



# *MEVROUW DE JONG GAAT ETEN: EU CITIZENSHIP, NATURALISATIONS AND MYTHICAL CULTURAL EXCEPTIONALISM IN EUROPE TODAY*

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*It has always been easier, it will always be easier, to  
think of someone as a noncitizen than to decide that he is  
a non-person.*

Alexander Bickel<sup>1</sup>

## **Introduction**

This essay discusses the dubious premises of the policy of cultural 'integration' adopted by a number of otherwise liberal democracies around the world. The focus is on the situation in the European Union (EU). By adopting a personal perspective on several occasions, I am looking for a new angle of assessing naturalization policies, which will hopefully be helpful for some of the readers who never changed nationalities themselves. Claiming that there is no such thing as a 'nation specific'

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<sup>1</sup> Bickel, Alexander, *The Morality of Consent*, New Heaven: Yale University Press, 1975, 53. For an illuminating analysis of this statement see Bosniak, Linda, 'Persons and Citizens in Constitutional Thought', 8 *Int'l J. Cont'l L.*, 2010, 9, 10.

culture to be tested and that the creation and consolidation of EU citizenship changed the whole framework of reference within which any Member State nationality operates and should be discussed, this essay exposes the counter-productive nature of the mistaken 'integration' approach to the absorption of non-citizens embraced by a growing number of Member States.<sup>2</sup>

The new reality which came about with the articulation of the status of EU citizenship<sup>3</sup> deeply affected the very essence of the Member States' nationalities in a number of important ways.<sup>4</sup> While EU citizenship provides all Member States' nationals with a number of Union-wide rights which no Member State alone could grant, the status of EU citizenship, although of *ius tractum* nature<sup>5</sup> (as it is derived from that of the nationalities of the Member States<sup>6</sup>), often finds itself in a contrarian relationship with such nationalities. The main logic behind the nationalities of the Member States – to which numerous naturalisation practices aimed at incorporating 'newcomers' clearly testify – is that of *settling* the nationals within the confines of the states.<sup>7</sup> The main logic of EU citizenship, on the contrary, consists in liberating citizens from the negative effects of the 'container theory of society'<sup>8</sup> that states impose. This is so, since the main EU citizenship right is *to leave* one's Member State of nationality<sup>9</sup> and to settle elsewhere. EU citizenship thus reinforces the democratic nature of the Union reflected in Article 6 TEU by providing for voting with one's feet:<sup>10</sup> EU citizens

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<sup>2</sup> The majority of EU Member States now require 'culture' and language testing. For up-to-date naturalisation regulations in all the Member States please consult the EUDO database, available at <[www.eudo-citizenship.eu](http://www.eudo-citizenship.eu)>.

<sup>3</sup> For analysis of the EU citizenship concept see, *inter alia*, Davies, Gareth, 'EU Citizenship', in Chalmers, Damian, Davies, Gareth, and Monti, Georgio, *European Union Law: Text and Materials*, Cambridge: CUP, 2010 (forthcoming), 439; Kochenov, Dimity, 'Ius Tractum of Many Faces: European Citizenship and a Difficult Relationship between Status and Rights', 15 *Colum. J. Eur. L.*, 2009, 169; Spaventa, Eleanor, 'Seeing the Wood despite the Trees? On the Scope of Union Citizenship and Its Constitutional Effects', 45 *Common Mrkt. L. Rev.*, 2008, 13; Kostakopoulou, Dora, 'Ideas, Norms and European Citizenship: Explaining Institutional Change', 68 *Modern L. Rev.*, 2005, 233; Jacobs, Francis G., 'Citizenship of the European Union – A Legal Analysis', 13 *Eur. L.J.*, 2007, 591; Maas, Willem, *Creating European Citizens*, Lanham: Rowman and Littlefield, 2007.

<sup>4</sup> Rostek, Karolina and Davies, Gareth, 'The Impact of Union Citizenship on National Citizenship Policies', 10 *Eur. Integration online Papers* 5, 2006, 1 (and the literature cited therein); Kochenov, Dimity, 'Rounding up the Circle: The Mutation of Member States' Nationalities under Pressure from EU Citizenship', *EUI Robert Schuman Centre for Advanced Studies Working Paper* No 2010/23, 2010, available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1577984](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1577984)>.

<sup>5</sup> Kochenov (2009) 'Ius Tractum', 181.

<sup>6</sup> Art. 20(1) TFEU.

<sup>7</sup> This explains dubious linguistic and 'cultural' testing in place in all the Member States. For the up-to-date analysis of national naturalisation laws of all the European states please visit EUDO citizenship observatory webpage: <<http://eudo-citizenship.eu>>.

<sup>8</sup> For the analysis of relevant literature see Calavita, Kitty, 'Law, Citizenship, and the Construction of (Some) Immigrant "Others"', 30 *Law & Soc. Inquiry*, 2005, 401, 405–409.

<sup>9</sup> Art. 21(1) TFEU.

<sup>10</sup> Such right is a characteristic of the majority of other federated entities around the world and goes to the core of the concept of federalism as one of the ways to promote freedom: Kreimer, Seith F., 'Federalism and Freedom', *Annals AAPSS* No. 574, 2001, 66; McDonnel, Michael, 'Review: Federalism: Evaluating the Founders' Design', 54 *U. Chi. L. Rev.*, 1987, 1484, 1494; Tiebout, Charles M., 'A Pure Theory of Local Expenditures', 64 *Journal of Political Economy*, 1956, 416. For a compelling explanation why the EU is a federation within a classical sense of the word see Schütze, Robert, 'On "Federal" Ground: The European Union as an (Inter)National Phenomenon', 46 *CMLRev.*, 2009, 1069; Schütze, Robert, *From Dual to Cooperative Federalism: The Changing Structure of European Law*, Oxford: OUP, 2009.

can always move away, choosing a Member State which would suit best their ideals of liberty and good life.<sup>11</sup>

Although it might seem that this obvious clash between the logical vectors of 'to stay' and 'to go' can be downplayed, it will have to be addressed seriously in the nearest future. Presuming that there is a general consensus about preserving a meaningful EU citizenship, this can only be done through rethinking and reframing the Member States' nationalities.

The situation of the newly naturalised Member State nationals is a perfect illustration of the logical disharmony existing between the two legal orders in the EU, affecting the same individuals simultaneously. This duality of statuses which governs the life of every single EU citizen exemplifies the archaic logic behind naturalizations, which, although obviously serving no purpose, is never questioned by politicians and is only rarely seriously criticized by scholars.<sup>12</sup> The illuminating critical accounts provided by Kostakopoulou<sup>13</sup> and Carens<sup>14</sup> are particularly useful in employing simple facts to challenge the counterproductive views entrenched within the political mainstream, which focus on the quasi-totalitarian embrace of necessarily a mono-culture, corresponding to each bounded community, each nation.

Such idea of the world shapes a duality, which consists in the tension between presumed order 'inside' and anarchy 'outside',<sup>15</sup> automatically dismissing any 'outside' culture as inferior to that of the majority culture 'inside' the state, mistakenly embracing the presumption of mono-cultural citizenship,<sup>16</sup> which never existed in reality,<sup>17</sup> however hard the states tried to impose it within the confines of their 'imagined communities'.<sup>18</sup> Viewed from this perspective, the European 'Costituzione

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<sup>11</sup> See Kochenov, Dimitry, 'On Options of Citizens and Moral Choices of States: Gays and European Federalism', 33 *Fordham. J. Int'l L.*, 2009, 156.

