

# **BRIDGING CIVIC NATIONALISM, COSMOPOLITANISM AND CONSTITUTIONAL PATRIOTISM – IN THE DEFENCE OF CITIZENSHIP TESTS**

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In this article I defend a state's right to introduce mandatory citizenship tests for future citizens. By critically engaging with the approach of the duty to allow harmless migration developed by the political philosopher Anna Stilz, I argue that she bridges the controversial theories dealing with the moral justification for migration, civic nationalism and multiculturalism, by proposing to balance the state's obligations towards would-be migrants and its citizens. Central in her argument is the claim that a state has the conditional right to exclude migrants in situations in which their arrival would cause significant harm for its citizens. I apply Stilz's theory to the issue of citizenship tests and argue that her arguments entail a new form of justification of citizenship tests, as these will foster political participation, can serve as a means to preserve social cohesiveness and hence prevent harm for the state. As Anna Stilz develops guidelines to answer the question of which duties future citizens have to fulfil towards their host state and argues in favour of fostering commitment to political and social commitment by migrants, she contributes to a specification of constitutional patriotism. In a short case study, I examine the procedure and justification of the Dutch citizenship test and demonstrate that the decisive advantage of Stilz' theory lies in the fact that it enables a more accurate evaluation of the moral justifications of the intentions of naturalisation law.

In countries with a high immigration rate not only the question of how to govern immigration but also the issues of collective identity and social cohesion become significant. These aspects are especially relevant for the issue of naturalisation. A number of states have introduced mandatory citizenship tests for immigrants who want to gain the status of a citizen (Etzioni, 2007). Such a measurement has initiated a controversial debate in political philosophy. There exist a variety of theories dealing with the question of under what circumstances a state may restrict immigration. Two of the main contrasting ones are civic nationalism and multiculturalism. The first one argues that a state has the moral right to exclude migrants on grounds of collective self-determination, as a state needs to represent its national culture and therefore has the unilateral right to determine the membership to its political community. Conversely, theorists of multiculturalism claim that a state is obliged to respect individuals' right of migrating and move across borders. Multiculturalists also stress that the state itself and its citizens can directly benefit from supporting its minority cultures and groups in a society. The political philosopher Anna Stilz has worked on the issue of migration and, in a yet unpublished book chapter, she develops a new approach of balancing the rights of migrants and citizens of the host country by disentangling the conflicting obligations the state has towards both groups (Stilz, 2019). Central in her argument is the claim that a state has the conditional right to exclude migrants in situations in which their arrival would cause significant harm for its citizens.

The purpose of this essay is to apply the presented theories to the issue of naturalisation and citizenship tests. I will be analysing Stilz's claims in the light of the theory of constitutional patriotism which justifies the state's obligation toward non-citizens. As the legitimization of the state is based on democratic institutions, (future) citizens need to comply with its procedures. Future citizens might be obliged to demonstrate their ability and willingness to accept these rules in the form of a citizenship test, so as to ensure the stability of a political community. Thus, it can be argued that citizenship tests can serve as a means to preserve social cohesiveness and prevent harm.

This essay makes two arguments. First, I will argue that Anna Stilz's theory of a state's right and duties concerning immigration is applicable to the issue of citizenship tests. Second, I will argue that her argumentation entails a new justification of citizenship tests, as these will foster political participation and hence prevent harm for the state.

This essay will be structured as follow. First, I will summarise the arguments from Stilz's paper in relation to the theories of both civic nationalism and multiculturalism. In the second chapter, I will briefly explain why her claim of harmless migration is applicable to the issue of citizenship tests. In the third chapter, I will refer to the theory of constitutional patriotism (hereinafter in Jürgen Habermas' terminology called *Verfassungspatriotismus*) which Stilz has critically reflected and reinterpreted. In a short case study, the procedure of citizenship tests in the Netherlands and its justification in light of both *Verfassungspatriotismus* and civic nationalism is presented in the fourth chapter. I will demonstrate that Stilz's approach of harmless migration entails an argument in favour of citizenship tests regarding the aspect of political participation which leads to the prevention of harm. In the sixth and final chapter the arguments of this essay will be summarised and critically reflected upon.

