Carrera and A. Wiesbrock 'Civic Integration of Third Country Nationals. Nationalism versus Europeanisation in the Common EU Immigration Policy', Centre for European Policy Studies (CEPS: Brussels, 2009); G. Hogan-Brun, C. Mar-Molinero and P. Stevenson (eds.), *Discourses on Language and Integration: Critical Perspectives on Language Testing Regimes in Europe* (Amsterdam: John Benjamins, 2009); R. van Oers, E. Erboll and D. Kostakopoulou (eds.), *A Redefinition of Belonging?*

been justified on the basis of manifest differences cum deficiencies inherent in migrant applicants and the need to enhance societal cohesion and adherence to the norms and values of the host country. Political expedience, ideology, far right populist discourses and migration control hardly feature explicitly among the existing official justifications. Yet, in reality citizenship and integration policies are closely aligned to all of them and subordinate to the policy objective of migration restriction.[2]

As social cohesion and acceptance of national norms and values become the main policy goals, certainly prevailing over non-discrimination and policies of social inclusion, migrants are now expected to take responsibility for their own integration, pay for it, prove their commitment to the host society and to 'earn' their entitlement to residence and citizenship. In short, they must take part in state-led games of snakes and ladders, in which the fulfilment of certain requirements earns them points and authorises their progression to the next level. By the same token, if they refuse to take part in, and to successfully complete, integration programmes, their status and entitlement to social benefits are affected. Alongside every ladder marking the progression from one stage to the next and betterment in status, there exists a snake threatening not only to block progression but also to place people in the invidious position of being asked to leave the host country. The relation between fulfilling expectations and sanctions is clearly reciprocal. By the same token, experiences of obstruction can easily follow opportunities - the long journey to citizenship can have many turns, and until the final stage is reached, membership is always conditional. In the UK's proposed probationary citizenship arrangements, which the Coalition

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Language and Integration Tests in Europe (Leiden: Brill/ Martinus Nijhoff, 2010). See also the debate on integration tests at http://eudo-citizenship.eu. See also See 'Citizenship Tests in a Post-National Era', Special Issue of the *International Journal on Multicultural Societies*, edited by S. Wright (2008, Vol. 10(1)) and the Special Issue of the *Journal of Ethnic and Migration Studies* edited by M. Vink and R. de Groot (2010,).

[2] R. Van Oers, E. Erboll and D. Kostakopoulou, 'Mapping the Redefinition of Belonging in Europe', in R. van Oers, E. Erboll and D. Kostakopoulou (eds.), *A Redefinition of Belonging? Language and Integration Tests in Europe* (Leiden: Brill/ Martinus Nijhoff, 2010), 307-331.

Government abandoned,[3] one's settlement was broken into distinct phases, including a phase entitled "probationary citizenship", which were clearly differentiated by gates. These gates opened and closed depending on migrants' success or failure in tests and the absence of a criminal record.[4]

Although scholars, such as Joppke, have argued that compulsory integration is the pursuit of liberal goals through illiberal means and a manifestation of repressive liberalism,[5] one should not overlook the role of civic integration in the process of migration control[6] and its use as a disciplinary technique in the management of ethnocultural diversity. In this game of snakes and ladders, testing one's fluency in the host language and the accumulation of factual information about civics, history or life in the country, which may well be forgotten a few months after the test, and not shared common experiences and enmeshment in society, are deemed to be the important determinants of who deserves to reside in the country and become a member of the political body. By enacting the values of an allegedly 'unified' society, controlling membership of the polity and making integration testing a symbolic act of subjugation to state power[7] governmental elites make and remake the nation. Their practices construct 'subject positions' for newcomers and citizens alike.[8] Society is thus made and remade through modalities of power and the particular scripts and practices of political elites. In this chapter, I examine closely the civic integration script and discuss how international human rights law could unsettle its basic premises by bringing forth an alternative normative and policy framework.

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[3] The earned citizenship system was due to be brought into effect in July 2011. On the 5th of November 2010, however, the Home Secretary announced that the scheme was to be abandoned and will no longer be introduced. The framework that will replace it is unknown at this time.
[4] Borders, Citizenship and Immigration Bill [HL] Bill 15-EN 2008-09. It received Royal Assent on 21 July 2009.
[5] Joppke n 1 above.
[6] S. Carrera (eds.), The Nexus between Immigration, Integration and Citizenship in the EU, CHALLENGE, CEPS : Brussels, 2006.
[7] B. Perchinig, 'All You Need to Know to Become an Austrian: Naturalisation Policy and Citizenship Testing in Austria', in R. van Oers, E. Erboll and D. Kostakopoulou (eds.), n 1 above, 25-50, at pp. 28-29.
[8] D. Kostakopoulou, 'The Anatomy of Civic Integration', *Modern Law Review*, Vol. 73(6), 2010, 933-958. Compare also O. Lowenheim and O. Gazit, 'Power and Examination: A Critique of Citizenship Tests', *Security Dialogue*, Vol. 40(2), 2009, 145-167.

