Res Publica (2019) 25:55–81
https://doi.org/10.1007/s11158-017-9369-y

Linguistic Integration—Valuable but Voluntary

Why Permanent Resident Status Must Not Depend on Language Skills

Anna Goppel[1]

Published online: 13 November 2017

Abstract Over the last decade, states have increasingly emphasised the importance of integration, and translated it into legal regulations that demand integration from immigrants. This paper criticises a specific aspect to this development, namely the tendency to make permanent residency dependent on language skills and, as such, seeks to raise doubts as to the moral acceptability of the requirement of linguistic integration. The paper starts by arguing that immigrants after a relatively short period of time acquire a moral claim to permanent residency in their host country. Accordingly, states may not limit residency at their discretion. Nevertheless, three arguments may seem promising for defending the requirement of linguistic integration: (a) that the immigrants' moral claim conflicts with a stronger moral claim on the part of the larger society, and this makes an infringement of the immigrants' claim proportionate; (b) that language requirements may be legally demanded as a precondition for permanent residency for the immigrants' own sake; and (c) that language requirements are defensible, as far as immigrants may be understood to have consented to such regulation upon entry to the country. This paper argues that all three must be rejected.

Keywords Ethics of immigration · Linguistic integration · Permanent residency · Language requirements · Integration requirements

For a long time states' immigration policies did not ascribe any role to integration. Since the beginning of this century this has changed. While for many decades states accepted immigrants without implementing any integration programmes, they now increasingly attach importance to integration. More importantly, they demand integration from immigrants as a prerequisite for the granting of core legal rights,

✉ Anna Goppel
anna.goppel@philo.unibe.ch

[1] Institute for Philosophy, University of Bern, Bern, Switzerland

linguistic integration playing an essential role. These new immigration regulations not only make access to these rights more demanding, they also illustrate a change in the perception of integration; from perceiving it as a 'positive social measure', to mainly perceiving it as a 'repressive immigration provision' (IOM 2009, p. 43).

One right, with regard to which this recent tendency is blatant, is the right to permanent residency. Within the last few years, several EU states, such as Austria, Denmark, Estonia, France, Germany, Latvia, the Netherlands and the United Kingdom, have made access to permanent resident status dependent on the passing of a language test—each differing regarding specific aspects such as the target group, the required level of language skills, as well as the strictness with which the regulations are implemented—and there has been a tendency to make these linguistic requirements increasingly demanding.[1] For the acquisition of EU long-term resident status, language requirements have been accepted, though not been made obligatory, for member states.[2] With regards to an increase of language requirements outside Europe, Canada, for example, adopted minimum language requirements for almost all programmes for immigration or permanent residency in 2012.[3]

In this paper I aim to raise doubts about the moral acceptability of migration policies that make the right to permanent residency dependent on linguistic requirements. As such, I am not questioning the desirability of linguistic integration for the immigrants themselves or the larger society—I actually believe language skills to be very valuable in many respects—rather, I question a tendency in migration policies. This tendency is quite specific. It is a tendency, however, that reflects the widely accepted assumption that states are morally justified in legally demanding integration from immigrants in exchange for crucial rights.[4] Moreover, in light of the value—both instrumental and non-instrumental—of the right to permanent residency, this tendency fundamentally affects the lives, and, as I will argue, the moral claims of numerous individuals. Compared to temporary residence statuses, the right to permanent residency no longer makes the allowance to stay in the country dependent on a specific immigration purpose, such as a specific job or the attendance of a specific education programme. Hence, it grants a substantially more secure status and allows for future planning in the absence of the fear that one might be forced to leave the country. Varying between different countries, the right to permanent residency, moreover, constitutes the precondition for several other

[1] Some countries, e.g. the Netherlands and Austria, require language skills for certain groups of immigrants as a precondition for even the allowance of a temporary residence permit (IOM 2009, pp. 41–43). These stricter, though more isolated, regulations will not be looked at specifically.

[2] For an overview of the developments and differences between the regulations of several EU-countries see Böcker and Strik (2011), Strik et al. (2010), chap. 3 and IOM (2009), chap. 2.3, specifically pp. 41–43 and 50–60.

[3] See the different programmes at: http://www.cic.gc.ca/english/information/applications/index.asp; accessed 18 May 2015. An increase of language requirements happened e.g. in 2012 regarding the Provincial Nominee Program, http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-04-11.asp; accessed 18 May 2015.

[4] Carens (2005, p. 30) distinguishes between requirements, expectations, and aspirations. In his terms, I will focus on requirements only, i.e. demands that may be legally and formally incorporated and sanctioned.

rights, such as access to certain social services or access to the labour market (Strik et al. 2010, p. 57).

Contrasting with the addressed political developments, philosophically these linguistic integration requirements have hitherto enjoyed little attention. In the ethics of immigration, the issue of whether the requirement of linguistic integration is morally legitimate as a prerequisite of permanent residency has been widely left unattended and in the context of possible requirements for access to citizenship the requirement of linguistic integration has typically been accepted without great discussion (see e.g. Hampshire 2010, p. 88; Miller 2008, p. 385; Walzer 1983, pp. 60–61).[5] Similarly, the debates on language policies and linguistic injustice do not attend to linguistic requirements addressed in this paper. Important contributions have been made with a view to how language and linguistic diversity is justly regulated in general, and regarding a range of specific language related issues, including language rights for minorities, the public recognition of languages, individual linguistic autonomy, and linguistic regulations in public education (e.g. De Schutter 2008; Kymlicka 1995; Patten 2001, 2006, 2014; Van Parijs 2000).[6] These discussions, however, do not relate to this paper's concern,[7] and address national minorities rather than migrant groups,[8] all of which renders them largely inapplicable to this paper's discussion. Prominently, Philippe Van Parijs (2011), in his work on linguistic justice, takes a broader perspective and addresses justice and relevant language developments triggered by migration, and the justifiability of coercive countermeasures to increase linguistic integration. However, neither of these countermeasures include linguistic integration as addressed in this paper, nor

[5] An exception is Joseph Carens. Although with arguments related to citizenship and with regard to a point in time beyond the five years here assumed as requirement for permanent residency, he explicitly questions the requirement with a view to access to citizenship (Carens 2005, pp. 39–40, 2013, pp. 55–61, specifically on language skills at pp. 59–60). More importantly, although without explicitly addressing language requirements in this context or discussing potential counterarguments, (a) his defence of a claim to not be deported that permanent residents, according to his argument, acquire after a certain period of residence (Carens 2013, pp. 102–105), (b) his defence of a claim to permanent residency that temporary residents acquire by having been living in the country for a number of years (Carens 2013, pp. 113–114), and (c) his general formulation of his theory of social membership (Carens 2013, pp. 158–164) all imply the claim that, after a certain time of residence, permanent residency must not be made dependent on the requirement of linguistic integration. For a critical discussion of language requirements for access to citizenship see also Shorten (2010).

[6] For an overview see De Schutter (2007) and Kymlicka and Patten (2003).

[7] The debate about public recognition of languages well illustrates this point. The main question here is to what extent public businesses and services should be made accessible in what language, considering those languages that enjoy this access as publicly recognised (sometimes in correlation of a literal recognition as official language sometimes not). What is at stake first and foremost is the question of how languages not initially forming a national language should be dealt with, rather than whether and how those not speaking the already recognised language should be made learning this language, which is what I address in this paper. For the question of language recognition, see e.g. Patten (2001) and (2014). Also note that Patten (2001, p. 694) explicitly excludes the question of how his proposal applies to languages of immigrant groups, and in 2014 (chap. 8) explicitly reasons as to why it does not apply equally (see also fn. 8).

[8] For interesting discussions addressing immigrant groups, yet—but for a potential argument from consent (see below Section "The Argument from Consent")—still widely unrelated to this paper's discussion see Kymlicka (1995), pp. 96–100, see also Patten (2006, 2014), chap. 8.

does Van Parijs attend to the idea of making rights dependent on linguistic requirements.

One way of defending the claim that access to the right to permanent residency must not be made dependent on linguistic integration would be to engage in the more general debate about whether states have a moral right to freely decide on whether they accept potential immigrants: if states must not regulate immigration at their discretion, they must not make the right to permanently stay dependent on any requirements.[9] I will set aside this general discussion and accept, for the purpose of this paper, that states have a moral right to exclude, except with regard to refugees.[10] I argue that even if such a right exists—as it is currently politically and legally almost universally accepted—serious doubts are appropriate regarding the moral acceptability of making permanent resident status dependent on linguistic integration.