## 1. Stilz's migration model

In her paper Anna Stilz (2019) establishes a wider framework aiming to answer the question if a state has the moral right to exclude migrants. It is worth noting that Stilz focuses on a group of migrants framed as "opportunity migrants" meaning those individuals seeking better economic opportunities who do not fall under the category of refugees (Stilz, 2019, 1). Stilz argues that a state has a "conditional right to exclude migrants of this sort" (ibid., 1), as the exclusion of would-be migrants can be only justified in cases where they would cause significant harm to the receiving state. Significant harm is defined as "setbacks to certain legitimate moral interests that, as a matter of justice, ought to be protected." (ibid., 2) In her chapter, Stilz moves then to elaborate on the question of how to justify migration restrictions on the basis of various conceptions of significant harm.

Her approach is to balance the competing interests of citizens with those of would-be migrants. In balancing these conflicting claims, a state ought to show partiality to the former group over the latter, as there is no reason for equal obligation to both groups. Stilz's main thesis is that a state has the duty to allow harmless migration as long as restrictions of immigration do not cause harm for would-be migrants with legitimate motivations for migration (ibid, 2f.). She writes,

"Migrants self-determination interests help to explain why states do not have a discretionary right to closure. (...) In deciding whether or not to allow

migrants to settle, I think it is permissible for the state to consider the effects of their settlement on its prior inhabitants to whom it has special duties.” (ibid., 42)

In conclusion, the state is obliged to conduct cost-benefit analyses of potential ramifications of migrants’ arrival in relation to the interests of its inhabitants.

Anna Stilz defends her position by a dialectal approach of presenting the weaknesses of the two main political theories in normative migration research – civic nationalism as well as cosmopolitanism. The theory of civic nationalism focuses on the principle of collective self-determination arguing that a functioning state requires full correspondence between the positions of residents and their government. This includes the right of full control over the membership of a political community. The political philosopher David Miller claims that a society prefers to promote and protect its natural culture which is reflected in many policies as well as the political institutions themselves and therefore guarantees social stability (Miller, 2016, 63). It follows that a state has the duty to protect its national cultural and political institutions and might restrict migration if the stability of these institutions is endangered by the presence of would-be migrants. Stilz rejects this point of view, as a state should act neutrally in a pluralist society (2019, 11). This requires equal treatment of all groups in a society and the prevention of granting privileges to one cultural group, may this even be the dominant one. Furthermore, in most cases, the admission of migration will not affect the residents’ ability to be governed by institutions reflecting widely shared values and commitments (ibid., 12).

On the other hand, representatives of cosmopolitanism claim that freedom of migration constitutes a universal human right. The core idea of this theory is that the practice of this human right includes cross-border movements. However, this perspective does not account for possible ramifications for citizens of a state. This is why Stilz rejects this claim of freedom as too broad (ibid., 32). Furthermore, she introduces a qualitative category. Following John Rawls, she distinguishes between basic liberties and motivations that cause no harm. Stilz refers to the reasons for migration defining different levels of urgency (ibid., 34-35). For example, migrants with an interest in pursuing educational opportunities that do not exist in their home country have a stronger claim for relocation than migrants simply seeking a better

economic status. An objection to this position is that migrants actively and willingly choose to live in another country whose institutions represent their values in a better way. Why should a state then not be equally responsible for would-be migrants? Stilz argues that it is permissible for a state to consider the effects of migrants’ settlement on its inhabitants due to a state’s right of collective self-determination (ibid, 42).

Stilz claims that both would-be migrants and residents have justifiable interests, so these interests need to be balanced in the migration law. “States should take greater responsibility for the fates of people within their boundaries, and less responsibility for the fates of people elsewhere. Otherwise they would disregard weighty claims to collective self-determination.” (ibid., 41)

A state is responsible to detect benefits and burdens of immigration for its residents. If the costs outweigh the benefits, a state needs to restrict migration to avoid harm. This also means that residents have to accept some of the costs of migration (ibid., 44). Stilz does not answer the question of how this calculus is supposed to work in practice. Rather she merely names some ideal as well as non-ideal reasons for restrictions, while requiring that governments publicly justify restrictions in migration law (ibid., 46).