Adjustment and Integration; Adjacent Readings

More than fifty years ago in *The Sociological Imagination* (2000 [1959], 90-1), C. Wright Mills commented on the notion of 'adjustment', and its opposite, 'maladjustment', as follows:

'This notion is often left empty of any specific content; but often, too, its content is in effect a propaganda for conformity to those norms and traits ideally associated with the small-town middle class. Yet these social and moral elements are masked by the biological metaphor implied by the term 'adaptation'; in fact the term is accompanied by an entourage of such socially bare terms as 'existence' and 'survival'. The concept of 'adjustment', by biological metaphor, is made formal and universal. But the actual use of the term often makes evident the acceptance of the ends and the means of the smaller community milieux. Many writers suggest techniques believed to be less disruptive than otherwise in order to attain goals as given; they do not usually consider whether or not certain groups or individuals, caught in underprivileged situations, can possibly achieve these goals without modification of the institutional framework as a whole.

The idea of adjustment seems most directly applicable to a social scene in which, on the one hand, there is 'the society' and, on the other, 'the individual migrant'. The immigrant must then 'adjust' to the society. The 'immigrant problem' was early in the sociologist's center of attention, and the notions used to state it may well have become part of the general model for the formulation of all 'problems'. From a detailed examination of specific illustrations of maladjustment, it is easy to infer the type of person who is judged to be ideally 'adjusted'.'[9]

Wright Mills' observations appear to be both pertinent and applicable to contemporary state-led discourses and policies on integration. I will tease out, and briefly discuss, five similarities; namely, a) the emptiness of integration; b) the presumed deficiencies on the past of the

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[9] C. Wright Mills, *The Sociological Imagination* (Oxford: Oxford University Press, 2000 [1959]), 90-1.

maladjusted; c) earning entitlements; d) the type of persons presumed to be adjusted or integrated; and e) the construction of migrants as a problematic category.

Like the notion of adjustment, integration is a nebulous concept. It can easily be described as a floating signifier, that is, as a notion inviting political elites as well as policy entrepreneurs to fill it with meaning in order to devise policy strategies and/or narratives of legitimation.[10] And although, like adjustment itself, it could be used in progressive ways, that is, in order to remove obstacles to full societal inclusion and barriers to respectful symbiosis among people by igniting a critique of structural inequalities, more often than not it is used in a conservative way in order to procure conformity to the culture, values and ways of life of the dominant societal group or the majority. As such, it bears more than a family resemblance to pre – and post-World War II discourses on migrant assimilation and the necessary Americanisation or Anglicisation of newcomers. In such discourses, different languages, cultures, accents, beliefs were deemed to be terribly un-American, backward and ultimately unpatriotic.

One may recall, here, for example, the demands of the grass roots 'Americanisation' movement which called for the imposition of a number of obligations on migrants, such as being able to speak and understand English, to know the American history and civics and to embrace a specific conception of Americanness'.[11] The views of Ellwood Cubberley are instructive in this respect. Writing in the first decade of the 20th century against the backdrop of migration from Eastern and Southern Europe to the US, he stated:

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[10] For a conceptual and historical enquiry, see D. Kostakopoulou, The Anatomy of Civic Integration. *Modern Law Review*, Vol. 73(6), 2010, 933-958. The discussion in this section draws on this paper. Compare also R. Penninx, 'Integration of Migrants: Economic, Social, Cultural and Political Dimensions', in A. L. MacDonald and Haug W. Macura (eds.), *The New Demographic Regime – Population Challenges and Policy Responses* (New York and Geneva, United Nations 2005); A. Favell, *Philosophies of Integration* (Macmillan: Basingstoke, 1998); K. Groenendijk, 'Legal Concepts of Integration in EU Migration Law', *European Journal of Migration and Law*, 6 (2004), 111-126.

[11] J. Perea, 'Am I an American or Not?' in N. M. J. Pickus and R. M. Smith (eds.), *Immigration and Citizenship in the Twenty-First Century* (Lanham: Rowman and Littlefield, 1998) 49 at 54.