<sup>12</sup> For accounts of exceptional clarity see Kostakopoulou, Dora, 'Why Naturalisation?', 4 *Perspectives on Eur. Politics & Soc'y*, 2003, 85; Carens, Joseph H., 'Citizenship and Civil Society: What Rights for Residents?', in Hansen, Randall and Weil, Patrick (eds.), *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe*, New York/Oxford: Randall Books, 2002, 100, 109–113. See also Zilbershats, Yaffa, 'Reconsidering the Concept of Citizenship', 36 *Tex. Int'l L.J.*, 2001, 689, 714 (in the potential duty to grant citizenship to a resident of a state).

<sup>13</sup> Kostakopoulou, Theodora, *The Future Governance of Citizenship*, Cambridge: CUP, 2008.

<sup>14</sup> Carens, Joseph H., *Culture, Citizenship, and Community*, Oxford: OUP, 2000.

<sup>15</sup> Allott, Philip, *Eunomia: New Order for a New World*, Oxford: OUP, 1991. See also Allott, Philip, 'The European Community is not the True European Community', 100 *Yale L.J.*, 1991, 2485, 2491: '[There was] an internal life of society which, put in ideal theoretical terms, could be labelled a rationalist-progressive pursuit of ever-increasing well-being for all the people in accordance with a given society's highest values. And there also was an external life of society, seeking the well-being of the state by any means and at anyone's expense. And the reality of the relation of the European states over recent centuries reflected the theoretical structure: intrinsically unstable and conflicting, occasionally life-threatening on a very grand scale'. See also Blank, Yishai, 'Why Citizenship?' 8 *Theoretical Inquiries in Law*, 2007, 411, 414.

<sup>16</sup> For an argument for multiculturalism see Kymlicka, Will, *Multicultural Citizenship*, Oxford: OUP, 1995.

<sup>17</sup> This is so since citizenship can be presented as evolution/struggle for recognition both of formerly ignored groups (women, gays, racial minorities, the poor) and of new forms of rights. See also Sypnowich, Christine, 'The Culture of Citizenship', 28 *Politics & Society*, 2000, 531 (disagreeing with Kymlicka on the point of promoting minority cultures, but arguing for a general state obligation to ensure that all 'live well', including a guarantee of cultural tolerance).

<sup>18</sup> Anderson, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (2<sup>nd</sup> ed.), London: Verso, 1991. See also Smith, Anthony D., *The Ethnic Origin of Nations*, Oxford: OUP, 1986.

senza popolo'<sup>19</sup> is not an exception in representing a polity without a nation, but a reflection of the state of affairs corresponding to the situation where the state-imposed uniformisation is absent.<sup>20</sup> Indeed, 'nowhere is a common identity sufficient to give rise to new forms of governance. Identities overlap and compete with one another'.<sup>21</sup>

While Member States present language and 'integration' tests preceding naturalisation as necessary and useful, the fact that this is absolutely not the case is obvious from the outset. First of all, the liberal ideology of tolerance, coupled with common sense, allows for arguing against such practices. Indeed, those who are willing to naturalize are in the absolute majority of cases long-term residents of a polity. It is overwhelmingly arrogant of any 'container society', of any state, to assume that the culture and language(s) of these people are inherently worse than the ones which the state happens to sponsor.

Asking those who successfully functioned in a society for years on end to pass any tests for naturalization amounts to underlining their 'otherness' and stressing the presumption against the acceptance of such people as equals before they pass through the state-sponsored 'purification' process. In short, it comes down to the denial of social facts:<sup>22</sup> those who never bother to naturalize will stay, but will always be looked down upon by the state faithful to the presumption of their cultural inferiority, which will mandate their exclusion from the majority society composed of 'correct' citizens, whose representatives in the legislature would preach faithfulness to the 'real' (*i.e.* state-sponsored) culture, which is usually viewed as a frozen set of conventions, rather than a set of dynamic interactions of different, mutually enriching influences.

In fact, when speaking of culture in such a context, it is impossible but to focus, following Adorno, on the idea of control, since 'whoever speaks of culture speaks of administration as well, whether this is his intention or not'.<sup>23</sup> Once the state intervenes, the very essence of what one commonly understands as culture is instantly transformed: 'the law can play an instrumental role in "organizing culture"',<sup>24</sup> leading to the formation and promotion of *Leitkultur* – the official state-sponsored version of 'culture' which is promoted by the state. The whole path toward liberal democratic state during the last half a century is also a path *away* from such interventions towards tolerance and pluralism, which does not prevent majorities to hale the exceptionalism of local 'cultures', subtly (or not) employing such narrative against those who 'do not belong'.

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<sup>19</sup> Scoditti, Entico, *Costituzione senza popolo: Unione europea e nazioni*, Bari: Edizioni Dedalo, 2001. One might also, following J.H.H. Weiler, characterise European integration through the notion of 'European constitutional federalism': Weiler, Joseph H.H., 'In Defence of the *Status Quo*: Europe's Constitutional *Sonderweg*', in Weiler, Joseph H.H. and Wind, Marlene (eds.), *European Constitutionalism beyond the State*, Cambridge: CUP, 2003, 7.

<sup>20</sup> For a brilliant account see Scott, James, *Seeing Like a State*, New Heaven: Yale University Press, 1998. See also Sissenich, Beate, *Building States without Society*, Lanham, MD: Lexington Books, 2007.

<sup>21</sup> Sissenich, Beate, 'Justification and Identity in European Integration', 14 *Constellations*, 2007, 347, 349.

<sup>22</sup> Carens, Joseph H., 'Citizenship and Civil Society: What Rights for Residents?', in Hansen, Randall and Weil, Patrick (eds.), *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe*, New York/Oxford: Randall Books, 2002, 100, 110.

<sup>23</sup> Adorno, Theodor, *The Culture Industry*, London: Routledge, 1991, 107.

<sup>24</sup> Aziz, Miriam, *The Impact of European Rights on National Legal Cultures*, Oxford: Hart, 2004, 83.

An acceptance by the majority should not deter scholars from criticizing this state of affairs, however: the understanding that majorities are more often wrong than right, predates Publius<sup>25</sup> and democracy is only a success, since it 'does not demand much of people and [...] can function with a minimal human being'.<sup>26</sup> Moreover, democracy is just the means, as Weiler reminded us, not a value in itself.<sup>27</sup> Consequently, 'a democracy of vile persons will be vile'.<sup>28</sup>

Secondly, in the context of the EU all the aforementioned considerations are amplified by the functioning of the concept of EU citizenship. It is conferred on any third country national together with the nationality of a Member State, and is essentially antithetical to the narrow-minded nationalist concerns which drive naturalisation politics. EU citizenship, by its mere existence, thus renders overwhelmingly dubious all the illiberal 'integration' efforts put in place by exceedingly less tolerant national legislatures. These policies cannot escape from being assessed in the context of the Union as a whole, not of a single Member State. Once the level of magnitude has changed, all state-mandated cultures become 'minority cultures'<sup>29</sup> in some sense, which results in instant taming of their mythical claims.<sup>30</sup> In fact, agreeing with Kymlicka, one of EU's key achievements is precisely in the taming of liberal nationhood,<sup>31</sup> which corresponds to the consolidation of democracy.<sup>32</sup> Non-recognition of this important contribution of the EU would clearly amount to 'moral blindness'.<sup>33</sup>

## I. Structure of the argument

This essay will proceed as follows. Following a brief account of the author's naturalization experience (II.), the myth of necessary 'integration' of the 'new-comers' into the majority society propagated by a number of (still) liberal democracies is analyzed. This myth is commonly employed by states in order to justify the exclusion of citizenship applicants who are perceived in the popular culture as the 'other' (III.). The essay continues focusing on the clash between the essences of EU citizenship on the one hand and that of Member States' nationalities on the other (IV.).

