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Title	Politics and legislation in citizenship testing in the United States
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Source	<i>Annual Review of Applied Linguistics</i> , 2009(29), 37-48
Published by	Cambridge University Press

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Antony John Kunnan (2009). Politics and legislation in citizenship testing in the United States. *Annual Review of Applied Linguistics*, 2009(29), 37-48 doi: 10.1017/S0267190509090047

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### **3. POLITICS AND LEGISLATION IN CITIZENSHIP TESTING IN THE UNITED STATES**

**Antony John Kunnan**

Politics and legislation have been entangled in language planning and policy in the United States since 1776. Regulations for immigration and citizenship (naturalization) have been in place since the Naturalization Act of 1790. This article examines the history of immigration and citizenship legislation that started with this act up to the more recent act of 1952, which included regulations requiring ability in English language and knowledge of history and government. It concludes with brief examinations of the old and redesigned Naturalization Tests.

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#### **Introduction**

Politics, legislation and social attitudes became closely entangled in language planning and policy in the United States soon after its independence. In the last two centuries, political views and legislation regarding immigration and citizenship have swung from libertarian to authoritarian communitarian as different political parties have come to power and made their views known publicly. The debates have been mainly about language and civic nationalism. In terms of language, on the one hand, many political thinkers have argued for a common language or a public monolingualism (see Huntingdon, 2005; Schlesinger, 1992), because they believe a bilingual or multilingual country could result in ghettoization and social immobility (Pogge, 2003). On the other hand, others have stressed the importance of multiculturalism and individual language rights (Kymlicka, 1995; Kloss, 1977) and tolerance-oriented language rights (May, 2005, 2008). From the standpoint of civic nationalism, there have been voices in the style of Randolph Bourne in 1916 who have called for a “Transnational America,” envisioning a country where Americans would have strong emotional ties with their home countries as “rooted cosmopolitans.” On the other hand, there are proponents of a Rooseveltian style of civic nationalism like Kristol and Brooks who have reminded new citizens that “citizenship entails more than just voting, and the business of America is more than just business” (cited in Pickus, 2005, p. 150).

Social attitudes toward immigration and citizenship too have swung from one extreme encapsulated in the words of Emma Lazarus on the pedestal of the Statue of Liberty, "Give me your tired, your poor, your huddled masses yearning to breathe free" (Kennedy, 1964, p. 45), to the other extreme of indefensible racial intolerance, bigotry, fear, and hatred variously against the French, Irish Catholics, Jews, southern and eastern Europeans, Chinese, Japanese, and Asian Indian immigrants.

All of these together have played a role in formulating immigration policies of successive governments, which have constantly reconsidered and changed these policies to suit their particular positions. These policies have also found their way into the requirements for citizenship (naturalization), including the testing of English language ability and knowledge of U.S. history and government. The overall purpose of these requirements, by government and mainstream accounts, is that they will help bring about "civic integration," "political allegiance," "social cohesion," and/or "social harmony." The main focus then in this article is twofold: the politics, legislation, and attitudes regarding U.S. citizenship and the requirements and testing of applicants for U.S. citizenship.

### **Politics and Legislation Toward Immigration and Citizenship**

In the last 230 years, the concept of American citizenship in terms of politics, legislation, court rulings, and social attitudes has swung like a pendulum, sometimes favoring inclusion and tolerance, sometimes exclusion and self-righteousness. This brief review traces how these factors contributed to the current status of English language and U.S. history and government requirements for immigration and naturalization.

#### 18th Century: Nativist Attitudes and the First Naturalization Acts

At the founding of the United States, varying concepts of citizenship emerged between two political groups: the Federalists, who promoted a strong nationalist government, and the Anti-Federalists, who campaigned for a less powerful role of government. George Washington emphatically declared in 1783 that America "was open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions." Although Washington's statement came a few years before the Naturalization Act of 1790, it looks as though the founders were untroubled by the presence of slavery of Blacks and Native Americans as U.S. citizenship was restricted to "free white persons." This racial terminology was used to exclude Blacks and Native Americans, flying in the face of the much-quoted line from the U.S. Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal." The Naturalization Act of 1790 (1 Stat. 103) provided

that any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the States wherein he shall have resided for the term of one

year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the Constitution of the United States.

