

# ARTICLE

## CREATING NEW AMERICANS: THE ESSENCE OF AMERICANISM UNDER THE CITIZENSHIP TEST

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### ABSTRACT

An average of one million people receives U.S. naturalization annually. Understanding the nature of U.S. citizenship—or more particularly, the gatekeepers of U.S. citizenship—is thus crucial. One of these gatekeepers has recently been reconstructed following several years of redesign. In 2008, the U.S. government introduced a new citizenship test that professes to focus on the substantive understanding of fundamental concepts of U.S. history and civics rather than memorization of random trivia, as was tested by the old citizenship test.

This Article is the first to analyze the normative aspects associated with the new U.S. citizenship test and seeks to challenge the test's purpose, subject matter, format, ideology, and justification. It opines that the test has failed to achieve the main goal of the redesign process: to create a more meaningful test. While the test creates “summa cum laude immigrants” in U.S. history and civics, their understanding is still fleeting. It requires new Americans to memorize esoteric issues, such as

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the location of the Statue of Liberty, while ignoring the understanding of important ideas, such as liberty and equal protection.

The manner new Americans are “created” is a political decision. The choices made today are likely to influence society tomorrow. The citizenship test is a great platform to examine these choices. This Article calls for a complete reassessment of the concept of citizenship tests.

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## I. INTRODUCTION

*What is the economic system in the United States? Who is the Commander in Chief of the military? What do we show loyalty to when we say the Pledge of Allegiance? When is the last day you can send in federal income tax forms? Who wrote the Declaration of Independence? What is one thing Benjamin Franklin is famous for? What territory did the United States buy from France in 1803? What did Susan B. Anthony do? Name one of the two longest rivers in the United States. Why does the flag have 13 stripes?*<sup>1</sup>

These are ten out of the one hundred questions that compose the civics portion of the new naturalization test. Knowing less than six of ten correct answers disqualifies the applicant. How many did you know? Are the questions hard or easy? And do they represent random trivia or a coherent theory of Americanism?

Immigrants have ceased to be merely an immigration issue. They shape national politics, influence the economic stability of the country, and redefine its national identity. The law of naturalization acts as the ultimate gatekeeper over the magnitude of immigration and the socioeconomic characteristics of immigrants trying to receive a ticket to “the American dream.” This ticket, as Peter Schuck stresses, is “the most valuable resource that mobile foreigners can ever hope to obtain.”<sup>2</sup> With an average of almost 700,000 people becoming naturalized Americans annually, the question of who receives American citizenship is crucial.<sup>3</sup> This Article focuses on the citizenship test as a case study to explore the current understanding of what it means to become an American citizen and the concept of Americanness that “we” demand “they” embrace in order to become one of “us.” Citizenship tests mirror not only who we think we are, and what kind of nation we want to be, but they also spell out what we want other people to think we are. Few issues are more pivotal to the American future.

What constitutes the nature of Americanness is not a new query. Just prior to the American Revolution, Hector St. John

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1. U.S. CITIZENSHIP & IMMIGRATION SERVS., CIVICS (HISTORY AND GOVERNMENT) QUESTIONS FOR THE NATURALIZATION TEST (2009), available at <http://www.uscis.gov/files/nativedocuments/100q.pdf> [hereinafter 2008 TEST REVISION] (questions 11, 32, 52, 56, 62, 68, 71, 77, 88 & 96).

2. PETER H. SCHUCK, DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE 128 (2003).

3. In the fiscal year 2008, 1,046,539 persons were naturalized. OFFICE OF IMMIGRATION STATISTICS, U.S. DEPT OF HOMELAND SEC., 2008 YEARBOOK OF IMMIGRATION STATISTICS 52 tbl.20 (2009). This is a high growth rate: in the fiscal year 2007, 660,477 persons were naturalized. *Id.* The last decade saw the largest number of naturalizations of any decade in the nation’s history. *Id.* at 51–52.

Crèvecoeur, a French writer who settled in the American Colonies in 1755, considered one of the greatest puzzles of the American society—the essence of being an American:

What then is the American, this new man? He is either an European, or the descendant of an European, hence that strange mixture of blood, which you will find in no other country. . . . *He* is an American, who leaving behind him all his ancient prejudices and manners, receives new ones from the new mode of life he has embraced, the new government he obeys, and the new rank he holds. . . . The American is a new man who acts upon new principles; he must therefore entertain new ideas, and form new opinions.<sup>4</sup>

In Crèvecoeur's view, Americanization is a process of adopting new habits and lifestyles—while leaving behind old manners and customs—and is not based on blood ties or ancestry but rather on a common commitment to representative government and individual freedoms.<sup>5</sup> Peoples of different races and cultures are incorporated into one political body. Crèvecoeur's motto is “[u]bi panis ibi patria”—“where there is bread, there is my homeland.”<sup>6</sup> But the *patria* is not just “bread.” Crèvecoeur emphasizes that a new citizen should act upon contemporary principles, learn the language, and love their new country more than their country of origin.<sup>7</sup>

The concept of Americanism can be explored in different fields and schools. This Article proposes its study through the examination of one of the instruments used to determine acceptance as an American—the U.S. Citizenship Test. The Article seeks to contribute to the understanding of the citizenship test, its historical development, justifications for its use, and the role it plays in the process of becoming an American. This topic, which has long escaped the scrutiny of legal scholars, comes to the fore with the introduction of a new citizenship test. In 2008, the U.S. government introduced a new citizenship test that professes to focus on the substantive understanding of fundamental concepts of U.S. history and civics rather than memorization of random trivia, as was tested by the old citizenship test.<sup>8</sup>

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4. HECTOR ST. JOHN DE CRÈVECOEUR, LETTERS FROM AN AMERICAN FARMER 43–44 (J.M. Dent & Sons Ltd. 1945) (1782).