I will start by addressing the politically widely shared view, which is also compatible with international law,[11] that—within the limits of human rights—states are free to decide upon the requirements for permanent residency, just to the extent they are free to decide upon entry regulations. In response to this, as I call it 'standard position', I will argue that over the time of their stay, immigrants acquire a moral claim to permanent residency. The existence of this moral claim limits states' freedom to decide upon these requirements at their discretion, yet does not exclude the possibility of certain morally justified requirements for the acquisition of permanent residency. This leads me to discuss, in the second part of the paper, three arguments that defend linguistic integration as such a morally acceptable requirement. I argue that none of them succeed. At least two strong objections can be raised against my criticisms, which I will address in the third part of the paper. In parts two and three I cover the prevailing arguments in defence of the requirement, yet further arguments may arise, which is why my negative argument is insufficient to show that such a requirement can never be justified. Nevertheless, I hope to make a strong case against the moral acceptability of making the right to permanent residency dependent on linguistic integration. I will conclude by relating the results to the broader issue of integration.

[9] The defence of a moral (human) right to immigrate, such as most prominently defended by Joseph Carens (e.g. 1987) is insufficient. Even if we accept this—as I believe convincing—claim, there could be conflicting rights on the part of the society of immigration that justified language requirement. The discussion I provide in this paper would partly still be necessary.

[10] This slightly differs from what is accepted in international law. International law only knows the regulation of non-refoulement, i.e. the prohibition to force individuals back to countries where they are in danger of being tortured or prosecuted; e.g. Art. 7 of the International Covenant on Civil and Political Rights and Art. 33 of the Convention relating to the Status of Refugees. Given that the individuals whom I address in this paper are already in the territory, the international regulations apply. With regard to these individuals the legal regulations have the same effect as the duty to allow certain individuals entry that I accept.

[11] The EU in its 2003 European Council Directive concerning the status of third-country nationals who are long-term residents (2003/109/EC) requests member states to grant permanent residency ('long-term resident status') after five years of legal and permanent stay (Art. 4.1). It hence limits the possibility to decide freely within the EU. It leaves it entirely up to the member states, however, to decide upon integration requirements (Art. 5.2). There is no equivalent regulatory body for determining residency rights or integration requirements on an international level.

Aiming at an argument that is applicable to the actual legal situation regarding linguistic integration, I will start from current permanent residency regulations. First, with the term 'immigrants' I will refer to those immigrants to whom current integration regulations apply, i.e. immigrants who have been admitted to a country but who have not been accepted as refugees, and who have not yet received citizenship.[12] Moreover, corresponding to current permanent residency regulations, I start from the assumption that these individuals have lived in the country of immigration for a number of years.[13] Second, with the term 'language' I will refer to one of the national languages of the country of immigration, and the term 'language skills' denotes knowledge of one of these languages. Finally, with the term 'linguistic integration' I refer to basic language skills. This corresponds to the fact that states throughout require only such basic knowledge of one of the national languages as a prerequisite for permanent residency.

The Moral Claim to Permanent Residency

> A State must obviously have the right to admit aliens on its own terms, imposing any conditions on entrance or tolls on transit, and subjecting them to any legal restrictions or disabilities that it may deem expedient. It ought not, indeed, having once admitted them, to apply to them suddenly, and without warning, a harsh differential treatment; but as it may legitimately exclude them altogether, it must have a right to treat them in any way it thinks fit, after due warning given and due time allowed for withdrawal.
> (Henry Sidgwick, The elements of politics, quoted in Miller 2008, p. 374)

Though in a more moderate form, the basic idea of this statement, which Sidgwick wrote at the end of the nineteenth century, still seems to be broadly accepted in politics and public discussions today. It draws on the state's right to exclusion and argues that individuals who did not have a moral claim to enter the country, also do not have a moral claim to stay there. Correspondingly, states are free to make the acquisition of the right to permanent residency dependent on discretionary conditions. In terms of human rights, limits to the discretionary freedom of states are of course accepted today, and inequalities pertaining to status and rights are topics for discussion and subject to change. Still, the position has not been given up

[12] To *sans-papiers*, i.e. individuals who live in a foreign state, without this state's permission, this paper's argument applies. Yet additional objections would have to be addressed to defend the results.

[13] With few exception regarding specific groups of migrants (IOM 2009, pp. 53–54), EU member states typically give (national) permanent resident status only to immigrants who have (legally) lived in the country for several years (IOM 2009, pp. 51–54). Germany (§9 (2) 1 Residence Act), and the UK for example, require five years' residence (https://www.gov.uk/apply-for-a-uk-residence-card/permanent-residence-card; accessed 6 June 2015), Cyprus fifteen (IOM 2009, p. 53). For EU long-term residence status for immigrants from countries outside the EU (third-country nationals) the EU requires member to grant that status after five years of legal residency, allowing for several additional preconditions including integration requirements (Art. 4 2003/109/EC). In Switzerland one must have lived five or ten years, respectively, depending on the country of origin, in order to have access to permanent resident status (Art. 34 FNA).

with regard to integration requirements and permanent residency for the group of immigrants that I address in this paper.

Philosophically, the discretionary freedom of states has been widely questioned. With regard to the question of whether and when immigrants should be granted citizenship—or rights equal to citizens—this freedom has been rejected almost throughout by cosmopolitans such as Joseph Carens (2005, pp. 33–41), liberal nationalists like David Miller (2008, pp. 375–378) or communitarians like Michael Walzer (1983, pp. 52–61). All of them make their points with a view to access to citizenship.[14] Carens also applies the argument to other legal rights that are typically granted to citizens, including the security of residency (Carens 2013, pp. 102–105). In this vein, a similar argument—potentially drawing on Carens, Miller, and Walzer—establishes a claim to permanent residency, making the standard position untenable in this respect as well. For the sake of this paper, I have accepted the politically prevailing view that potential immigrants do not have a moral claim to enter the country. It is unwarranted, however, to infer from this that such immigrants continue to remain without a moral claim to stay in the country. If one draws such a conclusion, one fails to recognise the morally relevant change that takes place in the relationship between the immigrants and the state of immigration. By staying in the country, immigrants become factual members of the society, and this factual membership is morally relevant for the claim to permanent residency.

Spelled out, the argument goes as follows. Three criteria seem to be pertinent candidates for a morally relevant membership: membership in the community of cooperation, subjection to the authority of the state, and membership in the social community. All three have been drawn upon to explain why immigrants must eventually be treated equally to citizens. They have also been regarded—at least partly—as relevant by philosophers who seek to explain why citizens have special moral obligations towards each other; obligations that do not exist vis-á-vis individuals outside of their political community.

First, citizens form a community of cooperation; they contribute to the economic success of the state; they also finance the economic subsistence of those members of the society who, for example are unable to work; and they more generally make the society able to function (Walzer 1983, pp. 59–60).[15] Secondly, national communities are directed and regulated by the same laws and political decisions. Accordingly, all those who are subjected to these laws and decisions, i.e. to the authority of the state, belong to that society in a morally relevant sense (Walzer 1983, pp. 60–61; also Blake 2001, pp. 276–285). Finally, members of a state are part of a social community. Through friendships, work relations, family relationships, membership in clubs, etc., they are intertwined and form a society relevant for having moral claims against each other (Carens 2005, pp 37–39).

[14] Walzer focuses on guest workers, while Carens and Miller on immigrants who already have permanent resident status. Kieran Oberman (2017) is the only philosopher I know of to question this discretionary freedom with regard to the exclusion from citizenship for the case that states are accepted to have a right to exclude.

[15] Walzer here seems to limit cooperation to economic cooperation. See note 17 for why we must understand the term 'cooperation' in a sense exceeding mere economic cooperation, if we want it to (on its own) establish factual membership of, or special obligations within, a specific society.

It is obvious that individuals who have been formally accepted as citizens or permanent residents are not the only ones that can possess morally relevant membership; immigrants who have been living in the country for some time can meet these three criteria as well. Immigrants spend their lives in the country, make friends, fall in love, participate in clubs, work, take care of others, and are subjected to the authority of the state. Not everyone who lives in a foreign country will always necessarily meet all these criteria; and it is difficult to determine how many years someone has to have lived in a foreign country in order to typically fulfil them. However, if we take the five years, after which several states—provided all other requirements are fulfilled—currently grant the right to permanent residency, it can reasonably be assumed that immigrants typically satisfy all these criteria.[16] Their lives take place in that country, and they are thus, in a relevant sense, subjected to its laws and political decisions. Usually after such time they have established social bonds, and are hence part of the social community. Finally, they have typically been working, raising children, or taking care of other people, and therefore are part of the community of cooperation. As such, these individuals might not be formally accepted members of the society but they are factual members.[17]

By virtue of being factual members, immigrants must be treated as such. This seems sufficient to argue that states are not free to decide upon immigrants' permanent residence status according to their own discretion. Rather, immigrants have a moral claim to be accepted according to their morally relevant factual status, and this includes the moral claim not to be expelled on the state's discretionary terms, i.e. a moral claim to permanent residency.[18]

[16] If we seek to develop legal regulations based on the moral claim to permanent residency, there seem to be two ways of reacting to the fact that five years of residency does not guarantee the fulfilment of the relevant criteria. Either it is decided individually, whether someone is a factual member, or else—as applies to most laws and seems to be reasonable—the regulations are developed on the basis of what can typically be expected. And this would be that after some time—five years are certainly sufficient—immigrants will be incorporated in the relevant sense. Whatever solution is chosen, after five years immigrants will typically be factual members of the society and have a moral claim to the right of permanent residency.

