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Comments on:

Comparative Citizenship: A Restrictive Turn in Europe?

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Statement of the Issue

In this paper Christian Joppke discusses immigration and citizenship laws in the pre-Enlargement 15 European Union countries. He makes two kinds of comparison: a synchronic comparison between these 15 states today, and a diachronic comparison between the 1980 baseline year and the post-2000 years. The focus is more on the diachronic comparison aiming to answer the question: Is the historical trend of change "a restrictive turn"? In order to address this issue, Joppke spells out four types of restrictions and discusses each for the period under study. These restrictions are as follows:

1. Decrease in the use of jus soli criterion;
2. Reduction of family union immigration;
3. Conditioning of naturalization on the achievement of integration or assimilation (toughening the criteria for naturalization – language command, civics tests, acquisition of liberal values);
4. Strengthening ties with expatriate communities abroad by allowing their members to acquire additional citizenship without losing their original citizenship, a step that indirectly hurts immigrants and their descendants by giving them less attention and access to citizenship.

The paper is rich in details about these restrictions, especially the third one (greater demands for naturalization), for many of the 15 countries. Along with the review of the restrictions, Joppke also looks into the liberalizations in each area.

The bulk of the paper is descriptive-empirical, namely, documentation of the change and interpretation of the evidence in reference to the question of the existence or absence of a restrictive turn. There is a minor analytical part which deals with the causes of change.

The method applied in the paper is illustrative and interpretative rather than systematic, country by country comparisons over the 1980-2006 period. This method

makes it difficult to reach definitive conclusion unless the evidence is clearcut, a rare situation in the social sciences. The task is made even more difficult because the author discusses liberalizations along with restrictions and reaches a conclusive generalization about the overall balance sheet of citizenship legislation in the 15 EU countries.

The paper falls within the mainstream social science writing in purposely lacking a normative dimension. Joppke does not pass explicit judgments and does not indicate if the legislation is good or bad. Yet, there is a normative component to his arguments because considerations of equality, inclusiveness and fairness implicitly lurk in his interpretations.

The European Case

Joppke's departure point is that citizenship legislation in the EU in the early 1980s was based on liberal norms of equality and inclusiveness. One piece of evidence is Howard's "citizenship policy index" that is based on 3 criteria of liberal citizenship laws: jus soli is allowed, length of residence required for naturalization is 5 or fewer years, and dual citizenship is tolerated. The 15 EU countries are supposedly liberal on these criteria, although they differ from each other. The most liberal countries are Belgium, France, Ireland, Great Britain, most of whom are former colonial powers with experience with foreign populations and long democratic traditions. The least liberal are Austria, Spain, Germany, Luxembourg, Denmark and Finland. In the middle are Greece, Italy, Sweden, Netherlands and Portugal. Howard shows that the 15 EU countries have remained liberal or even further liberalized since the early 1980s. Joppke criticizes Howard for applying only crude tests of these criteria. He reviews more refined indicators, reveals both restrictions and liberalizations, but comes to a similar conclusion and agreement with Howard that there is no overall "restrictive turn".

Joppke reviews in great detail the changes made in legislation during the 1990s and 2000s and finds a mixed bag of law amendments. He concludes that the thesis or suspicion that there is a restrictive turn must be rejected and that the changes in the citizenship legislation were made while preserving a liberal or even liberalizing framework. He insists that the pre-2004 EU was liberal and has remained liberal in its legislative handling of immigrants, emigrants and their descendants.

Joppke bases his uncritical view of the EU on the following evidence:

1. The use of jus soli criterion, which favors the local-born children of immigrants, was changed in two ways: it was made conditional on permanent residence of a parent (restriction) and jus soli was extended as a right to second generation immigrants (liberalization).
2. Certain restrictions were introduced on the right to citizenship of foreign spouses in order to prevent faked "marriages of convenience" and marriages for immigration. Yet, the number of marriages to foreigners increased because second generation immigrants and citizens in Europe came of age.
3. Harder tests of integration and assimilation were imposed for naturalization (restriction) but they are individual-level rather than group-level and can be passed by all individuals regardless of ethnicity (liberalization). For instance, the Netherlands in 2000 imposed a tough, mandatory five-hour exam for testing the reading, writing and speaking of the Dutch language. This new restrictive requirement aims to ensure civic integration, can be met individually, and does not disqualify any ethnic or racial group.
4. Ties with co-ethnic expatriates who live permanently abroad were strengthened by removing the ban on double citizenship (potential restriction for immigrants), but in most cases this measure was also extended to immigrants by allowing them to naturalize without renouncing their original citizenship (liberalization).

Joppke interprets the balance of these mixed legal amendments as lack of restrictive turn and as stable European liberalism.

Joppke's no-restrictive-turn conclusion should be reconsidered, however, in view of the following points:

1. The trend of continued liberalization in the legislation of immigration and citizenship laws that the EU has steadily introduced since 1945 was slowed down and even inhibited by new restrictions. What is new in the legislation is not ongoing liberalization but rather new restrictions.
2. Some restrictions are serious. For instance, Luxemburg amended its citizenship law in 2001 to require passive knowledge of one of the three official languages (French, German and Luxembourgish) *and* a basic

knowledge, supported by a certificate, of the difficult Luxembourgish language without provision of language instruction.