5. *Id.* at 40–44.

6. *Id.* at 43.

7. *Id.* at 43–48.

8. Laureen Laglagaron & Bhavna Devani, *High Stakes, More Meaning: An Overview of the Process of Redesigning the US Citizenship Test*, IMMIGR. BACKGROUNDER, 1, 5, 12 (Sept. 2008), [http://www.migrationpolicy.org/pubs/BR6\\_NatzTest\\_092908.pdf](http://www.migrationpolicy.org/pubs/BR6_NatzTest_092908.pdf).

The Article proceeds as follows: Part II explores the history and development of the citizenship test. It provides a glimpse into different concepts of Americanism as reflected in the debate over the test and its outcome. The test—originally introduced by anti-immigrant groups as a means to control immigration—became law with the introduction of the civics requirement in 1952.<sup>9</sup> Part II then examines the citizenship test's content and procedure and describes the test's restructuring, which began in 2001 following a critical report of the U.S. Commission on Immigration Reform.<sup>10</sup> It also inquires into the history of the citizenship handbook. The handbook, first developed in 1914, embodied a new idea under which new citizens needed to be “created” and was aimed at the acculturation of immigrants.<sup>11</sup> Part II presents the sociocultural transformation in the image of “good Americans”—and the essence of Americanism—as reflected in the handbook.

Part III argues that the new citizenship test is a “grab bag” with no underlying theory<sup>12</sup> and provides a normative analysis that assesses the test according to: (a) purpose; (b) subject matter; (c) format; (d) ideology of those who formulated it; and (e) justification. Part III contains five claims. First, the test has largely failed to achieve the purpose of the redesign plan: to create a more meaningful test. While it may create summa cum laude immigrants, their understanding is fleeting and not substantive. Second, the new subject matters may be more meaningful than the old ones, yet they focus on esoteric issues, such as the location of the Statue of Liberty, while ignoring essential values, such as equality. They also omit notorious moments of American history and, except for the Pilgrims, ignore the contribution of immigrant groups to America's history. Third, Part III challenges the test's format—a knowledge-based test—and offers alternative formats of citizenship tests: a performance-based test and a residency-based

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9. See *infra* Part II.B (discussing the origin of the citizenship test).

10. Laglagaron & Devani, *supra* note 8, at 14. The Commission criticized the test for having no clear purpose and urged the development of a new, more meaningful test. See U.S. COMM'N ON IMMIGRATION REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY (1997) [hereinafter IMMIGRATION REFORM REPORT].

11. See RAYMOND F. CRIST, U.S. DEPT. OF LABOR, BUREAU OF NATURALIZATION, STUDENT'S TEXTBOOK (1918); Susan M. Gordon, *Integrating Immigrants: Morality and Loyalty in US Naturalization Practice*, 11 CITIZENSHIP STUD. 367, 375–77 (2007) (discussing the creation of materials to support the “Americanization” program).

12. The redesign has failed to demonstrate a coherent structure or philosophy for the test—repeating the major flaw of its predecessor. See Sanford Levinson, *What Should Citizens (as Participants in a Republican Form of Government) Know About the Constitution?*, 50 WM. & MARY L. REV. 1239, 1244 (2009) (“The ninety-six questions of the test that was in place until October 2008 are, to put it mildly, something of a grab bag.”).

approach. Fourth, the test represents a strong republican theory of citizenship under which an American citizen must actively participate in the political life of the Republic and incorporates a strong constitutional essence. While the test includes only a few questions about freedoms and liberties, it contains a long list of items about civic responsibilities. Part III thus analyzes the test in light of the principle of state neutrality. And fifth, Part III questions the conventional wisdom that natural-born citizens are exempt from the citizenship test on the grounds that they already know the relevant information and presents empirical studies showing that most U.S. citizens—including college graduates and office-holders—would fail the test. Part III challenges the proposition that the citizenship test is a substitute for education and asks whether it is a discriminatory practice.

Part IV offers a comparative discussion and analyzes citizenship tests of four countries: Britain, the Netherlands, Germany, and Australia. It presents the manner in which countries deal differently with similar questions and notes that only the United States has such a low expectation of its citizenship test. While the citizenship test in the United States has a long tradition, it is a recent development in other countries that was triggered by the September 11th attacks and social tensions between immigrants and native-born communities. But while some European states use culture-based citizenship tests, the United States has remained loyal to civic citizenship and has relaxed the test's difficulty. Comparing the U.S. test to citizenship tests of other countries sheds light on the underlying theory of American citizenship.

Part V identifies three key issues that should be reassessed in any future restructuring of the test. First, what is the desirable concept of the test? Part V asks whether the citizenship test is really a "test," given that it focuses on memorization of pre-published questions and answers. It contrasts the current concept of the test, which examines knowledge and understanding of U.S. history and civics, with another possible concept, which examines attachment to the principles of the U.S. Constitution. Second, what is the desirable concept of "understanding"? Is the concept of understanding cognitive; that is, can one learn to be American, or does understanding of political ideas imply, or should it imply, at least acceptance of these ideas? Third, what is the desirable concept of "knowledge"? What level of comprehension is sufficient to possess knowledge about U.S. history and civics? Is knowledge merely legal (what is right), or also moral (what is good)? On the whole, Part V upholds a more meaningful test that focuses on a process of

“constitutional conversion,” which goes beyond memorization of random trivia to require a *commitment* to America’s form of government and some core American values and principles.

