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HOW LIBERAL ARE CITIZENSHIP TESTS?

edited by Rainer Bauböck and Christian Joppke

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES
EUROPEAN UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP

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EDITED BY RAINER BAUBÖCK AND CHRISTIAN JOPPKE

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Abstract

A significant number of –mostly Western European– countries have recently newly introduced citizenship tests or have added stricter requirements of civic knowledge to previously existing language tests. This working paper collects the contributions to a EUDO-CITIZENSHIP forum debate on whether such tests can be defended from a liberal perspective. The question: ‘How liberal are citizenship tests?’ can be interpreted in two ways: as a question whether applicants for naturalisation should be tested at all, or as a question about specific modes, contents and consequences of such tests that may make them either liberal or illiberal. In his kickoff contribution, Christian Joppke suggests an answer in line with the second interpretation by focusing on modes and contents. In his view, citizenship tests are defensible if applicants have reasonable opportunities to prepare for them and if questions are not inquisitive about individuals values and beliefs. Other authors claim instead that the most problematic feature of citizenship tests is the intention or effect of raising hurdles for naturalisation among long-term resident immigrants. Joseph Carens defends the view that ‘the most liberal citizenship test is none at all’. Ten authors have contributed to this lively and controversial debate, which concludes with a rejoinder by Christian Joppke.

Keywords

Citizenship, tests, naturalisation, liberalism, integration, values

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How liberal are citizenship tests?

Christian Joppke*

The heartland of liberalism, the United States, has long practiced citizenship tests. So, one must be astonished that their recent introduction in Europe has raised controversy, and that there is doubt about their “liberal” credentials. This may stem from the European tests’ origin in the “civic integration” policy for immigrants (see Joppke 2007), which the —still liberal— Netherlands pioneered in the late 1990s but that quickly turned into a nationalist imposition of ill-defined “Dutch norms and values” on (Muslim) immigrants, with increasingly punitive and exclusionary connotations. But not all European countries went quite as far as the Netherlands did. It is one thing if no test materials are provided by the government, on the note that ‘one cannot learn to feel Dutch’; if the test is costly and demanding; and if you can try only three times, which has made the Dutch citizenship test a serious hurdle to citizenship acquisition. And it is quite another thing if test materials can be bought cheaply or even downloaded free from the internet, if the answers are provided in the test materials, if the costs are low, and if you can try as many times as you want, which is by and large the British or German procedure. In a nutshell, the devil is in the detail, and a fast-handed debunking of the entire genre is mistaken.

With respect of the contents of the citizenship test, to ask for host-society language competence and knowledge of the principles and procedures of liberal democracies is an incontrovertibly legitimate core component of all citizenship tests in Europe and other Western states. And few would doubt that asking for knowledge of historical key events in a country’s road to becoming a liberal democracy, along with knowledge of liberal democracy’s peculiar institutional form in the respective country, is equally legitimate. In a sensible discussion, Liav Orgad (2010) has called this ‘national constitutionalism’. The controversy starts with respect to cultural knowledge, which is unconnected to political principles or history. So Orgad criticizes (variants of) the German citizenship test for including questions about German car makers and composers, or what Germans do at Easter. And he finds the British citizenship test wanting for including (multiple choice) questions of the type, ‘what would you do if someone spills beer over your shirt in a pub’. To this I respond that all countries are historically specific formations, and asking for some knowledge of, even experience with this specificity is not as such an unreasonable expectation. As inconspicuously liberal philosopher Samuel Scheffler (2007: 111) argued, the state ‘cannot avoid coercing citizens into preserving a national culture of some kind’. One must further consider that citizenship applicants are already legal permanent residents, who enjoy rights that approximate citizen rights in all domains except the narrowly political ones. And the expectation is merely cognitive: the respective information can be learned (and unlearned), and —like learning a new language— it is capacity-enhancing, it does not deprive the individual of anything, least their “identity”. Note, finally, that the German federal citizenship test, introduced in fall 2008 after heated discussions, abstains from demanding immersion into the German *Kultur*, such as asking for the “central motif” in a Caspar David Friedrich painting that shows a landscape on the Baltic island of Rügen (and that an earlier incarnation of the citizenship test in the Land of Hesse had at first included). To the degree that there is still “culture” in the final version, it is “culture” in the anthropological sense of everyday experience, which notably may include ‘differences and communalities in the context of migration’.¹

I would set the threshold of the impermissible from a liberal point of view higher than including culture, however high- or low-brow the latter might be. Instead, I propose to define this threshold by

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¹ *Verordnung zu Einbürgerungstest und Einbürgerungskurs* (5 August 2008), BGBl. 1 S.1649, Anlage 2: 171.

means of the Kantian distinction between “morality” and “legality”. A test that is inquisitorial about the “true” values or beliefs of an individual, even if they pertain to the rules of liberal democracy, is pernicious from a liberal point of view. An infamous example is the so-called *Gesprächsleitfaden* (Interview Guideline)², which was issued by the Land government of Baden-Württemberg in September 2005 to aid its naturalization officers, and which kicked off the German evolution toward the federal citizenship test introduced three years later. Its professed purpose was to check whether a citizenship applicant’s written “declaration of loyalty” (*Bekennntnis*) to the Constitution, which is a component of the German naturalization procedure since 2000, also corresponded to the applicant’s actual beliefs or “inner disposition”. The Interview Guideline was questionable in two respects. First, it originally applied only to citizenship applicants from member states of the Islamic League, thus discriminating against Muslim applicants for citizenship. In fact, the guideline, which consisted of 30 questions about applicants’ views on parental authority, religion, homosexuality, gender equality, terrorism, and other issues, construed the ‘liberal democratic order primarily as one that is contrary to the presumed values of a specific group’, Muslims (Wolfrum & Röben 2006: 15). But perhaps even more importantly, in touching the intimate sphere of the person, the guideline violated the liberty rights of the Constitution, especially the freedom of opinion and conscience. As the legal critics Wolfrum and Röben explicate the constitutional status quo, ‘the mere holding of an opinion is no threat to the liberal democratic order, if it is not expressed in concrete actions that are directed against this order’ (*ibid.*: 16). While it was appropriately condemned for its discriminatory, inquisitive morality test, the CDU-ruled Land government amazingly refused to backtrack, even after the introduction of the nation-wide citizenship test in 2008. This, indeed, is “repressive liberalism” (see Joppke 2007:14-18), the illiberal potential of a liberalism that transmutes into an identity, an ethical way of life that everyone is expected to be conformant with, and which is brought forward with an unabashedly exclusionary intention against liberalism’s presumed Other, Islam and Muslims.

Whenever the new citizenship tests are informed by the notion that the liberal state is one only for liberal people, the threshold of the illiberal is passed. Because this is a profoundly illiberal idea, casting people into a standard mold and robbing them of the possibility to decide for themselves who they want to be. Ever since Kant, it is a key precept of liberalism that law and public policy can regulate only the external behavior of people, not their inner motivations. And this is not just philosophical wish but hard legal fact in the constitutional state, which in Germany was established in the famous decision of the German Constitutional Court on “Jehovah’s Witnesses”. In this decision, the court held that citizens (and legal residents) are ‘legally not required to personally share the values of the Constitution’.³ All that, say, religious dissenters can be expected to do is to respect in their behavior the priority of the secular legal order, and not to harm the constitutional rights of third parties. Accordingly, an exacting loyalty requirement, which aims at ‘an inner disposition, a mindset (*Gesinnung*), not an external behavior’, has been deemed contrary to the Basic Law. This is no late modern invention of the German court. As early as 1944, a U.S. appellate court had ruled that ‘patriotism is not a condition of naturalization; that attachment is not addressed to the heart, demands no affection for or even approval for a democratic system of government, but merely acceptance of the fundamental political habits and attitudes which here prevail, and a willingness to obey the laws’ (quoted in Gordon 2007:371). David Miller articulates the operative principle in the American and German court rules: ‘Liberal states do not require their citizens to *believe* liberal principles, since they tolerate communists, anarchists, fascists, and so forth. What they require is that citizens should conform to liberal principles in practice and accept as legitimate policies that are pursued in the name of such principles, while they are left free to advocate alternative arrangements’ (Miller 2004:14).

² Interior Ministry of Baden-Württemberg, *Gesprächsleitfaden für die Einbürgerungsbehörden* (Az.: 5-1012.4/12, September 2005).

³ BVerfGE 102, 370 (Decision of German Constitutional Court on “Jehovah’s Witnesses”, 10 December 2000).

Returning to the new citizenship tests, the mainstream variants that ask for factual knowledge about a country's history, culture and institutions are unproblematic in this respect, because such matter is merely cognitive: it can be learned and mechanically reproduced. Moving from knowledge to values, even a signed loyalty declaration or an oath to the Constitution does not raise eyebrows, because it consists of an external behavior that, moreover, only actualizes the contractual underpinnings of liberal citizenship. However, a citizenship test that scrutinizes a candidate's "inner disposition" does raise eyebrows, precisely for transgressing the thin line that separates the regulation of behavior from the control of beliefs.

The German federal citizenship test of fall 2008 repudiated not only cultural nationalism, in response to the Hesse practice, but also "matters of conscience", in response to the widespread criticism brought against Baden-Württemberg's morality test.⁴ The section on "History and Responsibility" even comes close to the "constitutional nationalism" that Liav Orgad (2010) considers apposite in the liberal state: 'Every state has a constitutional uniqueness reflecting its history, development, traditions and contextual background'. Asking the citizenship applicant for knowledge about its particular road to democracy realizes the fact that she seeks entry not in *any* but in *this* political community. It is, according to Orgad, next to language, the one particularism that the liberal state may legitimately impose on citizenship applicants. In this sense, asking for the meaning of the photograph showing Chancellor Willy Brandt's famous *Kniefall* (kneeling) at the monument commemorating the victims of the Warsaw Ghetto, which is one of the 300 possible federal citizenship test questions, is not like asking what Germans do at Christmas or Easter (however *läppisch* the latter may be). Instead, knowledge of this event refers to Germany's unique story of becoming a liberal democracy. In its intrinsic linkage to universalistic liberal-democratic values, this type of question differs from asking for knowledge about German composers, car-makers, or painters—all entries of the heavily criticized yet never-practiced Hesse proposal, which had endorsed a cultural particularism that is unrelated to the precepts of liberal democracy. Next to the occasional morality inquisition, a second source of illiberalism in current citizenship practices is a trend toward imposing virtuosity in terms of active collectivity-oriented behavior. While having deep roots in the Occidental tradition, in terms of Republicanism from Aristotle to Rousseau, virtuous citizenship had so far been a privilege of the former Communist states, which expected its "citizens" to work for the common (socialist) good or face the risk of being expatriated for the lack thereof.⁵ If one brackets the strange duty to vote in some states like Australia or Belgium, most liberal states generally have abstained from an active participation requirement. Contrary to this, resource-starved, post-welfare states have devolved responsibilities to active citizens. But only for citizenship applicants has this recently hardened into a legal obligation. Accordingly, applicants for Danish citizenship now must sign a declaration that obliges them to 'become active citizens in Danish society' (though the imposed activities are limited to respecting the legal minimum, such as becoming "self-supporting" and respecting that "men and women have equal rights" and "freedom of speech and religion"). Britain, in its recent introduction of "earned citizenship", went a step further (see my discussion in Joppke 2010:59-60). It includes the new scheme of "probationary citizenship", which is a limbo period of one to three years, during which citizenship-bound immigrants have to prove that they are in work and law-abiding. Crucially, and emblematic to the logo of "earned citizenship" for the new citizenship construct, the minimum period of one year and three years for proceeding from probationary citizenship to citizenship proper or permanent residence, respectively, is possible only if the probationary citizen shows the extra effort of "active citizenship". This consists of "civic activities" through which immigrants "benefit the local community" and demonstrate their "commitment to the UK". Certainly, "active citizenship" thus conceived is still a voluntary shortcut to citizenship or permanent residence, but it may well become a compulsive "requirement" in the next round. The

⁴ 'Germany to introduce controversial new citizenship test', *Spiegel Online* 11 June 2008.