Illiterate, docile, lacking in self-reliance and initiative, and not possessing the Anglo-Teutonic conception of law, order, and government, their coming has served to dilute our national stock, and to corrupt tremendously our civic life… Our task is to break up these groups or settlements, to assimilate and to amalgamate these people as part of the American race, and to implant in their children, so far as can be done, the Anglo-Saxon conception of righteousness, law and order and popular government, and to awaken in them a reverence for our democratic institutions and for those things in our national life which we as a people hold to be of abiding worth'.[12]

The second similarity between Wright Mills' passage, which was written in 1959, and contemporary integration programmes is that maladjusted persons are always judged against those presumed to be ideally adjusted. The maladjusted are thus perceived to be deficient in comparison to the adjusted or the integrated. These presumed deficits on the part of maladjusted not only justify the differentiation between the two groups, but also reinforce an implicit or explicit hierarchy between them. In both past and contemporary civic integration policy initiatives, migrants' deficits allegedly can only be overcome through the gradual process of acculturation to middle-class patterns of life and through learning and embracing the nation's ideals and civic culture (education to citizenship). Such deficits normally include, speaking another language,[13] lacking the cultural traditions and values of the nation in question, having a different religion or not knowing the history of the host state and its constitutional evolution.[14] Little or no attention is given to facts, such as that multilingualism is a resource and should not be deemed to be a handicap if it does not include familiarity with the language of the host society and that 'lived languages' can easily become 'learned' ones[15] in a short period of time.

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[12] Cited in K. A. Appiah, *The Ethics of Identity* (Princeton, NJ: Princeton University Press, 2005) 202.
[13] In the early 20th century this was deemed to be a sign of intellectual inferiority.
[14] On the superimposition of democratic inclusion on forgotten exclusions, see Anthony Marx, *Faith in Nation: Exclusionary Origins of Nationalism* (New York: Oxford University Press, 2003).
[15] The latter terms are borrowed from H. Bhabha, *The Location of Culture* (London: Routledge, 1994) x cited in D. Kostakopoulou, 'The Anatomy of Civic Integration'.

Integration is thus something that migrants have to do in order to 'earn' an entitlement to be in a country, temporary or permanent residence, social assistance and ultimately eligibility to naturalisation. State elites genuinely believe that integration is something that can be delivered, measured with a view to verifying that it has been achieved and, ultimately, enforced. In brief, integration is deliverable and ascertainable. What is needed it to prescribe mandatory classes and tests. These reveal whether migrants have internalised the requirements and confirm their progress towards the desired goal of integration. Testing can be done at various gates - the gates devised so far are pre-entry screening and integration tests abroad, admission to a country, temporary or permanent residence and entry into the citizenry. Entry through the first gate may or may not guarantee the opening of other gates which require the fulfilment of different conditions and requirements.

But such reasoning is deeply flawed. This is not only because 'integration' is a long term process which cannot be subsumed under a contract of one or two or even five years' duration. It is also due to the fact that 'integration' is a long, complex and multifaceted process. True, it is often bumpy and segmented,[16] but it is equally true that it requires congenial rules and institutional conditions.[17] If people face rejection, they will not try to 'integrate'; they may feel 'more comfortable remaining outsiders'.[18] More importantly, like so many other things in life, it is reversible. Even 'well-integrated' citizens may find themselves questioning their commitment to a country or feeling strangers in the land[19] and recent foreign policy decisions are examples of how easy it is for a sense of alienation, disaffection and mistrust to spread among newcomers, citizens of migrant origin and autochthonous citizens. But it would be equally unwise to equate

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[16] H. Gans, 'Comment: Ethnic Invention and Acculturation: A Bumpy-line Approach', *Journal of American Ethnic History*, Vol. 11(1), 1992, 42-52. On segmented assimilation see M. Zhou, 'Segmented Assimilation: Issues, Controversies, and Recent Research on the New Second Generation', in C. Hirschman, P. Kasinitz and J. DeWind (eds.), *The Handbook of International Migration* (New York, Russell Sage Foundation, 1999) 196-212.

[17] J. Carens, 'The Integration of Immigrants', (2005) *Journal of Moral Philosophy*, Vol. 2 (1), at 42.

[18] G. A. Akerlof and R. E. Kranton, *Identity Economics: How our identities shape our work, wages and well-being* (Princeton: Princeton University press, 2010), pp. 102-03.

[19] See K. A. Appiah's reflections, n 14 above, 125-127.

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integration with the absence of such feelings since the latter play a crucial role in the formation of reflective judgements, democratic deliberations and demands for institutional change. In this respect, it may be argued that the integration contract is predicated on the delivery of something that is beyond both parties' full control. This lends credence to the argument that the true goals of civic integration programmes are not integration and inclusion; instead, they are migration restriction, control and discipline.