[17] What and how many of these criteria must be fulfilled is contested. Miller (2009) defends the view that all three criteria are necessary for establishing obligations of distributive justice, Carens (2005, 2013, p. 50)—within the context of citizenship—mentions both social membership and subjection, but ascribes particular importance to the former. Walzer (1983, pp. 59–61) mentions membership in the community of cooperation as well as subjection to the authority of the state. My argument works regardless of what and how many of these criteria we regard to be relevant, which is why I leave this question open. Only with regard to the criterion of membership in the society of cooperation one could possibly claim that it is wrong to assume that immigrants typically fulfil this criterion after five years. This claim, however, seems to be plausible only if cooperation is understood as economic cooperation including only individuals who have paid work. It is possible, for example, that one member of an immigrant couple stays at home in order to take care of the children and thus abstains from paid work. Such limited understanding of cooperation cannot be accepted. Only a broader understanding, including unpaid work, care for others, etc., can possibly establish a plausible understanding of membership for, or justify special obligations of justice within, a society.

[18] With a view to the legal residence status of third-country immigrants, the 2003 European Council Directive concerning the status of third-country nationals who are long-term residents (2003/109/EC) can be read as representing these considerations. It regards the time period under which an individual has been residing in a country as the central criterion for permanent residency ('long-term resident status') (e.g. Art. 4.1) and makes clear, at several points, that the links the individual has established with the country

Two points are important to highlight, before we continue. The first concerns the notion of 'moral claim': The terms 'moral claim' and 'moral right' are meant to be equivalent in meaning. I am using the term 'moral claim' instead of 'moral right' merely because this allows me to reduce confusion between the *legal* right to permanent residency and the *moral* entitlement—i.e. claim or right—immigrants acquire to this legal right. Just as the term 'moral right' would denote, a moral claim to permanent residency is a moral entitlement to the legal status of permanent residency. It does not only provide the society of immigration with additional reasons for inclusion in their discretionary reasoning, it places them under an obligation to grant this legal status. Clearly, having an obligation does not always mean that one has to act according to this obligation, and as we will see in the next section, the immigrants' moral claim to permanent resident status does not mean that granting such legal status is necessarily what is morally required all things considered. But as long as immigrants have such a claim, only equally important moral considerations can make it morally justifiable to interfere with the moral claim at stake.

Secondly, there is one objection that must be addressed before we can turn to the question of what the existence of the moral claim to permanent residency means with regard to the requirement of linguistic integration. Language itself, one may argue, is an aspect necessary for being a factual member of the society. This objection can be read in several ways. First, it could mean that language skills are a necessary condition for social integration, and thus factual membership in society, i.e. individuals can achieve social integration only if they have knowledge of one of the national languages. Second, language skills could be regarded as constitutive elements of social integration. Both versions of the argument face the same challenge. Looking at actual societies, they are based on a rather hypothetical picture and, hence, do not carry much weight with regard to reality. Societies today are influenced by migration and cultural diversity, which casts doubt on the assumption that everyone who is part of the social community speaks the national language. More importantly, integration is possible without knowledge of one of the national languages. Some language skills may be required, but this need not be the national language. And this also applies to unrealistic societies where everyone speaks the national language: friendships, love affairs, sport partnerships, etc. are possible, and happen in today's societies in all sorts of languages. To claim that someone is not socially integrated simply because these social bonds occur using a language different from the national language does not make sense. The third alternative reading of the claim that language itself is an aspect necessary for being a factual member of the society,[19] would be to argue that linguistic integration is a criterion for factual membership in society, independent of social integration, membership in the community of cooperation, and subjection to the authority of the

Footnote 18 continued
of residence shall have impact on the decision whether he or she should be allowed to reside in the host country, for situations with regard to which it allows states to decide upon individual residence due to a danger that emanates from the individual for public policy and public peace (e.g. Art. 6.1, Art.12.3 (d)).

[19] I am indebted to Jan Brezger for making me aware of this possible objection.

state. Again, the argument fails to capture reality. It requires a linguistically homogenous society and would deny a number of socially fully integrated citizens—of probably all current states—the status of factual membership.

Linguistic Integration Requirements

To have a moral claim does not necessarily render all actions or demands that run counter to it morally wrong. This also applies to the moral claim to permanent residency. I can think of two possibilities for morally justifying requirements for the right to permanent residency. However, neither of them, I will argue, justifies language requirements.

The first possibility is based on the view that moral claims—some at least—can be forfeited. Under certain circumstances, and through certain acts, individuals can forfeit certain moral claims and this also seems to apply to the moral claim to permanent residency. On such a basis, it could be justified to make the acquisition of the right to permanent residency dependent on requirements that exclude actions that would lead to such forfeiture. Based on this consideration it could for example be defensible to make it dependent on the requirement that immigrants not strive for destroying the state order by actively and severely attacking it. This first possibility for justification does not require further attention with regard to linguistic integration, for it does not apply. There is no reason to believe that the requirement of linguistic integration would exclude actions through which immigrants would forfeit their claim to permanent residency.

The second possibility seems to be more relevant. It is based on the fact that moral claims sometimes conflict, and that infringement of one of the claims is then justified, provided it is proportionate. Although the requirement is philosophically broadly accepted,[20] its precise application is not always easy. It is safe to say however, that the principle of proportionality requires at least two things: first, the good that is protected by the claim that is upheld must be more important than the good that is protected by the claim that is infringed; and second, the infringement must be necessary to reach the envisaged aim. The second condition requires that the interference is both appropriate for reaching the intended aim, and it should be the least damaging means, i.e. the intended aim must not be achievable by means that are less destructive than the infringement. Applied to the case under discussion, language requirements for the acquisition of permanent residency are justified provided the claim to permanent residency independent of language skills conflicts with a claim of the larger society[21]—in the following I will call these claims societal claims—provided the societal claim protects a good that is more important than the good protected by the claim to permanent residency independent of language skills, and provided withholding permanent residence status is necessary for upholding the

[20] See e.g. Judith Jarvis Thomson (1991, pp. 302–303, fn.13) in her seminal article 'Self-Defense', where she claims that 'a proportionality requirement flows very naturally out of the fact that some rights are more stringent than others, a fact that any plausible theory of rights must accommodate.'

[21] I will not differentiate between group rights and rights of individuals, as this does not make any difference to the argument.

societal claim. On such a basis and under certain circumstances, it could for example be justifiable to make the acquisition of permanent residence status dependent on proof of vaccinations. A government may have convincing reasons to fear a pandemic and to believe that it can only prevent it by vaccinating all inhabitants. At least with regard to those immigrants whose lives are not at risk if they were expelled, the good protected by the claim to permanent residency is less important than the societal good, which is the survival of a large number of people. Provided expelling immigrants—in case they refuse the vaccination—is the least destructive means to ensure survival, it seems justified to require vaccination as a precondition for the right of permanent residency.

However, this second possibility also fails to be a promising candidate in defence of linguistic integration as a requirement for the acquisition of permanent resident status. To show this requires a more detailed discussion of the relevant arguments, which focus on various goods that could give rise to countervailing moral claims. I will address three arguments, which I will call 'the argument from cultural protection', 'the argument from a functioning society', and 'the argument from economic success'. These arguments seem to prevail in the public debate, and they provide possible readings of the aims of integration proclaimed by governments and in legal documents, such as in the Swiss Federal Act on Foreign Nationals which reads: 'Integration should enable foreign nationals who are lawfully resident in Switzerland for the longer term to participate in the economic, social and cultural life of the society' (Art. 4 (1) and (2) FNA).[22]

I will argue that there are two reasons why these arguments do not succeed: either they fail to establish a conflict between societal and immigrant claims, i.e. they turn out not to provide sufficient reasons for demanding linguistic integration in the first place and thus accept a societal claim where there is none; or they fail to fulfil the principle of proportionality.[23]

The Argument from Cultural Protection

The argument from cultural protection holds that the claim to linguistic integration is a societal claim which is derivative from another societal claim, namely the

[22] For similar formulations in other states' legal documents see e.g. Germany: Migration und Integration (2011, p. 54).

