

Liberalism of Legal and Moral Citizenship: A Comparative Study

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Christian Joppke describes citizenship as having three dimensions: status, rights and identity. (Joppke 2007a) These dimensions can also be viewed as the official, legal aspect of citizenship and the unofficial belonging to a national identity. Legal citizenship is the formal, juridical rights and duties of a citizen as an individual, while moral citizenship is the expectation of common values and mores and is often group based. Schinkel and van Houdt present legal and moral citizenship not as opposing concepts, but as aspects of citizenship that have varying emphasis depending on the context. Whether a society has a liberal approach towards migrants and citizenship depends both on the weight placed on legal as compare to moral citizenship and the way the requirements to gain each are manifested in that society. Liberal requirements for legal citizenship entail a liberal citizenship test, limited mandatory integration requirements, and no distinction in the naturalization process based on ethnicity. In a liberal state, candidates for citizenship should be considered on their ability to uphold the responsibilities of a citizen and knowledge of government and laws. Thus their citizenship test should ask questions about what is correct focused on government and the political system, not on what is moral and on cultural values. Additional, cultural integration should not be a large part of the naturalization process if legal citizenship is to focus on membership in political society. Liberal requirements for moral citizenship entail no distinction between ethnic groups or between naturalized and native-born citizens in government statistics or programs. Once an immigrant has been naturalized, they are part of liberal society as an individual citizen equal to all other citizens, not as part of an ethnic group.

I seek to analyze the naturalization requirements (primarily citizenship tests and civic integration requirements) and use of ethnostatistics together to see if those nations which have a liberal approach to access to legal citizenship are also those that have a liberal approach to access to moral citizenship. If this is the case we should see that nations with liberal naturalization requirements are also those that are less likely to use racial and ethnic categories to classify and determine the benefits accorded to their citizens. I will examine the liberality of access to legal and

to moral citizenship in France, the Netherlands, and Germany. I will examine the interaction between legal and moral citizenship and test if these nations have an overall policy towards migrants that is liberal or illiberal, or if the liberality of policy regarding new citizens is dependent on the aspect of citizenship being addressed.

France

France prides itself on its color-blind, universalist, republican model of immigrant integration. The idea of republicanism treats all as equal citizens regardless of background. Belief in the color-blindness of the French system was so strong that discussion of racial discrimination was taboo until the late 1980s (Amiriaux and Simon). Although discrimination is no longer ignored in scholarship or public discussion and anti-discrimination laws exist, republicanism with its connotation of equal membership of all citizens in the body politic is still the dominant schema through which France is viewed. Culture, ethnicity, and religion are relegated to the private sphere with no role in public life. Is access to citizenship, both legal and moral, really as color blind and liberal as the republican model professes?

The Migration Policy Group gives France a score of 59 in the category of access to nationality, or halfway favorable, on its Migration Policy Index (MIPEX). A higher score is given for easier and more liberal access to nationality which is judged based on who is eligible, the conditions for acquisition, security of status and whether dual nationality is allowed. France allows dual nationality and has a high score for eligibility, but low scores for conditions for acquisition and security of status. The civic integration requirements of France include a language course and civic training, but are not as demanding as the requirements of Germany and the Netherlands. (France receives a score of 3.5 on the CIVIX indicating low levels of integration requirements when compared with the Netherlands' 4.5 or Germany's 6.) The civic training course does not require a fee, removing some of the burden for integration from the immigrant and putting all aspiring to French nationality on a more equal footing. France does not have a citizenship test, so the degree of liberality and focus on knowledge

regarding government and politics cannot be assessed. However, not having a citizenship is inherently a more liberal policy than having an illiberal test focused on the expectation of shared values and norms. Qualification for nationality is based on standardized, publicized requirements instead of knowledge of the culture of the host country. Yet despite the lack of an integration/citizenship test, gaining nationality requires sufficient assimilation which is an ambiguous obligation assessed in the prefecture. A Muslim woman was found to not be adequately integrated and thus denied naturalization in 2008 for wearing a full face veil. (Bertossi 2012) This example shows how cultural factors can be barriers to citizenship despite the otherwise clear, culture-blind requirements. An assessment of lack of integration can be used to block Muslims from naturalization without explicitly being aimed at Muslim populations. The overall requirements to receive French nationality are intended to guarantee equal treatment, fitting with the liberal, republican image of France, but the discretion given to prefects over nationality and the ambiguity of what is sufficient integration can lead to different outcomes in different localities.