## **2. Applicability of Stilz’s model to the issue of citizenship tests**

The arguments presented by Stilz concern the restriction of migration in general. However, as she sets permanent settlement of opportunity migrants as a necessary condition for defining possible harm for residents, the issue of naturalisation becomes relevant. It can be assumed that migrants with the right of permanent settlement would eventually want to gain full rights as citizens, i.e. the right to vote in order to be able to influence policies they are affected by. Thus, a state’s moral rights to restrict the right of naturalisation need to be explored and evaluated.

The theories discussed by Stilz have been widely applied to the institution of citizenship tests. The political philosopher Will Kymlicka, a representative of multiculturalism which is a theory closely connected to cosmopolitanism, claims that no state acts culturally liberal, as specific habits and traditions are widely used in every-day life. The one-sided promotion of a dominant culture would inhibit individuals’ opportunities for a fulfilled

life. A state should not only respect but promote minority groups' practising of their cultural life (Kymlicka, 1995). Therefore, we can assume that multiculturalists disapprove citizenship tests, as this would restrict the immigrants' freedom of practising their cultural habits<sup>1</sup>.

Stilz also refers indirectly to the theory of *Verfassungspatriotismus* which considers a state's constitution as the guiding principle for the integration of future citizens. Her approach of harmless migration is closely intertwined with this theory and demonstrates the significance of her thesis for the question of the duties of both would-be citizens and the state for naturalisation. In this respect, this essay contributes to a refinement of Stilz's model by referring to some practical considerations of harm.

### 3. Stilz's interpretation of *Verfassungspatriotismus*

Jürgen Habermas considers the constitution as the central institution for the creation and definition of state authority and as the only legitimate source of national collective identity (Habermas, 1995, 13). The establishment of a constitution is considered as a new political order of freedom entailing new forms of political and societal institutions. More broadly, a constitution structures the political decision-making process and guarantees rights and duties of the individual in a society. As such, it can be assumed that a constitution ought to be accepted and respected by every citizen on rational grounds.

"These rights, which are meant to guarantee to everyone an equal opportunity to pursue his or her private conceptions of the good, have an intrinsic value, or at least they are not reducible to their instrumental value for democratic will-formation." (ibid., 17)

As a constitution consists of intrinsic values, it requires citizens not only to respect the rules of law but rather asks them to implement the values of the constitution into political virtues. Citizens need to act accordingly to the constitutional rights in a public-interest oriented manner. In this respect, the constitution expresses an open and plural society in which a basis for mutual co-existence needs to be established by the citizens themselves. This difficulty is best expressed by the Böckenförde

<sup>1</sup> It is in fact debatable if multiculturalists necessarily disapprove citizenship tests, as they regard recognition as essential for social cohesion. However, to ensure clarity, this theory will not be discussed further.

dilemma (1991, 60). The establishment of a constitution necessitates the citizens' intrinsic motivation to value freedom. What are the sources of the impetus for citizens to establish the constitution in the first place?

Civic nationalists reject Habermas's position as too abstract. They regard the hypothetical identification with democratic procedures as not sufficient. David Miller claims that loyalty to a constitution alone "does not provide the kind of political identity that nationality provides" (1995, 163). The socio-moral motivations for the establishment of the constitution in the first place are founded on the basis of a shared sense of nationalism. Habermas does not provide a consistent answer to this critique but refers to a nation-specific consciousness. Therefore, civic nationalists claim that a nation's cultural background, not the constitution, is the central source for a collective identity according to *Verfassungspatriotismus* (Michelman, 2001). Following this perspective, the question of the core of collective identity still remains unanswered.

Stilz defends the Habermasian view against this critique. In her book "Liberal Loyalty" (2009), Stilz develops an alternative interpretation of *Verfassungspatriotismus* by focussing on "shared intentions" of citizens as a guiding principle for collective identity. Developing a philosophy of collective action, she claims that individuals' shared intentions to achieve a certain goal explain the "political allegiance" of citizens in a state. As all moral agents would share the intention of peaceful coexistence and the realisation of justice, these goals require participation in a democratic state. By simply participating in the socio-political life, individuals cooperate with their fellow citizens and establish a coherent political community. This is why members of a state have obligations of loyal commitment to the effort of establishing free and democratic institutions (Stilz, 2009, 175f.).