[23] The argument from democratic participation, i.e. the idea that language requirements can be justified as necessary conditions for functioning political participation and deliberation processes, as it has been discussed in the context of requirements for access to citizenship, will not be given specific consideration in this paper. On the one hand, this is because political participation rights are typically linked to access to citizenship, and hence do not in the same sense bear relevance with regard to permanent residency. On the other and more importantly, in the debate about access to citizenship, others have provided convincing reasons for why this argument should be rejected. The most important reason is provided by empirical examples such as Switzerland or South Africa, which do have several national languages (i.e. large numbers of individuals do not understand each other), but nevertheless are functioning democracies. As Shorten (2010, pp. 116–117) convincingly argues, one might respond that these democracies are impoverished versions of democracy. In such a highly idealised version, the normative relevance of the argument that language requirements must be introduced to reach functioning democratic participation and deliberation, however, has already substantially lost grounds (for further references see e.g. Hampshire 2010; Honohan 2010; Miller 2008).

societal claim to the protection of cultural identity: national societies have a societal claim to the protection of their cultural identity, linguistic integration is a necessary condition for the protection of this identity, and societies therefore have a societal claim to linguistic integration. This societal claim to linguistic integration—so the second part of the argument—conflicts with the immigrants' moral claim to permanent residency independent of language skills, and justifies the infringement of this latter claim.

Both parts of the argument would be worth discussing. Believing that the argument already fails in establishing the societal claim to linguistic integration which is at stake in this paper, I will, however, focus on its first part. This is my argument: depending on the explanations on which we draw for why cultural identity is valuable and worth protecting, the protection of the value either does not necessitate linguistic integration as it is at stake in this paper, or the value is of a kind that is insufficient to justify cultural protection.

Four preliminary notes are in place: first, I will draw on different answers that have been given as to why cultural identity is valuable or must be protected. I do not aim to question these accounts, but rather aim to show that the reason they provide for why cultural identity ought to be protected fails to defend the societal claim to linguistic integration that is at stake in this paper. Second, none of these explanations were formulated with a view to the relevant context. I do not claim that the authors would defend the result I am arguing against, i.e. that the value of cultural identity justifies the linguistic integration at stake. Third, not all accounts on which I draw speak of the protection of cultural identity; they might refer to culture or cultural belonging more generally, or to language as an aspect of it more specifically. By referring to the value of cultural identity or its protection I mean to address these different versions. Finally, it is important to note that the societal claim to linguistic integration that is at stake in this paper—and that we would hence have to be able to derive from the societal claim to cultural protection in order to defend the discussed linguistic integration requirements—is rather specific: it is the claim to legally require individuals to learn (one of) the host country's national languages.

Now, why is cultural identity valuable and must be protected? The given answers differ widely. We can group some of them, however, with respect to the ideas they draw upon and with regard to the applicable replies (see Song 2010 for the following categorisations). Many of them draw on the idea that individuals' selves are (partly) dependent on being embedded in a specific cultural setting: Charles Taylor, for example, regards a shared language as a 'common' or 'social good' 'of a culture which makes actions, feelings, ways of life which are of value feasible', and, as such, it is an intrinsically valuable good (Taylor 1990, p. 58). Other authors consider a socially shared culture or language as instrumentally valuable goods. Will Kymlicka, for example, considers culture—of which language is a crucial aspect—to be a precondition for individual autonomy; only by being part of a culture will one understand, and have access to, social practices and activities, and,

as such, adequate options for shaping one's life, something which is a precondition for individual autonomy (Kymlicka 1995, pp. 80–84).[24]

The following response seems to apply to all of the accounts addressed so far. Culture considered as a precondition for individual autonomy, or for understanding action or feelings as explained by Taylor, does not entail the claim that cultural change and further development imperils such value. Only abrupt and radical cultural changes could endanger individual autonomy or the general sense-giving character of culture. Empirically, such change, however, seems not to follow from giving up language requirements. The existence of other languages, or of groups unable to speak the national language, allows the co-existence of the different cultural practices, including the national language, and as such, the continuity relevant for individual autonomy etc. Changes in cultural practices and languages will occur, yet, given that the national language is the language of official communication and public education, and that all those whose mother tongue it is will be able to continue to communicate in this language, it is plausible to believe that these changes will occur at a pace, that would not leave anyone disoriented. These changes would continuously allow the relevant understanding of life-options and orientation. That we did not experience anything like such fundamental changes prior to the introduction of linguistic requirements in the beginning of this century, and that it does not occur in countries which have not introduced such requirements yet, seems enough evidence for legitimately making this claim.[25]

Taylor would not subscribe to this conclusion. Rather he argues that cultural groups, in order to secure their survival, are justified in introducing measures that aim to guarantee the survival of, for example, their language (e.g. Taylor 1994). I am sceptical that the above-sketched account allows this conclusion, and I will not be able to engage in alternative explanations, drawing, for example, on recognition. However, for my purpose it is sufficient to explain why the acceptance of a societal claim to introduce measures to secure cultural survival does not increase the justifiability of a societal claim to linguistic integration as it is at stake in this paper. In order for a language to survive, a number of measures might be appropriate and required. As Quebec's policies illustrate, they might include limiting to this language public communication, public education, or the public sign postings of private businesses. But there is no reason to believe that the securing of cultural survival requires measures that, on an individual level, guarantee the learning of the relevant language. This, however, is what is at stake with regard to the linguistic requirements for the right to permanent residency that this paper discusses. Lack of necessity combined with their comparably far more intrusive character seems sufficient then to reject their justification, and it might also explain why philosophers defending the justifiability of protective measures focus on the listed alternative means themselves (e.g. Taylor 1994; see also further in this paper my discussion of Van Parijs 2011).

[24] Margalit and Raz (1990, pp. 448–449), by ascribing to cultural groups an important role in the creation of identity and opportunities, and as such—though not explicitly—to autonomy, could be mentioned as a further example within this group.

[25] Theoretically, scenarios with the effect of radical change are possible. But the discussion of these scenarios adds nothing to a better general understanding of how our world should be regulated.

An alternative, influential account ascribing instrumental value to cultural identity proposed by liberal nationalists must also be addressed. Miller, for example, regards a shared national culture to be necessary for national solidarity, and as such crucial for the functioning of liberal institutions, such as welfare institutions (Miller 1997, p. 94).[26] The assumption Miller's argument is based on has been questioned by the claim that other forms of identification, such as identification with the constitution and legal order, or a sense of belonging to the political community, would be sufficient to reach the intended aim of solidarity (Mason 1999, pp. 271–282; see also Abizadeh 2002). But even if solidarity were dependent on cultural identity, this is insufficient to justify forcing someone to give up moral claims, such as the claim to a legal right to permanent residency independent of language skills. While my response to the previous accounts was to show that they are incapable of defending the societal claim to linguistic integration at stake because they ascribe a value to cultural identity the preservation of which does not require linguistic integration, my criticism here is that lack of solidarity does not normatively do the work of justifying linguistic integration that Miller wants it to do. As Ryan Pevnick argues in reply to the addressed liberal nationalist arguments with regard to immigration regulations, the attitudes underlying the sociological observation (i.e. lack of solidarity) must be morally defensible in order to justify interference with moral claims of individuals (Pevnick 2011, pp. 158–161). In other words, the mere fact that people refuse solidarity does not provide justification for the demanded rights infringements; it must be justified and based on defensible reasons in order to provide such justification. We would not accept the claim that a very traditional society's lack of motivation to uphold a social system that also supports single mothers justifies that this society makes financial support of mothers contingent upon them giving up their children, or having to remain in damaging relationships. Similarly, we cannot accept lack of motivation to uphold the welfare state in the face of individuals who do not linguistically adapt to the national culture alone as justifying an infringement of these latter individuals' rights. An argument about the defensibility of the demand of linguistic integration would be necessary to regard this lack of motivation to uphold the welfare state as a justification for denying permanent residency to individuals who are not linguistically integrated.[27]

One could ask at this point whether I have presented the argument from cultural protection in a satisfactory way. I have so far discussed whether a societal claim to linguistic integration can be derived from the value that cultural identity might have, and thereby ignored the possibility to defend cultural protection drawing on the disrespectful meaning and effects the refusal to linguistically integrate might have. Several authors have highlighted the importance of respect towards cultural groups and partly they have based on that a defence of measures of language protection. Avishai Margalit and Joseph Raz argue that the lack of respect others express towards the culture to which one belongs affects the self-respect of the members of

[26] For a brief overview of different versions of the liberal nationalist position ascribing instrumental value to a shared national identity, see Mason (1999), pp. 262–265. They all seem subject to the criticism provided here.