The developments identified damage the harmonious development of the societies of the Member States in a number of important ways, including the

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<sup>25</sup> See e.g. Madison, James, 'Federalist 51' [1799].

<sup>26</sup> Mueller, John, 'Democracy and Ralph's Pretty Good Grocery: Elections, Equality, and the Minimal Human Being', 36 *Am. J. Pol. Sci.*, 1992, 983.

<sup>27</sup> Weiler (2003), 18.

<sup>28</sup> *Id.*

<sup>29</sup> de Witte, Bruno, 'Politics versus Law in the EU's Approach to Ethnic Minorities', in Zielonka, Jan (ed.), *Europe Unbound*, London: Routledge, 2002, 137, 148. See also von Toggenburg, Gabriel, 'Minorities (...) The EU: Is the Missing Link an "of" or a "within"?'', 25 *Eur. Integration*, 2003, 273, 275–276.

<sup>30</sup> This is not to say that myths and cannot efficiently coexist with rationality, in fact, the contrary seems to be true: Della Sala, Vincent, 'Political Myth, Mythology and the European Union', 48 *J. Common. Mrkt. Stud.*, 2010, 1, 16.

<sup>31</sup> Kymlicka, Will, 'Liberal Nationalism and Cosmopolitan Justice', in Benhabib, Seyla, *Another Cosmopolitanism*, Oxford: OUP, 2006, 128, 135.

<sup>32</sup> Weiler (2003), 18. This point echoes the analysis by other scholars. Miguel Poiares Maduro emphasized the taming nature of the EU in a recent lecture at Boston University School of Law (March 26, 2010).

<sup>33</sup> Kymlicka (2006), 135.

propagation of mythical national exceptionalism through the state-mandated exclusive idea of culture and, what is probably more important, through making it clear to the applicants for naturalization, no matter where they might be coming from, that their own 'non-culture' is not good enough for the states where they reside. Once the layer of EU citizenship is added on top of the problems identified, the urgency to deal with the problems outlined becomes even more acute.

I am not concerned here with the issue of bulling someone to give up other nationalities,<sup>34</sup> still accepted in a number of countries<sup>35</sup> on the despicably silly assumption that passports and identities are not only interconnected, but also mutually exclusive.<sup>36</sup> Such bulling always comes at the price of closing one's eyes at obvious inconsistencies of such policy, based solely on prejudices and empty claims.<sup>37</sup> A good example is provided by my own country, the Netherlands, where 10% of the population,<sup>38</sup> including Her Majesty the Queen,<sup>39</sup> are double or triple nationals, while the official policy consists in the prohibition of dual nationality, going against modern trends in international law.<sup>40</sup>

This essay sets out to formulate several outstanding problems awaiting urgent resolution. These problems not only make the lives of a huge number of people more miserable than they would be otherwise. They also threaten to affect social harmony in our societies, where, most regrettably, the right turn seems to start taking a tall on common sense.

## **II. On a personal note**

When I<sup>41</sup> got naturalized in the Netherlands, like any other citizenship applicant, I was asked to prove that I legally resided in the Kingdom for a number of years, that my income was sufficient and also that I was well enough versed in the local

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<sup>34</sup> Jessurun d'Oliveira, Hans Ulrich, 'Multiple Nationality and International Law by Alfred Boll', 101 *Am. J. Int'l L.*, 2007, 922.

<sup>35</sup> Among the EU Member States such countries include the following: the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Slovenia (numerous exceptions apply). See de Groot, Gerard-René, and Vink, Maarten, *Meervoudige nationaliteit in Europees perspectief: Een landenvergelijkend overzicht*, The Hague: Adviescommissie voor Vreemdelingenzaken, 2008.

<sup>36</sup> Kochenov, Dimitry, 'Dual Nationality in the EU: An Argument for Toleration', submitted to *ELJ*, 2010 (and the literature cited therein).

<sup>37</sup> Brøndsted Sejersen, Tanja, "I Vow to Thee My Countries" – The Expansion of Dual Citizenship in the 21<sup>st</sup> Century', 42 *Int'l Migration Rev.*, 2008, 523; Sassen, Saskia, 'The Repositioning of Citizenship and Alienage: Emergent Subjects and Spaces for Politics', in Bodeman, Michal Y. and Yurdakul. Gökçe (eds.), *Migration, Citizenship, Ethnos*, Basingstoke: Palgrave Macmillan, 2006, 13; s Howard (2005), 700 *et seq.*; Hansen, Randall and Weil, Patrick, 'Dual Citizenship in the Changed World: Immigration, Gender and Social Rights', in Hansen, Randall and Weil, Patrick (eds.), *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe*, New York/ Oxford, Berghahn Books, 2002, 1; Zolberg, Aristide R., 'The Dawn of Cosmopolitan Denizenship', 7 *Ind. J. Global Legal Stud.*, 2000, 511; Rubinstein, Kim, 'Citizenship in a Borderless World', in Angie, Antony and Sturgess, Garry (eds.), *Legal Visions of the 21<sup>st</sup> Century: Essays in Honour of Judge Christopher Weeramantry*, The Hague: Kluwer Law International, 1998, 183.

<sup>38</sup> de Groot and Vink (2008).

<sup>39</sup> Jessurun d'Oliveira (2007), 923.

<sup>40</sup> Spiro, Peter J., 'Dual Citizenship as Human Right', 8 *Int'l J. Const. L.*, 2010, 111.

<sup>41</sup> For a less personal account of the subject matter please consult Kochenov (2010) 'Rounding up'.

language and culture.<sup>42</sup> A most elaborate testing system in place in the Netherlands<sup>43</sup> is tuned to ensure the ‘integration’ of newly naturalized citizens into the society. In order to prove one’s ‘integration’ continuous presence in the country does not count, just as employment at the state (Imperial) University. Many years of lecturing to law students in the Dutch language in that very University do not count either. Even the legal advice presented to the *Tweede Kamer* (lower chamber of Parliament) is good for nothing,<sup>44</sup> once the law says that instead of all this an ‘official’ test of (official) culture has to be passed.<sup>45</sup>

The *inburgeringstoets* sends a message which is clear: possessing humanity is not sufficient to be embraced by the Dutch state even upon years spent in the Kingdom. Like a great number of other European countries, the Dutch state views the society it is in charge of as so highly specific that it is entirely different from any other on the planet, making it necessary to test the ‘knowledge’ of this specificity by those willing to naturalise, *i.e.* those who have been part of this very society for many years, like I was. Listening to the municipal employee, I was wondering how I could survive so many years in a society so very different and unique. Do they see Godard’s films differently? Do they read Dostoyevsky differently? That they cook differently I already figured out.