There also exists another possibility which may pervert the official objectives of civic integration, namely, their use by migrants in a purely instrumental way without procuring an identification with them. In their seminal book, entitled 'The Social Construction of Reality', which was published in 1966, Berger and Luckmann highlighted this phenomenon by writing:

'The individual internalises the new reality, but instead of being his reality, it is a reality to be used by him for specific purposes. In so far as this involves the performance of certain roles, he retains subjective detachment vis-à-vis them – he 'puts them on' deliberately and purposefully. If this phenomenon becomes widely distributed, the institutional order as a whole begins to take on the character of a network of reciprocal manipulations'.[20]

This results in individuals 'playing at being what they are supposed to be and what they are not supposed to be'.[21] The fourth similarity between Wright Mill's observations and contemporary integration initiatives is that they refer to a particular type of person judged to be perfectly adjusted or well-integrated. The 'good' residents and citizens are nationals,[22] and this is a reflection of the nationalist narrative of unified and unique nations which are nurtured and

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[20] Peter Berger and Thomas Luckmann, *The Social Construction of Reality; A Treatise in the Sociology of Knowledge* (London: Penguin Books, [1966], 1991) at p. 192.
[21] Ibid, p. 192.
[22] S. Carrera, *In Search of the Perfect Citizen? The Intersection Between Integration, Immigration and Nationality in the EU* (Leiden, Boston: Martinus Nijhoff, 2009).

sustained by coherent and organic cultures.[23] Official discourses thus define the 'good citizens' as unselfish, self-sufficient, extrovert, willing to socialise with his/her neighbours and keen to participate in communal activities, successful, resourceful and modestly ambitious. By so doing, they create a picture of a homogenous public, thereby bracketing so many human experiences and citizenship positions; the jobless, poor residents of council estates, single parents taking up two and three jobs in order to raise their families, the homeless, those tormented by mental illness, those who care for disabled or terminally ill relatives and so on. The good citizen is also a 'safe citizen';[24] a person embracing the right values, patriotic, deferential to governmental policies and so on. Essentially, the regime of civic integration exhibits what Lynn Doty has described in another context as 'an ultimately simplified understanding of our own identities, an understanding hinging on a certain blindness to the boundaries constantly being erected to circumscribe just what diversity is allowed to mean and how much of it can be tolerated before it becomes threatening to the very idea of a unified identity and thus undermines the coherence of the statement 'I am an American''.[25] In determining what diversity is allowed to mean and how much of it can be tolerated, emphasis is placed on the traditional markers of national identity, that is, language, knowledge of the history, the civics and national ways of life. There are recipes for 'correct citizenship' since they carry an implicit guarantee of loyalty and are seen to guarantee systemic stability.[26]

But this narrative can only convince if the unified national community is juxtaposed to its threatening 'other', namely, the migrants. The narrative thus opens a conceptual path for the maintenance of divisions. Migrants are transformed into a problematic category: they must be

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[23] See D Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2008) chapter 2; Yosef Lapid and Friedrich Kratochwil (eds.), *The Return of Culture and Identity in IR Theory* (Boulder, Co: Lynne Rienner 1996).

[24] The 'unsafe' citizen was used by C. Weber; 'Citizenship, Security, Humanity, International Political Sociology', *International Political Sociology*, Volume 4(1), (2010), pp. 80-85.

[25] Roxanne Lynn Doty, 'Do you know if your borders are secure?', *International Political Sociology*, Volume 4(1), March 2010, pp. 92-95, at p. 92.

[26] As Lord Goldsmith had stated, 'People with a lower sense of attachment appear to be more critical of the current social and political order'; *Citizenship: Our Common Bond*. A Report to Rt Hon. Gordon Brown MP (2007), http://www.justice.gov.uk/reviews/citizenship.htm, p. 86.

regulated, controlled, disciplined, tested and enlightened in order to cease to be threatening and/or a problem for social cohesion and the survival of national identity. This new categorisation is then endowed with its own implicit hierarchies and divisions; the good migrants v. the bad ones, the desirable v. the undesirable, the wanted v. the unwanted. Through civic integration discourses and policies, national elites will thus define the good migrants and those deemed to be less assimilable. The latter, who more often than not are Turkish, Arab, Asian or African, will be at the bottom of the hierarchy. Little consideration is given to the facts that one's nationality, religion or colour says nothing about the person and his/her ability to 'fit' into society, that migrants' lives are marked by complexity, translation, adaptation and fusion and that cultures and institutions are multilayered and mutable. The national script, that is, the story about the collective that elites propagate, does not leave room for complexity, variability and the reality of everyday life.[27] Nor does it entail references to post-ethnic identities and cosmopolitanism, transnational connections and individuals' overlapping 'belonging' into several communities formed at different levels of governance. By placing excessive emphasis on national pride, shared national values and common national projects, it is essentially a means of ongoing processes of state legitimisation, identity formation and population control. As such, it is always unfolding, narrated, disseminated and instilled in policies and laws relating to entry, residence, family reunification and naturalisation.