⁵ See the famous case of East German songwriter Wolf Biermann, who was expatriated in 1976, after a concert in Cologne, because of a "gross violation of citizenship duties" (*grosse Verletzung staatsbürgerlicher Pflichten*).

obvious novelty, troubling from a liberal point of view, is making virtuous citizenship a condition for legal citizenship.

In my view, the flagged illiberal possibilities in some citizenship tests and rules are just that — possibilities and exceptions from the liberal norm. It is certainly unwarranted to put the new citizenship tests under the *Generalverdacht* of being illiberal. In fact, the very fact of standardization and formalization may well be a net win in liberality: it increases the naturalization procedure's calculability on the part of citizenship applicants, who are no longer subject to an open-ended, individual interview procedure and the involved state agent's unfathomable discretion.

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Citizenship tests and traditions of state interference with cultural diversity

Ines Michalowski *

Christian Joppke is certainly right that it is ‘unwarranted to put the new citizenship tests under the *Generalverdacht* of being illiberal’. The content of citizenship tests can very well correspond to liberal criteria, as a recent comparison of citizenship tests in five countries has shown (Michalowski 2009). Astonishingly, not only countries with a traditionally liberal citizenship regime such as the US and the UK run citizenship tests that can be defined as liberal but also countries (Austria and Germany) with otherwise rather restrictive citizenship regimes do so. Only the content of the Dutch citizenship test could not be classified as liberal.

These findings are based on the assumption that citizenship tests are liberal in the Rawlsian sense if questions concentrate on basic rights and freedoms and the political system that is supposed to guarantee them and if questions only relate to facts and the knowledge of “what is right” but not to “what is good.” Precisely, this means that the biggest thematic category in all countries except for the Netherlands is politics, rights and democracy: 52% of the questions in the US, 54% of the questions in Austria, 50% of the questions in Germany, and 31% of the questions in the UK focus on this topic. In the Netherlands, however, the thematic sub-category of health (18%) is bigger than the sub-category of politics, democracy and rights (12%). Furthermore, the systematic content analysis of the tests has shown that the US, Austria and the UK do not ask any question about “what is good”, Germany asks one question (out of a total of 300) while in the curriculum⁶ for the Dutch citizenship, one fifth of all test items relate to “what is good” (Michalowski 2009).

Constructed in proximity to Christian Joppke’s (2007) theoretical analysis, this two-dimensional classification of the content of citizenship tests raises at least two questions about the precise operationalization and thus definition of the notion of liberalism. According to Joppke’s definition, the US citizenship test is liberal because it only asks questions that relate to politics, historical key events or geography, because the 100 questions the candidate for naturalization has to familiarize with are published (and so are the right answers), and because none of the questions scrutinizes the candidate’s “inner disposition” (“merely cognitive” knowledge is required). We definitely situate the state-level citizenship questionnaire introduced in 2006 in the German Land of Baden-Württemberg at the other end of the spectrum because it specifically addresses Muslim candidates for citizenship and because it asks questions about the candidate’s inner disposition. However, there are a couple of tests and questions that are not as easy to classify. I will focus here on two issues:

Even though Christian Joppke states that ‘asking for knowledge of historical key events in a country’s road to becoming a liberal democracy (...) is equally legitimate’ he apparently only defines those tests questions as liberal that relate to such historical key events. This position is reflected by a discussion among Austrian parliamentarians and researchers as to whether questions about Austrian modern and medieval history that some conservative Austrian states have added to the federal citizenship test can be classified as communitarian and assimilationist (Perchinig 2010). Yet —as long as the answers to such questions are equally accessible— why should a question about contemporary history be more liberal than a question about modern or medieval history? Why should questions

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⁶ Since the Dutch test questions are not published and sample questions do not exist, the items coded were derived from the curriculum for the test which contains a list of 310 “important-to-know” bullet-points. For more details see Michalowski (2009).

addressed to immigrants start with the French Revolution (or the Edict of Nantes?) while popular French historiography starts with ‘*nos ancêtres les Gaulois*’?⁷ What exactly are the key events of history and what are historic details? Where does historiography about a country’s road to liberal democracy start? There seem to be only two ways of resolving this issue: either all history questions are considered liberal or only those questions are defined as liberal that correspond to the history and civic education knowledge that is required in regular school curricula (see e.g., Soysal & Szakács 2010).

The second issue relates to the fact that Christian Joppke equates liberal with knowledge requirements and illiberal with the behavior or inner disposition of the individual candidate for naturalization. This definition rightfully⁸ does not grant much importance to questions such as ‘What is a German tradition for Easter: set out pumpkins in the front yard, decorate Christmas trees, paint eggs, or shoot fireworks?’ (question # 293) which according to this definition is considered to be part of the corpus of liberal questions. On the other hand, this definition allows us to single out as illiberal questions such as ‘[the candidate] gets informed about unwritten rules (through observation, asking for advice, asking for support or correction etc.)’ that figure in the curriculum of the Dutch citizenship test. Still, this is not a satisfactory definition for at least two other ways to formulate citizenship test questions.

Questions such as ‘the candidate knows that concubinage (also of same-sex-partners) is accepted in the Netherlands’ appeal to the candidate’s cognitive knowledge, not to her inner disposition. Yet, the way this question is formulated differs for example from question # 245 in the German citizenship test ‘Who is not allowed to live together as a couple: Hans (20 years) and Marie (19), Tom (20) and Klaus (45), Sofie (35) and Lisa (40), or Anne (13) and Tim (25)?’ While both questions relate to knowledge, only the German question refers to law; the Dutch question on the contrary relates to knowledge about social norms. Even though this is debatable,⁹ I would argue that formulations matter and that this Dutch question is equally illiberal because the state departs from a procedural definition of ‘an overlapping consensus’ (Rawls 1993: 149-150 and 158-168) through politics and law to include questions about potentially contested moral and social norms. The Dutch curriculum suggests the general acceptance of social norms such as concubinage or homosexuality among the Dutch population although not all social and religious groups in the Netherlands do accept these norms and although the acceptance of such norms is not necessary for a liberal democracy. As Christian Joppke pointed out himself, a liberal democracy cannot judge its citizens who disagree with constitutional or other legal principles as long as their behaviour does not conflict with its law.

This brings me to the conclusion that an evaluation of citizenship tests should not only ask what these tests require from the individual candidate. It is equally telling to analyze how much competence they attribute to the state when it comes to regulating possible dissent that emerges from a culturally and religiously diverse population. While the Netherlands traditionally have, also because of past multicultural policies, a big state in the field of moderating cultural and religious dissent, the US-American state usually opts for the opposite solution. In this sense, integration and citizenship policies indicate whether states define cultural and religious difference as the private affair of each citizen or as a public issue that may require state interference.

⁷ It should be mentioned that none of these questions are asked during the French naturalization procedure because even though the law of 26 November 2003 (art. 68) stipulates that knowledge about rights and duties as conferred by French nationality is necessary for naturalization, no decree ever put this legal requirement into practice. As of January 2010, the only decree published redesigns the evaluation of the required language skills (*Arrêté du 22 février 2005 relatif au compte rendu de l’entretien individuel*).

⁸ Questions about national customs and traditions can be subsumed under a broad definition of applied geography.

⁹ I thank Marc Helbling for his comments.

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How liberal tests are does not merely depend on their content, but also their effects

Kees Groenendijk and Ricky van Oers*

In his contribution Christian Joppke correctly disqualifies citizenship tests scrutinising future citizens' inner dispositions as being unjustifiable from a liberal point of view.¹⁰ Citizenship tests that assess cognitive knowledge can, in his view, be qualified as liberal. This qualification of knowledge tests as liberal and tests judging the applicant's 'inner dispositions' as illiberal, however, requires some refining. Ines Michalowski already notes in her contribution that an evaluation of citizenship tests should not only ask what these tests require from the candidate, but that it is also important to analyse to what extent states use citizenship tests as an instrument to 'regulate possible dissent that emerges from a culturally and religiously diverse population.' As an example, she mentions that certain questions from the Dutch citizenship test regarding an applicant's cognitive knowledge of Dutch social norms and values should be qualified as illiberal. These questions suggest a supposed general acceptance of social norms among the Dutch population, whereas acceptance of these norms is not necessary for a liberal democracy.

To this refinement, we would like to add that the question regarding the justifiability of a citizenship test in a liberal democratic perspective can only be answered when the effects a citizenship test produces are taken into account. A citizenship test which puts up a barrier for lower-educated, less-well-off immigrants is hard to justify from a liberal point of view, how liberal its content may be. The devil, like Joppke states, is indeed in the detail, and these details hence deserve some elaboration. We will illustrate our position on the basis of the cases of the Netherlands and the UK.

In the Netherlands the possession of Dutch high school (or higher) diplomas leads to exemption from the requirement to pass a citizenship test for naturalisation. This implies that the citizenship test will primarily affect first generation of immigrants, who have generally not followed education in the Netherlands, and second generation school drop-outs, the number of which is exceptionally high in the Netherlands.¹¹ Next to the socio-economic problems the latter category will experience will now also be added legal problems: an extra barrier will be put up in the form of an expensive (at least €230) and complicated citizenship test that will stand in the way of full citizenship and permanent residence rights.

Empirical research conducted in the Netherlands (Van Oers 2006) has indeed shown that the citizenship test puts up a barrier for naturalisation. After the introduction of the test in April 2003 naturalisations decreased by 50%.¹² From 1 April 2003, the date the test was introduced, until 1 September 2006, a bit over half of all those who registered to take the test eventually passed it. In addition, many immigrants did not register to take the test in the first place, out of fear that they would

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¹⁰ To this observation we would like to add that not only citizenship tests are used as means to scrutinise an applicant's inner dispositions. Recently, an applicant who forced his wife to wear a full Islamic veil was refused French citizenship for a lacking desire of integration ('Besson refuse par décret de naturaliser un homme imposant le voile à sa femme', *Le Monde*, 2 February 2010). A comparable example can be found in the Netherlands, where the wife of an imam was refused naturalisation for her supposedly insufficient integration (Council of State, 6 August 2006).

¹¹ 'Het mbo is de blinde vlek', *De Groene Amsterdammer*, 21 January 2010.

¹² The numbers reached an all-time low in 2004 and 2005 (14,752 and 14,893 naturalisations respectively), when more than 50% fewer persons were naturalised compared to 2002 (29,299 naturalisations), the year before the revised Dutch Nationality Act, introducing the naturalisation test, entered into force. The total number of naturalisations in 2008 is still 44% lower than the level reached in 2002.

not pass the costly test, for which no studying material has been made available. It is difficult to prepare for a test in case the test subjects are kept secret. From interviews conducted with those charged with implementing the test and with immigrants themselves it became apparent that the test constitutes a particularly high barrier for weaker groups in society, such as the elderly, women in disadvantaged positions and persons who have not had any or only little education. For this category, the test has hence not led to an improved integration, which was one of the official aims of the test, but rather the opposite: immigrants in this category gave up their wish for full membership. The test thus creates extra barriers for lower-educated immigrants who lack the financial means to obtain the level required by the test. This is difficult to justify in respect of the principle of equal treatment of all citizens in a liberal democracy.

In comparison to the low pass rate for the Dutch naturalisation test, the average pass rate of the British 'Life in the UK' test is high: 73% of all tests taken have been successful.¹³ Still, a significant proportion of potential applicants for naturalisation and permanent residence (more than 25%) is being held back by actual test failures (Ryan 2008: 313).¹⁴ Furthermore, when taking a closer look at the pass rates for the test per nationality, it becomes apparent that the test constitutes an especially high barrier for certain categories of immigrant: family migrants and refugees. Whereas the pass rate is almost 100% for applicants holding the nationality of a country where English is the majority language (USA, Australia), less than half of all tests taken by immigrants holding the nationality of a country which has produced large numbers of refugees (Iraq, Kosovo and Afghanistan) or applicants for family reunification (Bangladesh, Turkey) are successful. The impact of the introduction of one uniform test is highly differentiated per nationality and is probably differentiated by immigration category (Ryan 2008: 303). It is therefore in our view questionable whether the British test, which has a 'good' reputation when it comes to its content (Michalowski 2009) can be justified when measured against liberal standards.