To prove my worthiness to vote against the likes of Wilders in a country where I have been paying taxes all my life, as I have never worked elsewhere, I registered for the test. The content of it was *truly* strange, to say the least. It included questions like ‘your neighbour died. What should you do?’ with the following suggested answers: ‘1. Nothing; 2. I send a condolences card; 3. I go help the widow’.<sup>46</sup> As any specialist in Dutch culture knows, only *one* of these answers is correct. Consider another example: ‘Mrs. de Jong says “I will go eat now”’ (*Ik ga nu eten*). Suggested reactions: ‘1. You are invited to join Mrs. de Jong; 2. Mrs. de Jong does not feel like speaking with you any more and wishes to go home; 3. Mrs. de Jong will probably invite you to eat with her later’.<sup>47</sup> And lastly: ‘Fines above a certain amount disqualify you from the possibility to become Dutch’ with the following suggested reactions: ‘1. Thanks God I only have a parking fine; 2. I did not know about this rule; 3. I never drink when I am driving’.<sup>48</sup>

Upon completing the test, of which no example is available anywhere and preparing to which is considered impossible, since ‘the proper attitude ... cannot be

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<sup>42</sup> Chapter 4, Rijkswet op het Nederlanderschap.

<sup>43</sup> For the description of the complexity of the Dutch ‘integration’ policy see van Oers, Ricky, de Hart, Betty and Groenendijk, Kees, ‘Country Report: The Netherlands’ *EUDO Citizenship Observatory RSC Paper*, EUI, 2009.

<sup>44</sup> *Kamerstukken II*, 31 200 IV, nr. 56 (reprinted in Bröring, H.E, Kochenov, D., Hoogers, H.G., Jans, J.H. (eds.), *Schurende rechtsordes: Over de Europese Unie, het Koninkrijk, en zijn Caribische gebieden*, Groningen: Europa Law, 2008). When I brought this document along to the municipal employee in charge of naturalisations she kindly noted that ‘since I spoke with a Flemish accent, I should probably consider naturalisation in Belgium instead’, making it obvious that no legal advice to the state can count as a sign of ‘integration’, especially if you speak like a ‘foreigner’.

<sup>45</sup> For the Dutch culture test with which I was confronted see <<http://docs.google.com/fileview?id=0B-z6p7DEIfUvNmZjNWQwMzgtNzM2OC00ZTIwLTgxNzItODAxNzVjMjRjNWRl&hl=en>> (the formulations are not identical to the ones in the test, as I had to reconstruct them relying on memory (taking notes during the test is prohibited)).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

learnt by heart',<sup>49</sup> the feeling of optimism which should normally accompany the decision to become a fully-fledged member of the society where one has been living for a very long time, was entirely gone.<sup>50</sup> I clearly remember how puzzled I was. *Is this Dutch culture, which for me included references to the Union of Utrecht, to the 'Golden Age'*<sup>51</sup> with its tulipmania,<sup>52</sup> to the art of Rembrandt van Rijn and Vincent van Gogh, to Piet Mondrian, to groundbreaking architecture and design, *Amsterdamse School*,<sup>53</sup> *De Stijl*<sup>54</sup> etc.? Above all, of all the famed liberalism and tolerance, so deeply entrenched in the Dutch society, there was no trace, to which the very existence of this absurd test abundantly testified. The language, which I learnt to read 'Rituelen',<sup>55</sup> seemed desecrated.

The Kingdom made it clear that besides being in contempt of my own culture and humanity, all what I considered important and what made me apply for naturalization actually did not count. What counted was a handful of irritating clichés like 'our trains are yellow' and 'our land is flat' as well as an ability to fill in forms correctly (to which several questions in the culture test were dedicated). It takes passing this secret test to realize that, in fact, the *imburgeringstoets* does not test any knowledge of anything and is not related to any culture whatsoever, however widely construed. Its real purpose seems to be the self-justification of the myth of exceptionalism of the local 'culture' of the Kingdom. The account of mythologies provided by Barthes is instrumental in this regard: myths are not important for the story they tell, but for what they *do*, as 'in a mythical system causality is artificial, false; but it creeps, so to speak, through the back door of Nature'.<sup>56</sup> Thus what counts in the context of the culture tests is not the rubbish contents of these exercises, but the line they draw between 'us' and 'them', which is, however, entirely arbitrary.

My personal story is not exceptional. Neither is it all too country-specific. More and more liberal democracies in the world introduce tests to check how accustomed citizens-to-be are with their 'culture' and society.<sup>57</sup> This worrisome practice of attempting the annihilation of the 'other' by imposing on her the status of 'one of us',

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<sup>49</sup> Groenendijk, Kees, 'Integratie en uitsluiting in het nederlandse vreemdelingenrecht', in Boeles, P. and Lodde, G., *Integratie en uitsluiting*, The Hague: Sdu uitgevers, 2005, 9, 30, as quoted in van Oers, Ricky, de Hart, Betty and Groenendijk, Kees, 'Country Report: The Netherlands' *EUDO Citizenship Observatory RSC Paper*, EUI, 2009, 26.

<sup>50</sup> The Dutch approach is opposed to the one in a number of other nations asking naturalization applicants to pass tests. US test, for instance, which does not contain absurd value judgements, unlike the Dutch: Park, Julian Wonjung, 'A More Meaningful Citizenship Test? Unmasking the Construction of a Universalist, Principle-Based Citizenship Ideology', 96 *California L. Rev.*, 2008, 999, 1032 *et seq.* (reproducing the standard questions of the US citizenship test).

<sup>51</sup> See Israel, Jonathan, *The Dutch Republic: Its Rise, Greatness, and Fall: 1477–1806*, Oxford: OUP, 1998.

<sup>52</sup> See Goldgar, Anne, *Tulipmania: Money, Honor, and Knowledge in the Dutch Golden Age*, Chicago: University of Chicago Press, 2007.

<sup>53</sup> See Casciato, Maristella, *The Amsterdam School*, 010 Publishers, 1996.

<sup>54</sup> See Overy, Paul, *De Stijl*, Thames & Hudson, 1991.

<sup>55</sup> Nooteboom, Cees, *Rituelen*, Amsterdam: De Bezige Bij 2009 (1980).

<sup>56</sup> Barthes, Roland, *Mythologies*, (trans. Annette Lavers) New York, Farrar, Starus & Giroux, 1972, 131.

<sup>57</sup> For an overwhelmingly interesting discussion see also the discussion between Christian Joppke, Ines Michalowski, Kees Groenindijk, Ricky van Oers, Amanda Klekowski von Koppenfels, Dora Kostakopoulou, Joseph Carens, Liav Orgad, Randall Hansen, Sergio Carrera, Elspeth Guild and Sara Wallace Goodman 'How Liberal Are Citizenship Tests', EUDO Citizenship Forum, 2010, available at <<http://eudo-citizenship.eu/cit-forum/viewtopic.php?f=2&t=10>>.

which Weiler abhorred<sup>58</sup> and Kymlicka found suspicious,<sup>59</sup> now seems to be accepted as a norm of daily life, generating a wave of scholarly criticism, a body of literature to which this essay aspires to contribute.<sup>60</sup> Indeed, 'integration' is a very interesting way of dealing with the 'other'. In the words of Weiler such 'come be one of us' strategy functions in the following way.