The retreat from the politics of multiculturalism and the state-led emphasis on mandatory integration testing invites a further reflection on the legitimacy of such measures and their capacity to deliver the desired goal of integration. Arguably, mandatory attendance of language and civic orientation classes, the prolonged process of scrutiny, combined with additional tests for the upgrading of legal status, and the sanctions attached to either non-participation or exam failure are more likely to trigger discouragement and feelings of exclusion within migrant

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[27] Compare the decision of the Conseil d'Etat in *Mme M*; Decision of 27 June 2008. Mrs M outlined all the practices of social citizenship and integration she participated in every day life, but this did not convince the French Conseil d'Etat which concluded that there existed a failure to assimilate.

communities. One wonders how a sense of belonging can be promoted by making it more difficult for one to belong. This leads me to conclude that the discourse on integration is based on the same logic as the discourse of exclusion and intolerance and that civic integration programmes largely reproduce what they criticise and are supposed to correct. As such, they are instruments of social and political closure.

The artificial homogenisation of society and the ethnocentricity characterising civic integration policies accentuates the vulnerability of migrants. By devaluing the productive effects of migrant labour and the multifaceted and dynamic encounters and partnerships between migrants and the host society, it transforms the former into problematic and deficient others. By so doing, it stimulates racism[28] and fuels hostility, resentment and xenophobia. Right wing discourses of fear and suspicion thrive in such an environment. Instead of affirming pluralism and the value of equal human dignity, and promoting intercultural dialogue and free communication, political life ends up being marked by strife and discrimination and becomes entangled in debates about essentialised cultural differences. The European Commission against Racism and Xenophobia has been concerned about these developments, not only because they have allowed for racist and xenophobic expression to become, sometimes, quite explicitly, a more usual occurrence within public debate itself, but especially because of the impact that the new political and public debate has had on public opinion and on the actions of ordinary citizens'.[29] And in his viewpoints, Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, has recommended the 'building of bridges of understanding': 'different groups should be allowed to fully integrate into society and, over time, demonstrate what they and their culture have to

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[28] Nora Rathzel, 'Developments in Theories of Racism', in *Europe's New Racism? Causes, Manifestations and Solutions*, edited by the Evens Foundation (New York: Berghahn Books, 2002) pp. 3-26.
[29] European Commission Against Racism and Xenophobia, Third Report on the Netherlands, CRI (2008) 3, Strasbourg, 12 February 2008, 35.

contribute. Curiosity and open-mindedness should be encouraged as well as a dynamic vision of the future instead of fear and suspicion'.[30]

Human rights norms and pluralism: a different take on the 'integrated' society

International human rights law can unsettle the premises of the civic integration regime by presenting an alternative normative framework. In the subsequent discussion, I focus on normative resources which could be utilised in order to call into question mandatory civic integration. These are the values of equal human dignity and non-discrimination, constructive pluralism, the right to family life (Article 8 ECHR) and a different supposition on the 'integrated' society emanating from human rights law.

Respect for equal human dignity and the moral egalitarianism of Article 1 of the Universal Declaration of Human Rights[31] ('all human beings are born free and equal in dignity and right'), coupled with the prohibition of discrimination on grounds of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (Article 2) and the proclamation that everyone has the right to recognition everywhere as a person before the law and is entitled without any discrimination to equal protection of the law, can unsettle the construction of migrants as a problematic category and thick narratives of belonging. In addition, the parties to the International Covenants on Human Rights[32] have undertaken the obligation to guarantee that the rights enunciated in these covenants will be exercised without discrimination of any kind as to race, colour, sex or language and to combat racism (1965 International Convention on the Elimination of All forms of Racial

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[30] *Human Rights in Europe: Growing Gaps*, Council of Europe, 2010, at p. 134.
[31] GA Res. 217A, 3(1) UN GAOR 71, UN doc. A/810 (1948).
[32] These are the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. All three instruments were concluded in 1966; GA Res. 2200, 21 GAOR Supp. (No 16) 52, UN doc. A/6316 (1966), GA Res. 2200, 21 UN GAOR Supp. (No. 16) 49, UN doc. A/6316 (1966); GA Res. 2200, 21 UN GAOR Supp. (No. 16) 59, UN doc. A/6316 (1966).

discrimination).[33] On the basis of the latter Convention, the Member States have thus an obligation to 'expressly and specifically' prohibit discrimination and to promote equality. This entails the adoption and effective enforcement of anti-discrimination legislation and adequate protection against racial harassment, violence and incitement to hatred. To deny or weaken human rights protection on the grounds of cultural specificity, race or ethnicity or the need to maintain a particular conception of national identity is discriminatory and contrary to the Vienna Declaration and Programme of Action.[34]

In addition, human rights instruments not only have affirmed the importance of culture for individuals and groups, but have also recognised the importance of cultural pluralism and the protection of cultural diversity. Article 27(1) of the Universal Declaration on Human Rights, which entails the recognition of the right of everyone to participate in the culture of the community - this is reaffirmed by Article 15 of the International Covenant on Economic, Social and Cultural Rights - and Article 27 of the International Covenant on Civil and Political Rights, which entails the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, have been complemented by the right of individuals to participate in cultural activities in Article 5(e)(vi) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 31 of the Convention on the Rights of the Child.[35] The latter Convention states explicitly that education must develop 'respect for the child's own cultural identity, language and values and for the national values of the country in which the child is living' while the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms migrant workers' right to maintain their cultural identity (Art.