## II. THE CITIZENSHIP TEST: HISTORY AND DEVELOPMENT

### A. *The Road to U.S. Citizenship*

The U.S. Constitution grants Congress the power to determine naturalization requirements.<sup>13</sup> Among its first acts was the Naturalization Act of 1790, which allowed naturalization of “free white persons” following two years of U.S. residency, conditioned upon the good moral character of the immigrant and the swearing of an oath to support the Constitution.<sup>14</sup> In 1795, Congress extended the residency period to five years and added a requirement that the applicant be attached to the principles of the Constitution.<sup>15</sup> From 1795 until 1905—except for the restrictions following the hysteria of the XYZ Affair<sup>16</sup> that provoked the infamous Alien and Sedition Acts of 1798<sup>17</sup>—there was little federal immigration regulation.<sup>18</sup> The Constitution did not define U.S. citizenship nor did it note the manner of its acquisition. This issue was partly addressed by Congress in the Fourteenth Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”<sup>19</sup>

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13. U.S. CONST. art. I, § 8, cl. 4.

14. Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103, 103 (repealed 1795).

15. Naturalization Act of 1795, ch. 20, § 1, 1 Stat. 414, 414 (repealed 1802).

16. The XYZ Affair was a diplomatic incident between the United States and France that led to the Quasi War. *See generally* William Stinchcombe, *The Diplomacy of the WXYZ Affair*, 34 WM. & MARY Q. 590 (1977) (discussing the XYZ Affair and its effects).

17. *See* Naturalization Act of 1798, ch. 54, § 1, 1 Stat. 566, 566 (repealed 1802) (increasing the residency requirement from five to fourteen years); Alien Act, ch. 58, § 1, 1 Stat. 570, 570 (1798) (expired 1800) (giving the President the power to deport aliens deemed dangerous to peace and safety); Alien Enemies Act, ch. 66, § 1, 1 Stat. 577, 577 (1798) (codified as amended at 50 U.S.C. § 21 (2006)) (authorizing the President to ban the admission of enemy aliens); Sedition Act, ch. 74, §§ 1–2, 1 Stat. 596, 596 (1798) (expired 1801) (criminalizing conspiring against the U.S. government by false, scandalous, or malicious writing, printing, uttering, or publishing). Except for the Alien Enemies Act, all the other Acts expired or were repealed between 1800 and 1802.

18. *See* Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833 (1993) (showing that immigration regulation in this period was mainly conducted at the state level). Federal regulation that existed was aimed at Asians and specific classes of immigrants, such as prostitutes. *Id.* at 1872–72, 1886–87, 1887 n.347.

19. U.S. CONST. amend. XIV, § 1.

Current U.S. law regulates the manner through which a person can become an American citizen through naturalization.<sup>20</sup> The process is three-fold: meeting admission requirements,<sup>21</sup> passing the grounds of inadmissibility,<sup>22</sup> and satisfying the naturalization requirements.<sup>23</sup> The substantive naturalization requirements include:<sup>24</sup> (a) minimum age of eighteen years; (b) minimum period of continuous residence and physical presence in the United States; (c) possession of good moral character; (d) attachment to the principles of the U.S. Constitution; (e) basic English language proficiency; (f) knowledge and understanding of fundamental U.S. history and civics; and (g) taking an oath of allegiance.<sup>25</sup> In addition, the applicant should not fall into one of the grounds of ineligibility, such as the opposition to government or law, or membership in a totalitarian party.<sup>26</sup>

The citizenship test focuses on requirement (f): knowledge and understanding of fundamental U.S. history and civics. It is apparently the goal of other requirements to examine the applicant's character or patriotism. Consider the good moral character requirement. This requirement had been used to exclude applicants based on immoral behavior relating to lifestyle choices and sexual behavior—such as homosexuality, incest, prostitution, and polygamy—or criminal behavior, such as illegal gambling and habitual drunkenness.<sup>27</sup> According to Lauren Gilbert, the definition of good moral character “was rooted in Christian values and English common law.”<sup>28</sup> If the

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20. The focus of this Article is becoming an American citizen by way of naturalization; the Article does not discuss the acquisition of American citizenship at birth.

21. 8 U.S.C. §§ 1183–1188 (2006) (providing qualifications for permanent residence).

22. 8 U.S.C. § 1182 (2006) (providing grounds of inadmissibility).

23. 8 U.S.C. § 1427 (2006) (providing naturalization requirements).

24. Minor children having at least one U.S. citizen parent are exempt from these requirements. 8 U.S.C. § 1433(a) (2006).

25. 8 U.S.C. § 1445(b) (2006) (minimum age); 8 U.S.C. § 1427(a)(1) (2006) (residence); 8 U.S.C. § 1427(a)(3) (2006) (good moral character); *Id.* (attachment to the principles of the U.S. Constitution); 8 U.S.C. § 1423(a)(1) (2006) (English language proficiency); 8 U.S.C. § 1423(a)(2) (2006) (history and civic knowledge); 8 U.S.C. § 1427(f)(2) (2006) (oath of allegiance).

26. 8 U.S.C. § 1424 (2006).

27. See Lauren Gilbert, *Citizenship, Civic Virtue, and Immigrant Integration: The Enduring Power of Community-Based Norms*, 27 *YALE L. & POL'Y REV.* 335, 340–61 (2009) (discussing the good moral character requirement's relationship to state morality laws).