[27] This argument only applies if changes in motivation are possible, given human nature. The assumption that they are possible seems acceptable, however, without further argument.

cultural groups (Margalit and Raz 1990, pp. 448–449).[28] '[I]ndividual dignity and self-respect' they write, 'require that the groups, membership of which contributes to one's sense of identity, be generally respected and not be made a subject of ridicule, hatred, discrimination, or persecution' (Margalit and Raz 1990, p. 449). Philippe Van Parijs addresses the role of respect with a specific view to language policies. He argues that state regulations must guarantee equal respect in the sense that they 'avoid it always being the same group who do the linguistic "bowing"' (Van Parijs 2011, p. 141), i.e. that it is always the member of one group that must accept communication in the other group's language (Van Parijs 2011, chaps. 4 and 5).[29]

None of these authors explicitly defend linguistic integration requirements as discussed in this paper, i.e. linguistic integration as a requirement for permanent residency. That said, Margalit and Raz as well as Van Parijs call attention to the argument that linguistic integration may be demanded in order to guarantee equal respect and avoid the negative meaning and effects of disrespect, and Van Parijs explicitly defends with this argument certain linguistic requirements.[30] I agree that the refusal to linguistically integrate can express disrespect, nevertheless I doubt that the argument justifies the linguistic integration requirements at stake.

Certainly, individuals who do not adapt linguistically do not necessarily disrespect the relevant national language or culture. The failure to linguistically adapt must therefore not always be regarded as a disrespectful action. Even if immigrants refused to linguistically adapt out of disrespect, it is not clear that it is justified to require participation in this cultural practice. Of course such language requirements do not guarantee a change in attitudes. And if we argue that it is not the attitudes but the disrespectful conduct itself, then it is still not clear that states are morally allowed to legally counteract it on an individual level. Even if states are justified in preventing such conduct on an individual level, I am not sure that the justified measures include the requirement to learn the language. Certainly, with regard to some cultural practices such as religion, the demand to abstain from disrespectful conduct with regard to them does not include a demand to participate in them.

Van Parijs' idea of linguistic justice questions these considerations. He would probably agree that the attitudes of individuals who do not acquire language skills are not necessarily disrespectful. He disagrees, however, that what I said with regard to religion, applies equally to the use of language. Unlike religious practices, he regards the failure to participate in the linguistic practice—regardless of the underlying attitudes—under certain circumstances, to be a form of disrespect, a violation of equal respect, or 'parity of esteem' in Van Parijs' words; regardless of the attitudes, linguistic justice requires a system in which such parity of esteem is established. Van Parijs seems to be right in highlighting that an individual's disrespectful attitudes are not always necessary to create disrespectful conduct as

[28] See also Taylor (1994), who highlights the importance of recognition in this respect.

[29] Van Parijs' argument could also be read as a version of a non-instrumental account or an instrumental account referring to the value cultural identity has for certain groups. I believe it is best understood as referring to individuals and their linguistic self-esteem. The categorisation of the argument does, however, not influence the applicability of my reply.

[30] For some details regarding these requirements see the remainder of this paragraph.

well as in drawing attention to relevant differences between religious and linguistic practice, and my picture was at least incomplete because it ignores disrespectful structures in society.

However, to counteract disrespectful structures in society and to avoid what Van Parijs regards as injustice, does not require *every* individual to learn the local language, it merely requires a guarantee that the local language is the dominant and publicly used language, and that as a result, it is not always the group that speaks it that does 'the linguistic "bowing"'. Just as suggested in response to the argument drawing on cultural survival, I believe that measures applying to public education and public communication are sufficient. If that is true, being unnecessary and inevitably more intrusive, individual linguistic integration requirements as they are at issue in this paper cannot be defended on the basis of the required respect.

In fact, Van Parijs himself derives from his position measures that do not include these requirements—linguistic integration as a precondition for permanent residency and, more generally, requirements enforcing linguistic justice on an individual rather than structural level—and he could be read as drawing on a similar consideration. Although he defends a solution to linguistic injustice which 'imposes the learning or use of a single language […] or [in some cases] of two or more languages disjunctively'(Van Parijs 2011, p. 135), he clearly states that it is a 'reasonable expectation' that individuals 'who intend to settle among us for good, or at least for a long time' learn the local language (Van Parijs 2011, pp. 140–141), ascribes to immigrants a 'duty to integrate linguistically' required by justice (Van Parijs 2011, p. 150), and encourages the state to 'indicate publicly that people which intend settling in the territory will need to acquire the capacity to communicate in the local language'(Van Parijs 2011, p. 141); he also argues that 'public authorities must not and could not monitor and sanction individual attitudes and behaviour' (Van Parijs 2011, p. 141). And explicitly he only demands the establishment of the relevant language as the language of public education and public communication (Van Parijs 2011, chaps. 4 and 5), i.e. means that establish linguistic justice by preventing disrespectful structures in society rather than by strictly enforcing language skills on an individual level.

The Argument from a Functioning Society

The argument from a functioning society emphasises the importance of common language for a functioning society: a society has a moral claim against its members to contribute to the functioning of the society, language skills are necessary to fulfil this claim, and may hence be required. As with the argument of cultural identity, the claim to linguistic integration is derivative from a primary claim. Here the claim concerns the contribution to a functioning society.

The argument can be read in two ways. In its strong reading 'functioning' can be taken as referring to the maintenance of law and order. Language requirements could then be required in order to make the society work according to its laws, and to protect it from breaking down. In order to function, the state requires communication in all crucial aspects—for example police work, tax administration,

court services, and other institutional work—so the language skills necessary for such communication may therefore be demanded.

Understood in this way, the argument seems to address a societal claim: societies seem to have the right to demand from their members that they contribute to the functioning of the society, or at least not counteract it. Moreover, it is convincing that, for the society to function, state officials must be able to communicate with individuals in many respects. This, however, does not require that the affected individuals themselves speak a national language. It can be fulfilled through the translation of official letters, conversations, etc. This is the way in which such communication already often works today. There will of course not always be someone available to translate. This, however, does not weaken my point. There may be occasions, e.g. in police work, when encounters are spontaneous, and when there will not be any translator present. Basic information, such as the request to show the passport, give personal details, to step away for the ambulance, etc., will, however, typically be understood even without language skills. There will then still be occasions where important communication is impossible without a shared language. Even if communication fails at such times, and even if this may sometimes cause dangerous situations, law and order will, however, not break down. As such, 'functioning' in the strong sense does not depend on language skills on the part of the immigrants. As a result, a societal claim to linguistic integration cannot be derived from a possible claim to a functioning society in the strong sense, and there is no conflict of claims that could justify the infringement of the claim to permanent residency.[31]

Alternatively, we can read the argument in a weaker and more convincing way: 'functioning' can be understood as referring to the frictionless and smooth living together of all members of the society. If people do not share basics in one language, communication will often get complicated. Doctors will have difficulties understanding their patients' problems, and they will not always manage to inform them sufficiently about risks and possible treatment. Teachers may have trouble talking to the parents of their pupils. And even if there is a translator at hand, they cannot be sure that their messages are coming across in the way they intended. Also day-to-day conversations in shops or on the street may get complicated if the individuals involved do not share a language.

This description shows that a common language is valuable and desirable. Nevertheless, I am not convinced that society has a moral claim for its members to contribute to the functioning of a society in this weak sense. Nor am I convinced that a societal moral claim to linguistic integration can be derived from that. But even if we accepted both claims and, thus, that the argument pinpoints a conflict between the societal claim to linguistic integration and the immigrants' claim to permanent residency, the argument fails. And this is due to the principle of proportionality.

[31] Theoretically, we can of course imagine extreme scenarios with many people arriving, speaking a different language and endangering the functioning of the society in this strong reading. But again the discussion of these scenarios adds nothing to a better general understanding of how our world should be regulated.

The good that is protected by the claim to permanent residency is more important than the good that is protected by the societal claim involved. Immigrants would live in the danger of being forced to give up their current lives, find new jobs, and leave behind their social contacts; they would not have secure protection from these things happening. They would have to change their life plans and be deprived of their social environment. The national society, on the other side, would have to accept conversational inconveniences. It might even have to accept individual situations where conversational difficulties cause damage. This may be somewhat difficult, but the burden certainly can be ignored if we compare it to the burden that would be imposed on immigrants, if we were to deny them the right to permanently stay in the country. The infringement of the claim to permanent residency is disproportionate.

The Argument from Economic Success

The argument from economic success is based on the assumption that linguistic integration increases the chances for immigrants to participate successfully in the economy, and as such, decreases the probability that the society will have costs, for example in terms of social benefits. The society, so the argument goes, has a moral claim to economic participation vis-á-vis all members who are capable of participating, and may therefore demand linguistic integration as a precondition for the right of permanent residency. As is the case with the other arguments, the claim to linguistic integration here is a derivative moral claim.

The argument addresses a tenable societal claim: every member capable of doing so must participate in the economic success of a society. This seems to be convincing on the basis of considerations of fairness, at least for countries that do not have installed a system of unconditional basic income. However, it faces both empirical and normative challenges.