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[33] General Assembly resolution 2106 (xx) of 21 December 1965. It entered into force on 4 January 1969.
[34] This was adopted in 1993 by the United Nations World Conference on Human Rights in Austria and affirms the universality of human rights; Para 1 states: 'The universal nature of these rights and freedoms is beyond question'.
[35] Convention on the Rights of the Child 1989, reprinted in 28 ILM 1448 (1989).

31) and the right 'to hold opinions without interference' (Art. 13(1)).[36] In this respect, the rigorous scrutiny of the cultural affiliations, beliefs and practices of newcomers and aspiring citizens[37] does not appear to be consonant with established human rights norms.[38]

The 1966 UNESCO Declaration on the Principles of International Cooperation, proclaimed by the General Conference of UNESCO on 4 November 1966, stated that all cultures form part of the 'common heritage belonging to all mankind'. The Declaration recognises that 'each culture has a dignity and value which must be respected and preserved' (Article 1) in conjunction with the affirmation of human dignity in the UDHR.[39] In this respect, both interstate cultural cooperation and internal exchanges among majority and minority communities need to be promoted. And the Mexico City Declaration on Cultural Policies, which was adopted on 6 August 1982, recognises that cultural pluralism is manifested in the presence of a variety of cultural identities. Article 2 states that 'the assertion of cultural identity therefore contributes to the liberation of peoples. Conversely, any form of domination constitutes a denial or an impairment of that identity'. After all, as the Declaration on Race and Racial Prejudice has noted, 'All individuals and groups have the right to be different… and to be regarded as such' (Article 1). The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, on the other hand, highlights the importance of mutual understanding and

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[36] The Convention was adopted in 1990 by the UN General Assembly (Resolution 45/158 of 18 December 1990). No European Union Member state has ratified it yet. For a discussion of the reasons, see Paul De Guchteneire, Antoine Pecoud and Ryszard Cholewinski (eds.*), Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (UNESCO Publishing and Cambridge University Press, 2009).

[37] Compare the Baden-Wurttemberg citizenship test which questions applicants' attitudes towards sexual orientation and gender.

[38] Respect for and protection of cultural identity features is also affirmed by the Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Principles of International Cultural Cooperation and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

[39] K. Singh, 'UNESCO and Cultural Rights' in *Cultural Rights and Wrongs* (UNESCO Publishing 1998) p.148.

cultural pluralism for societal enrichment.[40] Similarly, within a regional level, the preamble of the 1995 Framework Convention for the Protection of National Minorities[41] affirms that through dialogue cultural diversity becomes a source for the advancement of societies. Recognition and protection of people's own language and culture facilitates human rights promotion and protection; as Diana Ayton-Shenker has noted, 'such an approach is essential to ensure that the future will be guided above all by human rights, non-discrimination, tolerance and cultural pluralism'.[42]

States practices need to be consonant with fundamental rights, including the right to family and private life enshrined in Article 8 ECHR. In this respect, if integration requirements imposed on spouses seeking family reunification become essentially hurdles designed to delay or even to deter their entry, and if spouses find themselves unable to join their partners if they fail the integration tests, then it is quite likely that national regulations interfere with the normative structure of the right to family life (Article 8 ECHR). Normative infringements which make it virtually impossible to exercise the right or impair its very substance are unlawful. If, on the other hand, integration measures, such as language and civic orientation tests, are deemed to be simply arrangements associated with the exercise of the right to family reunification, because, for example, exam failure does not preclude the grant of a temporary visa to enter the host country and to retake the tests there, then such interferences, falling within the domain of Member States' margin of appreciation, could be justified according to Article 8(2) ECHR, provided they are in accordance with the law, pursue a legitimate aim (- and such aims are exhaustively listed in 8(2) ECHR), are necessary in a democratic society and meet a proportionality test. This means that the

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[40] United Nations General Assembly Resolution 47/135, 3 February 1993. See also A. Xanthaki, 'Multiculturalism and International Law: Discussing Universal Standards' (2010) 32 *Human Rights Quarterly* 21.
[41] Europ. TS No. 157.
[42] The Challenge of Human Rights and Cultural Diversity, United Nations department of Public Information DPI/1627/HR, March 1995, http://www.un.org/rights/dpil627e.htm.