28. *Id.* at 355; see *In re Smith*, 71 F. Supp. 968, 972 (D.N.J. 1947) (“In considering moral character . . . with our traditions and our Anglo-Saxon approach, it is difficult indeed to reason on ethics at all without entering into the sphere of Christian, or biblical ethics, since our laws are so permeated with what Blackstone refers to as the ‘Revealed Law’ . . .”).



good moral character requirement, (c), tests immigrants' moral perceptions,<sup>29</sup> the attachment requirement, (d), tests their patriotism.<sup>30</sup> Throughout American history it was used to exclude anarchists, communists, pacifists, and individuals who were unwilling to swear an oath of allegiance or bear arms in defense of the Constitution.<sup>31</sup> Case law is divided on whether, under the attachment requirement, the immigrant must legally accept the Constitution as the law of the land<sup>32</sup> or must also demonstrate emotional attachment towards fundamental constitutional ideals.<sup>33</sup> Immigrants were often required to show a "belief in representative democracy, a commitment to the ideals embodied in the Bill of Rights, and a willingness to accept the basic social premise that change only be effected in an orderly manner."<sup>34</sup> Bearing true faith to the principles of the Constitution is also a requirement of the American oath of allegiance, requirement (g).<sup>35</sup>

### B. *The Origin of the Citizenship Test*

In 1887, in a series of public lectures, economist Edward Bemis proposed adopting a literacy test as a means to filter out idle, vicious, and other undesirable aliens in order to block the entry of immigrants illiterate in their own native language.<sup>36</sup> The

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29. Good moral character is currently satisfied by checking police records and government databases. See 8 C.F.R. § 204.2(c)(2)(v) (2010) (requiring an affidavit and "local police clearance or a state-issued criminal background check" for proof of good moral character). The statute does not include a definition of good moral character, but includes a list of grounds constituting lack of good moral character. See 8 U.S.C. § 1101(f) (2006).

30. For discussion of the attachment requirement, see *Schneiderman v. United States*, 320 U.S. 118, 133–40 (1943); SANFORD LEVINSON, *CONSTITUTIONAL FAITH* 122–54 (1988); Gerald L. Neuman, *Justifying U.S. Naturalization Policies*, 35 VA. J. INT'L L. 237, 253–63 (1994); and Peter J. Spiro, *Questioning Barriers to Naturalization*, 13 GEO. IMMIGR. L.J. 479, 501–04 (1999).

31. Spiro, *supra* note 30, at 501–02; see *In re Shanin*, 278 F. 739, 740–41 (D. Mass. 1922) (construing a naturalization applicant's refusal to engage in military service as evidence of a lack of attachment to the principles of the Constitution).

32. See, e.g., *United States v. Rossler*, 144 F.2d 463, 465 (2d Cir. 1944) (declaring that "[p]atriotism is not a condition of naturalization" and maintaining that the attachment requirement "is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government; but merely an acceptance of the fundamental political habits and attitudes which here prevail, and a willingness to obey the laws which may result from them").

33. See, e.g., *Shanin*, 278 F. at 740–41 ("Attachment' is . . . a depth of conviction which would lead to active support of the principles in question . . ."); *In re Siem*, 284 F. 868, 871 (D. Mont. 1922) ("Attached' in reference to principles, by all standard authorities, means 'having regard and affection for' and 'sustaining by moral force.'").

34. DAVID WIESSBRODT, *IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL* 356 (4th ed. 1998).

35. 8 C.F.R. § 337.1(a) (2010).

36. JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860–1925*, at 101 (2d ed. 1988); see Edward W. Bemis, *Restriction on Immigration*,

literacy test, introduced by anti-immigrant groups to exclude southern and eastern Europeans in a “respectable” way, aimed at reducing the immigration rate of these immigrants by 50%.<sup>37</sup>

The literacy test issue was first brought before the House in 1895 and was passed by a large majority in 1896.<sup>38</sup> However, President Cleveland vetoed the bill due to its exclusionary nature.<sup>39</sup> During the next years, three further attempts to pass the test were vetoed.<sup>40</sup> In March 1905, President Theodore Roosevelt appointed a commission to examine the nation’s naturalization law and suggest some revisions. The commission revived the idea of implementing a literacy test, noting that some immigrants are unable to read the Constitution they swear to support. It concluded that “no one be admitted to citizenship who does not know the English language.”<sup>41</sup> A year later, Congress passed a bill mandating that “no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language.”<sup>42</sup> This was the legal kickoff of the English language requirement. In the following years, further attempts to expand the literacy test to include reading and writing skills were vetoed by Presidents William Taft and Woodrow Wilson.<sup>43</sup> Both vetoes were, in part, against the hidden xenophobic use of the literacy test.<sup>44</sup> It was the patriotic fervor of World War I that finally allowed the passage of the bill in February 1917.<sup>45</sup> The test excluded “aliens over sixteen years of age, physically capable of reading, who cannot read the English language, or some other language or dialect, including Hebrew or Yiddish.”<sup>46</sup>

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ANDOVER REV., Mar. 1888, at 251, 251–64 (presenting justifications for limiting immigration).

37. HIGHAM, *supra* note 36, at 101.

38. *Id.* at 103–04.

39. *Id.* at 104–05.

40. *Id.* at 188–93, 201–03.

41. See NATURALIZATION COMM’N, REPORT TO THE PRESIDENT OF THE COMMISSION ON NATURALIZATION, H.R. DOC. NO. 59-46, at 11 (1st Sess. 1905) (“[I]f [the immigrant] does not know our language he does in effect remain a foreigner, although he may be able to satisfy the naturalization laws sufficiently to secure our citizenship.”).

42. Naturalization Act of 1906, ch. 3592, § 8, 34 Stat. 596, 599 (repealed 1940). For discussion of the English language requirement, see Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 337–48 (1992); Neuman, *supra* note 30, at 263–68; and Spiro, *supra* note 30, at 489–97.

43. HIGHAM, *supra* note 36, at 189–92.

44. *Id.* at 193.

45. *Id.* at 200–03; see Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952).

46. Immigration Act of 1917 § 3. Exemptions were given to family members and to Russian Jews who fled from religious persecution. HIGHAM, *supra* note 36, at 203.

