CONTENTS

List of Figures and Tables  xvi
List of Contributors  xvii
Preface  xix
Acknowledgements  xxiv
List of Abbreviations  xxv

1 European Societies, Migration, and the Law: Instead of an Introduction  1

MORITZ JESSE
1.1 Introduction and Objective  1
1.2 Background and Context  3
1.3 Structure  8
1.3.1 Part I: Making the ‘Other’ – The Construction of ‘Otherness’  9
1.3.2 Part II: The Operation of Legal ‘Othering’ and the National–Foreigner Dichotomy in the EU  10
1.3.3 Part III: After the Arrival of the ‘Others’ – Reactions to the ‘Refugee Crisis’ of 2015  12
1.3.4 Part IV: ‘Othering’ in the EU  13
1.3.5 Part V: European Societies, ‘Otherness’, Migration, and the Law  14

PART I Making the ‘Other’ – The Construction of ‘Otherness’  17

2 The Immigrant As the ‘Other’  19

MORITZ JESSE
2.1 ‘Othering’ As the Discursive Differentiation from a Collective-Self  19
2.1.1 Who Is the ‘Other’? – Different from ‘Us’  19
2.1.2 Who Are ‘We’? – Better than the ‘Other’  22
2.2 The ‘Othering’ of Immigrants and the Law  25
2.2.1 Pre-determined Power Relations between Receiving Society and Newcomers  25
2.2.2 Foreigners and Immigrants As the Natural ‘Others’ in a Nation State 26
2.3 ‘Othering’ of Immigrants and European Union 31
  2.3.1 EU Free Movement and Citizenship of the Union 31
  2.3.2 EU Migration Law 32
2.4 Law As an Amplifier of ‘Otherness’ and Defender of ‘Communities of Value’ 35
  2.4.1 Immigration Law As a Mirror 35
  2.4.2 Integration Measures and Economic Conditions As (Fake) Defenders 38
  2.4.3 The Role of the Judiciary 40
2.5 Conclusions: Immigrants As the ‘Other’ 41

3 ‘Othering’ in Unconcerned Democracies and the Rise of Anti-liberal Political Divisions 43
HELENA HOFMANNOVÁ AND KAREL ŘEPA
3.1 Introduction 43
3.2 ‘Othering’ As a Leading Principle of Czech Political Discourse 45
  3.2.1 ‘Othering’ and Political Actors in the Czech Republic 45
  3.2.2 The Impact of ‘Othering’ on Law, Civic Society, and International Cooperation 50
3.3 Constructing ‘Us’ and ‘the Others’ While Deconstructing Modern Constitutionalism 52
  3.3.1 The Logic of Political ‘Othering’ in Five Principal Steps 53
  3.3.2 ‘Unconcerned Democracy’ As a Consequence of Anti-liberal ‘Othering’ 56
3.4 Conclusions: Constitutional Values for ‘Us’ and Nothing for ‘The Others’ 60

4 The Crimmeligrant ‘Other’ at Europe’s Intra-Schengen Borders 62
MAARTJE VAN DER WOUDÉ
4.1 Introduction: Europe and the Schengen Area 62
4.2 Who Is ‘the Other’? 65
4.3 Bordering and ‘Othering’ 68
  4.3.1 ‘Bordering’ and National Identity 69
  4.3.2 Intra-EU ‘Othering’ and Bordering 71
4.4 Controlled Free Movement in the Schengen Area 72
  4.4.1 Schengen Proof Bordering 75
  4.4.2 Schengen Proof ‘Othering’ 77
4.5 Concluding Reflections 78
# Table of Contents

## Part I

### 5 The ‘Others’ amongst ‘Them’ – Selection Categories in European Resettlement and Humanitarian Admission Programmes

- Natalia Welfens and Asya Pisarevskaya
  - 5.1 Introduction: Setting the Scene 81
  - 5.2 Refugee Selection in Resettlement and Humanitarian Admission Programmes 83
  - 5.3 Categorising As ‘Othering’: Logics of Humanitarianism, Security, and Assimilability 85
    - 5.3.1 Humanitarian ‘Othering’: UNHCR’s Submission Categories for Resettlement 87
    - 5.3.2 Assimilability Logics of ‘Othering’ 94
  - 5.4 Harmonising Selection Categories in the EU: Combining Humanitarian, Security, and Assimilability Logics 99
  - 5.5 Conclusion 102