Dutch and German integration requirements, which are essentially admission requirements or conditions for entry authorization, could well be seen to infringe Article 8 ECHR.[43]

Human rights thus protect individuals' private and family life and, as the foregoing discussion has shown, welcome the right to be different.[44] This implies neither the essentialisation of cultural identities nor the reification of cultures. Individuals are located within an ever-changing historical process which shapes and reshapes their manifold identities. Additionally, cultures are artefacts that change, mutate, become more plural, get constructed and re-constructed within complex and dynamic socio-political environments. By attributing importance to intercultural dialogue, mutual exchanges, cultural diversity and fair treatment, human rights law thus entails the resources needed to challenge exclusionary notions of belonging propagated by state elites and coercive state practices and to promote 'thinner', that is, less ethnocentric, conceptions of citizenship.

Avoiding discrimination in the attribution of nationality features prominently in the 1997 European Convention on Nationality, which has been neither signed nor ratified by the UK and Belgium. The Convention not only furnishes principles which could influence states' nationality laws, but also provides that naturalisation conditions should not be used as a discriminatory means of population selection or of implementation of a discriminatory policy. In this respect, imposing integration requirements which may reflect 'subjective and arbitrary judgments'[45] or demand unreasonably high levels of attainment or impose exceedingly high tuition requirements and fees thereby making access to nationality increasingly difficult or positing obstacles to the

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[43] I have discussed this in D. Kostakopoulou, 'The Anatomy of Civic Integration'.

[44] R. Stavenhagen, Cultural Rights: A Social Science Perspective, *in Cultural Rights and Wrongs* (UNESCO Publishing 1998) at p. 12. It may be worth noting here that the Elles Draft Declaration on the Human Rights of non-citizens entailed 'the right to retain one's language, culture and traditions' (Article 4[x]). Had a similar provision on the retention of language, culture and traditions been adopted, it could plausibly be interpreted as conferring upon non-citizens a legal right to resist integration in the host country; see R. Lillich, *The Human Rights of Aliens in Contemporary International Law* (Manchester University Press, 1984), 55.

[45] Advisory Opinion of the Inter-American Court of Human Rights OC-4/84, 19 January 1984, cited in V. Oers et al., 'Mapping the Redefinition of Belonging in Europe', at p. 328.

acquisition of nationality by the children of migrants, all would be seen to contravene the Convention.

Accordingly, human rights norms could open pathways for calling into question societal closure and for promoting a culture of rights and respect for the other. For it is only through learning from each other, engaging in intercultural and inter-religious dialogue and protecting diversity that constructive pluralism can take root in contemporary multicultural and globalised environments. While the discourse and policy of integration replicates national policies of migrant assimilation and domination, constructive pluralism welcomes migrants, who are unavoidably carriers of distinct cultures, languages, religious beliefs and values which do not contravene the normative framework of human rights and fundamental freedoms and the legal framework of the host society, as collaborators, partners and citizens in waiting (Table 1 below). The proliferation of mandatory integration testing in Europe signals an official retreat from multiculturalism, has augmented the vulnerability of migrants and has fuelled racist and xenophobic discourses. States' eagerness to place additional obstacles to acquiring a short term or long term residence and eventually citizenship has transformed migrant incorporation into an obstacle race. Coercive practices and the deployment of juridical mechanisms of migration control in order to enforce mandatory integration requirements coupled with the unnecessary state interference into individuals' private realms, by inquiring about their beliefs and views on nudity, gay partnerships, religion, family practices and conventions, have extended the disciplinary reach of the state and have give rise to unease in societies. Mapping these developments and inspired by the vision of human rights, democracy and cultural pluralism, the subsequent table compares and contrasts integration through participation in institutionally programmed games of snakes and ladders with the pluralist mode of migrant incorporation.

	Integration	Pluralism
Communities	Ethnocentric or civic nationalist	Plural, forward-looking and relaxed
The wider political narrative	Embracing homogeneity Nationality as the key to unity and social cohesion	The unity of society is achieved by doing things together, solving problems together, by designing appropriate institutions and by valuing the efforts of all those who contribute to the commonwealth
Key terms	Hierarchy, control and intolerance	Participation, fair treatment and non-discrimination
Perceptions of Newcomers and non-national residents	Subjects or very 'weak framers'	Active participants, collaborators and stakeholders
Learning and incorporation	Re-education - the content is determined by state authorities and includes formal courses, compulsory attendance, specified hours and curriculum and tests	Learning is self-directed and unavoidable: there exist multiple sites of learning and newcomers should be encouraged to take part in as many spheres of social life as possible
Sense of 'belonging'	To be instilled through formal programmes, tests and performative acts	It develops as a matter of course in processes of social interaction and cooperation
Community Relations	Suspicion and qualified acceptance: re-certifying their commitment at multiple gates – 'should they really be here?' 'who is worthy to belong to the community of citizens?'	Respectful symbiosis
Citizenship	An obstacle race	Easily acquired