Empirically, the argument is questionable, at least if it is used to defend *currently existing* residency regulations. First, the assumption can be questioned that *basic* language skills substantially increase the chances for successful economic participation and, as such, decrease the probability that there will be costs for the society. In order to have such effects, it has been argued, the required level of language skills would have to be raised, compared to what is currently demanded in legal integration regulations (Böcker and Strik 2011, p. 174; IOM 2009, p. 43).[32] There is little evidence to the contrary (see Esser 2006, pp. iv and 81–92). In light of the limited research on the impact of *basic* linguistic skills on economic integration,[33] I am unable to verify this result. On the basis of existing empirical

[32] Yuxin Yao and Jan Van Ours (2015) conclude that having language problems did not significantly decrease the employment opportunities for women and men in the Netherlands. This potentially contradicts the statement by Anita Böcker and Tineke Strik, yet also questions that language requirements decrease the probability that there will be costs for the society.

[33] There is a huge body of empirical literature on the economics of language including literature on the economic impact language skills have for (different groups of) individuals. The question of whether and to what extent basic language skills—as they are required in the regulations under discussion in this paper—impact the chances on the job market, does, however, not seem to have received any closer

research, it is questionable, however, that current regulations have such an economic effect, and clear that these regulations can only be accepted on the basis of the argument of economic success if basic language skills actually had such effects.

The second empirical criticism, which questions current residence regulations and potential future regulations that make access to permanent residency dependent on linguistic integration for all immigrants, is based on obvious empirical facts: language skills are not necessary for economic success and self-dependence. There are large numbers of immigrants who earn their living without sufficient knowledge of one of the national languages. This not only applies to individuals living in a non-English-speaking country earning their living in English, but to individuals with various backgrounds, such as individuals with Turkish origins working in Germany. These individuals do not require social benefits but—via paying taxes—participate in providing them. All of these individuals already fulfil the societal claim to economic cooperation. With regard to these individuals, there is no claims conflict that could justify infringing the right of permanent residency. These individuals would have to be exempted from language requirements, contrary to how it is currently regulated. The acceptability of current regulations then not only depends on what results can empirically be validated regarding the impact of basic language skills on chances in the job market, but the regulations must also be rejected because they are over-inclusive.

Even if we changed the regulations accordingly, i.e. exempted those individuals from the regulation who already participate in the economy (2nd empirical objection), and were able to prove that basic language skills had the required effects (1st empirical objection), the argument from economic success does not provide a justification for making permanent resident status dependent on linguistic integration (and this also applies if the first two arguments are not accepted). It seems to be morally defensible to require the unemployed to fulfil measures that increase their chances for economic participation.[34] Provided one could show that language skills will sufficiently increase the economic chances and that language requirements do not impose a disproportionate burden, it also seems to be morally acceptable to demand language skills. If individuals fail, or refuse, to acquire language skills, however, denial of permanent residency constitutes a disproportionate and, as such, unjustified interference. Linguistic integration is not sufficient to guarantee economic success, which makes the denial of permanent residency disproportionate to the intended aim. The affected individuals would be deprived of the security to continue their lives in the country in which they are socially integrated, and this would happen to merely increase the chances for the society not to have additional

Footnote 33 continued
analysis. An interesting body of work addresses the question of whether, and to what extent, fluency in a language or an increased proficiency impacts earnings and employment opportunities (e.g. Aldashev et al. 2008; Dustmann and Fabbri 2003). The positive impact of increased proficiency does, however, not allow conclusions as to whether *basic skills* versus *no skills* increase access opportunities. And this aspect has, as far as I can see, not yet gained any attention. For an excellent overview over the existing literature see Gazzola et al. (2015).

[34] At least this applies to societies that do not have a system of unconditional basic income.

costs. Hence, the argument from economic success fails to justify linguistic integration as a precondition for the right of permanent residency, as with the other arguments, on which public opinion seems to rest, that I presented.

Objections

One could criticise my argument for ignoring two essential objections. On the one hand, one could argue that language skills could be demanded for the migrants' own sake rather than for society's benefit as I have hitherto assumed. On the other, one could argue that immigrants, who are aware of linguistic integration requirements, can be taken as consenting to these requirements by entering the country, and as such, these requirements are morally legitimate.

The Argument from the Immigrants' Benefits

I have hitherto only discussed arguments defending linguistic integration requirements with reference to the wellbeing of, and benefits for, the society in the country of immigration. The integration goals that I cited above from the Swiss Federal Act on Foreign Nationals, however, seem to suggest an additional focus. Claiming that immigrants should be enabled 'to participate in the economic, social and cultural life of the society' can be read equally as focusing on the good at stake for the immigrants themselves. Applied to linguistic integration requirements, the underlying reasoning then seems to be that language skills may be demanded as being in the best interest of the immigrants themselves.

Different arguments can be formulated depending on what good one focuses on. One could, for example, argue that language skills increase the immigrants' chances to participate in economic life, and may therefore be required as a precondition for permanent residency. The justification here is not based on the possible costs for the society, as it was in the argument from economic success, but on the needs of the immigrants themselves. Alternatively, one could focus on social or cultural participation. No matter what form of participation we focus on, however, as long as we argue that language requirements are justified by the immigrants' own benefit, any such arguments fail: regardless of the value participation may have for immigrants, states are not justified in making immigrants realise such value, because this would be an unacceptable paternalistic act.

This claim of unacceptable paternalism faces the challenge that probably all societies accept some measures that, at first sight, may be described as paternalistic. Individuals are often legally required to wear helmets when driving a motorcycle or to fasten their seatbelts when travelling in a car. Both measures, one may argue, are justified on paternalistic grounds, i.e. the benefit of those individuals directly affected by these measures provides justification for the state to force them to act in a certain way. It is true that such, or equivalent, measures are accepted in most societies. This does not provide reason, however, for also accepting language requirements based on the benefits to immigrants.

First, I doubt that the requirements to wear helmets or seatbelts can reasonably be described as being justified on paternalistic grounds. If such measures can be justified at all, I believe it is not due to the benefits expected for the directly affected individuals, but to the benefits expected for the society, e.g. in terms of cost reduction.

Not everyone will agree with this first point. Those who do not will hopefully be convinced by the second: even if some requirements, such as the requirement to wear helmets, were justified on purely paternalistic grounds, there are two crucial differences to language requirements. These differences explain why the requirements to wear seatbelts etc. may be mild and acceptable acts of paternalism, whereas language requirements constitute a strong and unacceptable form of paternalism. First, with the requirement to wear helmets, states interfere with the lives of the affected individuals in a minimal way, whereas they strongly interfere by forcing someone to learn a certain language. In the former case, states merely set up minor regulations for an activity the individual will do anyway and has chosen him- or herself. In the latter case, states make individuals incorporate a new activity or (temporary) goal into their lives. As such they strongly interfere with the individuals' life plans, which constitutes a substantial interference with their freedom. Second, a requirement to wear a helmet aims to protect life and bodily integrity, some of the most fundamental human goods. Language requirements seek to guarantee some form of participation. Although such a form of participation may be valuable, it is a less basic good than life or bodily integrity. Hence, even if some requirements could be explained on paternalistic grounds, these two differences—even considered separately, I would argue—explain why language requirements constitute a fundamentally different form of state interference and cannot plausibly be considered a minor form of paternalism. They must be rejected as unacceptable paternalistic acts.

Two objections must be addressed at this point. Both provide a slightly different interpretation as to who benefits and how from language requirements. Miller raises the first point, defending cultural integration as a requirement for access to citizenship:

> [T]he argument that immigrants will have a sufficient incentive to become acculturated without compulsion ignores the fact that the interests of men and women, and parents and children, may not coincide, since access to the national culture typically creates greater freedom of choice, which may undermine traditional family structures. So the policy recently implemented in a number of countries of making access to citizenship conditional on passing a test, that requires, for example, a working knowledge of the national language, and some familiarity with the history and institutions of the country in question, can be defended on these grounds.
> (Miller 2008, p. 385)

Language requirements, so Miller claims, enable individuals to escape traditional (which seems to mean oppressive) family structures, and as such provide these individuals with greater freedom of choice. Similarly, this argument can be applied to linguistic integration as a precondition for the right of permanent residency. Language requirements, one could argue, allow women, who are stuck in a

suppressive patriarchal structure, to access the society and provide them with important chances for a life in freedom.[35]

The argument's premise seems convincing: it is good to support oppressed individuals to escape oppression. The solution Miller proposes to reach such an aim, however, is morally surprising and unacceptable. Here is an analogy: it would be like addressing the question of discrimination against women in management jobs by requiring women to seek a university degree and high management positions, and making their right to employment dependent on the fulfilment of that requirement. In more analytical terms: several aspects to the proposed solution pose questions, none of which can be answered in a way that makes it defensible to make permanent residency dependent on language requirements. Why should the suppressed individuals be legally forced to change their conduct rather than the suppressors? If we assume that the suppressors cannot be legally forced to stop their suppression, why should the suppressed not be supported or encouraged but forced? Why should it be justified to enforce the requirement by threat of interference with the suppressed individuals' basic moral claims? In other words, why should the fact that they are suppressed, and that language skills (or language classes) may help their liberation, justify potential interference with an important moral claim they have, i.e. the claim to permanently stay in the country? Put even more drastically: why should it be justified to bring someone to take a liberating measure by threatening him or her with a life of insecurity and the risk of expulsion, when she has a moral claim to avoid such a life and such a risk?