An overall evaluation of citizenship tests should not only be based on the content of these tests (Joppke) and the extent to which states use the tests to define cultural and religious difference as a public issue that may require state interference (Michalowski), but also on the effects these tests produce in terms of excluding a significant part of the permanent resident population from full citizenship rights. Important differences in terms of access to full citizenship are not easy to justify from a liberal democratic perspective.

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Citizenship tests could signal that European states perceive themselves as immigration countries

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That such a vociferous debate in Europe over the liberal vs illiberal nature of citizenship tests has emerged in recent years is, as Christian Joppke rightly states, surprising in light of the fact that the United States, the “heartland of liberalism”, has had some form of citizenship testing for over one hundred years (Hyatt 1948: 3). Far from being controversial, the American test is an accepted step today on the path to naturalization. Nearly all applicants pass the test, with easier tests available for the aged.

Why, then, has even the basic concept of testing been received so negatively in Europe, both in academe and in civil society? Some observers have argued that these tests are an indication of the fundamental unwillingness of European countries to accept their reality as immigration countries (Wright 2008: 3), while others argue more specifically that the tests represent a discriminatory selection mechanism intended to reduce the number of individuals who are “worthy” of joining the polity (Etzioni 2007, McNamara & Shohamy 2008, Rice-Oxley 2008). Yet to paint all citizenship tests with the presupposition of being illiberal and exclusionary is, as Christian Joppke points out, unwarranted. In Germany, following strong criticism of the test, 99% of federal-level test-takers passed the test in 2009,¹⁵ suggesting that the test is not unduly difficult, nor does it pose a significant barrier to naturalization.

On the other hand, as Kees Groenendijk and Ricky van Oers argue, even liberal tests (and certainly illiberal ones) may create a barrier in terms of inhibiting potential applicants. Thus, it could be argued that tests, even liberal ones, are actually restrictive in nature. And, indeed, in Germany, application numbers sank in 2009, yet, according to the government, this decline is due to the time involved in administering the new test and should reverse in 2010.¹⁶ Christian Joppke closes his remarks above by noting that citizenship tests may even be a net win in liberality. Indeed, arguably, liberal citizenship tests –and as Ines Michalowski points out nearly all citizenship tests can be classified as such– are far more inclusive than alternative procedures involving subjective criteria.

The illiberal potential of subjective criteria for naturalization is perhaps best demonstrated by the recent decision of the French authorities to reject a man’s naturalization application on the grounds that he “forced” his wife to wear a *niqab*.¹⁷ Similarly, a *niqab*-wearing woman was denied naturalization in France in 2008 on appeal on the subjective grounds that she was insufficiently assimilated despite her fluent French.¹⁸ French naturalization law, as revised in 2003, requires candidates to demonstrate their assimilation in France, normally demonstrated by knowledge of the French language and of the rights and duties conferred by French citizenship. The interpretation of this

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¹⁵ Presse- und Informationsamt der Bundesregierung Pressemitteilung (2009), ‘Staatsministerin Maria Böhmer zu sinkenden Einbürgerungszahlen: ‘Weiter für Einbürgerungen werben!’’, No. 259, 12 June <http://www.bundesregierung.de/Content/DE/Pressemitteilungen/BPA/2009/06/2009-06-12-ib-einbuengerungszahlen.html>.

¹⁶ *Ibid.*

¹⁷ ‘France Denies Citizenship to Man With Veiled Wife’, *New York Times*, 4 February 2010.

¹⁸ ‘A Muslim woman too orthodox for France’, *International Herald Tribune*, 18 July 2008.

provision in these two cases, based on subjective criteria, clearly represents what Joppke calls ‘the notion that the liberal state is one only for liberal people.’

Citizenship testing, on the other hand, can enable a government to establish clear criteria and demonstrate what it feels is important for new citizens to know, while maintaining a transparent procedure. However, if citizenship tests are to serve this function and are not to inhibit some from applying, then citizenship testing itself must be reconceptualized. In the United States, testing is perceived as an inclusive phenomenon which gathers new members into the political process. It is, in short, a rite of passage.

While I agree with the contributors above, who argue that citizenship testing is not necessarily an illiberal practice, I would take the argument one step further and argue that a *liberal* citizenship test can in fact even institutionalize naturalization, making it a normal and expected procedure for immigrants, rather than an exceptional step. The introduction of liberal citizenship testing in Europe could thus be, rather than an exclusive phenomenon, a significant step on European countries’ path to becoming incontrovertible “countries of immigration.”

The USCIS ‘Guide to Naturalization’ begins with the words ‘Welcome. We are very pleased that you want to become a U.S. citizen.’ These words are genuine: in the United States, the expected trajectory for immigrants is that they will become US citizens.¹⁹ The expectation of inclusion in the polity is, as the phrase has it, a two-way street.

The trick, then, seems to lie in reconceptualizing European citizenship tests similarly. Looking at the German citizenship test, which has four questions on immigration to Germany, we could argue that immigration is being portrayed as a “historical key event” in Germany. We can thus look at citizenship testing in a structural/macro context rather than on an individual level. The introduction of a formal, transparent and liberal naturalization procedure could be said to institutionalize both immigration and the natural progression to naturalization as well as granting individuals the potential for full inclusion in the polity.

The German test, from this perspective, moves Germany one significant step closer to being –and being perceived as such– an immigration country. Ultimately, the context of reception which greets new immigrants is as crucial to successful immigrant integration as any individual characteristics, and the perception of a country as an immigration country is significant. As Christian Joppke and Ines Michalowski both point out, the liberal nature of testing is key. A successfully carried out test and widespread acceptance of the test – already underway – will go a long way toward achieving that positive context of reception.

It is unfortunate that widespread German and European discussion about citizenship testing began with the “infamous” Baden-Württemberg “*Gesprächsleitfaden*”, a clearly illiberal test, and which continues to colour much of the public perception of citizenship tests. The discussion in this forum make clear arguments that citizenship testing *need* not necessarily be exclusive or illiberal, but have a far greater potential.

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Citizenship tests could signal that European states perceive themselves as immigration countries

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What liberalism is committed to and why current citizenship policies fail this test

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Hardly anybody would disagree with Christian Joppke's (Christian thereafter) observation that 'whenever the new citizenship tests are informed by the notion that the liberal state is one only for liberal people, the threshold of the illiberal is passed'. Nor would liberals disagree with Christian's contention that only the external behaviour of people - neither their hearts nor their minds - should trigger law's intervention. Christian makes this argument with clarity and rigour. But in distinguishing between 'good' and 'bad' citizenship tests, that is, justifiable tests, on the one hand, and 'illiberal possibilities and exceptions from the liberal norm', on the other, my main worry is that liberalism's remit becomes somewhat narrowed.

The judgement about the extent to which contemporary European citizenship tests are liberal or illiberal centres on their specifics; that is, their content, the nature of the questions they entail, the easiness or difficulty of the test, the possibility of retaking it and so on. Although this is a legitimate focus, it is also one-sided. "Zooming in" on citizenship tests, or on anything indeed, needs to be accompanied by a "zooming out" exercise. And if the parallel processes of zooming in and out lead to congruent findings, then one can safely conclude that the case for the liberal character of citizenship tests has been made quite persuasively. In the brief commentary that follows I intend to "zoom out" in order to examine whether citizenship tests in general meet liberal (and not national) prescriptions. I will then seek to paint a more panoramic picture by examining their context, timing, the official discourses surrounding them and their effects with a view to establishing whether they are in conformity with liberalism. In other words, this brief commentary will focus on the "before" and "after" of Christian's analysis.

How liberal is it to test whether burden-sharers qualify for membership?

Liberalism exists in several modalities. Irrespective of the differences among various liberalisms, however, it is true that all liberals subscribe to the principle of equal human dignity and uphold the moral claim that all individuals deserve equal concern and respect (Dworkin 1985). Individuals deserve to be treated as equals not because they belong to the same class, caste, race, gender or nationality, but because they have the same moral personality irrespective of their class, caste, race, gender or nationality. A second distinguishing characteristic of liberalism is an aversion to, or disapproval of, state repression, authoritarianism and, generally speaking, manifestations of state power that unnecessarily interfere with individuals' lives so as to impede their self-development (Locke 1689, Mill 1861, Hobhouse 1911, Dewey 1931). In other words, it is very difficult to dissociate liberalism from egalitarianism and the expectation that state authority must be exercised in a prospect or life enhancing way. True, these tenets are not unaffected by balancing exercises in everyday life and politics. Nor are they immune to exceptions. But it is generally recognised that exceptions and deviations from the liberal norms have to be justified by principled considerations and overriding reasons of public interest. Having said this and taking an overall view, liberalism cannot sanction domination, discrimination and unequal treatment, the stigmatisation of certain individuals and the consistent devaluation of their contributions as well as abuses of dominant positions be they on the part of the state or of majorities of all sorts.

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If my understanding of liberalism is correct, then it seems to me that citizenship tests fail to meet the above mentioned liberal prescriptions. When newcomers are called upon to share the burden of the commonwealth, neither their nationality nor their newcomer status are relevant considerations. States treat them as equal burden sharers; as members of the commonwealth, they are expected to pay taxes and national insurance contributions and to be law abiding. No allowance is given to the facts that their new 'home' may enjoy, or exploit, human resources and investment for which another country has paid, that their health has been looked after by another welfare state or indeed that their residence may not be 'forever', thereby disabling them to draw pensions and other benefits from the public purse to which they would have contributed. Nor is any state willing to adopt a system of graduated taxation based on the duration of residence, as far as I know, or to incorporate a settlement allowance, such as the one given to new members of corporations and other organisations. Newcomers have an obligation to contribute to the commonwealth in the same way as anybody else and their past, including the tag of nationality they carry, is completely irrelevant for their burden sharing duties.

Yet, when it comes to the enjoyment of the benefits of membership, including the right to be treated as a full and equal member of the society and to have a say in how your monetary contributions are being spent, equal burden sharers find themselves caught in graduated schemes of membership and unequal statuses because of their 'alien' nationality. Neither equal burden sharing status nor law abidingness nor prolonged residence is sufficient for citizenship acquisition. Citizenship becomes a privilege to be conferred on 'deserving persons'; that is, on those who have attended obligatory language courses, have passed formal examinations and have accumulated factual information about the history, institutions, values and ways of life of the country to which they have contributed for a prolonged period of time both in monetary and non-monetary terms. Equal burden sharers are thus *de jure* and *de facto* unequal beneficiaries. And this is the case because European governments have decided to change the rules of engagement in the new millennium and to put emphasis on the traditional markers of national identity, that is, on linguistic assimilation, knowledge of the history, the civics and ways of life, oaths of allegiance and citizenship pledges, as opposed to the facticity of residence and equal contribution. I struggle to see anything liberal in this state-led asymmetrical treatment.

In addition to the unfairness of treating individuals as equals and fully integrated into society, when it comes to the extraction of their resources, and unequals, who must fulfil integration requirements, when it comes to the enjoyment of benefits, it should not be disregarded that citizenship tests open the way for the state to engage in practices of "othering" and to play an unduly interfering, and often coercive, role. Christian has clearly shown this with respect to the Dutch and the UK's probationary citizenship reforms. Actual contributors and members of the public are not accorded the equal respect they deserve; they are deemed to be non-belongers, undeserving, deficient, probationary citizens, unworthy or less worthy than citizens. They have to prove their willingness to integrate, to recertify their commitment to the country at various gates, to take part in mandatory language training courses, mandatory language and civic integration tests, pay for them and so on. Their path to citizenship is ridden with the hurdles that national executives have raised. It is immaterial whether the hurdles are too high or a bit lower. The crux of the point is that naturalisation is not liberalised; it is made more restrictive. And migrants do not have the option of disregarding integration requirements, cannot engage in dialogue with the relevant authorities about their content or the attributes they believe to be important for citizenship capacity, cannot contest their terms, put forward alternative suggestions and so on. They are expected to play no other part apart from complying with them. Their subjection to the disciplinary power of the state, coupled with the mandatory, test-based and sanctions-oriented character of integration tests, show that the aim of citizenship tests is not to enhance citizenship capacity (have not burden sharers already demonstrated this?) and the free and unimpeded development of the self in manifold associations with others (Dewey 1927: 150), but to enhance governments' control of membership of the polity and the disciplining of the migrant population.