It is noble since it involves, of course, elimination of prejudice, of the notion that there are boundaries that cannot be eradicated. But the 'be one of us', however well intentioned, is often an invitation to the alien to be one of us by being us. Vis-à-vis the alien it risks robbing him of his identity. Vis-à-vis oneself, it may be a simple manifestation of both arrogance and the belief in my superiority as well as my tolerance. If I cannot tolerate the alien, one way of resolving the dilemma is to make him like me, no longer an alien. [...] It is a form of dangerous internal and external intolerance.<sup>61</sup>

Luckily the tests promoted by a number of states are not and cannot possibly be effective. States simply cannot impose any 'nation-specific culture' on the new citizens, neither can they invent it. And asking to know a local language does not make one forget the other five, let alone the lullabies,<sup>62</sup> since the private realm, our biological existence, is bound to be separated from the sphere of the political, to which citizenship is confined and where the tests take place: we are not in '1984'.<sup>63</sup>

The strongest point of culture is its universality, its appeal to the whole of the humanity, which unavoidably plays against any messianic feelings in the legislatures introducing 'culture' tests. Indeed, the content of the tests exemplifies the impoverished character of the myths of national exceptionalism. The duo of globalisation and liberalism has done its job. While classical myths are rich, colourful and intriguing, the myths of cultural exceptionalism adopted by the liberal democracies can only be dull and deeply embarrassing. If the Dutch example I provided does not seem convincing enough, any other citizenship test would do the job.<sup>64</sup>

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<sup>58</sup> Weiler (2003), 7.

<sup>59</sup> Kymlicka (1995).

<sup>60</sup> See e.g. Kostakopoulou, Dora, 'Matters of Control: Integration Tests, Naturalisation Reform and Probationary Citizenship in the United Kingdom', forthcoming in *J. Ethnic & Migration Stud.*, 2010; Joppke, Christian, 'Beyond national models: civic integration policies for immigrants in Western Europe', 30 *W. Eur. Pol.* 2007, 1. See also Vink, Maarten and de Groot, Gerard-René, 'Citizenship Attribution in Western Europe: International Framework and Domestic Trends', forthcoming in *J. Ethnic & Migration Stud.*, 2010.

<sup>61</sup> Weiler (2003), 19.

<sup>62</sup> For an informative account of the Soviet language policy in the Baltic States see Bychkov Green, Sonia, 'Language of Lullabies: The Russification and De-Russification of the Baltic States', 19 *Mich. J. Int'l L.*, 1997, 219. Liberal democracies in their illiberal phase cannot possibly be more effective in culture moulding than totalitarian empires.

<sup>63</sup> Agamben, Giorgio, *Homo Sacer: Sovereign Power and Bare Life* (trans. Daniel Heller-Roazen) Stanford, CA: Stanford University Press, 1998.

<sup>64</sup> Consider a standard question from the US naturalisation test: 'what colour are the stars on our flag?': Park (2008), 1032.

### III. State-mandated *étalons* of culture

My first thesis is that liberal democracies have simply lost the luxury of inventing themselves as nations in a substantive vein.

Post WW II developments leading to the rise of international migration – as well as international marriages producing children directly disproving the dogma of unitary identities and exclusive nationhood<sup>65</sup> – coupled with the global rise of human rights and liberalism<sup>66</sup> rendered it impossible for states to continue shaping their nations.<sup>67</sup> States effectively lost any legal possibility of imagining themselves as rooted in homogeneous monocultural societies, unable to ask of their own nationals and of the growing numbers of new-comers anything more than mere respect for the liberal ideology: ‘societies that lack or suppress [...] other affiliations, allowing only allegiance to the nation-state, are rightly condemned as totalitarian’.<sup>68</sup>

Nationality as such has been reinvented in a procedural vein, becoming merely a ‘*Kopplungsbegriff*’<sup>69</sup> connecting a state and a person. Proceduralisation of the idea of nationality means that lacking certain mythical characteristics of a ‘worthy citizen’ cannot cause either deprivation of nationality nor block access to naturalization, as “‘abstract character” of state membership [...] is decoupled from rights and identity’.<sup>70</sup> The citizenship test I had to pass was so embarrassing not only because its patriotic drafters were unwise.<sup>71</sup> Quite on the contrary in fact, they knew the limits of what they

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<sup>65</sup> The proliferation of liberal ideology also caused similar developments in other spheres. Just as the dogmatic construct of ‘nation’, the notions of ‘race’ and ‘family’ undergo mutation. Acceptance of dual nationality and multiple identities can thus be compared with the acceptance of interracial marriage, as well as sexual minorities. On the latter two see Ball, Carlos A., ‘The Blurring of the Lines: Children and Bans on Interracial Unions and Same-Sex Marriages’, 76 *Fordham L. Rev.*, 2008, 2733. Ball writes: ‘one of the reasons why same-sex marriage is so threatening to so many is that the raising of children by same-sex couples blurs the boundaries of seemingly preexisting and static sex/gender categories in the same way that the progeny of interracial unions blur seemingly preexisting and static racial categories’ (at 2735). Just in the same vein, the existence of dual nationals undermines the ‘natural’ division of the world into nations and states.

<sup>66</sup> Rawls, John, *Political liberalism*, New York: Columbia University Press, 1993; Sandel, M., ‘Review of Political Liberalism’, 107 *Harv. L. Rev.*, 1994, 1765; Dworkin, Ronald, ‘Foundations of Liberal Equality’, in Darwall, Stephen (ed.), *Equal Freedom. Selected Tanner Lectures on Human Values*, Ann Arbor: The University of Michigan Press, 1995, 190. Joppke provides an excellent summary of the idea applying it to the context of nationality: Joppke, Christian, ‘Immigration and the Identity of Citizenship: The Paradox of Universalism’, 12 *Citizenship Stud.*, 2008, 533, 534–536.

<sup>67</sup> See Falk, Richard, ‘The Decline of Citizenship in an Era of Globalization’, 4 *Citizenship Stud.*, 2000, 5.

<sup>68</sup> Martin, David, ‘New Rules for Dual Nationality’, in Hansen, Randall and Weil, Patrick (eds.), *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe*, New York/Oxford: Randall Books, 2002, 34, 39.

<sup>69</sup> de Groot, Gérard-René, *Staatsangehörigkeitsrecht im Wandel*, Cologne: Carl Heymanns Verlag, 1989, 5 (as quoted in Joppke, Christian, ‘Citizenship between De- and Re-Ethnicization (I)’, 44 *Archive européenne de sociologie*, 2003, 433). See also Makarov, Aleksander, *Allgemeine Lehren des Staatsangehörigkeitsrechts*, Stuttgart: Kohlhammer, 1947. There is a huge literature on the negative impacts of globalization on citizenship and the nation state: Bosniak, Linda, ‘Citizenship Denationalized’, 7 *Ind. J. Global Legal Stud.*, 2000, 447. See also Kuisma, Mikko, ‘Rights or Privileges? The Challenge of Globalization to the Values of Citizenship’, 12 *Citizenship Stud.*, 2008, 613; Wolf, Martin, ‘Will the Nation-State Survive Globalization?’, 81 *Foreign Aff.*, 2001, 178; Falk (2000); Rubinstein, Kim, and Adler, Daniel, ‘International Citizenship: The Future of Nationality in a Globalised World’, 7 *Ind. J. Global Legal Stud.*, 2000, 519; Lipschutz, Ronnie D., ‘Members Only? Citizenship and Civic Virtue in a Time of Globalization’, 36 *Int’l Politics*, 1999, 203.