The second objection is based on a different reading of who benefits from language requirements. Provided it could be shown that children's equal chances depend sufficiently on their parents' language skills, one could argue that language requirements are justifiable. This objection is based on a convincing moral consideration: among other basic rights, such as the rights to be protected from violence and to be nourished, children have a right to be educated in a way that provides them with adequate opportunities within their society. In case parents do not fulfil their obligations to act in accordance with these rights, states may enforce such rights against the will of the parents. Based on such considerations states may, for example, force parents to educate their children adequately, or else to subject the children to compulsory education.

The force of the challenge largely depends on empirical data, which I am unable to determine, as well as on the specific situation of the affected families. I will raise a few doubts which taken together allow us to conclude that language requirements cannot be defended by reference to the children's equal chances in society. First, it seems to be clear that the parents' education, their attitude to education, as well as their socio-economic situation drastically influences the children's chances in school. But there is evidence that the parents' language skills make a substantial difference with regard to the children's success in school only when the national language is the language in which parents and children communicate at home (for an overview of the empirical findings see Esser 2006, iii and pp. 65–79). In order to

[35] This argument is also present in political discussions about integration (see e.g. Seveker and Walter 2010, p. 12).

defend language requirements on the basis of such (disputed) findings, we would have to show that basic language skills lead to the parents switching to the national language at home, which is an implausible assumption. Second, the negative effect of parents' conduct would have to be so extreme that speaking of a rights violation and justifiable state interference would be warranted. Just as the state is not allowed to force parents to provide their children with *healthy* food, it must not interfere if the parents' language skills do not have a significant impact on the children's life chances. Third, in view of the principle of proportionality, which I have already discussed, it would have to be shown that no other less harmful measures were available to reach the intended aim. Fourth, even if we disregard points 1–3, the argument faces a further substantial objection. The alternatives that proponents of language requirements propose are that either the parents learn the language, or they are not given permanent residence status. The second alternative makes not only the parents but also the children live in insecurity, and it exposes them to the risk of expulsion. In light of the wellbeing of the children, the basis of the current argument, the second option cannot sensibly be defended. All these points raise sufficient doubts as to the soundness of the argument. Lastly, however, even if the doubts I express in all of the above points were held to be unfounded, at least current residency requirements would still not be defensible, as language requirements could only be demanded from individuals who have children.

The Argument from Consent

The second objection one may raise is the following: by entering the country, immigrants have consented to being granted permanent residence status only once they have acquired language skills. Language requirements, in other words, may be regarded as conditions linked to permission to enter the country of immigration, to which immigrants consent by moving there.[36]

We can abstain from engaging in the discussion on whether or when entry may be considered relevant consent. To understand the entering of a country as *tacit* consent to conditioned access to permanent residence status is not very promising; this would be like arguing that entering a marriage would count as tacit consent to all sorts of predictable morally wrong treatment in the marriage, and imply that immigrants upon entry tacitly agree to all predictable unjust legal treatment. Given that states currently do not explicitly make immigrants consent to conditioned access to permanent residence status upon entry, if tacit consent is excluded, current linguistic integration requirements for permanent residence cannot be justified as acceptable due to consent. That said, states could require immigrants to consent

[36] Kymlicka (1995, pp. 96–100) and in more detail Patten (2014, chap. 8) make this kind of argument to defend differential treatment of immigrants and national minority groups regarding their language and cultural rights. Oberman (2017) argues that the argument from consent explains why immigrants may permanently be denied access to citizenship provided states have a right to exclude. Given their different focus—none of them addresses the right which is at stake in this paper, i.e. the right to permanent residency, and the legitimacy of making it dependent on linguistic integration—the applicability of their arguments is limited to their general considerations about consent.

upon entry, and the interesting question therefore is whether linguistic integration requirements were justified provided they did.[37]

Setting aside these questions regarding forms of consent, the argument is based on the convincing observation that consent can change the moral assessment of an act. Still, I will argue, regulations making the right of permanent residency dependent on linguistic integration cannot be defended.

We know parallel cases from other contexts, which illustrate why. Typically, provisions in employment contracts are regarded as void when they make employees consent to a one-day notice period for termination, for their entire employment.[38] Now how can that theoretically be supported? Let me start with two reasons that sometimes explain why consent must be regarded as normatively unsuccessful, i.e. as not morally legitimising the treatment that was consented to,[39] which do not seem to be decisive in the employment case. First, consent is unsuccessful if it is forced upon a person. This case is typically illustrated by the example of a robber who forces the victim at gunpoint to consent to provide money. The employee, in contrast, can, under normal circumstances, be regarded as having sufficient choice for his consent not to be forced upon him in the relevant sense. Second, consent is unsuccessful if it is meant to denounce an inalienable right. The right not to be enslaved certainly is a good candidate for such a right. This explanation also fails to explain the employee example. Imagine the employee not only agreed with the employer on a one-day notice period for their entire employment, but also—in case he gets fired—agreed on an enormous amount of money, which will guarantee him a financially independent life. In this case the agreement seems acceptable and hence the right to a longer period of notice is not inalienable.

What else can explain that the agreement in the employee example is reasonably described as void? I think two explanations are applicable. The first draws on a combination of the dependency of the employee, and the importance of the right he or she is asked to give up. An employee is dependent in this situation; if he or she wants or needs the job, he or she will possibly agree to things that he or she would otherwise not have accepted. On its own, this does not seem to make void agreements that are to the benefit of one of the parties, and that is typical of many negotiations. It does, however, in combination with the importance of the right that the employee denounces. Employees gain a moral claim to an appropriate notice-period—the appropriate period increases with the time of employment—which provides them with the security necessary for planning their lives and protection from arbitrary interference by the employer. To denounce such a claim in a situation

[37] Oberman (2017) convincingly argues that entrance cannot be treated as consent if states do not have a right to exclude. Accordingly, if states lack a right to exclude, linguistic integration cannot be defended as a requirement of permanent residency on the basis of the argument from consent. Having accepted a right to exclude for the sake of this paper, this point, however, needs no further attention.

[38] For this example I am indebted to Andreas Cassee.

[39] Sometimes the normative success is treated as a constitutional aspect of consent, which makes the term 'consent' only applicable if the act thought to develop consent is normatively successful. I will use the term for the actual agreement and distinguish between normatively successful and unsuccessful consent; however, nothing depends on the terminology.

of dependency can, under normal circumstances, not be regarded as a normatively successful renouncement.[40] More would be required to explain why exactly the combination of the two factors which I have highlighted renders consent unsuccessful and the agreement void. I believe that the explanation lies in the exploitation of the vulnerability of the employee, but I will not be able to provide a final explanation. I hope to have provided sufficient plausibility for the relevance of the factors nonetheless, and this is adequate to explain why the consent argument does not justify linguistic integration as a precondition for the right to permanent residency.

There is a second, more general—and therefore potentially more powerful—reason for why the agreement must be regarded as void. It draws on the fact that the moral claim to an extended notice period is a moral claim that the employee only acquires in the future. Initially, he or she does not have such a claim; it comes with a certain time of employment. Now in order to give something up by consent, this something must normatively be at our disposal. At our normative disposal, however, can only be claims that we currently have. If that is true we cannot possibly renounce claims that we will gain in the future; the employee cannot then, upon his or her entry in the employment, renounce the moral claim to a longer notice period, a claim he or she will only have once he or she will have been employed for a certain time.

Having provided two explanations for why it is plausible to reject the agreement as void in the employment example, we are now able to explain why the consent argument must be rejected with a view to linguistic integration as a requirement for the right to permanent residency. The immigrants' situation at issue runs parallel to the employee example and both given explanations for why the agreement is void are applicable. Potential immigrants are, at the time of entry, in a situation in which their entry depends on their agreement to an important future moral claim. Under such circumstances, it is morally unacceptable to require consent to the requirements for permanent residence status that are otherwise not defensible. And immigrants, given that they do not have the claim to permanent residency upon entry, are normatively unable to agree on its limitation in this moment.

[40] This explanation corresponds to Patten's account (2014, chap. 8, particularly pp. 277–281) to the extent it implies that in situations of dependency, certain terms of agreement are too demanding for consent to be morally relevant. Patten argues that in situations of dire circumstances the normative impact of consent, among other things, depends on the 'presumption that the terms being accepted are reasonable' (2014, p. 280). Moreover, when Patten's version of the argument from consent, though defending limitations of immigrants' language and cultural rights, is applied to the issue at stake, it seems to generate the outcome I defend. I have questioned the reasonableness of making the right to permanent residency dependent on linguistic integration in the first part of the paper. Provided this reasoning is convincing, according to Patten's argument immigrants' consent would not render the requirement of linguistic integration acceptable.