How liberal are the policy goals behind the contemporary citizenship tests in Europe?

Although the foregoing discussion has given rise to doubts about the extent to which citizenship tests meet liberal prescriptions, it is necessary to examine whether other important variables, such as their socio-political context, timing, discourse and effects might disprove this conclusion. By placing citizenship tests in their contextual setting, a different picture from the one painted by Christian emerges. Citizenship tests are part of a civic integration paradigm that has taken root in Europe in the new millennium. Interestingly, the countries that have adopted citizenship tests require also migrants to meet integration requirements in the form of language and civic orientation classes and tests in order to enter, obtain temporary or permanent residence and to have access to social benefits. In the Netherlands, France, Germany and Denmark integration requirements must be met by spouses seeking reunification with their loved ones. In the latter case of “long-distance integration”, states’ new requirements function as switches for the family migration journey and may well contravene the right to family reunification under Article 8 ECHR. As such, they are more closely associated with exclusionary practices and restrictive migration control than with the ideal of liberal autonomy and civic republican concerns about the promotion of active citizenship in free and enriching associations.

Their timing, too, coincides with Islamophobic campaigns and the increasing influence of right-wing parties that underpin elites’ concerns to reduce (unwanted) migration as well as the number of naturalisations. The notion of “naturalisation tourism” has recently been added to the spectre of ‘asylum shopping’ (Perchinig 2010). These concerns feature in parliamentary debates and in the explanatory memoranda to integration laws (van Oers 2010). Christian reminds us of the negativity associated with ‘liberalism’s presumed others, Islam and Muslims’, and the official discourses surrounding the introduction of integration tests, not only in the domain of naturalisation, but also with regard to migration and family reunification, contain a great deal of it. Normality and normativity (Balibar 2004: 75) have been replaced by ethnocentricity, the association of “foreignness” with inferiority and/or deficiencies that need to be corrected before “every day citizens” and tax payers become officially recognised as citizen-voters. The astonishing thing is that this happens at a time when multilingualism, irrespective of whether it includes knowledge of the language of the host country, is widespread, documents can easily be translated by computer software, yahoo and google, countries’ important historical and political events feature in wikipedia and other internet sites and individuals can have simultaneous access to state-controlled and independent media in several countries.

Finally, any judgement about the liberal character of the citizenship tests that have recently been introduced in European countries must also take into account their effects. Restrictions and the tightening of existing requirements logically lead to reductions in the number of naturalisations and, if country reports and national studies confirm this, it would be difficult to talk about liberal citizenship tests or the liberalisation of political belonging in Europe.

Illiberal exceptions or a general disregard for liberal norms?

Christian argues that ‘the flagged illiberal possibilities in some citizenship tests and rules are just that – possibilities and exceptions from the liberal norm’, but I would argue that liberal norms do not permit such exceptions. Individuals should be valued, not evaluated and tested; should be respected, not presumed to be deficient, backward or inferior; should be encouraged to feel ‘at home’ in their new country, not discouraged or selected; and should be allowed to get on with their lives without having to conform to elites’ perceptions of what it means to be a “good citizen” or how to be a national –perceptions to which a large number of autochthonous “citizens” would fail to conform. More importantly, as actual contributors to the commonwealth, they should be recognised as equals and rightful beneficiaries. Disregarding the above and disseminating discourses about countries’ and individuals’ “integration capacities” is a manifestation of political irresponsibility.

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The most liberal citizenship test is none at all

Jospeh Carens*

I want to pose a few challenges to Christian Joppke's discussion of citizenship tests, but let me start by saying that I found his treatment on the whole to be thoughtful, balanced and perceptive. I focus on my concerns only for reasons of space.

Joppke begins by implying that citizenship tests cannot be illiberal since the United States, the "heartland of liberalism" has had them for many years. In the wake of the Bush era, it seems surprising to have to point out to Europeans the flaw in that logic. Not everything the United States has done, past or present, would qualify as "liberal," if one uses that term in a critical and normative sense. That caveat applies in the area of immigration as well as in many other areas.

When I first turned my mind to naturalization tests, more than a dozen years ago, it was not in the context of European attempts to introduce them but in the context of a critique of American attempts to "strengthen" citizenship by making the naturalization process, including the testing component of the process, more meaningful.²⁰ I argued then that, in theory, the United States ought to abolish its exam. (As a matter of practical politics, it was and would still be unrealistic, indeed counterproductive, to pursue abolition, but that does not affect the analysis in principle.) I would defend the same view today, and with respect to Europe as well as North America.

Basically, my argument is that, as a matter of fundamental democratic principle, people who have been settled in a country for several years are members of society and should be able to participate in the political process governing their society. Their opportunity to do so should not depend upon their capacity to pass a test, however it is designed.

I am not suggesting that we should be indifferent to what immigrants learn or how they adapt. But there is a big difference between encouraging or even expecting people to acquire certain sorts of knowledge or other competencies and requiring this. It is one thing to think that citizens ought to understand something, quite another to make this knowledge a legal prerequisite for citizenship.

It is important to encourage people to feel as though they belong in the society they have joined. It makes sense to encourage immigrants to learn the language of the place where they have settled. (Of course, they normally have strong incentives of their own to learn the language, given adequate opportunity.) It is also good to make it possible for immigrants to learn about how things work in their new home, and to learn about common practices and attitudes, the country's history and traditions, and so on, so long as this is designed to make them feel welcome and comfortable in an unfamiliar environment rather than as a way to pressure them to conform. I doubt that citizenship tests are likely to help with these positive transformations.

On the other hand, what is liberal or illiberal is partly a matter of formal rules and principles and partly a matter of context and interpreting how things really work in practice. The latter concern is what makes me wish we had seen a bit more of Joppke the sociologist (as distinct from Joppke the legal and political theorist) in this essay. Even though all citizenship tests are objectionable in principle on my view, they are not all equally objectionable in practice. While I think there is reason to criticize the American test, it is a relatively minor criticism of what is, on the whole, a fairly welcoming naturalization process. The same may be true of some of the European tests, especially

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²⁰ For those who want the fuller version of the argument, see Carens (1998).

when the tests represent moves away from discretionary and subjective examinations in a particular context (as Joppke and von Koppenfels emphasize), when the financial and intellectual demands are modest and when almost all applicants pass.

Joppke's introductory paragraph contrasting the Dutch approach with that of the British and Germans makes it clear the relative liberality or illiberality of these tests depends a lot on context. He appropriately draws our attention to questions about cost, accessibility of information, re-take options, and so on. Kees Groenendijk and Ricky van Oers rightly argue that we should pay attention to other factors such as class and ethnicity that may influence the outcomes of such exams and that are hard to justify from a democratic perspective. The underlying thrust of their argument, which I would endorse, is that the more exclusionary the exam the more problematic it is from a democratic perspective.

If we think of Joppke's original question as a question about degrees instead of, or in addition to, a question about thresholds, it would be helpful to extend this sort of sociological questioning further. Who favours such tests in a given country and who opposes them and why? How does support or opposition fit with other social and political agendas relating to immigration? What do the advocates of such tests say that they are seeking to accomplish? Is there evidence to indicate whether the announced purposes are the real ones or whether the tests are intended to achieve some other goal? Whatever the underlying motivations and intentions, what are the actual effects of the tests? These sorts of questions are already addressed to some degree by Joppke and the other contributors to the forum, but they inevitably require much more detailed and locally specific investigations. They are the questions we have to pursue if we hope to provide a more satisfactory answer to the question 'How liberal are citizenship tests?'

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Five Liberal Concerns about Citizenship Tests

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Citizenship tests are, to put it mildly, a sort of a grab bag. But not just candies one finds there. There are unpleasant surprises as well. The question here is whether citizenship tests are liberal. This question presupposes, apparently, that they should be. Of course, they must be lawful, but liberal? Provided they should, are they? Joppke is entirely right: ‘the devil is in the detail,’ he asserts, and thus ‘a fast-handed debunking of the entire genre is mistaken’.

As a rough generalization, I would argue that citizenship tests, at least in some European Member States, have recently become illiberal. This is either because they seek to achieve illiberal purposes, or implement illiberal means. To a certain extent, some European states embrace illiberal policies that violate the same values they seek to protect. This creates a Paradox of Liberalism: liberal states, in order to preserve what they perceive as a liberal regime, are resorting to illiberal means to guarantee liberal values. Here lies the paradox: either the liberal must tolerate illiberal practices, or turn to illiberal means to “liberate” the illiberal. Either choice undermines liberalism.

There are at least five concerns from a liberal perspective: The first is the ideological nature of some of the citizenship tests. Certain tests in Europe are not concerned with one’s knowledge and understandings of the host society’s way of life, but explore their moral perceptions. Citizenship tests are often interested in psychological attitudes and moral judgments rather than cognitive understanding and legal acceptance. They investigate the applicant’s reactions to ideas like homosexuality, nudism, children education, religious conversion, and political agenda. As long as these questions are included in the test, they may be a form of ideological exclusion. In extreme cases, such as the test implemented by the German Land of Baden-Württemberg, they try to control one’s freedom of thought and freedom of conscience.

Moreover, some questions do not have a moral right-or-wrong answer and, unlike questions such as what are the colors of the flag, do not have a right answer at all. Consider the British question of ‘you spill someone’s pint in the pub. What, according to the book, usually happens next?’ The possible answers are A) You would offer to buy the person another pint; B) You would offer to dry their wet shirt with your own; and C) You may need to prepare for a fight in the car park. The “right” answer is A. Yet, one might choose B, and ask whether this is morally or legally wrong. But my concern lies in a more fundamental point: why is the British government interested in private interaction in bars? Spilling pints in a bar is not generally illegal behaviour and, as long as the reaction to such an act is legal, one might ask what the Government has to do with this issue. Should not the response be learnt by daily life interactions rather than Governmental codes of how to behave in bars? Some of the test items are, at most, in the periphery of core liberal values. It is doubtful whether a questionnaire on how to behave in bars, nudism, women’s dress codes or children education falls under basic civic liberalism. And, as Joppke rightly observes, liberalism contains the freedom to choose not to be liberal, as long as one’s way of life is democratic and legal. And even if one argues that state neutrality does not (or should not) apply to aliens, it at least applies to citizens, as in the case of family members.

The second concern relates to the “paradox of liberal toleration”. Ideological exclusion, as in the Dutch test, is based on the premise that some beliefs or behaviour patterns are considered “un-Dutch”

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and, hence, should not be tolerated. Nevertheless, it is possible to wonder whether the very idea of ideological exclusion is not, in itself, “un-Dutch” in light of the centrality of free speech in the Netherlands. The country has significant Moroccan and Turkish communities. Had the Dutch wanted to preserve the “Dutch culture”, they should have taken into account the Moroccan and Turkish culture as well. Denying the minority groups’ culture might be regarded “un-Dutch” in itself because diversity and pluralism are central elements of Dutch culture.

The third concern touches upon the distinction between immigration law and domestic law. Liberal democracies, especially multicultural societies, are characterized by ongoing social tensions. Immigration laws are not the appropriate means for resolving these tensions because other less intrusive alternatives are available, such as educational systems or social institutions. If, for instance, it is forbidden to wear a *burqa* in French public schools’ classrooms, it must not lead to the conclusion that a person who wears a *burqa* should be disqualified from French citizenship. The reason is that immigration law is not the appropriate method by which to control a person’s religiosity. If an immigrant violates the law, civic and criminal sanctions exist.