## Part II

### 6 The Rights of ‘Others’ in Domestic Constitutions: Towards an Equality-Based Approach?

- Clíodhna Murphy
  - 6.1 Introduction 107
    - 6.2.1 A Catholic Constitution 110
    - 6.2.2 A Nationalist Constitution 112
    - 6.2.3 A Liberal Democratic Constitution Capable of Evolving with a Diverse Society 114
  - 6.3 The Position of Non-citizens in the Constitutional Order: Case-Law Analysis 115
    - 6.3.1 Inconsistent Terminology in the Fundamental Rights Provisions 116
    - 6.3.2 Conflicting Decisions on the Status of Non-citizens in the Constitutional Order 117
    - 6.3.3 A Change of Direction? An Equality and Dignity Based Approach in NHV v. Minister for Justice and Equality 121
    - 6.3.4 Breaking down the Citizen–Foreigner Distinction: How and Why? 123
    - 6.3.5 Future Directions: Increasing Openness to Rights Claims, Ongoing Resistance to the Dismantling of Citizenship As the Fundamental Legal Status? 125
  - 6.4 Conclusion 128
# Table of Contents

7 Hierarchies of Privilege: Juxtaposing Family Reunification Rights, Integration Requirements, and Nationality in EU Law 130

Narin Idriz

7.1 Introduction 130

7.2 A (Conditional) Benchmark: Family Reunification Rights of EU Citizens 132

7.2.1 Economically Active: Unconditional Right to Residence and Family Reunification 134

7.2.2 Economically Inactive: Conditional Rights to Family Reunification 134

7.2.3 Static Citizens: No Right to Family Reunification under EU Law 135

7.3 Rights Granted under International Agreements of the EU 136

7.3.1 Free Movement of the EEA Nationals and Swiss Nationals 137

7.3.2 Turkish Nationals under the Ankara Agreement 139

7.4 Third-Country Nationals under Secondary EU Law 142

7.4.1 The Family Reunification Directive: Benchmark for Unprivileged TCNs 143

7.4.2 Highly Qualified Migrants: Privileged Applicants 147

7.5 Conclusion: Hierarchies of Privilege and ‘Othering’ 149

8 Alienation of ‘Second Generation Turkish Dutch’ in the Name of ‘Integration’: Family Reunification Policies in the Netherlands 152

Gizem Kolbaşı-Muyan

8.1 Introduction 152

8.2 Bureaucratic Alienation: Family Reunification for Turkish Citizens in the Netherlands 154

8.2.1 Prevention of Court Judgments: Well-Timed ad hoc Residence Permits 156

8.2.2 Restrictive Administrative Interpretation of Individual Rights 159

8.2.3 Excessive Length of Legal Proceedings 160

8.2.4 Restrictive Policies and Denied Rights: Three Steps of Alienation and ‘Othering’ 162

8.3 Perceptions of Discrimination and Alienation by Second Generation Turkish Dutch 162

8.3.1 Income Requirements for Family Reunification 162

8.3.2 Civic Integration Exam Abroad and Courses in the Netherlands 163
Table of Contents

8.3.3 Age Requirements for Family Life 167
8.3.4 High Administration Fees for Family Reunification 168
8.3.5 Mechanics of Alienation and Feelings of Exclusion 168
8.4 Impact on the Integration of SGTD Sponsors 169
8.5 Conclusion: The Administrative Creation of ‘Otherness’ 172

9 Different Levels of ‘Legal Otherness’ in the Context of Expulsion and Entry Bans 173
KATHRIN HAMENSTÄDT
9.1 Introduction 173
9.2 Different Levels of Protection against Expulsion, Security of Residence, and Integration 175
9.3 Different Degrees of ‘Legal Otherness’ in EU Law 178
9.3.1 EU Citizens and Their Family Members Covered by the Citizenship Directive 178
9.3.2 Turkish Nationals Covered by the EEC–Turkey Association Agreement 183
9.3.3 Long Term Resident Third-Country Nationals Covered by the LTR-Directive 185
9.3.4 Conclusions regarding the Different Levels of ‘Legal Otherness’ in the Context of Expulsion 186
9.4 Entry Bans and the Schengen-Information System 188
9.5 Conclusions 190