Conclusion

I have defended the position that access to permanent residency should not be made dependent on linguistic integration, even if we accept that states have a right to exclude. This is because immigrants who have something at stake with regard to permanent residency regulations, are factual members of the society and as such have a moral claim to permanent residency, which does not conflict with a societal claim to linguistic integration that could justify the infringement of the immigrants' claim. In the absence of a positive argument as to why the existence of a suitably weighty conflicting moral claim is categorically impossible, this conclusion is tentative. I hope to have shown, however, that the arguments that reflect governments' legal documents and rhetoric which also seems to prevail in the public debate, fall short of justifying linguistic integration as a precondition for the right to permanent residency. Further arguments may be presented. Up to this point, I should have provided sufficient reason, however, to reject as morally unacceptable current regulations that make permanent residency dependent on linguistic integration.

This conclusion criticises a specific aspect of integration regulations. Nevertheless, it allows me to draw some more general conclusions regarding integration requirements in general. In addition to linguistic skills, integration regulations currently require immigrants to acquire knowledge of the history, culture, and rights and duties of the country of immigration, of its constitution, as well as of values accepted in the society. Moreover, integration is currently not only required for being granted permanent residence status, but also for having access to citizenship. We cannot conclude that integration should never be required in any of its forms. As linguistic integration is often held as one of the core aspects to integration, one can at least conclude, however, that the results speak in favour of encouragement rather than requirement. Requiring integration on a legal basis faces strong challenges regarding its moral acceptability. The more important the rights which are made dependent on integration, the more likely such requirements will be disproportionate. As integration is valuable in some respects, states should introduce measures that do not require but enable integration (on the part of the immigrants as well as on the part of the rest of the society). Granting rights that are currently made dependent on successful integration could be regarded as a first step towards making such integration happen.

Acknowledgements I have presented versions of this article in several contexts: Society for Applied Philosophy Annual Conference 2013; Working Group on Normative Theory of Migration; Research Colloquium at the Ethics Research Institute Zurich; Konstanz-Zurich Research Colloquium. I thank all the participants for their valuable comments and criticism. In particular I would like to thank two anonymous referees, David Archard, Jan Brezger, Andreas Cassee, Terry Classen, Luara Ferracioli, Kieran Oberman, Tiziana Torresi, and Peter Schaber.

References

Abizadeh, Arash. 2002. Does liberal democracy presuppose a cultural nation? Four arguments. *American Political Science Review* 96(3): 495–509.

Aldashev, Alisher, Gernandt, Johannes, and Thomsen, Stephan L. 2008. Language usage, participation, employment and earnings. Evidence for foreigners in West Germany with multiple sources of selection. *ZEW Discussion Paper*, No. 08-090.

Blake, Michael. 2001. Distributive justice, state coercion, and autonomy. *Philosophy & Public Affairs* 30(3): 257–296.

Böcker, Anita, and Tineke Strik. 2011. Language and knowledge test for permanent residence rights: Help or hindrance for integration? *European Journal of Migration and Law* 13: 157–184.

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; quoted as: 2003/109/EC.

Carens, Joseph H. 1987. Aliens and citizens: The case for open borders. *The Review of Politics* 49(2): 251–273.

Carens, Joseph H. 2005. The integration of immigrants. *Journal of Moral Philosophy* 2(1): 2–46.

Carens, Joseph H. 2013. *The ethics of immigration*. Oxford: Oxford University Press.

De Schutter, Helder. 2007. Language policy and political philosophy: On the emerging linguistic justice debate. *Language Problems and Language Planning* 31(1): 1–23.

De Schutter, Helder. 2008. The linguistic territoriality principle—A critique. *Journal of Applied Philosophy* 25(2): 105–120.

Dustman, Christian, and Fabbri, Francesca. 2003. Language proficiency and labour market performance of immigrants in the UK. *The Economic Journal* 113(489): 695–717.

Esser, Hartmut. 2006. Migration, sprache und integration. *AKI-Forschungsbilanz 4*, Berlin: Wissenschaftszentrum Berlin für Sozialforschung (WZB).

(German) Act on the residence, economic activity and integration of foreigners in the federal territory residence act of 30 July 2004; quoted as: Residence Act.

Gazzola, Michele, Grin, François, and Wickström, Bengt-Arne. 2015. A concise bibliography of language economics. *CESifo Working Paper*, No. 5530.

Hampshire, James. 2010. Becoming citizens: Naturalization in the liberal state. In *Citizenship acquisition and national belonging*, ed. Gideon Calder, Phillip Cole, and Jonathan Seglow, 74–90. Houndmills: Palgrave Macmillan.

Honohan, Iseult. 2010. Republican requirements for access to citizenship. In *Citizenship acquisition and national belonging*, ed. Gideon Calder, Phillip Cole, and Jonathan Seglow, 91–104. Houndmills: Palgrave Macmillan.

IOM. 2009. Laws for legal immigration in the 27 EU member states. *International Migration Law Nr16*.

Kymlicka, Will. 1995. *Multicultural citizenship: A liberal theory of minority rights*. Oxford: Oxford University Press.

Kymlicka, Will, and Alan Patten. 2003. Language rights and political theory. *Annual Review of Applied Linguistics* 23: 3–21.

Margalit, Avishai, and Joseph Raz. 1990. National self-determination. *The Journal of Philosophy* 87(9): 439–461.

Mason, Andrew. 1999. Political community, liberal-nationalism, and the ethics of assimilation. *Ethics* 109(2): 261–286.

Migration und Integration. Aufenthaltsrecht, Migrations- und Integrationspolitik, (German) Bundesministerium des Innern, October 2011; quoted as: Migration und Integration 2011.

Miller, David. 1997. *On nationality*. Oxford: Clarendon Press.

Miller, David. 2008. Immigrants, nations, and citizenship. *The Journal of Political Philosophy* 16(4): 371–390.

Miller, David. 2009. Justice and boundaries. *Politics, Philosophy and Economics* 8: 291–309.

Oberman, Kieran. 2017. Immigration, citizenship, and consent: What is wrong with permanent alienage? *The Journal of Political Philosophy* 25(1): 91–107.

Patten, Alan. 2001. Political theory and language policy. *Political Theory* 29(5): 691–715.

Patten, Alan. 2006. Who should have official language rights? *Supreme Court Law Review* 31: 101–115.

Patten, Alan. 2014. *Equal recognition. The moral foundations of minority rights*. Princeton, NJ: Princeton University Press.

Pevnick, Ryan. 2011. *Immigration and the constraints of justice*. Cambridge: Cambridge University Press.

Seveker, Marina, and Anne Walter. 2010. *Country report Germany, The INTEC Project: Integration and naturalisation tests: the new way to European citizenship*. Nijmegen: Centre for Migration Law, Radboud University Nijmegen.

Shorten, Andrew. 2010. Linguistic competence and citizenship acquisition. In *Citizenship acquisition and national belonging*, ed. Gideon Calder, Phillip Cole, and Jonathan Seglow, 105–122. Houndmills: Palgrave Macmillan.

Song, Sarah. 2010. Multiculturalism [online]. In *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta. http://plato.stanford.edu/archives/win2010/entries/multiculturalism/. Accessed 19 April 2013.

Strik, Tineke, Böcker Anita, Maaike Luiten, and Ricky van Oers. 2010. *The INTEC project: Synthesis report. Integration and naturalisation tests: the new way to eEuropean citizenship*. Nijmegen: Centre for Migration Law, Radboud University Nijmegen.

(Swiss) Federal Act on Foreign Nationals of 16 December 2005; quoted as FNA.

Taylor, Charles. 1990. Irreducibly social goods. In *Rationality, individualism and public policy,* ed. Geoffrey Brennan and Cliff Walsh, 45–63. Canberra: Centre for Research on Federal Financial Relations, ANU.

Taylor, Charles. 1994. The politics of recognition. In *Multiculturalism. Examining the politics of recognition*, ed. Amy Gutmann, 25–73. Princeton, NJ: Princeton University Press.

Thomson, Judith Jarvis. 1991. Self-defense. *Philosophy & Public Affairs* 20(4): 283–310.

Van Parijs, Philippe. 2000. Must Europe be Belgian? On democratic citizenship in multilingual polities. In *The demands of citizenship*, ed. Catriona McKinnon and Iain Hampsher-Monk, 235–253. London: Continuum.

Van Parijs, Philippe. 2011. *Linguistic justice for Europe and for the world*. Oxford: Oxford University Press.

Walzer, Michael. 1983. *Spheres of justice*. New York, NY: Basic Books.

Yao, Yuxin, and Van Ours. 2015. *Language skills and labor market performance of immigrants in the Netherlands*, 2015. No: CentER Discussion Paper.