The fourth concern derives from the discriminatory intent of citizenship tests. Some tests have intended to achieve an illiberal purpose. They were designed and introduced to exclude Muslims—let’s call a spade a spade and not just “certain groups.” This is the case of the Baden-Württemberg test, which originally applied only to applicants from one of the 57 Member States of the Organization of the Islamic Conference (following criticism, the “Muslims-only test” had changed to any applicant ‘whose loyalty to the German Basic Law is doubted’)²¹. But this is also the case of the Dutch test, which, unlike the Baden-Württemberg test, is “universal” and seemingly applies to all immigrants. Yet one needs only look at the endless list of exemptions to understand with whom the tests are concerned. The process does not apply to EU citizens, nor to citizens of Australia, Canada, Japan, New Zealand, Switzerland, and the United States. The West, then, is exempted. And even if there is no intent to discriminate Muslims (or other ethnic groups), it may have disparate racial impact. The policy’s impact is not just a moral consideration but also legal. As the House of Lords recently held in the case exclusion of Roma, ‘the law reports are full of examples of obviously discriminatory treatment which was in no way motivated by racism’.²² Thus, a test that serves a discriminatory mechanism for ethnic selection is illiberal.

The fifth concern touches upon fairness and the test justification. There may be good justifications for citizenship tests: orientation, education, democratic participation, promotion of social cohesion, etc. Yet the test purpose should be specified and the items and format should be narrowly tailored to achieve this purpose (as long as it is a justified one). A test without a clear purpose, or with no empirical relation between the purpose and the items, format and scoring rubric, may be arbitrary. The justification of the test derives from the justification of the purpose it serves, and how effective is the test to accomplish this purpose. If, for example, knowledge and understanding of fundamental history and civics is necessary to keep the state stable, and the test serves this purpose, the test is justified (or not) based on the value one attributes to this purpose. But this raises a question: if it is an important purpose, why not require knowledge and understanding of history and civics from any native-born citizen? Why not ask every citizen to pass a test at the age of 18 before enrolment on the electoral votes (this suggestion has recently been made in Australia). In fact, it may be more important to require a test from native-born people. If the knowledge is essential to keep the state stable, constitutionally ignorant citizens may threaten the country’s social cohesion. And, while it could be possible to exclude aliens, it is impossible to denaturalize a citizen because she does not recite constitutional essentials.

²¹ ‘Über-Citizen and German Kulturkampf –s.10 German Naturalisation Law: A Front?’, *Islamic Human Rights Commission* (2007), at 3-4; Wolfrum & Röben (2006).

²² *Regina v. Immigration Officer at Prague Airport* (2004) UKHL 55, at para 82.

Five Liberal Concerns about Citizenship Tests

In addition, one should not isolate citizenship tests from the broader context of recent citizenship policies in Europe (and elsewhere). As Kostakopoulou suggests, “‘zooming in’ on citizenship tests... needs to be accompanied by a ‘zooming out’ exercise’. Zooming out would lead us to what I think is a sort of moral panic in Europe. One should look at the emergence of “integration pacts”, oaths of allegiance, and a long list of culture-based citizenship laws that have been adopted in Denmark, Switzerland, Austria or the Netherlands.

To be clear: I do not claim that citizenship tests are illegal but only that they are badly managed in the way that challenges their being liberal under some subsets of liberalism. One typology that may help to clarify matters is based on a distinction between questions that must be asked as a prerequisite to join a liberal democracy, questions that can be asked, and questions that must not be asked. As for the last category, I think it is wrong, in liberal terms, to focus on moral attitudes, political agendas, or ideological beliefs. In a different place, I mention the desired content that must be included in a citizenship test (Orgad 2010). In between, there is an area of discretion. Examples include questions about rivers and oceans, symphonies of Beethoven and Brahms, or paintings by Caspar David Friedrich. Asking about these matters is not, in itself, illiberal. This information may be important, but it would be better to supply it to newcomers as an orientation material, rather than a mandatory knowledge that immigrants need to be tested on. Hence, it may not be illiberal liberal to ask about Goethe and Jørn Utzon, cricket and Santa Claus, the location of the Statue of Liberty and what Germans do at Easter, but the question is what the point is? Is this cognitive knowledge really essential for becoming German, Danish, British, or American?

Last point: I share the distinction between beliefs v. behaviour. It would be nice if we could just draw the line at beliefs versus physical acts, but some physical acts (for example, the wearing of the *niqab*) are such close manifestations or expressions of beliefs in a way that belief and act may become inseparable. So that kind of line would lead to some hard questions.

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Citizenship tests: an unapologetic defense

Randall Hansen*

I have learned a great deal from these contributions and find myself in agreement with most of them. I only have few comments in response to the original piece, and to the posts that followed. As I am on drinking terms with most of the participants in this group, I will generally use first names.

My broadest objection is not to the content of the posts but rather to the framing of the question: are citizenship tests “liberal?” Part of the problem is that liberalism means so many different things in so many different contexts, and so many people who agree on so little claim to all be liberals, that I at times despair that the concept has been emptied of meaning. In the most expansive sense, laws that emerge from liberal democratic institutions and survive rights-based constitutional challenges are “liberal”. In the most restrictive, any avoidable intrusion of the state on an individual's autonomy is illiberal. As states could certainly function without citizenship tests, they are avoidable and, on this maximalist definition, illiberal (an argument of this sort partially relates to the points Dora advanced).

A more promising way forward is to subject the tests to a reasonableness standard: is it reasonable to ask new citizens to take a test as a condition of acquiring citizenship? The first point to be made, and it has been made by Kees and (if I may) Ricky, Joe, and Christian himself, is that it depends on the type of tests: tests that are deliberately difficult and/or designed to exclude particular groups are obviously unreasonable (and analogous to the infamous literacy tests drawn up to keep African Americans from voting in the South). Assuming that the test is not overly difficult (so that anyone with, say, a high school education could be expected to pass it), and that the pass rate is reasonably high (say 70% or more), it is eminently reasonable. This is so for several reasons.

First, citizenship provides only one major advantage (there are generally minor ones, such as diplomatic protection, that can become major if one is unwise enough to go hiking in Afghanistan): voting. Citizens vote, and both the state and, equally importantly, all other citizens can reasonably expect that those participating in the democratic process have a basic knowledge of the country's history, institutions, and culture.

Second, the fact that immigrants but not native born citizens are required to take the test does not violate an equality requirement for two reasons. First, differential effect does not necessitate unfair unequal treatment. It does not because, as the late Brian Barry pointed out, all general laws have differential effects. Progressive tax laws affect the rich more than the poor; anti-smoking laws affect smokers more than non-smokers; anti-noise laws affect the noisy more than the quiet; laws on bicycle lanes affect drivers more than walkers, etc. They may be unequal in effect, but they are not unfair. In itself, a differential effect tells us nothing. Second, and more importantly, citizenship tests are in a fundamental sense a substitute for education: those born in the country or those who arrived very young can generally be expected to have acquired a basic knowledge of the country's history, institutions, and cultural practices through school. Where they do not, this is a failure of the education system (hence the academic glee over the number of citizens who fail these tests is little more than a tribute to shoddy schools). Since immigrants have generally not been schooled in the country, they lack this education and the test serves as a substitute. Like high school equivalency tests, the education is not as thorough, but it is an education nonetheless. And making the test a requirement rather than an expectation is no different than making education a requirement rather than an expectation. In this

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context, it is no coincidence that many states provide a right of citizenship to children who have lived in a country for more than ten years.

On the issue of which questions the tests should ask, there is a well supported consensus that questions probing personal convictions are unreasonable, hence the early Baden-Wurttemberg test was widely condemned, not least within Germany itself, as unreasonable. Against Ines (if I may), I would argue that questions on social norms are themselves fine if those norms are supported by law and a strong social consensus (which is why I draw a distinction between the infamous Baden-Wurttemberg test and the equally infamous Dutch video showing men kissing and a topless bathing woman: the latter only highlighted that both practices were legal and acceptable in the Netherlands. It did not argue that anyone had to like them). Questions such as ‘is homosexuality widely viewed as an acceptable lifestyle in country X?’ are fine if it is acceptable, which I gather it is in the Netherlands. That such norms are contested by minorities is not especially relevant, as all social norms are.

Beyond this, we need to be anthropologists to understand which tests are appropriate for which country: the details on the institutional, historical, and cultural knowledge will depend entirely on the country. For history, the Glorious Revolution might be fundamental in Britain, the 1954 *Brown vs. the Board of Education* Supreme Court decision in the US. For institutions, the lower house might be of utmost importance in Britain, the complex electoral system, the upper house, and the omniscient constitutional court in Germany. On the cultural side, knowing what do when someone spills a beer on you might matter in Britain (certainly, knowing what to do if you spill the beer on someone else is a matter of life a death), knowing when to shake hands (always) might matter for Germany. I throw these out as possible examples only. They are questions elected governments, ideally through broad consultation with the citizenry, to answer, not for academics to decide by intellectual fiat. The point is that a wide range of questions, testing fact not belief and posed in the national language, on history, institutions, and culture/cultural practices are reasonable, and the precise content and wording will be heavily context dependent. If applicants from a particular group, such as non-English speakers in the UK, fail them at a larger rate than others, then it is incumbent on members of that group to improve their English. There can be no meaningful political participation without knowledge of the national language.

I would like to address two final issues raised in Joe’s piece: the transformative nature of the exam itself, and the true motivations of those supporting it. Here I disagree based on the importance of tests: humans are by nature competitive beings, and we value that for which we have worked more than that which is handed to us. Throughout our lives, most if not all of us take pride in accomplishments for which we have prepared and on which we have been tested: entries to good schools, scholarships, degrees from prestigious universities, and even more mundane accomplishments such as driving licenses and first-aid certificates. The citizenship test is part of what imbues citizenship itself with value (of the various hurdles, it is in my view less important in its transformative effects than the ceremony effect). The corollary of this observation is that if citizenship is too easily acquired and has too few rights and obligations attached to it, it means little. This is, in essence, the situation in Canada: the country’s citizenship is among the easiest to acquire in the world, almost everyone who immigrates acquires it, and it (as measured by the number of mostly naturalized citizens living permanently abroad) is the most devalued, acquired more than any other western citizenship for instrumental reasons (a relatively good travel document, a safe haven in case politics turn sour in Lebanon or Hong Kong).

The final issue concerns the “true” motivations of those enacting these policies. I am doubtful that this will lead to much. Their motivations cannot be properly measured (if they are ulterior, will they tell us when we ask them?), and like any public policy outcome (especially in continental, coalition-based governments) they will be the product of compromise among diverse actors with diverse and contested motivations (pro-immigration conservatives and liberals who believe in national identity, anti-Islamic conservatives and progressives, politicians who believe in and are concerned about identity, progressives genuinely worried about the rights of women and gays, actors from all parties

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who believe that citizenship should mean something, and so forth). More broadly, some of the best public policies – social and health insurance for industrial workers – came from the worst motives (Bismarck’s desire to crush the social democrats), while some of the worst policies (forced eugenic sterilization) – had the best motives (the desire of the progressive left to eliminate the social ills caused by national degeneration). The question is whether the policies are themselves to be recommended. For the reasons I have outlined, citizenship tests are not only reasonable (or “liberal” if one insists) but thoroughly desirable.