3. Some restrictions are primarily motivated by ethnicization. For instance, the "liberal" waiver of the double citizenship for nationals residing permanently abroad and acquiring a foreign citizenship was motivated by the ethnic desire to strengthen the ties with them, slow down their assimilation and hopefully bringing them back in order to boost the ethnic majority in the homeland.
4. It is not clear from the presented evidence who is intended to be the primary beneficiary of the legislation – Europeans (from other EU countries) or non-Europeans.
5. Restrictions on immigration and citizenship run counter to multiculturalism to which most EU countries proclaim to espouse and keep.
6. Restrictions on immigration and citizenship run counter to the vital interest of most EU countries that need immigrants to overcome the demographic deficit, to fill the shortage of workers in some branches of the economy and to bolster the pension system. Since the mid 1970s these countries diminished the chances of immigration and naturalization of non-European immigrants although these immigrants could have helped them appreciably ease their demographic problem.
7. The accession of 10 countries in 2004 and 2 countries in 2007 makes the EU as a whole much less liberal in its immigration and citizenship laws because the new member states are much less liberal than the older members.
8. One important cause for the EU Enlargement program was to stop dependence on non-European labor and immigration. "Second-rate" Europeans are better than non-Europeans.
9. A crucial reason for the failure of Moslems' integration in the EU is the shallow nature of multiculturalism in Europe as a whole. The real tests of multiculturalism are formal recognition of specific minorities and specific minority languages and the extension of broad collective rights and especially the right to a separate, state-financed, compulsory education for cultural and linguistic minorities. Indigenous minorities should qualify for these collective rights and immigrant minorities should also benefit from some collective rights. Most of the present 27 EU states and all the various European conventions on protection of minorities do not meet these criteria.

10. Only in the last several years the EU started to experience the failure of Moslems' integration and fears of Islamic terrorism. These are prime movers of future restrictions on immigration and naturalization of non-Europeans. It is expected that more restrictions on immigration and citizenship will be imposed with the spread of Islamic separation and incidents of terrorism in Europe.

Let me now end up with a comment on Israel. Joppke's paper does not refer to any country not among the 15 pre-enlargement EU. Comparison to Israel can place Joppke's thesis in a broader perspective and throws some light on Israel.

The Israeli Case

There are conflicting views on Israel's legislation on immigration and citizenship. In their book *Israel in the Family of Nations* (in Hebrew), Yakobson and Rubinstein evaluate Israel's laws, policies and practices by comparing them to those of EU countries and international and European standards. They conclude that Israel does well and hence is not different from any European liberal democracy.

I disagree. I see Israel as an extreme case of a democracy which applies exclusionary restrictions on immigration and citizenship. The main immigration law in Israel is the Law of Return that provides automatic entry and citizenship to Jews and their immediate relatives. In order not to deter any Jew from coming to settle down in Israel, it allows multiple citizenships. It pursues a policy of encouraging Jewish immigration, strengthening ties with the Jewish Diaspora, and keeping Israeli citizenship by Jewish expatriates who live permanently abroad (in order to cease to be an Israeli citizen, one needs to get the permission of the Minister of Interior who usually refuses to do so if the applicant is an Israeli Jew living abroad). The complementary part of the Law of Return is lack of a repatriation law for the Palestinian Arab refugees and their descendants. The Entry to Israel Law and the Citizenship Law – two long-standing Laws enacted in the early 1950s – provide for entry and immigration of non-Jews but there is little use of them by non-Palestinians such as foreign workers and asylum seekers. They have been used mostly for family unification of Arab citizens (on the average of 4,000 persons a year). A new law (enacted in 2003) severely restricts family unions of Arab citizens who marry spouses from the West Bank and Gaza Strip or any enemy country.

These demographic laws and policies can be explained by three pivotal factors: As a Jewish state Israel does its utmost to preserve and augment its Jewish majority (Zionism as ethnic nationalism), Israel lives in a hostile environment of which the Arab minority is part (the exigencies of the Israeli-Palestinian and Jewish-Arab conflict), and Israel has a large Arab minority (16.5% of the total citizen population) that is perceived as a threat to its Jewish character. Regardless of what Israel officially declares (for instance, the severe restriction on the Arab right to live in Israel with a spouse from the occupied territories was justified on security rather than demographic grounds), all these considerations are at work in the thinking and behavior of Israel and Israeli Jews. As a result Israel sees itself as *a defensive democracy* that has the legitimate right to enact restrictive laws of immigration and citizenship and to impose surveillance over the Arab minority.

There are very few countries in Europe that are in the same vulnerable Israeli situation or that apply such restrictive laws and policies. Germany is similar to Israel in some features – its law of return and self-perception as a defensive democracy. Estonia and Latvia are similar to Israel in declaring themselves as the homelands of an ethnic majority, denying automatic citizenship to a very large segment of their permanent populations (the Russian speakers) and enacting very restrictive laws of naturalization. Yet, even when compared to these EU countries, Israel is by far an extreme case. It is an extreme case also in the fact that the *special combination* of the three causes underlying its laws and policies on immigration and citizenship simply does not exist in any contemporary EU country.

The comparison between Israel and the EU countries (as described and analyzed by Joppke) clearly shows that the EU is liberal and Israel is not liberal in its laws and practices. The EU's laws on immigration and naturalization are motivated only partially by ethnicity while those of Israel are mainly determined by ethnicity and ethnicity-based fears. On the other hand, Israel is more ideologically multicultural than most EU countries because it specifically recognizes the Arabs as a religious, linguistic and cultural (but not national) minority and provides them with a separate, state-financed, compulsory educational system in Arabic.

On the other hand, the EU might move in Israel's direction when it feels that its Western civilization, national cultures and internal security are more significantly threatened by non-European immigrants and their descendants. Joppke is, however, right in observing that the EU's liberal tradition and legal framework are a shield

against imposing sweeping restrictions on non-European immigrants and their descendants even if the states and majority populations of the EU will experience a clear increase in threats. Israel's second-rate democracy does not have these built-in liberal immunizations.