<sup>70</sup> Joppke (2003), 433.

<sup>71</sup> Kostakopoulou, Theodora, ‘Thick, Thin and Thinner Patriotisms: In This all There Is?’, 26 *Oxford J. Legal Stud.*, 2006, 73.

legally could do all too well. Once state membership is abstract and there is an obligation to introduce a nation-specific ‘culture’ test, for those willing to naturalise, the test is bound to be at least as abstract as the belonging itself, *i.e.* a waste of time.

Contemporary liberal democracies are bound to accept social realities, which necessarily entails acknowledging the differences between citizens, as well as welcoming as citizens the residents who do not think, act or look like the majority. As a consequence, when they refer to ‘being one of us’, their ‘particularism’ is necessarily bound to stop at the restatement of liberal values: there is no more such a thing, legally speaking, as differences between ‘Britishness’, ‘Frenchness’, ‘Danishness’ etc.<sup>72</sup> Today, ‘the national particularisms which immigrants and ethnic minorities are asked to accept across European states, are but local versions of the universalistic idiom of liberal democracy’.<sup>73</sup> This makes it exceedingly more difficult for liberal democracies to justify the outdated logic of ‘naturalisation’ to which they historically expose the ‘new-comers’.

Faithful to the inertia of the modern times of nation-formation states have not stopped using the quasi-messianic rhetoric of national ‘specificity’, of which ‘culture’ and language testing are clear illustrations. Interestingly, as Weiler has compellingly demonstrated, the same applies, too, to the very idea of national *constitutional* specificity, which the Member States often embark on ‘protecting’ (rhetorically at least).<sup>74</sup> In the current context there is a need of critical reassessment of constitutionalism, an idea building – whether we want it or not – on the assumptions of monocultural nationalism.<sup>75</sup>

Whatever the mythical cultural exceptionalism of liberal democracies today might mean, besides the questions about a *mevrouw de Jong*, it is clear that it is powerless in front of a task of the generation and preservation of social cohesion. Neither the embarrassing questionnaires about local ‘culture’, nor the tests of proficiency in the local language are able either to replace, or to provide added value to simple socialisation of new members of a society. Indeed, instead of promoting socialisation, they merely play a role of ‘mobilisation bias’<sup>76</sup> – a well-known conclusion of social scientists which is hardly new. Indeed, agreeing with Kostakopoulou, ‘a sense of belonging to community develops with inclusion in society and politics, rather than as a result of citizenship ceremonies and language proficiency tests’.<sup>77</sup> There is nothing scary about a natural evolution of the society, where people eat what they want, pray when they want and choose a language suitable, as far as they can judge, for the occasion.

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<sup>72</sup> Joppke (2008), 536–542.

<sup>73</sup> *Id.*, 541.

<sup>74</sup> Weiler (2003), 16, 17. Although ‘protecting national identity by insisting on constitutional specificity is *à la mode*’ (at 16), ‘constitutional texts in our different policies, especially when it comes to human rights, are remarkably similar’ (at 17). Consequently, ‘defending the constitutional identity of the state and its core values turns out in many cases to be a defence of some hermeneutic foible adopted by five judges voting against four’ (*Id.*).

<sup>75</sup> Tully, James, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge: CUP, 1995. See especially Chapter 3: ‘The historical formation of modern constitutionalism: An empire of uniformity’, at 59–98.

<sup>76</sup> Lukes, Steven, ‘Political Ritual and Social Integration’, 9 *Sociology*, 1975, 289.

<sup>77</sup> Kostakopoulou (2006), 73; Kostakopoulou (2010).

Given that states are bound to exercise self-restraint in nation-building, it became apparent that ‘the paradigm of societies organised within the framework of the nation-state inevitably loses contact with reality’.<sup>78</sup> With the rise of human rights ideology and the proceduralisation of nationality, the array of exclusive entitlements which nationality would bring weakens, as the deprivation of rights on the ground of not being a citizen becomes more difficult to explain and justify.<sup>79</sup> Consequently, a number of key social and some political rights previously associated with the idea of ‘belonging to a nation’, came to be connected with residence only,<sup>80</sup> watering down citizen-foreigner dichotomies.<sup>81</sup>

As a result of the developments described, national borders are genuinely irrelevant for increasing numbers of people in planning their lives. This makes it impossible, wholeheartedly to embrace the fictions taught to our great-grand fathers by the public school systems of the day in the expression of a reality masterfully exposed by Renan: ‘l’oubli, et [...] l’erreur historique, sont un facteur essentiel de la création d’une nation’.<sup>82</sup> School curricular research in the liberal democracies in Europe demonstrates that the idea of national glory – the cornerstone of the school programs of the past – is being supplanted.<sup>83</sup> ‘British national pride’, like any other similar institution, is in decline.<sup>84</sup> States are trying hard to come up with their ‘own’ culture<sup>85</sup> but there is no such thing, beyond tolerance, which can be embraced, but not owned.

#### **IV. EU citizenship / Member States’ nationalities: Diverging vectors**

My second thesis is that, when viewed through the lens of EU integration, language and ‘culture’ tests seem even less justified, running counter the very idea of European integration, let alone that of EU citizenship.

The EU adds to the transformative potential of liberalism and migration in general. Precisely because EU citizenship is ultimately a secondary status, the power of the Member States, who remain in charge of nationalities,<sup>86</sup> is severely weakened. This is so, since while each one of them taken separately can have an illusion that it controls access to EU citizenship, taken together they do not, as long as the naturalisation regimes are not harmonised, at least to some extent. Huge disparities between the

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<sup>78</sup> Beck, Ulrich, ‘The Cosmopolitan Perspective: Sociology of the Second Age of Modernity’, 51 *British Journal of Sociology*, 2000, 79, 80.

<sup>79</sup> See in this respect *inter alia* ECt.HR *Gaygusuz v. Austria* [1996] Appl. No. 17371/90.

<sup>80</sup> Maillard, Sandrine, *L’émergence de la citoyenneté sociale européenne*, Aix-en-Provence : Presses universitaires d’Aix-Marseille, 2008; van der Mei, Anne Pieter, ‘Union Citizenship and the “De-Nationalisation” of the Territorial Welfare State’, 7 *Eur. J. Migration & L.*, 2005, 210; Davies, Gareth, “‘Any Place I Hang My Hat?’ or: Residence is the New Nationality”, 11 *Eur. L.J.* 1, 2005, 43.

<sup>81</sup> Schuck, Peter H., *Citizens, Strangers, and In-betweens: Essays on Immigration and Citizenship*, New York: Westview Press, 2000.