Are Integration Tests Liberal? The “Universalistic Liberal Democratic Principles” as Illiberal Exceptionalism

Sergio Carrera and Elspeth Guild*

Introduction

‘How’ liberal are citizenship tests? This is the question that Joppke’s contribution to the EUDO Citizenship Forum, and the subsequent reactions and reflections, have addressed in relation to the proliferation of integration tests in citizenship laws in several European states and their illiberal or liberal nature and effects. This commentary argues that any discussion about the testing logic driving integration conditions in citizenship laws across Europe should instead start from a completely different angle examining the liberality of integration tests as whole and framing the question at stake as follows: ‘Are integration tests liberal?’. By addressing “the how”, our reflections may implicitly legitimate the nation state’s contemporary obsession (the caricature of which is the current French debate about ‘what does it mean to be French’)²³ about the search and test of national identity through the practice and reframing of citizenship tests. “The how” also takes too easily for granted their presumed compatibility with liberal democratic principles and fundamental rights that they seek to promote in citizenship applicants. A “question-by-question” liberal evaluation disguises, and to a certain extent blinds, the general illiberal nature and effects underlying a global integration testing exercise. The framing of the debate around the question ‘How liberal are citizenship tests?’, and the analysis that flows from it, therefore, is biased by setting aside a more profound reflection about the general rationale or intended public goals as well as the nature and multilayered effects of integration tests, and the vulnerability in which they leave the liberty, security and diversities of the individual in relation to the state and nationalism.

“Testing integration” constitutes another tool of “exceptionalism” appealing to the obligation for the foreigner to respect, adhere and disappear into a constructed set of national liberal democratic history, principles and values (“rules of the game”) which are (in a rather hypocritical fashion) considered to be alien only to “non-nationals”, and which function as another legal barrier for them to cross the bridge towards a formal recognition before the law of citizenship. Paradoxically, liberal democratic principles and values (which even include knowledge on “fundamental rights”) are operationalised in a testing fashion and therefore become exceptions or derogative clauses for foreigners to have access to the very same liberal democratic entitlements and fundamental rights that citizenship tests are said to uphold. The contemporary use of integration tests in citizenship and migration laws in Europe constitutes a new form of illiberalism in the hands of nation states to discipline and standardize the knowledge, feelings and way of life that “their perfect citizen” (wherever s/he may be) must have in order to be recognized as a (legitimate) member of the national polity. Integration tests need to be regarded as an expression of illiberalism when demanding the assimilation of differences into a set of “liberal democratic principles and values”; a demand whose relationship with the principles of respect for diversity, non-discrimination and fundamental rights remains contested.

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²³ <http://www.debatidentitenationale.fr>

Joppke's general conclusion states that 'the devil is in the detail, and a fast-handed debunking of the entire genre (integration tests) is mistaken'. This commentary challenges this assumption and argues that any critical assessment of the liberal nature of integration tests in nationality law needs to start from the question "Are integration tests liberal?" This is the question that unravels the underlying assumptions and thesis upon which "tests" are being politically justified, practiced and promoted across the European Union. We have organized our answers to that question around the following four main points: first, "a question-to-question" or an "overall test" evaluation?; second, liberal democratic principles as exceptions to rights and citizenship; third, the justification of integration tests in Europe: the exchange of ideas in the EU; and fourth, the nature of the tests: integration tests vs. diversity and non-discrimination.

1. 'A Question-by-Question' or an 'Overall Test' Evaluation?

Joppke highlights that 'the devil is in the detail'. Our first contention is that any critical examination of integration tests should not fall into the trap of looking at the nature and effects of particular or specific questions inside the test. An analysis granting importance only to the liberal nature of "this" or "that" question inside the test may easily lose a proper panoramic vision about the general rationale, functionality and effects of the entire testing exercise. In fact, the devil might well arise from the combination of several "details" (or questions) which when examined all together clarify their purported functions and actual implications. The detail is therefore certainly important to understand "the whole", but an engagement with "the whole" and its underlying general thesis is not only necessary from a theoretical point of view but also fundamental in order to uncover the hidden politics of identity pursued by the nation state when using citizenship integration tests. The differentiation that Joppke advocates between those integration questions that relate to 'history, principles and other organizational principles', which in his view are 'liberal', and those concerned with 'cultural knowledge', which are then qualified as 'repressive illiberalism' is in our opinion too simplistic and avoids engaging in the underlying thesis which Carens' contribution deals with: 'The most liberal citizenship test is none at all'.

In a similar line of argumentation as Joppke's, Michalowski's article ('Citizenship Tests reflect political traditions of state interference with cultural diversity') states that "if questions concentrate on basic rights and freedoms and the political system that is supposed to guarantee them and if questions only relate to facts and the knowledge of "what is right" but not to "what is good", then citizenship tests are liberal. Similarly, by looking at which particular questions are 'liberal' and which ones 'illiberal', and in searching for potential classifications attempting to divide them into acceptable or unacceptable groups, one might fail to address one of the most fundamental questions at stake when examining integration tests: Are integration tests "as a whole" a liberal practice? It is by studying how the combination of all the questions interacts and intersects that the exclusionary and disciplinary function of integration tests becomes in our view more clear: obliging them to show allegiance to a constructed national identity understood as a set of principles, historical events and values wrapped into a liberal democratic package.

It is by addressing directly this general question that we can have a more appropriate understanding of the overall political functionality of the increasing trend in the practice of integration tests in public citizenship policies in European countries. Kostakopoulou's contribution ('What liberalism is committed to and why current citizenship policies fail this test') provides instead an excellent and refreshing starting point for our discussion by encouraging the reader to "zoom out" when examining the liberal character of citizenship tests and calling for a panoramic picture taking into consideration their general context, timing, official discourses and effects. The evaluation of an integration test needs indeed to be made from a global perspective addressing their general relationship with liberalism, and not one falling into the trap of checking the adequacy and legitimacy of specific questions.

2. Liberal Democratic Principles as Exceptions to Citizenship

Setting aside discussions about what precisely we have in mind when referring to the concept of “culture”, it is clear that questions about history, principles and other organizational “liberal” principles and values might display precisely the very same (unacceptable) functions as those conceived to be directly related to “cultural values”. Certain visions and understanding of “history” are certainly closely related to, and rooted in, nationalism. Joppke argues that ‘to ask for host-society language competence and knowledge of the principles and procedures of liberal democracies is an incontrovertibly legitimate core component of all citizenship test’ and that ‘the new citizenship tests ... asking for knowledge about a country’s history, culture and institutions are unproblematic’. Yet, what are these principles and procedures of liberal democracies? What are and who selects ‘key historical events’? Are these principles and procedures as “incontrovertible” as Joppke’s contribution argues they are?

There is clearly not a straight-forward answer to the concepts we are using here, and this of course plays in favour of the nation state. For instance, the knowledge about an “historical event” does not escape from the subjectivity inherent to nationalistic understandings of common principles and values. Michalowski rightly challenges the assumption that a test’s questions about history are “objective” and “liberal” and argues that ‘either all history questions are considered liberal or only those questions are defined as liberal that correspond to the history and civic education knowledge that is required in regular school curricula’. The nationalist focus around which most of our “contemporary history” has been often “revisited” in many educational systems in Europe needs to be highlighted. History (through public state education) has played a key function in fostering homogenous values and memories that remain in tension with the diversity and complexities characterizing “the past”. Certainly, a particular reading of history may function as an effective tool in the promotion of a constructed cultural perception of “the self”, “what we are” and, most importantly, who does not belong to that “historical reading of the past”. Individual memory seems to be rather short-term when taking for granted the existence of any homogenous community sharing “a common history” which legitimizes and intends to perpetuate its unity, purity and uniqueness. What the nation-state does not want to recognize is the hugely diversified histories and complexities that have characterized not only their very foundations, but also their various historical phases and configurations.

“Cultural knowledge” can therefore not be easily separated from other core principles and values of a “cultural-related” nature that integration tests in citizenship laws demand from potential applicants.

Further, the testing of liberal democratic principles and values is at odds with the principle of non-discrimination. There is a presumption that ONLY foreigners do not know and comply with liberal democratic principles and values, which in some cases even include basic fundamental rights such as equality of treatment between men and women and the right to education. The integration tests are based on the axiom that the non-citizen has to be tested against those values reigning in liberal democracies for them to become a formal part of the citizenry. The very liberal democratic principles and fundamental rights which have been supplied in democratic countries to protect the liberty and security of the individual against illiberal state interference on the basis of people’s diversities, perform paradoxically the role of derogative condition inside citizenship law for the individual to have access to and benefit from these very rights and principles. The nation state uses “the liberal state concept” (democratic principles, values and fundamental rights) as “the exception” or as a normative mandatory condition against which the applicant’s knowledge will be tested for being naturalized into the perfect citizen (Carrera 2009). Externally, the foreigner needs to lose the assumed “non-liberal façade” in favor of the perfect vision that our governmental and political elites have in mind. Diversity and heterogeneity, which citizenship integration tests consider as a deviation from liberal democratic principles and fundamental rights, need to be hidden in the private sphere and covered in an individual’s external behaviour in the public space.

3. The Justification of Integration Tests across Europe: The Exchange of Ideas in the EU

The question ‘Are Integration Tests Liberal?’ also leads to another key issue: WHY are liberal states in Europe increasingly using integration tests? For which intended public purpose are these tests being introduced and what are their expected effects both politically and practically (i.e. the rate of naturalizations) across Europe? When signalling the origins of the European practice of testing “civic integration”, Joppke says that ‘not all European countries went quite as far as the Netherlands did’ and refers to the non-controversial liberal nature of citizenship tests in the US. A similar position is advocated by Klekowski’s contribution (‘Citizenship tests could signal that European states perceive themselves as immigration countries’). She also argues: ‘The introduction of liberal citizenship testing in Europe could thus be, rather than an exclusive phenomenon, a significant step on European countries’ paths to becoming incontrovertible “countries of immigration”’.

In our view, the assessment of integration tests across Europe is not comparable with debates taking place in the US, but they rather need to be seen as yet another example of a common European trend towards the implementation of more restrictive citizenship and immigration policies. Furthermore, the fact that such tests might be considered as proof that these states are seeing themselves as “countries of immigration” says nothing about the liberal or illiberal nature of their endeavours and the intended restrictionists goals behind their testing practices. As Kostakopoulou and Orgad have argued in their contributions, one cannot simply separate citizenship integration tests from the broader context of recent citizenship and migration policies across Europe. Indeed, the Netherlands is not the only European country that is currently administering integration tests both in citizenship and migration laws. Other examples using civic integration tests as a requirement for migration and citizenship entitlements have been studied by the academic literature (Guild, Groenendijk and Carrera 2009, Van Oers, Erboll and Kostakopoulou 2010). They have shown how in a significant number of cases the political justifications and/or intended (or unintended) effects have been a reduction in the number of foreigners having access to rights and citizenship. The “politics of mimetics”, which are proliferating as a consequence of the exchange of ideas and practices promoting the use of civic integration tests, have been also fostered at European Union level since the 2002 so-called EU Framework on Integration has favoured certain “national models” and integration policies in migration and citizenship laws to be exchanged and legitimized (Carrera & Wiesbrock 2009).

4. The Nature of the Tests: Integration Tests vs. Diversity and Non-Discrimination

As Carens says, integration tests are a legal prerequisite for citizenship. Indeed, the liberal evaluation of integration tests cannot forget about their conditional or mandatory nature as well as the sometimes huge discretionary power of determining whether or not somebody has passed the tests. Integration is indeed an indeterminate concept which is inherently subjective and leaves wide discretionary power for the state, public official, private actor or computer to determine whether or not the applicant meets the “national prototype”. In this respect, Joppke says that integration citizenship tests actually increase ‘the naturalization procedure’s calculability on the part of citizenship applicants, who are no longer subject to open-ended, individual interview procedure and the involved state agent’s unfathomable discretion’. In a similar line of thought, Klekowski argues that ‘a liberal citizenship test can in fact even institutionalize naturalization, making it a normal and expected procedure for immigrants, rather than an exceptional step’. However, the fact that tests are based and founded on the indeterminate legal concept of integration does not add to legal certainty and objectivity for the individuals subject to them. The subjectivity still remains because of the nature of the concept “integration” that leaves open to which principles, history, institutions and values one actually refers. In addition, what are the legal mechanisms (effective remedies) to challenge a potential negative decision that an applicant is not integrated into national liberal democratic principles and values?