The literacy test turned out to be ineffective due to the growing rate of literacy in southern Europe, which was a key motive for the implementation of the National Origins Quota System of 1921.<sup>47</sup> The quota system intended to preserve the Anglo-Saxon hegemony by favoring northern and western Europeans.<sup>48</sup> In 1950, at the height of hysteria over the threat of communism, Congress passed the Internal Security Act providing that no person shall be naturalized unless he or she can demonstrate “an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.”<sup>49</sup> This time, President Harry Truman vetoed the bill, but it was nevertheless passed in the Immigration and Nationality Act (INA) of 1952.<sup>50</sup> This Act also introduced, for the first time in U.S. history, a civics requirement:

No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot demonstrate . . . a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.<sup>51</sup>

The civics requirement remains in effect today.<sup>52</sup> It specifies that every applicant must demonstrate *knowledge* and *understanding* of the fundamental history of the United States, and its principles and form of government.<sup>53</sup> In 1952, there was no federal procedure to assess the knowledge and understanding of the applicant. Immigration officials in different states and districts applied disparate evaluation standards and tended to ask dissimilar questions. It was not until 1986 that the federal government established a standard test, which allowed some exemptions based on age, long term residency, medical certification, and mental impairment.<sup>54</sup> Current law also includes

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47. See Patrick Weil, *Races at the Gate: A Century of Racial Distinctions in American Immigration Policy (1865–1965)*, 15 GEO. IMMIGR. L.J. 625, 636 (2001) (linking the quota system with nativism); Perea, *supra* note 42, at 335–36 (stating that the literacy test and quota system were nativist attempts to preserve racial and linguistic homogeneity).

48. Perea, *supra* note 42, at 335.

49. Internal Security Act of 1950, ch. 1024, sec. 30, § 304(1), 64 Stat. 987, 1018.

50. Perea, *supra* note 42, at 339; see Immigration and Nationality Act, Pub. L. No. 82-414, § 312(1), 66 Stat. 163, 239 (1952) (codified as amended at 8 U.S.C. § 1423(a)(1) (2006)).

51. Immigration and Nationality Act § 312.

52. 8 U.S.C. § 1423(a)(2) (2006).

53. *Id.*

54. 8 U.S.C. § 1423(b)(1)–(2) (2006); Noah M.J. Pickus, *To Make Natural: Creating Citizens for the Twenty-First Century*, in IMMIGRATION & CITIZENSHIP IN THE 21ST CENTURY 107, 122 (Noah M.J. Pickus ed., 1998).

a “due consideration clause,” providing that “[i]n choosing the subject matters, in phrasing questions and in evaluating responses, due consideration shall be given to the applicant’s education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other [relevant] elements or factors.”<sup>55</sup> This provision suggests that the citizenship test must acknowledge the applicant’s background and associated characteristics.

The citizenship test is taken in English during a face-to-face oral interview, which usually takes twenty minutes.<sup>56</sup> The interview follows the determination of the applicant’s eligibility for citizenship, completion of the appropriate application, verification of fingerprints and biometric information, and the payment of fees.<sup>57</sup> During the interview, the applicant is asked to supply answers on the application documents and, unless exempted, pass an English language proficiency test and a U.S. history and civics test in which the applicant must correctly answer six out of ten randomly selected questions chosen from a closed list of ninety-six pre-published questions and answers.<sup>58</sup>

The questions were formulated in 1986 and remained in effect until October 1, 2008.<sup>59</sup> They focused on American history and civics, and were limited to subject matters covered in the *Federal Citizenship Textbook*.<sup>60</sup> The old test included questions about the Bill of Rights, the President, the Judiciary, Congress, and history (“Why did the Pilgrims come to America?” or “What did the Emancipation Proclamation do?”).<sup>61</sup> Moreover, becoming

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55. 8 C.F.R. § 312.2(c)(2) (2010).

56. 8 C.F.R. § 312.2(c) (2010).

57. See JEFF CHENOWETH & LAURA BURDICK, CATHOLIC LEGAL IMMIGRATION NETWORK, A MORE PERFECT UNION: A NATIONAL CITIZENSHIP PLAN 35–37 (2007).

58. The English test is simple: applicants read aloud parts of the application or random sentences from a standard list. They are also required to write simple sentences from a standard list; misspelled words or grammatical mistakes do not constitute exclusionary grounds if a “reasonable person” is able to understand the sentence. *Id.* at 37–38, 52–53. An applicant who fails the test can retake it within ninety days. 8 C.F.R. § 312.5(a) (2010).

59. Holli Chimela, *New Citizens Will Need Deeper Knowledge*, N.Y. TIMES, Dec. 1, 2006, at A26; Press Release, U.S. Citizenship & Immigration Servs., USCIS Announces New Naturalization Test (Sept. 27, 2007), available at [http://www.uscis.gov/files/pressrelease/NatzTest\\_27sep07.pdf](http://www.uscis.gov/files/pressrelease/NatzTest_27sep07.pdf).

60. 8 C.F.R. § 312.2(c)(2) (2010); see U.S. CITIZENSHIP & IMMIGRATION SERVS., SAMPLE U.S. HISTORY AND GOVERNMENT QUESTIONS FOR THE OLD NATURALIZATION TEST (2009), available at [http://www.uscis.gov/files/natedocuments/Flashcard\\_questions.pdf](http://www.uscis.gov/files/natedocuments/Flashcard_questions.pdf) [hereinafter OLD TEST]; see also U.S. BUREAU OF NATURALIZATION, FEDERAL CITIZENSHIP TEXTBOOK (BiblioBazaar, photo reprint 2010) (1922).