Additionally, despite the relative liberality of French naturalization policy, moral citizenship is not always available with the granting of legal citizenship and some discourse surrounding legal citizenship is not as liberal as the overall policy. This is expressed in a speech made by a prefect of Hauts-de-Seine in a speech at a naturalization ceremony where he stated, "In soliciting French nationality you have expressed the desire to adhere to the fundamental values of the Republic and the rules of democracy... The approval of your demand shows that you have sufficiently adopted the way of life and customs of our country, not to the point of completely resembling a native Frenchman but enough to put you at ease amongst us. You are the link between foreign communities and native French." (Fassin and Mazouz 2007, author's translation) The prefect's words emphasize the continuing social distinction between the recently naturalized and those considered French despite their identical legal status as French citizens. The newly naturalized are somewhere in between foreign and French in the moral aspect of citizenship. Additionally, although the

republican model emphasizes the color-blindness of citizenship there is an acknowledgement that a certain degree of assimilation may be required to become naturalized.

The use of questions regarding nationality or ethnicity on the French census has been a controversial issue, with many changes to the wording of the question on nationality over time. (Spire and Merllié) The questions have regarded citizenship and nationality, not ethnicity or race as emphasized in Eastern Europe or the United States, and divide residents into three categories (French by birth, French by acquisition, or foreigner). Although the wording of the question has been altered several times, there has never been a further distinction among those born with French citizenship into sub-categories or ethnic groupings. (Spire and Merllié) There has also been debate over whether the collection of ethnostatistics is a useful tool in measuring and then addressing the problem of discrimination or further stigmatizes marginalized groups. Asking questions on ethnicity in public surveys was made illegal in 1985 under the loi informatique et libertés, as categorizing the residents of France by ethnicity was declared to be against the Republican principle of equality. (Brinbaum and Cebolla-Boado 2007)

The attachment to the republican model leads to official French policy presenting their stance on access to both legal and moral citizenship as more liberal than it is in reality. The naturalization policy of France is fairly liberal and the French government has a liberal stance on access to moral citizenship as viewed by its lack of gathering or usage of ethnic statistics. However there are indirect barriers to both moral and legal citizenship for certain minority groups viewed as undesirable or resistant to integration.

The Netherlands

The Netherlands received a score of 66 on the MIPEX scale for access to nationality, falling into the favorable category. The Migration Policy group describes the path to citizenship as “basic and clear” and states that “as of May 2010, naturalised immigrants and Dutch-born citizens were legally treated as largely equal and secure citizens”. Straightforward requirements that do not

distinguish applicants for citizenship based on their backgrounds and equal treatment under the law for both naturalized and native citizens are both elements necessary for access to legal citizenship to be considered liberal.

The Netherlands has relatively strict civic integration requirements. Immigrants are required to have some competency in the Dutch language, pay a substantial fee for integration courses, and pass a test in order to gain citizenship. Initially integration courses were mandatory only for newcomers and voluntary for settled migrants. Integration was seen as requiring participation of both the newcomers and the receiving society, but recent immigration policy has been seen as correcting past failure and places the responsibility for integration solely on the immigrant. (Odé and Klaver 2010) In 2004, the *Outline Civic Integration Policy Paper* reiterated the duty of civic integration and the responsibility of migrants in learning the Dutch language and Dutch norms and values. (Driouchi 2007: 52–3 via Willem Schinkel and Friso van Houdt) This is in contrast with the long-held image of the Netherlands as multicultural and celebrating tolerance and diversity. The Netherlands has experienced increasing diversity and in the last decade seen the growth of far right populist parties. Since 2006 a ceremony is also mandatory for the receipt of Dutch citizenship, marking it as a moment worthy of celebration and adding emphasis to the moral aspect of citizenship over the legal rights. (Willem Schinkel and Friso van Houdt) The country was classified as a 4.5 on the CIVIX scale measuring difficulty of integration requirements placing it in the top third of degree of difficulty of the European countries studied. (Wallace Goodman)

In Ines Michalowski's analysis and comparison of a sample of five citizenship tests (US, UK, Germany, Austria, and the Netherlands), the test given in the Netherlands was found to be the least liberal. 16% of the required knowledge regarded traditions and public morals, compared with only 2% in the UK and none in the US, Germany, or Austria. Additionally, just 28% of the questions referred to politics, history and geography. If the test were liberal we would expect to see politics and history as the predominant focus of the questions. A liberal test would also not have questions

on public morals and norms as that is an area that addresses culture, not the ability to participate in the political process and uphold the duties of a citizen.