Table 1. A comparison of incorporation strategies

Human rights norms thus not only expose the fault line characterising the way in which we see the others and conceive of integration, but they also bring forward a different picture of the 'integrated' society. They put emphasis on respect for the inherent dignity of all human beings irrespective of their class status, nationality, religion or legal status, do not tolerate differential treatment that is not objectively justified and compliant with proportionality and call into question

narratives of organic national communities whose organising principles newcomers must be coerced to learn. These two approaches are, of course, very different and likely to yield very different results. By putting emphasis on the historically ongoing character of social cooperation and a process of imagining (- and re-imagining) communities and constructing (- and reconstructing) collective identities that respects individuals' interests and expectations, the cosmopolitan promise of human rights leaves little room for notions of 'authentic cultures', for 'others who are deemed to be unfit for the national life and national citizenship' and 'true members'. Instead, it affirms the importance of pluralism, cultural heterogeneity and dialogic exchanges among groups and individuals with the view to maintaining and enriching the networks of cooperative interaction, enhancing the flourishing of the commonwealth and sharing its burdens more equitably.

In such an environment, individuals do not have to abandon their identities or reject their value systems in order to conform to the attitudes and cultures of the host community, but they are constantly challenged by the flow of ideas and arguments and prompted to reflect on the merits of assumptions, beliefs, ideas and prejudices that may espouse. No human activities take place in walled-off spaces, no actions are purely self-regarding and no policies are acceptable particularly when they imply harms or injustice to others, be they close or distant. This is because, contrary to contemporary political narratives associated with integration and citizenship tests, we live among moral agents, our thinking has been shaped by them and our actions have implications for them.

I have not seen a better depiction of the co-operative model of society mentioned above than in David Oleson's 1964 'parquet deformation' picture featuring below. Entitled the 'I at the Center', it shows how our personal identities are shaped by the myriad influences of neighbouring others, whose shapes, in turn, become increasingly different as they move away from the centre. The same would hold true if the 'I at the Center' was substituted by 'Community'. By going beyond the 'I at the Center', and Hofstadter's insightful remark that in Oleson's pen and ink

design we see that 'each of us is a bundle of fragments or other people's souls, simply put together in a new way,[46] one observes the common groupings that emerge towards the periphery of the design as well as the absence of any walls, dividing lines and even bridges among the central and peripheral shapes. In this image, communities feature as being the same and different at the same time and the web that holds groups and individual together in a political unit remains uninterrupted. In such an interconnected society, each community or personality helps define others' identities even as it seeks to define its own. 'Integration' thus occurs 'without a script', precisely because there is no intention to make it a culturally self-authenticating device. Rather, it is a matter of participation, the interweaving of experiences and empowerment through rights.

Being together with others, doing things with them and living together with mutual respect and equality entails a highly compelling vision of integration. Embedded within such a co-op model of society is individuals' freedom to 'choose whether or not to identify with a cultural community or with more than one cultural community simultaneously, regardless of borders, and to modify that choice' and their right 'not to be designated as belonging to a cultural community, or be assimilated into one, against his or her will'. Both rights featured in an informal working draft Declaration of Cultural Rights prepared by experts and representatives of organisations with a view to presenting it to UNESCO for adoption[47], and if they had been adopted they could legitimately be seen as conferring on individuals a right to resist integration and assimilation.

IMAGE OMITTED

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[46] Douglas Hofstadter, *I am a Strange Loop* (New York, Basic Books, 2007), p. 252.
[47] See Appendix C, Draft Declaration of Cultural Rights, Article 4 on 'Identification with a Cultural Community' in *Cultural Rights and Wrongs*, n 44 above at p. 204.

Conclusion

Contemporary civic integration regimes do not look to international human rights norms and the tradition of cultural pluralism for direction and inspiration. Instead of working with the new world of the 21st century, they decry the passing of the old world of national monoculturalism and closure. But by concentrating on outmoded concepts and narratives to respond to anxieties about national identities and to procure migration restriction and control, political elites can easily be seen as destroyers, and not as enablers, of societal integration and inclusion. In both official discourses and policies, 'integration' is not just a word to describe an action or the conditions for societies' harmonious development. Integration has become politicized by elites who believe that multiculturalism is a problem and/or a threat to national cohesion. Accordingly, it has mutated from a fact aligned with issues of socio-economic inequality and the social marginalisation of migrants to a norm tied up with ethnocentricity and individuals' alleged inability, or unwillingness, to assimilate. Whether it is perhaps time to redefine the concept of integration or to abandon it altogether remains the subject matter of a continuing discussion that can not be divorced from considerations of political morality, human dignity and rights.