According to Pickus (2005, p. 15), there was also disagreement regarding “how to turn new immigrants into the proper kinds of citizens. What kind of requirements for officeholders or immigrants wishing to be naturalized would best ensure their loyalty and their ability to understand America’s civic principles and participate in its public life? Was the simple fact that the immigrant chose to come to the United States sufficient, or should there be a required amount of time before naturalization, variously set between 3 and 14 years? Or would newcomers never be trusted fully and be barred from holding elective office?”

In 1795, Congress repealed the 1790 Act, raised the residence requirement for citizenship to five years, and required a declaration of intention to seek citizenship at least three years before naturalization. Three years later, fearing foreign influence, Congress passed a set of four laws called the Alien and Sedition Acts. These laws gave the president enormous powers to move against enemies and potential enemies in the country and made the path to naturalization more difficult for immigrants.

#### 19th Century: Sifting Immigrants

Several new acts were passed over the decades in the 19th century, with the addition of new provisions including the requirements of good moral character and allegiance to the Constitution and the exclusion of criminals and prostitutes from admission. The most notable change came in 1865 with the 13th Amendment to the U.S. Constitution abolishing slavery. Following this amendment, Blacks were recognized as citizens in the 14th Amendment in 1868. This amendment overturned the U.S. Supreme Court’s infamous *Dred Scott v. Sandford* ruling that people of African descent, whether or not they were slaves, could never be citizens of the United States, and that Congress had no authority to prohibit slavery in federal territories. Yet a little more than a decade after expounding the 14th Amendment’s guarantees of equal protection, due process and consent, Congress reverted to a more restrictive immigration policy. Responding to a national xenophobic clamor for the exclusion of Chinese, Congress passed the Chinese Exclusion Act of 1882. This act included several over-restrictive provisions including the suspension of immigration of Chinese laborers (merchants, teachers, students, and tourists were exempt) to the United States for 10 years and prohibition of Chinese from becoming citizens through the naturalization process.

#### Early 20th Century: Coercion and the Literacy Bill

Language criteria for naturalization were added for the first time in the 1893 Act, when Congress added *the ability to read and write* (but not specifically in English), and in the 1906 Act, Congress required applicants *to sign their petitions in their own handwriting and speak English*, as well as to demonstrate attachment to the principles of the Constitution.

In 1896, Congress passed the *literacy test bill*, promoted by the Immigration Restriction League (1915), which wanted to have a barrier in place to restrict “undesirable immigrants” that were coming to the United States from southern and eastern Europe (mainly from Italy and eastern Europe) and threatening the “American way of life.” The test was expected to assess the ability of applicants for immigration to read at least 40 words in any language as a requirement for admission to the United States, but this bill was vetoed by President Grover Cleveland. Around 1906, immigration examiners began to develop questions on the understanding of the Constitution; this was a precursor to the current knowledge of history and government test (see Pickus, 2005 for examples).

In 1917, wartime hysteria fed American xenophobia, and Congress passed the *literacy test bill* again, overriding President Woodrow Wilson’s veto this time. This racially oriented bill (with an Asian barred zone for immigration) became the first literacy requirement that required potential citizens and immigrants over 16 years of age to read at least 30 words and not more than 80 words in ordinary use in any language. The test resulted in effectively restricting immigration of Italians, Russians, Poles, Hungarians, Greeks, Asiatics, and Irish Catholics.