While many nations have had controversy over how to construct ethnic categories for census questions, the Netherlands has not had that debate as it does not use a national census. The use of a census was discontinued as protest movements associated census taking with inappropriate ethnic categories and the use of the census to aid in deportation of Jews during WWII. (de Zwart 2012) Kertzel and Arel write of the way in which dividing populations into mutually exclusive racial or ethnic categories in census-taking spurred the creation of new collective identities and gave legitimacy to these divisions. (Kertzel and Arel 2002) Yet despite the discontinuation of the census in the Netherlands there is widespread use of ethnic labels determined by the government, exactly what protests against the census sought to avoid. Minority groups and individuals are not able to determine their own identity groups and labels as there is no direct questioning of the population and instead top-down designations are assigned. (De Zwart 2012)

The Dutch government keeps a detailed register of ethnic groups in the Netherlands and the National Bureau for Statistics frequently uses this information in studies it publishes on differences between ethnic minorities and the native population. (De Zwart and Poppelaars 2007) Not only is there frequent use government determined identity designations, but all non-natives are conflated with the use of the word *allochtone* to refer to immigrants. Foreigners are grossly overrepresented on welfare rolls and the Netherlands has the highest overrepresentation of foreigners in the prison system of any European nation. (Joppke 2007 B) The word *allochtone* in the media and popular culture is associated with the image of foreigners as criminal, poor, and uneducated. The growing research on the criminality of the *allochtone* population and the binary division between *allochtone* and *autochtone* (Dutch native) contributes to stigmatization and the perception that crime and poverty among immigrant populations is due to cultural differences and lack of integration into Dutch society. (Brion 2003)

The Netherlands has increasingly required a level of moral citizenship be gained before allowing legal citizenship, but even legal citizenship does not merit full moral citizenship. While there is no legal differentiation between naturalized and Dutch-born citizens, there is a large degree of social segregation and ethnic distinctions used by the government and the media. The 'allochtone' population is viewed as causing trouble for the native Dutch population and not sufficiently integrating into Dutch culture. Recent laws have increased the integration requirements for naturalization despite the Dutch reputation for multiculturalism. The historic 'pillarization' of Dutch society led to tolerance and multiculturalism as key elements of Dutch national identity yet current Dutch identity is much more homogenous. (Duyvendak and Scholten) Newer immigrant groups have not been included into the national identity and thus have extremely restricted access to moral citizenship.

Germany

Germany has refused to label itself as a nation of immigrants and a high percentage of non-ethnic Germans are not naturalized citizens, even among those born in Germany. Yet access to nationality has become more liberal in recent years and Germany was given a score of 59 on access to nationality on the MIPLEX, identical to France's score. In 2006 changes were made to standardize naturalization law to counter charges of discrimination and unequal treatment prompting the MIPEX scores for conditions for acquisition and security of status to increase in the latest ranking. Yet the score is still brought down by the refusal to allow dual citizenship for non-EU nationals, and issue that been the center of political debates. In the late 1990's the issue of access to nationality was a significant divide between left and right leaning parties with the centrist liberal party aligning more closely with the parties on the right opposing allowing more applicants for naturalization to maintain dual nationality. (Green 2005) Dual nationality is opposed on the grounds that it can lead to conflicts of loyalty and it grants advantages to duals-nationals not enjoyed by those possessing only German citizenship. (Green 2005)