The abovementioned approach is particularly relevant for the issue of immigration. Residents of a given state might share the goal of democracy but are denied their right by their current government. Stilz is not a cosmopolitan, she believes in the nation state's right of self-determination (ibid., 210), but her claim of shared intentions is the source for her claim that a state is obliged to generally consider the interests of non-citizens in respect to the right of its own citizens.

"No theory of constitutional patriotism can underwrite ethnic or nationality preferences in immigration policy (...) or preferences for skilled or wealthy immigrants. (...) So a full account of constitutional patriotism will require a number of prescriptions for the reformation of our practices."

(ibid., 208)

This leads to questions to what extent future citizens need to comply with the host state's institutional system and if citizenship tests are a justifiable tool to prove the would-be citizens' ability and willingness to do so.

#### **4. The Dutch Citizenship Tests**

To be considered a Dutch citizen an applicant must have lived in the Netherlands for at least five years without having committed severe crimes. The citizenship test comprises several elements. In a practical test the language proficiency is tested. By phone and in a computer-based test questions on the Dutch societal and political system as well as on practical issues in every-day life need to be answered. Furthermore, all would-be citizens need to attend a naturalisation ceremony after successful application (de Leeuw/van Wichelen, 2012).

Given the structure of the test, knowledge of the language and the political system, as well as the familiarity with rights and duties as citizens, are the intended conditions would-be citizens have to meet in order to be considered able to participate sufficiently in Dutch society. As the norm of participation is a central principle of the Dutch citizenship test, it can be argued that this process is justified by the theory of *Verfassungspatriotismus*. By learning for the test, future citizens are forced to critically engage with a nation's societal and political system. With a knowledge test for naturalisation this commitment is proved. The duty of attendance for the naturalisation ceremony entails a further commitment for future citizens, as they need to publicly consent to the constitution, although no official oath is required.

The introduction of the Dutch naturalisation law was justified to ensure that would-be citizens would be made "aware of Dutch values and keep to the countries norms" (Joppke, 2007, 8). In her study, based on a content analysis of test questions, Michalowski compared the structure of several citizenship tests. In the Dutch case particular importance is given on questions concerning traditions and the public conception of moral values. About 10% of all questions refer to a how-to-guide on social conventions. About a fifth of the correct answers is not based on facts but on a conception of what is good. In the United States, for example, citizenship tests solely ask knowledge-based questions on the political system from a pre-published catalogue (Michalowski, 2011, 760-762). Furthermore, in the Dutch case, lower rates of passing the test, higher application

fees as well as lacking official support for exam preparation (Joppke, 2007) can be interpreted as a clear indication to generate practical as well as motivational obstacles for potential applicants.

The essential purpose of the Dutch citizenship test seems to be that of testing compliance with cultural conventions and behaviours in everyday-life. Thus, a certain cultural perception is supported. A central part of the test is a film in which limits of freedom in the Netherlands are explained, e.g. female circumcision or honour killings. Furthermore, certain cultural values such as gender equality or sexual freedom are promoted (de Leeuw/van Wichelen, 2012). Therefore, the test is framed in a way in which would-be citizens are expected to actively assimilate in the receiving society a cultural as well as moral sense. Therefore, a representative of *Verfassungspatriotismus* would reject these measurements, as the purpose of the test does not appear to motivate political participation of future citizens. On the other hand, a civic nationalist would regard this test structure as appropriate, as the state unilaterally determines the testing procedure in which future citizens have to show their ability and willingness to adopt to a clearly defined set of principles regarded as necessary for mutual co-existence.