The story of Ms. Friedman, a 23-year-old Yiddish-speaking native of Poland, who arrived in New York on March 17, 1923, best captures how the literacy test was put into practice:

(She) was asked by the (immigration) inspector: “Do you read any other language than Yiddish?” “No,” she replied. As part of her entry examination, her literacy was then tested using a printed slip in Yiddish, the English translation of which was: “Blessed is the man who walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful.” Although she was able to read a large majority of the words, she could not explain the meaning of them. Ms Friedman was denied admission. (cited in Hing, 2004, p. 51)

A variant of the literacy test in English was also used in both northern and southern states to determine eligibility for voting, effectively denying voting rights to large numbers of African Americans in a number of southern states and disenfranchising a million Yiddish speakers in New York (Del Valle, 2003). Decades later, the Voting Rights Act of 1965 suspended the literacy test in all states; in 1970, Congress extended the prohibition of the literacy tests and in 1975 made the ban indefinite and national in scope (Del Valle, 2003).

This hysteria culminated in 1924 with the annual quota of 150,000 immigrants from European countries (imposed for the first time), which clearly discriminated against southern and eastern Europeans. Spolsky (1995) reported that the act “permitted special visas to foreign alien whose only purpose was to study in the U.S. in a school, college, or university approved by the Secretary of Labor” (p. 55). This loophole resulted in many applicants from nonquota immigrant students

seeking admission to U.S. institutions and the need for a test of English language ability. According to Spolsky (1995), the College Entrance Examination Board developed a test for use starting in 1930, but this test did not survive beyond a few years due to the economic crisis of the 1930s. However, as the first U.S. institutional test of English for foreign students, it was a precursor to the development of the Test of English as a Foreign Language (TOEFL), which took place three decades later.

#### Mid-20th Century: English Language and History and Government requirements

After World War II, the Immigration and Naturalization Act of 1952 enshrined both the English language and the history and government requirements for citizenship; they were also known as the educational requirements. The act required applicants for citizenship to demonstrate their ability to *speak, write, and read English and to demonstrate their knowledge of U.S. history, principles, and form of government*. In the words of Del Valle (2003), “in passing the English literacy provision, Congressmen clearly linked the inability to speak or understand English to political suspicion” (p. 93). Specifically, in the language of the Immigration and Nationality Act (INA), § 312, the applicants for naturalization are expected to demonstrate

(1) an understanding of the English language, including an ability to read, write, and speak words in the English language: provided, that the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and

(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the U.S. (INA, §312, 8 U.S.C. 1423)

The Immigration and Nationality Act of 1952, also known as the McCarran-Walter Act, continued to restrict immigration, allowed the government to deport immigrants or naturalized citizens engaged in subversive activities, and allowed the barring of suspected subversives from entering the country. The Act was also used over the years to restrict members and former members and associates of the Communist Party from entry. This act reflected the McCarthy era (mid-1940s to late-1950s), during which Senator Joseph McCarthy was able to create fear among the citizenry regarding communists through the House Committee on Un-American Activities, but it did not test political beliefs for citizenship.

In the 1960s came the most significant change in immigration laws: the Immigration and Nationality Act of 1965 abolished the national-origin quotas that had been put in place in 1924, treating all countries as equal regardless of population or desire of residents who wanted to immigrate to the United States. Decades later the Immigration Reform and Control Act of 1986, which strengthened the educational

requirements for naturalization, also offered amnesty to about six million undocumented residents. As a result of this legislation, the flow of legal permanent residents has remained steady: around 1.1 million for each of the 2005, 2006, and 2007 years (Homeland Security, 2008).

Nativist attitudes to immigration and citizenship have resurfaced in the last decade with the passing of the USA Patriot Act of 2001. The new measures have included the curtailment of many civil liberties and tightening of visa regulations. But despite this, so far there have been no additional educational requirements for immigration and naturalization making the U.S. more accommodating towards citizenship/naturalization than some European countries (see Shohamy and McNamara, 2009 for comparisons). This accommodation can also be seen in the total number of persons naturalizing for each of the 2005, 2006, and 2007 years which has also remained steady, on average around 650,000 (Homeland Security, 2008).