However despite the requirements for general applicants for naturalization being relatively stringent, ethnic Germans living abroad have historically been given an easier route to the acquisition of German citizenship. Aussiedler, ethnic Germans from Central and Eastern Europe are granted full citizenship on entrance into Germany and between 1955 and 2000, 4 million Aussiedler immigrated. (Behr 2005) Those claiming German ancestry and had never been to Germany had an advantage in gaining citizenship than those of non-European descent who were born in Germany and had parents born in Germany. However the requirements for gaining the benefits associated with being an Aussiedler and the advantages Aussiedlers receive in comparison with other immigrants have decreased since the 1990s. (Takle 2011) The numbers of Aussiedlers seeking German citizenship have declined and those continuing to seek entry are primarily from the former Soviet Union and now perceived as more culturally Russian than German, making them more similar to other immigrant groups in their integration and language needs. (Behr 2005 and Takle 2011) Although in many instances moral citizenship is not automatically available with the granting of legal citizenship or lack of moral citizenship can block access to legal citizenship, in the case of Aussiedlers moral citizenship was available before, and cleared the path to, legal citizenship. The sense of cultural similarity and shared identity was emphasized over shared participation in a legal and political system making moral citizenship more important in the German case than the liberal principles of citizenship as based on participation in the public sphere and equality.

Germany is widely considered to have a restrictive immigration policy and its civic integration requirements are the most demanding of all of the 15 Western and Central European countries ranked on the CIVIX scale. A language course and test as well as an orientation course costing £1 per hour are required for settlement and a citizenship test and ceremony are required to obtain German nationality. The requirements for civic integration as well as the reluctance to give up citizenship of the country of origin and long wait periods all contribute to the high numbers of foreigners who migrate or are born in Germany that do not seek to obtain German nationality. (Behr 2005)

Despite the lack of liberality in other areas of immigration policy, the assessment done by Michalowski finds that 89% of the questions on the German citizenship test relate to government, history, and geography and half of all questions are specifically about the political system, rights, and democracy. Additionally within the category labeled as traditions and public morals, questions were overwhelmingly geared towards tradition and questions on lifestyle norms require knowledge of what is legal instead of questions about social values or what is moral. Although Germany's citizenship regime is considered restrictive and ethnocultural, its citizenship test is actually fairly liberal. The questions ask about knowledge of the laws and political system which is necessary to be an active citizen and there are relatively few questions dealing with culture or social norms. That the citizenship test is so liberal is a striking contrast to the perception of Germany as having an ethnocultural citizenship regime and its strict civic integration requirements.

Access to German citizenship, both legal and moral, is limited for those not of German heritage. However it is increasingly becoming easier with higher numbers of naturalizations among non-ethnic Germans and decreasing distinctions in the integration requirements between ethnic Germans and other immigrant groups.

Conclusion

In general, countries with more liberal access to moral citizenship are also those with more liberal access to legal citizenship. Germany has a strong tradition of defining national identity and the moral citizenry based on a shared cultural heritage and it has the most restrictive naturalization requirements of the three countries examined. The Netherlands widespread usage of ethnic labels and divisions between allochtones and autochtones restrict access of new immigrants to moral citizenship and the Netherlands has the most illiberal citizenship test and leaves the migrant responsible for the required integration course for naturalization. Although access to both moral and legal citizenship is somewhat less liberal in practice than in policy in France, French policy is clearly the most liberal of the three nations studied regarding access to both aspects of citizenship.

The two dimensions of citizenship interact and those who are viewed as having moral citizenship may have easier access to legal citizenship and those who are viewed as not integrating sufficiently or striving to be a part of the moral citizenry may face obstacles to obtaining legal citizenship. Additionally, changing views on moral citizenship can lead to changes in policy regarding legal citizenship such as the case of German Aussiedlers increasing requirements to prove their “Germanness” when new waves of German ancestry immigrants were perceived as culturally more Russian. This was also the case in the Netherlands where the perception of newer immigrant populations as failing to integrate led to stricter integration requirements in order to receive Dutch citizenship. Similarly in France, the perception of Muslims as not fully part of the moral citizenry has led to cases of denial of legal citizenship for outward signs of Muslim faith with women wearing burqas. The direction of influence may also flow from changes in legal citizenship to changing views on moral citizenship. In the future, the increasing numbers of legal citizens of migrant backgrounds may lead to a changing view of national identity and more liberal access to moral citizenship. The legal and moral aspects of citizenship overlap and interact with each other in each society so that although access to one may be more liberal than access to each other, those nations with more liberal access to one aspect are likely to also have more liberal access to the other. Similarly changes in societal views or policy on one aspect of citizenship are likely to be followed by changes in the policy regarding the other aspect.

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