61. OLD TEST, *supra* note 60 (questions 50 & 63).

an American citizen entailed that applicants learn about the state in which they lived through questions like: “What is the state capital?” or “Who are the state’s senators?”<sup>62</sup> The applicant also had to be familiar with the American flag—seven of the ninety-six questions focused on the flag.<sup>63</sup> Applicants were also required to learn about Martin Luther King, Jr., identify the speaker who said “Give me liberty or give me death,” and know who penned the Star-Spangled Banner.<sup>64</sup>

The old test included almost no question requiring an understanding of U.S. history and civics. The only skill necessary to pass the test was an ability to memorize relatively easy information. The applicant could memorize, for example, that the basic beliefs of the Declaration of Independence are equality and the right to life, liberty, and the pursuit of happiness without even understanding what these beliefs mean.<sup>65</sup> Similarly, the applicant was required to “[n]ame one right or freedom guaranteed by the first amendment,” yet was not required to know something substantial about its nature or understand it.<sup>66</sup>

### C. Redesigning the Citizenship Test

In the fall of 1997, the U.S. Commission on Immigration Reform published a thick volume on immigration and immigrant policy calling for reform based on a renewed commitment to Americanization.<sup>67</sup> While admitting that the term “Americanization” had earned a bad reputation in American history—“when it was stolen by racists and xenophobes in the 1920s. But it is our word, and we are taking it back”—the Commission considered Americanization not as a process to force Anglo conformity, but rather a vehicle for integration.<sup>68</sup> It rephrased the concept of Americanization and tried to separate it from its infamous historical context. The Commission found that immigrants should conform to political values embodied in the U.S. Constitution.<sup>69</sup> Americanization means “the cultivation of a shared *commitment* to the American values of liberty, democracy and equal opportunity,” as well as “freedom of speech and religion[] and representative

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62. *Id.* (questions 27 & 36).

63. *Id.* (questions 1–7).

64. *Id.* (questions 41, 45 & 58).

65. *See id.* (question 56 regarding the Declaration of Independence).

66. *Id.* (question 80).

67. IMMIGRATION REFORM REPORT, *supra* note 10, at 25–26.

68. *Id.*

69. *Id.*

government.”<sup>70</sup> The Commission declared that “American unity depends upon a widely-held belief in the[se] principles and values,” and that immigrants “truly become Americans when they give allegiance to these principles and values.”<sup>71</sup> The Commission based its reform on three phases: first, Americanization is a voluntary process and cannot be forced; second, it is a reciprocal process in which immigrants and native-born Americans make an effort to accommodate one another; and third, it is a process of individuals, not of collectives.<sup>72</sup>

The Commission recommended three steps to promote Americanization: orientation, education, and naturalization. Orientation includes assisting immigrants to become self-reliant by providing them with the information needed for successful integration; education supports encouraging immigrants to participate in English and civics courses; and naturalization means making the citizenship process more uniform and more meaningful.<sup>73</sup> The Commission found disturbing the fact that “INS district offices vary significantly from each other in the methods by which they administer the test and in the threshold number of correct answers needed for passage.”<sup>74</sup> A key suggested step was making the test more meaningful. The Commission noted that “current tests do not adequately assess [immigrants’] *understanding* or abilities. The civics test, for example, relies on memorization of discrete facts rather than on *substantive understanding* of the basic concepts of civic participation.”<sup>75</sup> Thus, the Commission called for a fundamental restructuring of the test’s content and for the development of a new test.<sup>76</sup> It suggested that the test “should assess whether applicants *understand* the basic principles of U.S. government: for example, *what it means* to have freedom of speech or the freedom to assemble.”<sup>77</sup>

In 2002, the U.S. Citizenship and Immigration Services (USCIS) began redesigning the citizenship test.<sup>78</sup> In the spring of 2004, the USCIS contracted with the National Academy of Sciences (NAS) to help optimize the test’s validity, reliability,

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70. *Id.* (emphasis added).

71. *Id.* at 25.

72. *Id.* at 27–29.

73. *Id.* at 30–58.

74. *Id.* at 46–47.

75. *Id.* at 46 (emphases added).

76. *Id.* at 54–55.

77. *Id.* at 47 (emphases added).

78. CHENOWETH & BURDICK, *supra* note 57, at 53.

and fairness.<sup>79</sup> The NAS was concerned that the test was arbitrary and had no “scientific basis,” and asked the USCIS to specify its purpose “and the inferences to be drawn.”<sup>80</sup> The NAS claimed that only when a clear statement of the test’s purposes exists, would it be possible to identify the desired test’s format and content, judge its validity and fairness, and develop a scoring rubric.<sup>81</sup> In March 2005, responsibility for redesigning the test shifted from the USCIS to the Office of Citizenship (OoC). In summer 2005, it was revealed that “84 percent of applicants passed the current citizenship test on the first try, and 95 percent passed it on the second try . . . on a random sample of approximately 3,000 naturalization case files completed in FY 2003 and FY 2004.”<sup>82</sup> In June 2005, the Homeland Security Department (HSD) introduced its own report on the test’s redesign.<sup>83</sup> The HSD declared that the purposes of the test redesign process are to: (a) create a more uniform test and uniform standards of evaluation; and (b) create a test for a *meaningful* understanding of U.S. history and civics.<sup>84</sup> It repeated that the test “relie[d] on memorization of discrete facts rather than on substantive understanding of the basic concepts of civic participation” and offered to adopt a new, more meaningful test.<sup>85</sup>

#### D. *The New Citizenship Test*

In February 2007, the USCIS released the new citizenship test.<sup>86</sup> It announced that the new test—which entered into force on October 1, 2008—better assesses whether applicants have “a meaningful understanding of U.S. government and history.”<sup>87</sup> It is the second federal citizenship test—the first test was created in 1986.<sup>88</sup> Yet, after seven years of redesign process, the test structure remains the same—the applicant still must answer

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79. *Id.* at 54.

80. COMM. ON THE U.S. NATURALIZATION TEST REDESIGN, NATIONAL RESEARCH COUNCIL, REDESIGNING THE U.S. NATURALIZATION TESTS: INTERIM REPORT 2, 12 (2004) [hereinafter NAS REPORT].

81. *Id.* at 17–20.

82. CHENOWETH & BURDICK, *supra* note 57, at 54–55.

83. *Id.* at 55.

84. OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SECURITY, NO. OIG-05-25, LETTER REPORT: CITIZENSHIP TEST REDESIGN (2005) [hereinafter HSD REPORT].

85. *Id.*

86. Laglagaron & Devani, *supra* note 8, at 10.

87. U.S. Citizenship & Immigration Servs., *USCIS Introduces New Naturalization Test*, USCIS MONTHLY, Oct. 2007, at 2, available at [http://www.uscis.gov/files/nativedocuments/USCIS\\_Monthly\\_Oct07.pdf](http://www.uscis.gov/files/nativedocuments/USCIS_Monthly_Oct07.pdf).

88. Chimela, *supra* note 59, at A26.

correctly six out of ten questions from a closed list of one hundred questions.<sup>89</sup>

The main changes inserted in the test are as follows: First, the new test is better organized than the old one. The list of questions is divided into three topics with various subtopics: American Government (Principles of American Democracy, System of Government, Rights and Responsibilities), American History (Colonial Period and Independence, 1800s, and Recent American History and Other Important Historical Information), and Integrated Civics (Geography, Symbols, and Holidays).<sup>90</sup> Second, the test contains more meaningful questions, some of which simply rephrase old questions. For example, instead of asking “Who was the President during the Civil War?,” the new test asks “What was one important thing that Abraham Lincoln did?”<sup>91</sup> Other questions are new: “What stops one branch of government from becoming too powerful?” or “What is one promise you make when you become a United States citizen?”<sup>92</sup> Third, the test contains questions highlighting the diversity of U.S. history. One question asks “Who lived in America before the Europeans arrived?” and another “Name one American Indian tribe in the United States.”<sup>93</sup> One question directly addresses slavery: “What group of people was taken to America and sold as slaves?”<sup>94</sup> The test no longer has questions such as “What was the 49th state added to our Union?,” but it nonetheless includes esoteric questions, such as “Where is the Statue of Liberty?”<sup>95</sup> It also contains new topics, such as geography.<sup>96</sup> Fourth, the test is less nationalistic; it includes only two questions about the American flag as opposed to seven in the old test.<sup>97</sup> Yet, it is more “war-oriented”—ten out of one hundred questions focus on wars.<sup>98</sup>

The new format tests the applicant’s knowledge of the U.S. political system and understanding of some rights and principles. It also requires that the applicant be familiar with the federal system and with the state in which the applicant lives. Some questions focus on a state’s U.S. Senators, Governors, U.S.

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89. 2008 TEST REVISION, *supra* note 1, at 1.

90. *Id.* at 1–11.

91. *Id.* (question 75).

92. *Id.* (questions 14 & 53).

93. *Id.* (questions 59 & 87).

94. *Id.* (question 60).

95. *Id.* (question 95).

96. *Id.* (questions 88–95).

97. *Id.* (questions 96 & 97); *see supra* text accompanying note 63.

98. *Id.* (questions 61, 72–74 & 78–83).



Representatives, and the state's capital.<sup>99</sup> Becoming an American citizen compels the applicant to learn the names of the current U.S. President, Vice-President, Chief Justice, and Speaker of the House.<sup>100</sup> The U.S. history is not only the history of ideas and institutions, but also of heroes and heroines. The new test excludes questions on Patrick Henry and Francis Scott Key in favor of questions on Susan B. Anthony and Benjamin Franklin (e.g., "What did Susan B. Anthony do?" and "What is one thing Benjamin Franklin is famous for?").<sup>101</sup>

*E. "Good Americans" in the Citizenship Handbook*

The old and the new citizenship tests reflect, to a great extent, a test that focuses on the U.S. Constitution. This was not always the case. A close reading of citizenship handbooks reveals a different concept of citizenship. At the beginning of the twentieth century, the Bureau of Naturalization began to develop the concept of "good Americans" with the introduction of immigrant education programs.<sup>102</sup> These education programs provided an interesting glimpse into the American perception of what it legally means to become an American citizen.

Citizenship programs were first developed in 1914, at the height of the nativist movement, by Richard Campbell, Director of the Bureau of Naturalization, and Raymond Crist, Deputy Commissioner of Naturalization.<sup>103</sup> Campbell and Crist believed that adoption of the American way of life was a prerequisite to becoming an American citizen.<sup>104</sup> Immigrants were expected to adjust to the values of the dominant group and cut themselves from their old world ties. Americanization was the national obsession of the era.<sup>105</sup> President Theodore Roosevelt charged "hyphenated-Americans" with not being "true Americans"; he believed that anyone can become American, but, in order to do so, one must conform to prevailing cultural norms.<sup>106</sup> Roosevelt asserted that immigrants "must celebrate Washington's birthday rather than that of the Queen or Kaiser, and the Fourth of July

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99. *Id.* (questions 20, 23, 43 & 44).

100. *Id.* (questions 28, 29, 40 & 47).

101. *Id.* (questions 68 & 77).

102. Gordon, *supra* note 11, 372–73.

103. *Id.* at 372.

104. *Id.* at 377.