## **Testing for Citizenship**

### Late 20th Century: The Old Naturalization Test

The United States enforced the educational requirements for naturalization in the Immigration and Nationality Act, §312, in different ways over time. Starting in 1952, the requirement was informally enforced by immigration examiners. The idea of a standardized test was only raised when aliens seeking citizenship through the Immigration Reform and Control Act of 1986 were required to meet educational requirements. It was first proposed in the mid-1980s, although a test was not required to satisfy the Section 312 statute. Its main purpose was to assess an applicant's ability in English language and knowledge of U.S. history, principles, and form of government. At first, in 1991 the INS contracted with six private testing services to administer the standardized test. By 1996, these organizations operated about 1,000 testing sites through subcontractors. This arrangement was stopped and contracts canceled after an episode of the *20/20* television program exposed testing fraud. The test then reverted to the control of the INS, and it has been part of the naturalization process ever since.

The Naturalization Test had three sections in the English language part: (1) Speaking: Informal interaction took place between the examiner and the applicant regarding the naturalization paperwork (N-400 form, etc.) or other topics; (2) Reading: The applicant was to read one sentence; (3) Writing: Applicants were expected to write one sentence from about 100 sentences provided as dictated by the examiner. The applicant was given three chances. The history and government part was composed of 10 to 12 open-ended questions on U.S. history and civics selected at random from a hundred in the *Federal Textbooks on Citizenship*. Six correct answers were required to pass the test.

There were a number of problems with the test: (1) Examiners used different sentences for reading and writing. (2) Examiners used different content for listening

and speaking; some used history and civics test questions (although these questions could be answered in the applicant's first language); and some used questions about daily life, current events, sports, to talk to the applicants informally. (3) The level of difficulty of the sentences for the dictation test varied in topic, length, complexity. Some sentences were three words; some were 10 words ("I work very hard"; "Oath of Allegiance"; "Martha Washington was the first first lady in the United States"); and some words were more difficult to spell (allegiance, president, television). (4) Applicants did not know what constituted a pass or a fail in the dictation test and what constituted a pass or a fail in the reading or speaking test. (5) The history and government test questions encouraged memorization of discrete facts with no necessary understanding of the material.

In terms of general public opinion, too, the test was seen as meaningless and seen to hinder citizenship applicants. Pickus (1998, p. 25a) concluded that "questions deal with rights and freedoms but none speaks of its obligations . . . civic knowledge does not make one a good citizen—native-born Americans do not have to take any such test." Etzioni (2007, p. 355) summed it up with this: The "test hinders those who do not speak English and favors immigrants from English-speaking countries and persons who can afford extensive English education prior to their arrival, or once they are in the U.S."

In addition, very little public domain data (or a technical manual) was available regarding the quality of the tests; thus, there was no way to verify many of these arguments with empirical analysis. Del Valle (2003, p. 113) reported only one study: "A 1998 study commissioned by INS found that 34% of all denials (based on of 7,843 petitions) were because of a failure on the language and civic test. . . . the number may even be higher since applicants who fail the test initially can retake the test and are considered 'continued.' 25% of those continued are on account of failure on one of the tests."

### Early 21st Century: The Redesigned Naturalization Test

Given the general dissatisfaction with the old Naturalization Test, the test was ripe for redesign. As early as 2002, a redesign plan was underway with the first contract issued by the new U.S. Citizenship and Immigration Services office (USCIS, which replaced INS) to a private company. Soon, the project was taken away from the private company and handed to the Board of Testing and Assessment (BOTA) at the National Research Council. The BOTA recommended a multitiered advisory structure and a technical advisory panel to oversee the project and to create a plan for test development. Instead, in 2005 the USCIS announced changes: The redesign was shifted from USCIS to the Office of Citizenship (OoC), the USCIS contract with BOTA was terminated, and another private company was given the contract with the new target date of January 2007 for completing the project.

Content. In December 2006, the USCIS announced that it had worked with community-based organizations and other stakeholders to help ensure that the redesigned Naturalization Test and the testing procedures were developed and

implemented in a fair and consistent manner. USCIS also concluded that the current format would be continued for the English language testing. Thus, the format would consist of the following: (1) Applicants will have three chances to read and write a sentence in English based on a vocabulary list (rather than actual sentences as in the current test). (2) Reading and writing sentences will cover U.S. history and civics; and applicants will be asked to read a sentence and then write the answer dictated to them. (3) Applicants' answers to questions normally asked about their application (N-400) during the interview will form the speaking test. (4) 144 new study questions on U.S. history and government will be available; the number is to be reduced to 100 for the pilot test; and applicants will have to answer six out of 10 questions to pass this requirement. The OoC also released information regarding the English test: vocabulary lists for reading and writing and speaking tasks with the N-400 application.