<sup>82</sup> Renan, Ernst, *Qu’est-ce qu’une nation? et autres essais politiques*, Paris: Agora, 1992 (1st ed. 1882), 41.

<sup>83</sup> Joppke (2008), 537 (and literature cited therein).

<sup>84</sup> Tilley, J. And Heath, A., ‘The Decline of British National Pride’, 58 *British J. Sociology*, 2007, 661.

<sup>85</sup> And sometimes language: the invention of Montenigrin, which, although identical to Serbo-Croat is defined as ‘ethnically and culturally separate language’ by the Montenigrin Association of America is the latest example of this fascinating process (<<http://www.montenegro.org/language.html>> ).

<sup>86</sup> Case 135/08 *Janko Rottmann v. Freistaat Bayern* [2010] ECR 0000 (judgement of March 2, 2010), para 39.

citizenship laws of all the Member States<sup>87</sup> lead to the multiplication of the ways of acquisition of the same status of European citizenship. In failing to regulate the issue of access to EU citizenship effectively, the Member States opted for the illusion of control rather than the resolution of outstanding problems, which include, most importantly, the need to design an effective immigration policy for the Union, while ensuring that the rights of EU citizens and third-country nationals are protected.

In a borderless Union the current approach means that more than twenty-seven ways of acquiring the same status applicable in all the Member States are in existence.<sup>88</sup> Informed third-country nationals are free to choose the Member State where the access to nationality is framed in the most permissive terms,<sup>89</sup> in order to move to their 'dream Member State' later, in their capacity as EU citizens. Obviously, when comparing the number of rights associated with EU citizenship with that associated with the nationality of a particular Member State, it becomes clear that at present 'for third-country nationals residing in the EU it is becoming increasingly irrelevant in which Member State to naturalize'.<sup>90</sup> The main status they are likely to benefit from, in any event, will be EU citizenship, not the particular Member State's nationality *per se*.<sup>91</sup>

Consequently, the Member States are unable to make a coherent claim to be able to control the access of non-nationals to their territories.<sup>92</sup> No matter how they frame their citizenship laws, the mere existence of the internal market has already destroyed any direct logical connection between the territory of a particular Member State and the 'people' of that Member State. The conceptual contradiction between the nationality policies of the Member States and the main EU citizenship rights is clear. While the Member States grant nationality to those connected with their territory or populace, assuming that the nationals would keep such connections, EU citizenship follows an opposing rationale, aiming at encouraging people to move, to benefit from the opportunities that the internal market has to offer and to think beyond their Member States. Consequently, third-country nationals naturalising in a particular Member State can do this for two reasons: either to stay in the Member State or to leave immediately, benefiting from the main right of EU citizenship.

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<sup>87</sup> For overviews see e.g. de Groot and Vink (2008); Bauböck, Rainer, Ersbøll, Eva, Groenendijk, Kees and Waldrauch, Harald (eds.), *Acquisition and Loss of Nationality: Policies and Trends in 15 European States: Comparative Analyses* (Vol. I), Amsterdam: Amsterdam University Press, 2006. For detailed country-by-country information see the documents available on the web-page of the EUDO project: <<http://eudo-citizenship.eu/>>.

<sup>88</sup> Kochenov (2009) '*Ius Tractum*', 182–186.

<sup>89</sup> This is exactly what happened in the *Chen* case, where a Chinese mother came to Belfast in order to give birth to little Catherine in defiance of the Chinese one-child policy. The girl acquired Irish nationality by birth and immediately fell within the scope of EU law as an EU citizen falling within the scope *ratione materiae* of EU law, since the birth actually took place in the UK, creating a cross-border situation: Case C-200/02 *Kunqian Catherine Zhu & Man Lavette Chen v. Secretary of State for the Home Department* [2004] ECR I-9925. As one can guess, '[t]he choice of Ireland as Catherine's place of birth had not been accidental but rather influenced by the peculiarities of Irish Nationality laws in force at that time, which had been brought to the Chens' attention by their lawyers': Hofstotter, Bernhard, 'A Cascade of Rights, or Who Shall Care for Little Catherine? Some Reflections on the *Chen* Case', 30 *Eur. L.Rev.* 2005, 548.

<sup>90</sup> Kochenov (2009) '*Ius Tractum*', 183.

<sup>91</sup> For a detailed analysis of this point see Kochenov (2010) 'Rounding up', on which the core of this and the previous section is based.

<sup>92</sup> See also Maas (2007), 8.

Currently, the Member States seem to assume that the latter choice is not an option, since all the naturalisation policies are built on the assumption that a new citizen will *stay* in the Member State, which provides justification for the linguistic, cultural and other tests the newcomers are asked to pass before EU citizenship is conferred on them. Once the EU dimension is taken into account, however, the illusory world in which the Member States are still living crumbles in a second: why would you ask of an applicant for naturalisation to be proficient in Latvian, a language which virtually no-one speaks in the EU (and the world), if it is known that the main right that naturalisation confers is to *leave* Latvia and to benefit from EU citizenship rights in a greater Europe where hardly anything 'Latvian' will help? This is so obvious and, at the same time, so stubbornly ignored by the Member States that the situation can hardly be characterised in optimistic terms. However, given the lasting impact of European integration on the nationalities of the Member States it is unavoidable that the change will come. Pronounced in a slightly different context, these words of AG Poiares Maduro certainly apply to the awkward situation of those persons who, when naturalising in the EU, are exposed to 'culture' and language tests:

Citizenship of the Union *must* encourage Member States to no longer conceive of the legitimate link of integration only within the narrow bonds of the national community, but also within the wider context of the society of peoples of the Union.<sup>93</sup>

Viewed from the other side, any Latvian policy of language and 'culture' promotion targeting uniquely third-country nationals is by definition futile, since Latvia is just a tiny spot on the map of the EU, where borders do not exist for EU citizens. The latter can rely on EU law to come to Latvia and settle there. Given that any discrimination on the basis of nationality, either direct or indirect, is squarely prohibited by Article 18 TFEU,<sup>94</sup> the application to EU citizens of any kind of tests in any circumstances is legally impossible.<sup>95</sup> And if a Belizean naturalised on the island of Curaçao by virtue of passing an exam of the knowledge of Papiamentu<sup>96</sup> can settle in Latvia without any tests, how can the preservation of cultural specificity be used as an argument for asking a Moldovan to pass them? Is Papiamentu less 'dangerous' for the survival of Latvian culture than Romanian written in Cyrillic script? Obviously, the same observations apply to any of the Member States of the Union in a situation where, as Somek put it, 'the [EU] does no longer yield'.<sup>97</sup>

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<sup>93</sup> Opinion of AG Poiares Maduro in Case C-499/06 *Halina Nerkowska v Zakład Ubezpieczeń Społecznych Oddział w Koszalinie* [2008] ECR 3993, para 23 (emphasis added).

<sup>94</sup> For assessment see Davies, Gareth, *Nationality Discrimination in the European Internal Market*, The Hague: Kluwer Law International, 2003.

<sup>95</sup> See e.g. Case C-544/07 *Uwe Rüffler v Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu* [2009] ECR 0000, judgement of 23 April 2009, para 64; Joined cases C-396/05, C-419/05 and C-450/05 *Doris Habelt, Martha Möser and Peter Wachter v. Deutsche Rentenversicherung Bund* [2007] ECR I-11895, para 2.