#### **5. How would Stiliz evaluate the Dutch citizenship test?**

After presenting the structure of the Dutch citizenship test and evaluating the intentions of its introduction in the light of the theories of civic nationalism and constitutional patriotism, Anna Stiliz's theory will now be applied to the case. The justification of the chosen design of the test in the Netherlands provides interesting insights into the premeditated prevention of harm to the citizens. Would Stiliz accept these restrictions in the naturalisation law in the sense of a fair balance of the obligations of a state towards would-be citizens and its citizens? On the basis of conceptions of significant harm Stiliz discusses, a well-founded assessment on which accounts of citizenship tests are justifiable according to her theory is to be made. Following the analysis and considerations above, two justifications of the Dutch test design emerge as being of particular importance. First, the fact that the Dutch citizenship test creates barriers for immigrants with lower education and lesser financial means might be defensible in Stiliz's point of view. As she claims that a state has special obligations to the domestic poor, the protection from economic competition among the worst-off in society is an ideal reason for restricting migration.

But the state has to argue why the society does not benefit from these new citizens overall, as this might entail situations in which the worst-off in a society suffer from immigrant admission (Stilz, 2019, 26).

Second, the framing of the Dutch citizenship test in the sense of clearly promoting a dominant culture needs to be analysed in the light of social cohesion. Civic nationalists argue that social cohesion in a society can only be guaranteed if future citizens identify with the society and actively participate in its social life (Miller, 2016, 161). Stilz rejects this point of view in an institutionalist sense, as she denies the viewpoint that through migration institutions are malfunctioning (Stilz, 2019, 29). Stilz names ideal reasons for restricting migration based on political costs (e.g. protection of national security) as well as on economic costs (e.g. protection of welfare state) (ibid., 44). Interestingly, she refers to social cohesion as a non-ideal reason. This position does not appear particularly convincing, as one could easily argue that the lack of social cohesion leads to further political and economic costs for a state. If future citizens are less successful in educational or economical terms due to the lacking motivation of adapting to the host state's society, this might cause higher financial support for these groups by the state. The persistence of one's own cultural and social practices can lead to would-be citizens not actively participating in society. This may result in a loss of legitimacy for naturalisation among the local population, which would increase the political costs of maintaining an open immigration law. Stilz would respond to that critique by referring to the individuals' shared intentions which necessarily lead to a democratic participation. This is why a sufficient degree of social cohesion in a society can be guaranteed. However, the criterion of social cohesion as a non-ideal reason for restricting migration in Stilz' theory needs to be further clarified.

The decisive advantage of Stilz' theory lies in the fact that it enables a more precise evaluation of the intentions of a naturalisation law. The question to ask is how a future citizen ought to be required to adjust to shared intentions of a society before becoming a citizen of that state. In general, a mandatory citizenship test is defensible in Stilz' point of view, as it can lead to cost reduction and the avoidance of harm since it fosters the commitment to these intentions. The focus of the test ought to lie on encouraging future citizens to participate both politically and socially – similar to the position of constitutional nationalists.

## 6. Conclusion

In this paper, I have argued that Anna Stilz's theory of a conditional right to exclude migrants is applicable to the issue of citizenship tests, as this policy requires the state to balance the interests of both would-be citizens and residents. The concept of significant harm obliges the state to limit the opportunities for naturalisation if the possible ramifications for the residents outweigh the expected benefits. With the introduction of the tool of cost-benefit analyses, Anna Stilz contributes to a specification of *Verfassungspatriotismus* as she develops guidelines to answer the question of which duties future citizens have to fulfil towards their host state. Based on this perspective the rights and obligations for the state can be derived. However, the practical difficulties of this approach lie in the ex-ante detection of possible harms for residents. The case of the Dutch citizenship test shows that a state can simply declare that certain types of costs due to naturalisation are harmful. It is necessary that a state publicly justifies how exactly restrictions on immigration law can avert harm to its citizens. Therefore, more research is needed on how both future citizens and residents ought to be included in the democratic decision-making process on migration and naturalisation policies.

All discussed theories centre on the question of under which conditions migrants are socially integrated to become citizens of their host state. The concepts discussed focus on different aspects of the meaning of integration. Anna Stilz attempts to deliberate all these approaches. Her broad model of migration regulation very well represents very well the usual trade-off of normative theories. They allow a variety of implementation options, which must be justified. The choice of an option must be considered carefully by balancing all interests.

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