The USCIS also stated that the Redesigned Naturalization Test was piloted in 10 local USCIS offices in 2007 with about 5,000 voluntary naturalization applicants. Further, they reported that the test would address the concerns raised with the old test as test items were analyzed for their cognitive and linguistic characteristics to see if they met one or more of the following criteria: Does the item involve critical thinking about government or history? Does the item offer an inferred or implicit concept of government, history, or other areas? Does the item provide a geographical context for a historical or current event? Does the item help the applicant better utilize the system? Is it useful in their daily lives? Does the item help the applicant better understand and relate to our shared history?

Problems. A few problems have already surfaced. First, several service organizations complained about piloting the test in terms of the site selection, candidate selection, and eligibility. They argued that site selection was not random but based on convenience to district officers, that candidates were not randomly chosen but the candidates were self-selected and therefore lower-ability applicants opted out of the pilot, and therefore the results were skewed with a high passing rate.

Second, judging from the published questions in the history and government part of the test, which now has 100 questions in section on American government, American history, and integrated civics, there is very little difference between the old and redesigned test as memory of facts and figures are still the focus. It is possible that any critical thinking on history and government can only take place in the applicant's native language and not in English. For most citizenship applicants from non-English-speaking countries, English is a new second language, and sophisticated responses that they may have regarding U.S. history and government may not be easy to express in English.

### **The Naturalization Test: Meaningless and Indefensible**

Based on the above descriptions of the test, the Naturalization Test does not and cannot serve any of the purposes of "civic nationalism" or "social integration" for several reasons. First, the test requirement and purpose are both meaningless and

indefensible. The test is a holdover from the 1950s when postwar worries and anticommunist hysteria played a strong role in establishing the requirement through the Immigration and Nationality Act of 1952. This requirement is much like the English literacy requirement that was instituted for immigration and voting in late 19th and early 20th century when there were worries over war, economic problems, and fear of immigrants and potential citizens. In fact, U.S. laws and court rulings finally canceled the literacy requirement for voting, but the English requirement for naturalization has remained.

Native-born citizens are not asked to demonstrate their ability in the English language or U.S. history and government before they receive their driver's license or passport as such requirements. It may be that the Naturalization Test requirement could be in violation of laws against racial and ethnic discrimination, but the courts are reluctant to review citizenship requirements as Article 1, Section 8 of the U.S. Constitution leaves the power to establish rules regarding naturalization to Congress. Further, the 14th Amendment's Due Process clause requires government action to be made on a rational basis in order to avoid arbitrary and capricious state action. The test as it is implemented cannot test civic nationalism or social integration through indirect measures of English language ability and knowledge of U.S. history and government, as these are skills and knowledge but not measures of community participation and activism. In addition, the Naturalization Test is not a requirement for immigration to the United States. Even if we accept the Immigration and Nationality Act of 1952 and the English and U.S. history and government requirement as they stand, there is no constitutional requirement that this should be satisfied through a test. As a result, it's possible that the Naturalization Test could be challenged in court as constitutionally and substantively (from the assessment perspective). This could leave the door open for alternative ways of satisfying this requirement.

Second, in terms of test conceptualization, content and administration, the test is meaningless and indefensible. Both the old and the redesigned test are by all accounts unable to meet the standards or qualities recognized by the language assessment community as necessary properties of assessment procedures (AERA, APA, NCME, 1999; Bachman & Palmer, 1996; Kunnan, 2008). As a result, the Naturalization Test cannot claim that it can assess the English language ability and knowledge of U.S. history and government of applicants for citizenship, as the qualities of test construct, content, administration, scoring and reporting are all questionable. Without publicly available test performance data, one cannot be certain about this; but from anecdotal experience, passing the test hardly means that the required skills and knowledge have been acquired.