<sup>96</sup> For the application of EU citizenship in the overseas possessions of the Member States see Kochenov, Dimitry, 'The Impact of European Citizenship on the Association of the Overseas Countries and Territories with the European Community', 36 *Legal Issues of Economic Integration*, 2009, 239.

<sup>97</sup> Somek, Alexander, 'Solidarity Decomposed: Being and Time in European Citizenship', 32 *Eur. L.Rev.*, 2007, 787, 789.

Even though the European citizenship does not directly question the dubious nature of claims to the nation-specific cultures, it clearly flashes out the inconsistency of the policy of 'culture' and language testing by the Member States. Even if specific culture to be tested existed, which is not the case, as the previous two sections of this essay have demonstrated, and if the knowledge of particular state-selected languages were indispensable for successful functioning in a society, which is equally untrue, even if patronising, the claim for pre-naturalisation tests still makes no sense, as it ignores all those who do not intend to naturalise and simply live in a territory of the given Member State,<sup>98</sup> as well as all EU citizens coming from other Member States, who are given virtually *all* rights associated with the nationality anyway, no naturalisation required.<sup>99</sup>

Should one be alarmed by this state of affairs? Most certainly not: the examples provided simply point to the fact, once again, that the assertions of messianic cultural exceptionalism by the Member States are routed in prejudice, rather any legitimate concerns. With language it is all the same: one can spend days in Luxembourg without hearing Luxembourgian. We are likely to hear less of it in the near future, just as we will hear less Dutch in the streets of Amsterdam, or less English in the streets of San Francisco. Is this a valid reason to make a handful of third country nationals naturalising in the Grand Duchy to pass a language exam? Of course not, since, firstly, knowing a language does not necessarily mean using it. Secondly, should the new Luxembourgians opt for benefiting from their free movement right and leave the country, they will not have anyone to speak to (too bad they were pushed to learn the language they will never need). Lastly, given that language requirements do not apply to non-naturalising third country nationals and EU citizens their imposition clearly cannot have anything to do with Luxembourgian society, of which the latter two groups make an all too important part. Rather, it is about the distorted self-image of the state, which opts for intruding into the lives of the weakest among the populace with its unjust demands. How else can this be characterised if not as '*apartheid européen*'?<sup>100</sup>

Putting 'culture' and language testing into EU context demonstrates with clarity how arbitrary random and non-sensical these policies are. All in all, the picture of inclusion and exclusion as applied to different entitlements in the EU is such that, agreeing with Aziz, it 'fails to adequately account for the *status quo* in the Union and the spheres of belonging which, to some extent, make a mockery of vertically defined hierarchical interpretations of citizenship'.<sup>101</sup> Much needs to be changed.

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<sup>98</sup> A number of the Member States has recently moved towards introducing 'culture' and language testing of some categories of migrants before admitting them to the territory, which is nothing but a most disappointing creation of obstacles in people's lives for no positive reason (besides racism and xenophobia, of course, which linger behind the scenes). For the analysis of the list of the countries as well as the analysis of the policy using the UK as an example see Kostakopoulou (2010).

<sup>99</sup> For details see Kochenov (2010) 'Rounding up', 31.

<sup>100</sup> Balibar, Étienne, *Nous, citoyens d'Europe? Les frontières l'Etat, le peuple*, Paris : La Découverte, 2001, 190, 191.

<sup>101</sup> Aziz (2004), 79–80.

### ***Chto delat'?* (as a conclusion) <sup>102</sup>**

Whatever liberal democracies think about the stand-off between culture of humanity and their 'own culture', when connecting the state-approved possession of the latter with the newly-reinvented notion of citizenship, to which the 'culture' and 'integration' tests testify, it is inevitable that the obvious is bound to prevail: the return to the logic of modern states actively shaping their nations and annihilating the 'other' within their borders is highly unlikely. And in their present form, the tests, as introduced, do not actually test anything even closely related to culture, despite trying to reassert citizenship against personhood of those taking them. This is wrong and can lead to increasing tensions in the societies making this mistake, just as any other arbitrary divide unjustifiable on its face would. Bosniak is right, submitting that 'the very idea of personhood in liberal-egalitarian thought is ethically expansive ... [this idea] contains the normative and rhetorical resources to challenge every context in which it is situated – including the national constitutional context itself'.<sup>103</sup> The battle for self-serving myths fought by all the 'integrationist' states against their own inhabitants willing to be accepted is thus lost, having just started.<sup>104</sup>

The search for more questions about *mevrouw de Jong* going to eat, hoping to invent cultural exceptionalism through 'culture' testing of permanent residents should stop as soon as possible. The idea that every liberal democracy in the EU is in possession of its own unique culture worth being imposed on the new-comers is the first problem I promised to outline. The second problem concerns the chronic blindness of the Member States, unwilling to see the effects of European citizenship and the successful functioning of the internal market on their societies. In reframing naturalization politics, attention should be paid to the fact that the Member States do not represent closed container societies any more and that the vectors of EU citizenship and of their nationalities are diametrically opposed to each other. Asking someone to learn Slovenian to become an EU citizen can thus be counter-productive, a mistake. Lastly, it is highly worrisome that the Member States do not feel the need to respect the private realm of those willing to naturalize; language and culture should be left to every individual human being to choose and to practice. By demonizing those who have not yet answered the questionnaire about *mevrouw de Jong's* preferences, social cohesion is undermined and numerous lives derailed. While pointing out all this is restating the obvious, it is most unfortunate that these issues are not seriously discussed in the Union today. It is easy to predict, however, that in the medium term future naturalization procedures in the EU will be radically different from what we have now – more open and, ultimately, more just.

Returning to my personal story, all the nuisances of the process notwithstanding, I am very happy to have become an EU citizen. Although the literature seems to be unanimous on the fact that the EU cannot generate an emotional appeal,<sup>105</sup> I am one of the few for whom the contrary is true: it is EU

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<sup>102</sup> See Chernyshevsky, Nikolai, *Shto Delat'?* [What Is to Be Done?], Leningrad: Nauka, 1975 [1863].

<sup>103</sup> Bosniak (2010), 29.

<sup>104</sup> This does not prevent the current policies to intrude into the lives of hundreds of thousands of people throughout the EU, derailing their lives for no reason and driven by sheer prejudice and the lack of common sense.

<sup>105</sup> See e.g. Della Sala (2010), 1. For a particularly balanced and illuminating account see Aziz (2004), 82–84.

citizenship, not the Dutch nationality that matters most to me. That I was bound to receive EU citizenship via the Dutch Kingdom is just a minor element of my story – other Member States happen to be just as short-sighted in putting widely-held prejudices into their naturalization laws. Having dedicated several years of my academic enquiries to the analysis of the regulation of the accession of states to the EU,<sup>106</sup> I am particularly happy to have acceded to the Union personally. I thus wholeheartedly thank the Queen in whose name I became an EU citizen.

Thank you, Beatrix, a Dutch monarch with a British nationality (among others).

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<sup>106</sup> Kochenov, Dimitry, *EU Enlargement and the Failure of Conditionality*, The Hague: Kluwer Law International, 2008.