How does the imposition of knowledge about these principles and values relate to cultural and religious pluralism? Michalowski states that ‘an evaluation of citizenship tests should not only ask

what these tests require from the individual candidate. It is equally telling to analyze how much competence they attribute to the state when it comes to regulating possible dissent that emerges from a culturally and religiously diverse population’. This is, in our view, important to emphasize from a European historical tradition which has supplied itself with the necessary legal mechanisms and human rights instruments to precisely limit the nation state’s temptation to “standardize” the perfect national citizen. As stated above, integration tests use liberal arguments as a tool for excluding those not passing the test. They hide a huge symbolic power of disciplining difference which is signalled to the citizenry as well as for those not belonging to it and willing to become part of it.

The non-citizen needs to be tested against the dearest liberal democratic values which foreigners are supposed not to share, and which often include fundamental rights. One of the core functions pursued by the integration tests in European liberal democracies, and which is promoting their propagation across different European legal systems, is precisely the political message which is sent and the limitation of the number of naturalizations. Also, the testing practices cut-cross various legal layers in migration and citizenship laws. The non-national will be ‘tested’ against the integration concept practice by the nation state every time s/he asks for rights, security of residence, family life, social solidarity and citizenship. There is a constant testing taking place whose political importance resides in the questioning of the liberal democratic knowledge and practice by the foreigner.

The integration test also diminishes the relevance of the length of residence in the country of origin as the main factor for the individual to get closer to the formal juridical equality granted by the acquisition of citizenship status. As Groenendijk and van Oers argue in their input to the present debate, an examination of citizenship integration tests needs to be also based on the effects that they produce ‘in terms of excluding a significant part of the permanent resident population from full citizenship rights’. Further, the children of the majority of Europe’s immigrants who have a permanent residence status in their host member state are either born citizens of the host state or have facilitated access to citizenship there. Therefore, this raises questions as regards the temporal importance of citizenship test in Europe. What then is the purpose of citizenship tests? As Groenendijk and Van Oers argue, empirical research in the Netherlands shows that ‘the test thus creates extra barriers for lower educated immigrants who lack the financial means to obtain the level required by the test’. It appears that one of the effects may be to discipline those who are already citizens that they know they are inadequate and to humiliate the new immigrants by showing how crossing the educational and financial threshold is required for becoming a citizen.

5. Conclusions

This commentary has argued that citizenship integration tests in Europe provide a case where “universalistic liberal democratic principles” function as “illiberal exceptionalism” whose relationship with the principle of non-discrimination, fundamental rights and the respect for diversity remains very much at stake. Whose capacity is being therefore enhanced through the application of integration tests in European liberal democracies? The capacity that is enhanced is that of the nation state to continue perpetuating its existence, and that of its national identity upon which it has been constructed. Such tests also increase the state’s capacity to spread a strong political message to the public at large about the existence of a core set of principles and values that their perfect citizen supposedly meets and that any foreigner is by definition presumed not to meet. Integration tests also serve to enhance the nation state’s capacity to claim that there might be somewhere a perfect citizen holding all that ‘knowledge’ and to make more difficult the foreigners’ access to security of residency, equality and citizenship.

The capacity of the individual subjected to these processes is in fact diminished in light of the inherently indeterminate nature of the principles and values upon which the integration test has been elaborated and the discriminatory treatment subsumed in a process which takes as default position that the poor foreigner does not know “our liberal democratic principles and history” and needs to be evaluated and learn about them. Paradoxically the dearest liberal democratic principles and

fundamental rights that European countries appear to be determined to protect act as an exception for individuals not holding their nationality to participate and enjoy equality of treatment. As Kostakopoulou argues, the very liberal norms invoked here do not permit such exceptions! The debate about integration tests hides a deeper problem concerning the limits of government power when faced with deviation from the national wholeness that it attributes to its citizenry. The nation state needs to come to terms and realize that you cannot impose on people a requirement to be loyal. Liberal democratic principles and fundamental rights are there to protect the individual against unacceptable practices and policies increasingly in tension with respect for diversity.

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Lost and Found: An Empirical Foundation for Applying the “Liberal Test”

Sara Wallace Goodman*

I thank Christian Joppke as well as fellow contributors for what has turned out to be a very interesting and relevant discussion. I find asking ‘how liberal are citizenship tests’ to be a worthwhile endeavour, particularly for understanding the context of integration and how states view newcomers. However, I am sceptical that this political theory question should be the starting point of inquiry. What is missing is a clearer picture of the wider practice of citizenship tests, civic integration courses, and language assessment. This empirical view of the range and diversity of civic practices must necessarily precede case selection for the application of a “liberal test” and the subsequent wielding of metrics to determine which cases pass, as Joppke describes, the ‘threshold of the impermissible.’ By looking at the landscape of cases in Europe and beyond, comparativists and political theorists alike can ask necessarily different questions about tests but with adequately articulated scope conditions. To engage in Kostakopoulou’s exercise of “zooming out” reveals that the most obvious violation of a test’s liberality in practice is not in its content (Michalowski) or existence (Carens), but in its purposeful connections to immigration policy and fusion with objectives of control.

“Zooming out” is required across three dimensions. First, we need to see the wider picture of which states have adopted citizenship tests. This practice extends far beyond the samples at the center of the forum debate. Second, we need to see what other requirements apart from civic knowledge complement citizenship tests, like language skills and demonstrating a commitment to a set of core values. Citizenship tests do not exist in vacuums. They are required among a configuration of material criteria, and these in combination determine whether the practice of citizenship is ‘illiberal’ and ‘discriminatory’ or ‘liberal’ and ‘inclusionary.’ Third, it is worthwhile to examine which states ask newcomers to demonstrate civic knowledge, language proficiency, and values at stages other than citizenship acquisition. One of the arguments for interpreting tests as illiberal is that they set a discriminatory double-standard between knowledge for naturalizing newcomers and knowledge for those with citizenship by birth. But another potential source of illiberalism is that it asks different standards at different stages of legal status, including entry and settlement. A wider, empirical view across these three dimensions is therefore imperative and prior to asking normative, theoretical questions.

This forum has applied the “liberal test” to tests in the United States, Austria, Germany, the Netherlands and the UK. However, we also see citizenship tests that assess country or constitutional knowledge in places including Denmark, Estonia, Hungary, Latvia, Lithuania, Moldova, and Romania, (Wallace Goodman 2010b) as well as further afield in Mexico and South Korea. Is it assumed or expected that tests in these other European and non-European countries violate liberalism in content, application, or outcome? Do we only expect Western European tests to be liberal, holding them up to a problematic double standard? Discussing only a few selected Western European countries and the US provides us with a biased view.

To select a case almost at random, Latvia has the same exemptions from naturalization tests as previously examined cases (obtaining a certain degree of education in Latvian, age, and disability). The cost of citizenship (28 Lats, or approximately 40 euros) is far lower than the Netherlands (230 euros for the test alone, 380 for the entire citizenship process, both of which are much lower than the 675 dollars price-tag for the liberal exemplar of US citizenship). The exam assesses knowledge of

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principles of the constitution, the text of the national anthem, and history, asking content questions such as ‘What countries share Latvia’s land borders?’ and a number of question on the country’s relationship with Soviet Russia. In 2008, almost one-third (28%) of applicants failed the language part of the exam and 18% failed the country knowledge component (Kruma 2009: 13). These figures are comparable to the 75% pass rate of the ‘Life in the UK’ test for citizenship. Finally, Latvia assesses national language at an average level —the B1 level of the Common European Framework of Reference for Languages. This is the same level of assessment as in Germany and the UK, but higher than that of the Netherlands (A1) and Austria (A2). Do these comparisons render the Latvian tests liberal as the Western European ones? Or at least equally subject to the same test of liberality? What are the scope conditions for liberal assessment? Should we not apply the same standard to new and old EU states?

Aside from civics tests, states also require the aforementioned language proficiency. A far greater number of countries require sufficiency in a national language than do country knowledge in a citizenship test. Language is assessed through a requirement of certification of the completion of an exam or language education (Austria, Denmark, Estonia, Finland, Latvia, Moldova, Portugal, the UK), an oral interview (Croatia, the Czech Republic, France, Germany, Luxembourg, Malta, Slovakia, Spain, Turkey), or just a test itself (Iceland, Netherlands, Slovenia and, in the case of Hungary, indirectly through completion of the civics test). Practices in federated states like Switzerland and Germany necessarily vary, with some cantons/*Länder* requiring written tests and others oral interviews. The level of assessment also varies, but none assess beyond a B2 level of usage (which is required in Denmark), described as the “vantage” stage of “independent users”. Not one EU country requires language at the “proficiency” level (C1 or C2). In fact, Denmark has the highest standard of language assessment in the EU. All other countries require language (in descending order of difficulty) at the B1 “threshold” level for independent users (Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Spain, Switzerland, UK), the A2 “waystage” level for basic users (Austria, Iceland, Netherlands, Portugal) or at the most minimal standard of an A1 “breakthrough” level for basic users (France). And, finally, some countries do not have a language requirement at all (Ireland, Italy and Sweden). The consensus among the contributors to this debate rightly is that requiring language does not push citizenship tests across the threshold of discriminatory, illiberal practices. And to re-iterate Hansen’s words, ‘differential effects do not necessitate unfair unequal treatment’. But I think the more probing question is not whether language tests are liberal, but why, with the same variation in assessment and same expectation of learning and accumulated knowledge, is a language test safely within the bounds of liberalism while a country knowledge test teeters closer to the edge of illiberalism. Assuming that neither tests ‘inner dispositions’ and ‘morality’ (and I believe that it needs to be distilled from how a question is worded to determine whether it assesses replicated knowledge as opposed to acceptance of political values and attitudes), language and country knowledge seem equally fair conditions for sovereign states to require of potential members.

Third, turning to oaths and ceremonies, this is a requirement that can most precariously rub against the consensually illiberal practice of assessing morality and behaviour, yet none of the contributors pays much attention to this aspect. Only the UK and the Netherlands have now a citizenship ceremony similar to the US model. Several require an oath or pledge of fidelity, which is sworn in front of a court, magistrate, or immigration official in contrast to the shared experience of a ceremony. These countries include Austria, the Czech Republic, Germany, Greece, Ireland, Italy, Lithuania, Romania and Slovakia. Other countries require a written commitment to values and principles, including Belgium, Denmark, Estonia, Finland, Latvia, Malta, and Spain. Can we hold oaths and value commitments to the same standard of tests? Applicants are asked to verbally commit to a set of principles that they do not need to hold personally. Just as you can reproduce knowledge, you can read a script. For example, naturalizing Americans swear to ‘absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen’ as an Oath of Allegiance to the United States during the US citizenship ceremony. Yet there is no attempt to prevent dual citizenship by enforcing renunciation of

a previous one. And surely, during the British citizenship ceremony, a person can publicly swear to be ‘faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors’ while holding privately republican views. I do not think that this subverts individual autonomy in a discriminatory way; instead, it detaches the end product (citizenship as a form of membership) from the means (naturalization as a “naturalizing” process). This is certainly a problem, but not one of liberalism.

The final empirical dimension worth considering about civic tests before asking questions about how “fair” they are is looking at where states require them. The real innovation of the European variant of civic testing—in contrast to the American model—is that it promotes “citizen” values and skills not only among applicants for citizenship but also for various earlier gates of membership, including those where migrants seek permanent settlement and territorial admission. In fact, it is this extension of civic requirements to ostensibly non-traditional stages of civic status that raises major concerns and warrant special attention. Germany, Denmark, the Netherlands, Austria and the UK not only have civic integration requirements for citizenship but also for permanent residence (e.g., integration courses with tests) and pre-entry or immigration (with the exception of Austria, where there is currently only a language test for immigrant settlement) (Wallace Goodman 2010a).