Third, in terms of test consequences, the beneficial value to society is really unknown. The level of English language needed to pass the Naturalization Test is not high enough to ensure that citizens could use English in their communities instead of their first languages. All individuals residing in the United States can participate in civic activities and community work without both the required English language skills and knowledge of U.S. history and government (although these skills and knowledge may help). The biggest incentive to learning English is financial, and as a result,

almost all U.S. residents or potential citizens learn English as needed in their preferred occupations.

The low naturalization rates among some communities show that the test is more of a negative than a positive source of motivation. Once applicants have met other requirements for naturalization, the English and U.S. history and government requirement alone stands as a barrier to their dreams of naturalization.

This informal evaluation of the test has revealed deep and wide problems. A more formal analysis using the Test Fairness Framework and the Test Context Framework (Kunnan, 2008) or the Assessment Use Argument (Bachman, 2005) is only likely to show these problems with more clarity. Therefore, I would argue that the Naturalization Test is an undue burden on non-English-speaking immigrants and only creates a barrier for them to acquire citizenship. This requirement and the way it is implemented need to be replaced with a program that would include courses in community colleges, adult or high schools in English language and U.S. history and government, so that immigrants who need such skills and knowledge will have the opportunity to acquire and develop them. This is ideologically a middle-of-the-road position in terms of language rights and civic nationalism: a nation where there would neither be a policy of national monolingualism nor an overt policy of individual language rights and neither advocacy of strong patriotism nor one of overt international cosmopolitanism. In such an American nation, without coercion by tests, all citizenship applicants could gradually learn English and gradually become involved in appropriate civic responsibilities in their communities (see Kunnan, 2009 for discussion).

## **Conclusion**

From this brief review of the political and legislative debates, court rulings and societal attitudes in the last 200 years, the following observations can be made. Nativist and communitarian attitudes, progressive era politics, and restrictive and coercive immigration and citizenship policies have had both direct and indirect effects on the literacy bill for immigration, and voting and the requirements for naturalization.

Thousands of immigrants and applicants for citizenship have suffered under the weight of oppressive laws, court rulings, and hostile communities, but their struggles helped remove most of the race and nationality-based biases through legislation and court rulings, which did away with exclusions based on race and nationality and a literacy requirement for immigration. But while these gains have been made, political leaders and commentators still continue to debate the extent to how inclusive or exclusive or how tolerant or self-righteous immigration and citizenship policy should be, and this will continue to be a concern to immigrants and potential citizens.

The crux of the matter regarding the English language and the history and government requirements for naturalization is whether these tests have in any way been able to promote “civic integration,” “political allegiance,” “social cohesion,” or

“social harmony” among immigrants or whether they have become an irritating formality or a real new barrier to citizenship. In any case, the unacceptable quality of the Naturalization Test suggests that it needs to be abandoned or replaced.

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Pickus, N. (2005). *True faith and allegiance: Immigration and American civic nationalism*. Princeton, NJ: Princeton University Press.

This is a provocative account of civic nationalism and the politics of turning immigrants into American citizens. Pickus presented the emotional debates and controversial decisions that have held sway right from the founding of the United States to the progressive era and to contemporary times. He also argued for a renewed civic nationalism and advances a citizenship policy for the 21st century.

Shohamy, E., & McNamara, T. (Eds.). (2009). Language testing in the context of immigration, citizenship and asylum. *Language Assessment Quarterly*, 6 [Special issue].

This special issue features major articles by Blackledge on a critical analysis of the discursive context in which proposals for language tests for citizenship emerge, Saville on a framework for considering issues involving language tests in the context of citizenship and asylum, Eades on language analysis as a tool in the processing of the claims of undocumented asylum seekers, and de Jong on the development of language tests for immigration and citizenship in the Netherlands. In addition, there are short papers on specific countries by Gysen, Kuijper, Kunnan, Schupbach, Zabrodska, McNamara, Cooke, and Shohamy.

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