10 The Non-national As ‘The Other’: What Role for Non-discrimination Law? 192
KARIN DE VRIES
10.1 Introduction 192
10.2 The Inequalities of Nationality 193
10.3 Current Responses from Non-discrimination Law 195
10.3.1 Nationality Discrimination under the ECHR 195
10.3.2 Nationality Discrimination in EU Law 198
10.4 An Anti-stigmatisation Approach 199
10.4.1 The Anti-stigmatisation Approach 199
10.4.2 Nationality As Stigma? 200
10.5 Outlines of a New Approach 206
10.5.1 Protecting the Powerless 206
10.5.2 Rebuffing Stereotypes 207
10.5.3 Recognising Social Membership 208
10.6 Conclusion 209
PART III  After the Arrival of the ‘Others’ – Reactions to the ‘Refugee Crisis’ of 2015  211

11  The Reception of Asylum Seekers in Europe: Exclusion through Accommodation Practices  213

HELENA SEGARRA

11.1  Introduction  213
11.2  Methodological Approach  215
11.3  Reception Practices in the EU, Austria, and Italy  217
   11.3.1  Reception in the EU  217
   11.3.2  Reception in Austria  220
   11.3.3  Reception in Italy  221
11.4  The Camp As a Symbol and Place of Exclusion  222
   11.4.1  ‘Othering’ through Space  224
   11.4.2  Catch 22 – ‘Othering’ through Bureaucratic Means  226
11.5  Conclusion  228

12  Integration Impossible? Ethnic Nationalism and Refugee Integration in Bulgaria  230

EMILIYA BRATANOVA VAN HARTEN

12.1  Introduction  230
12.2  Bridging East and West: The Case of CEE and Bulgaria  232
   12.2.1  Refugee Policies in CEE Countries  232
   12.2.2  Refugee Policies in Bulgaria  234
12.3  Laissez-faire or Laissez-passer Approach to Refugee Integration?  235
   12.3.1  Refugee Integration Policies in Bulgaria: Pre-2013  235
   12.3.2  Refugee Integration Policies in Bulgaria: Post-2013  237
12.4  ‘Othering’ and ‘Otherness’ in the East and in the West  241
   12.4.1  Nation-Building, Citizenship, and Integration Policies  241
   12.4.2  Ethnic and Civic Nationalism Revisited  242
12.5  Conclusion  244

13  Refugees’ Integration into the Labour Market: Discharging Responsibility in the UK  247

SONIA MORANO-FOADI, CLARA DELLA CROCE, AND PETER LUGOSI

13.1  Introduction  247
13.2  Discharging Responsibility for Labour Market Integration  249
13.3  The Legal Framework towards Refugees’ Labour Market Integration  251
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.3.1 Obligations Stemming from International Treaties</td>
<td>251</td>
</tr>
<tr>
<td>13.3.2 Obligations Stemming from EU Law</td>
<td>253</td>
</tr>
<tr>
<td>13.3.3 Implementing Policies to Include Refugees</td>
<td>254</td>
</tr>
<tr>
<td>13.4 The UK’s Syrian Vulnerable Persons Resettlement Scheme (VPRS)</td>
<td>255</td>
</tr>
<tr>
<td>13.4.1 Planning and Coordination</td>
<td>255</td>
</tr>
<tr>
<td>13.4.2 Support</td>
<td>256</td>
</tr>
<tr>
<td>13.4.3 Monitoring</td>
<td>257</td>
</tr>
<tr>
<td>13.4.4 Operational Challenges in the VPRS</td>
<td>258</td>
</tr>
<tr>
<td>13.4.5 Experiences of ‘Recognised’ and ‘Resettled’ Refugees</td>
<td>259</td>
</tr>
<tr>
<td>13.5 Conclusion</td>
<td>262</td>
</tr>
</tbody>
</table>