It is in this outward expansion of requirements where I think the assessment of liberalism is most relevant. By attaching such as “citizenship” tests to the process of immigration and settlement, content that, in principle, promotes membership and inclusion becomes mixed up with immigration policy and ambitions of control. While states have autonomy in determining immigration policy, exclusionary rules that require knowledge for some groups and not for others are an explicit violation of equal treatment. Selectivity along grounds of race, religion, gender is universally regarded as illiberal in both immigration policy and, a fortiori, in naturalization policy.²⁴ Yet, by design or effect, pre-entry requirements do just that. By design, we see a pre-entry test in the Netherlands, for example, that exclusively targets certain nationalities over others (exempting citizens from the EU, Australia, Canada, Japan, New Zealand, and the United States). The Basic Civic Integration Exam (or immigration test) also explicitly targets religious leaders. By effect, the requirement that family-forming migrants are required to demonstrate knowledge or language before entry produces a clear bias against immigrants from Turkey and Morocco, which constitute the largest national groups that immigrate for family-formation or -unification purposes, as well as against female migrants, which in absolute numbers of entries are comparable to men, but make up the majority of family-based migrants.²⁵ This immigration test is onerous: as a condition for receiving a temporary residence permit, or MVV, a potential migrant must sit a 15-minute, 50-question oral Dutch language exam assessing listening and speaking skills as well as a separate Knowledge of Dutch Society examination, in which the applicant answers 30 questions on Dutch life and society. It is taken over the phone and administered at the Dutch embassy in the applicant’s country of origin. Yet it is not because of its difficulty that it is illiberal, it is because of the discriminatory effect it has on certain populations. Denmark is applying a similar immigration test. Germany and the UK (by 2011) only assess language at point of origin through a test, while France has the least difficult version by offering a cost-free interview to test the potential migrant’s expected level of French proficiency.²⁶

In conclusion, a wider view of citizenship tests not only shows a diversity of countries that use such tests, but also that there are complementary material conditions for citizenship access as well as civic assessment at earlier stages which is perhaps the most clearly illiberal dimension of “citizenship tests”. With this fuller empirical foundation, a richer exploration of liberalism in immigration and citizenship policy becomes possible.

²⁴ Thanks to Rainer Bauböck for this comment.

²⁵ Informatie-en Analyses Centrum (INDIAC) (2008), *Monitor Inburgeringsexamen Buitenland*, Den Haag: Immigratie- en Naturalisatiedienst.

²⁶ For more on pre-entry integration requirements, see Goodman Wallace (forthcoming).

A final note on the United States as the primary example of a liberal citizenship test invoked by several contributions to this forum discussion: I find little resemblance between the US naturalization test and its European progeny in any way other than content. It is a 10-question civics exam where the applicant orally answers questions selected by an immigration officer from a total set of 100. Content ranges from ‘What did Martin Luther King, Jr. do?’ to ‘Who is your U.S. Representative?’ The applicant must answer 6 out of 10 questions correctly, and the test need not necessarily be conducted in English. Aspiring citizens can also take the exam multiple times if they fail. A 2008 redesign of the test content was for the purposes of shifting knowledge from the “trivial” to the “useful”. Moreover, this is the only civic barrier encountered by an immigrant from point of entry to citizenship acquisition, in contrast to the manifold barriers erected in a handful of European cases. But if the US is going to be the standard from which we deduce a liberal test, as opposed to inductively identifying concepts and selecting reflective, context-free standards for measurement, then it seems we are measuring cases against an outlier, not an average. This should not, in turn, render all European cases deviant and “illiberal”, but perhaps force us to identify new conditions to describe what we see as a common practice, rather than an exception, among democratic states.

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How Liberal Are Citizenship Tests? A Rejoinder

Christian Joppke*

I argued that, in principle, there is nothing objectionable to the new citizenship tests in Europe (even though I would not go as far as Amanda Koppenfels, who thinks they could turn Europe into US-style “country of immigrants” –that’s a bit too much to expect of a trifle). The threshold of the illiberal is reached when (a) beliefs (and not just knowledge) are tested, but also when (b) behavioural virtuosity is imposed as condition for naturalization. Interestingly, no commentator said anything about (b), perhaps because the British concept of “active citizenship” is no requirement (yet?) and has not (yet?) been followed up elsewhere. Overall, I held, ‘the devil is in the detail’, and a context-sensitive analysis of the contents and modalities of citizenship tests is required to assess their “reasonableness” (the apposite term suggested by Randall Hansen in lieu of the overstretched “liberalism”).

This argument was criticized from two sides, call them “maximalist” and “minimalist”. The maximalists wish to debunk the entire genre of citizenship tests. They come in various shades: principled, consequentialist, Foucauldian. In the principled camp, of course, is Joseph Carens, who thinks ‘the most liberal citizenship test is none at all’ (though under his sociologist’s cap he asks for ‘more detailed and locally specific investigations’, which Joppke—the sociologist, forever, Joe!—cannot but endorse). Much like Carens, the philosopher, Dora Kostakopoulou finds such tests an affront to ‘equal human dignity’: ‘liberalism cannot sanction domination, discrimination and unequal treatment’. This is true, in principle, but from this position it is inconsistent to argue that such situation has arisen only lately, after ‘European governments have decided to change the rules...and put emphasis on...national identity’. A principled liberalism (which, under my philosophical hat, I also endorse) would require a wholesale attack on the very institution of naturalization, even of citizenship law as such (which, in setting conditions, cannot but “discriminate” if such discrimination starts already by treating citizens and non-citizens differently). It is pointless for a maximalist to get nervous about citizenship tests; she should spend her precious energy (she needs a lot of it) on combating the existence of citizenship *in toto* that cannot but set boundaries that, in turn, cannot but exclude some (nay, practically all).

A similar riposte must be made to consequentialist maximalists Kees Groenendijk and Ricky van Oers, who deplore the negative “effects” of citizenship tests on lower-educated immigrants. In their view, these tests do not meet a standard of substantive equality or of equal outcomes, in that as a result of them different nationalities (via exhibiting different average skill levels) naturalize in different rates. May be, but then one cannot limit oneself to criticizing the citizenship tests. Instead, one must find fault with much harsher violations of substantive equality in many countries’ naturalization rules—for example, making employment or a minimum income a condition for obtaining citizenship. If they are rejected, such conditions should not be called “illiberal” but “undemocratic”.

Maximalists of a Foucauldian kind are Sergio Carrera and Elspeth Guild. They find the new tests a devious exercise by ‘nation-states’ to ‘discipline and standardize’ (even ‘humiliate’) the new immigrants, who are to be turned into “perfect citizens”, nothing less. ‘The capacity that is enhanced’ in this process is said to be that of the “nation-state”, not of the immigrant. This is a rather bizarre statement, not only because it comes from two policy wigs who one would expect to be a touch more hard-nosed; it is bizarre also if one considers that some three-quarters of new immigrants in any one year in most European states are not selected at all but entering on the basis of (family or refugee)

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rights. In short, European states have to deal with immigrants they would not admit if they had the choice. “Capacity” on that front is a mutilated thing to begin with; no wonder that states wish to “enhance” it in the very minimal ways that are available to them. A Foucauldian view is so far out that I hesitate to say anything further.

A standard trope by maximalists is to criticize states’ alleged “double standard” in their treatment of citizens and non-citizens, the latter being expected to acquire a level of knowledge that even many citizens do not muster. As Liav Orgad (though clearly no maximalist) asks, ‘why not ask every citizen to pass a test at the age of 18 before enrolment on the electoral votes?’. In my view, a persuasive case for why only non-citizens but not citizens should be required to take a citizenship test has been made by Randall Hansen. Consider, he says, that the one genuine citizen right on the contemporary rights palette is the right to vote and to stand for election. Only citizens vote (at least nationally), and this requires civic knowledge, for the sake of all who have to suffer the consequence of the vote. Citizens acquire civic knowledge in school (which incidentally is mandatory), immigrants don’t. So it is apposite that immigrants, who have not been schooled in their country of residence, are required to undergo a civics course and test as condition for citizenship. In sum, the citizenship tests are “substitute for education”, which is obligatory for everyone, immigrant *and* citizen. And if many citizens were not capable of passing the test, as is being passed around in enlightened pub conversations these days, this is not an argument against the citizenship test but must make you worry about “shoddy schools”.

On the opposite side, there are the minimalists who, rather than debunking the entire genre, agree that the ‘devil is in the detail’ and who seek to fine-tune and modify within a context-sensitive approach. I learned most from the exchange between Ines Michalowski and Randall Hansen on the role of “social norms” in the citizenship tests. Michalowski argued that ‘formulations matter’ and she pointed to cross-national variation in ‘how much competence (tests) attribute to the state when it comes to regulating possible dissent that emerges from a...diverse population.’ In short, only in the Netherlands, notably not in the US, cultural and religious difference is treated as a ‘public issue that may require state interference’ —which Michalowski finds problematic from a liberal point of view. To this Hansen retorted, correctly in my view, that ‘questions on social norms are themselves fine if...supported by law and...social consensus’. If newcomers are confronted with state-distributed videos that show kissing men and nude women, this is not pitching for agreement with these practices —all that is expected is to know and accept them as fact (which, of course, is not possible without a disposition to tolerance that is the minimal ethic that one cannot do without in a liberal society). Hansen thus finds the Dutch video categorically distinct from Baden-Württemberg’s infamous *Gesprächsleitfaden*, which is not testing the knowledge and factual acceptance of norms but pitching for agreement with them. Overall, ‘a wide range of questions, testing fact not belief...are reasonable’ (Hansen). The line between “acceptance of” and “agreement with” may be thinner and more difficult to draw than conveyed by Hansen, but I find his position, well, reasonable.

The most voracious minimalist is certainly Sara Wallace Goodman. However, her view of liberalism (and of violations thereof) is so broad that ‘the concept (becomes) emptied of meaning’ (R. Hansen). She identifies various violations of liberality in (some of) the new tests where I can see no violation at all, unless one holds too catholic a view of what is “liberalism”. Above all, she criticizes the “outward expansion” of citizenship tests to earlier phases of the immigration process, even to a pre-immigration phase, as in the notorious Dutch policy of “integration from abroad”. Indeed, a key characteristic of the new civic integration policy, of which citizenship tests are but the logical tail-end, is to fuse immigrant integration and immigration control concerns, which so far had been neatly divided up into two separate policies. Deplorable as this fusion of integration and control may be from a pro-immigrant or humane point of view, it is not a violation of liberalism. If it were, immigration policy (even citizenship policy) as such would be a violation of liberalism, which is true philosophically but not politically, that is, accepting the existence of states and of its immigration and citizenship policies as in principle (though not always in reality) legitimate. One of the few real

violations of liberalism in her scenario is, perhaps, the policy of the Netherlands to exempt from “integration from abroad” certain rich countries (including the United States, Australia, Japan, South Korea and Switzerland). This does constitute national-origin discrimination. However, is it a dubious, quasi-racial discrimination? I doubt it is, because the cut is between rich and poor countries. No doubt, by contrast, that Baden-Württemberg’s initial limitation of its interview guideline to applicants from official Muslim countries constituted illicit national-origin discrimination. But Wallace Goodman is mistaken to qualify, in addition, as violation of liberal precepts the unequal effects of the tests, their connection with immigration control, the existence of “double standards” (as to the knowledge expected of non-citizens and citizens), or even the fact that the questions are “too difficult” to answer. Whatever these things are, they are not violations of liberalism.

When I received my assignment I was told not to pull a punch. So let me end in style. It is of course holier-than-thou to reject the vision of a liberal state only for liberal people. This notion (once overheard from Roger Waldinger) was my concession not to appear too celebratory about liberalism’s march of victory, in which I do believe. But an Israeli audience would (in fact, it did) respond: it all depends on numbers, you cannot run a state with any kind of people. More concretely, you cannot run a liberal state that is filled up to the ceiling with illiberal people. As Tocqueville knew, liberal institutions are nothing if not supported by ‘habits of the heart’ that are liberal too. The question is where the threshold of the tolerable is and where danger starts. After the demise of some 20th century alternatives, which were born and sometimes ended in blood, liberalism is all we have: it is *the* political theory, *the* ideology (if you want to call it thus) of differentiated societies. We should trust its powers, but it would be naïve to assume that it never needs protection —through citizenship tests, for instance, perhaps even including their more intrusive variants.

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