**PART IV ‘Othering’ in the EU**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 When a Country Is Not a Home: The Numbered (EU Citizens) ‘Others’ and the Quest for Human Dignity under Brexit</td>
<td>267</td>
</tr>
<tr>
<td>DORA KOSTAKOPOULOU</td>
<td></td>
</tr>
<tr>
<td>14.1 Introduction</td>
<td>267</td>
</tr>
<tr>
<td>14.2 Constructing EU Citizens’ ’Otherness’: From the Progressive Framing of the European ’Other’ to Externally Imposed Alienation</td>
<td>272</td>
</tr>
<tr>
<td>14.2.1 The Politicisation of EU Mobility in the United Kingdom</td>
<td>272</td>
</tr>
<tr>
<td>14.2.2 Politicisation and Institutional Sedimentation of the EU ‘Other’</td>
<td>274</td>
</tr>
<tr>
<td>14.3 Human Dignity and the Migrant Manifesto of 2011</td>
<td>279</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 The ‘Market Insider’: Market-Citizenship and Economic Exclusion in the EU</td>
<td>282</td>
</tr>
<tr>
<td>MORITZ JESSE AND DANIEL CARTER</td>
<td></td>
</tr>
<tr>
<td>15.1 Introduction</td>
<td>282</td>
</tr>
<tr>
<td>15.2 The Dano-Trinity and the Parousia of Market Citizenship</td>
<td>282</td>
</tr>
<tr>
<td>15.2.1 Market Citizenship in Sala, Baumbast, Grzelczyk, and Bidar</td>
<td>284</td>
</tr>
<tr>
<td>15.2.2 Market Citizenship in Directive 2004/38: The Omnipotence of Article 7</td>
<td>284</td>
</tr>
<tr>
<td>15.2.3 The Dano-Evolution</td>
<td>286</td>
</tr>
<tr>
<td>15.3 ’Fat Morgana’ of Legal Certainty? The Concept of ‘Sufficient Resources’ and ‘Unreasonable Burdens’</td>
<td>288</td>
</tr>
<tr>
<td>15.4 Undermining Residence Security of EU Citizens</td>
<td>290</td>
</tr>
<tr>
<td>15.4.1 Automatic Illegality after Automatic Means-Test?</td>
<td>290</td>
</tr>
<tr>
<td>15.4.2 Access to Permanent Residence</td>
<td>293</td>
</tr>
</tbody>
</table>
15.4.3 Returning with Family to Home Member State after ‘Illegal’ Residence in Host Member State 295
15.5 Concluding Remarks: The Logic and Effects of Market Citizenship 297

16 Inclusion and Exclusion of Migrant Workers in the EU 301
DANIEL CARTER
16.1 Introduction 301
16.2 Forms of Employment over Time 302
  16.2.1 From Bretton Woods to Neoliberalism 302
  16.2.2 Non-standard and Flexible Forms of Employment 304
16.3 Inclusion and Exclusion in EU Free Movement Law 307
  16.3.1 EU Workers: Equal Treatment As Inclusion 307
  16.3.2 Union Citizenship I: Inclusion of the Economically Inactive 310
  16.3.3 Union Citizenship II: No Safety Net 312
  16.3.4 The Legal Consequences of Exclusion: Movement and Work without Protection under EU Law 315
  16.3.5 The Wider Consequences of Exclusion: Stigmatisation and Social Hierarchies 317
16.4 Conclusion 318

PART V European Societies, ‘Otherness’, Migration, and the Law 321

17 Deciphering the Role of (Migration) Law in the Social Construction of ‘Otherness’ 323
DANIEL THYM
17.1 Critical Approaches to European Migration Law 323
  17.1.1 Starting Point: Salient Political Debates 324
  17.1.2 Migration Law between Doctrine and Critique 325
  17.1.3 Reconstructing the Law beyond ‘Othering’ 327
17.2 Methodology: Interaction of Legal Rules and Court Judgments with Social Practices and Political Processes 328
  17.2.1 Constitutional Law and the Danger of ‘Hollow Hope’ 329
  17.2.2 Dynamic Evolution of Migration Law between Statutory Interpretation and Constitutional Adjudication 332
  17.2.3 Law As a Counterpoint and Individual Agency 334
17.3 Research Horizon: Overarching Trends in the Social Sciences 338
  17.3.1 Conditionality As an Expression of State Sovereignty 339
## Table of Contents

17.3.2 Distinguishing ‘Alienage’ and ‘Denizenship’ 342
17.3.3 The Significance of ‘Othering’ beyond Migration Law 344
17.4 Conceptions: Reconstructing European Migration Law 346
   17.4.1 Ambiguities of the EU’s ‘Postnationalism’ 347
   17.4.2 Beyond Binary Descriptions of EU Migration Law 349
   17.4.3 Societal Self-Images between Pluralism and Coherence 352
17.5 Conclusion 354

18 The ‘Others’ amongst ‘Us’: Instead of a Conclusion 356
   18.1 Thick Legal Norms and Bureaucratic ‘Othering’ 357
       18.1.1 The Stickiness of Substantive Rules and Flexible Procedures 357
       18.1.2 Vague Norms and ‘Reverse Harmonisation’ on EU Level 358
       18.1.3 Bureaucratic ‘Othering’ 361
   18.2 Economic ‘Othering’ 362
   18.3 Cultural ‘Othering’ 364
   18.4 Who Are ‘We’? 366
   18.5 Stop ‘Othering’ – Make Migration and Immigrants ‘Normal’ 368

Bibliography 374
Index 427