105. HIGHAM, *supra* note 36, at 234–63.

106. THEODORE ROOSEVELT, *True Americanism*, in TRUE AMERICANISM: FOUR ESSAYS 27, 54 (Kessinger Pub., photo reprint 2006) (1897).

instead of St. Patrick's Day."<sup>107</sup> "Above all," he asserted, "the immigrant must learn to talk and think and *be* United States."<sup>108</sup>

Citizenship programs were the beginning of the idea that new citizens needed to be "created." Their official purpose was orientation: to supply immigrants with the knowledge required for examination in a naturalization court.<sup>109</sup> But that was only the first step. The second step was to generate an American identity and promote the adoption of American lifestyles. Campbell and Crist believed that compelling people to learn civics would shape their attitudes.<sup>110</sup> The real issue was moral character—as Campbell noted: "Genuine citizenship is primarily a state of inward feeling and only secondarily one of knowledge."<sup>111</sup> Citizenship was an internal process immigrants had to undergo to develop an American consciousness and emotional attachment to the United States.<sup>112</sup> Hence, citizenship handbooks were intended to teach immigrants how they should behave and think or even feel in America. They taught immigrants how to dress, cook, decorate the home, and behave in society. They included sentences such as, "A man to be a good American must be straight, and he must also be strong,"<sup>113</sup> or explained matters of personal hygiene by instructing immigrants how to keep their home clean and tidy: "You can not be a self-respecting citizen if you wear soiled, untidy clothing . . . ."<sup>114</sup>

Women and motherhood was a favorite subject. Lessons such as a woman's job is to raise children and furnish the house—"Furniture should be simple and plainly carved. There should be no upholstered furniture or heavy draperies to catch

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107. *Id.* at 50–52.

We have no use for the German or the Irishman who remains such. . . . [W]e want only Americans, and, provided that they are such, we do not care whether they are of native or of Irish or of German ancestry. . . . We have no room for any people who do not act and vote simply as Americans, and as nothing else.

*Id.* at 45.

108. *Id.* at 52; see Woodrow Wilson, *Americanism and the Foreign-Born*, in THE AMERICAN STUDIES ANTHOLOGY 127, 129 (Richard P. Horwitz ed., 2001) ("You cannot dedicate yourself to America unless you become in every respect and with every purpose of your will thorough Americans. You cannot become thorough Americans if you think of yourselves in groups. A man who thinks of himself as belonging to a particular national group in America, has not yet become an American . . . .").

109. Gordon, *supra* note 11, at 376.

110. *Id.* at 376–77.

111. *Id.* at 376 (quoting 1917 COMM'R NATURALIZATION ANN. REP. 34).

112. *Id.* at 377.

113. U.S. DEP'T LABOR, FEDERAL CITIZENSHIP TEXTBOOK 156 (1922).

114. CRIST, *supra* note 11, at 124.

the dust”<sup>115</sup>—were repeated often. The 1918 handbook taught immigrants that a “good American woman” stays at home: “She is busy all day caring for her children, cleaning, scouring, getting meals ready, and keeping clothes clean and mended.”<sup>116</sup> It also detailed lessons on teaching women how to cook—“Fat is necessary, but you do not need cream, butter, and bacon all at the same time”—and how to select vegetables and prepare eggs.<sup>117</sup>

Immigrant education programs were taught during evening citizenship classes in public schools.<sup>118</sup> By 1921, more than 3,000 cities around the country offered such classes.<sup>119</sup> The Bureau of Naturalization granted certification for those who successfully finished the course; “these certificates provided a tangible inducement for immigrants to complete a course: naturalization judges in many cases agreed to treat them as proof that the applicant was attached to the principles of the Constitution.”<sup>120</sup> The courses’ syllabuses were rich in information about holidays, national symbols, history, and the U.S. Constitution, but also included facts about daily situations—how to protect the home from fire—and about American culture, such as Henry Longfellow’s poems.<sup>121</sup> Immigrants were directed to love America and, more importantly, to love America more than their country of origin.<sup>122</sup> Making Americans out of immigrants was a matter of heart and mind: “[An immigrant] will never become a real American until he throws himself heart and soul in with the people of America, [and] adopts their language and customs.”<sup>123</sup>

The handbooks were further developed during World War II with an added emphasis on loyalty: “[W]e must lock our national stable before the horse is stolen. If we use our heads today, we will not be forced to use our rifles, our airplanes and our

115. *Id.* at 131.

116. *Id.* at 109.

117. *Id.* at 110, 113.

118. Gordon, *supra* note 11, at 378.

119. NOAH PICKUS, TRUE FAITH AND ALLEGIANCE: IMMIGRATION AND AMERICAN CIVIC NATIONALISM 212 n.56 (2005).

120. *Id.* at 98. This preferential treatment is now rooted in 8 C.F.R. § 332.3(c) (2010), which states that: “Public school certificates attesting to the attendance and progress of enrollees shall be given favorable consideration by Service officers in determining the applicant’s overall knowledge and understanding of the fundamentals of the history, principles, and form of government of the United States.”

121. *See, e.g.*, U.S. DEP’T LABOR, *supra* note 113, at 1–4 (listing lesson topics).

122. CRIST, *supra* note 11, at 23 (“When I become a citizen of the United States I shall be a citizen of my native country no longer. I may love my native land, but I love the Government of America better . . . This is not only a law of man but it is a law of God.”).

123. EDWIN W. ADAMS, A COMMUNITY CIVICS: A TEXT-BOOK IN LOYAL CITIZENSHIP 3 (1920); *see* RAYMOND F. CRIST, U.S. BUREAU OF NATURALIZATION, TEACHER’S MANUAL (1918) (emphasizing language and civics as key areas of education for immigrants).

battleships tomorrow.”<sup>124</sup> A good American was described as one who works all day, goes to night school, learns to speak English fast, saves money enough to have a home, learns how to prepare American food, watches baseball, loves to vote, belongs to some clubs, obeys the law, shows loyalty, shares responsibilities, believes in the Constitution, and is familiar with the community.<sup>125</sup> In addition, a good American needs to understand the laws concerning stream pollution, know guiding principles for selecting a wallpaper for a living room, be able to describe the local system of garbage disposal, be familiar with ways of preventing contagion, and be able to explain the relation between poverty and crime.<sup>126</sup>

During the 1960s, the texts taught less about the American way of life and more about U.S. history and civics. They discussed the colonists, the founding fathers, the Philadelphia Convention, the Bill of Rights, state and local governments, and federalism.<sup>127</sup> The handbooks read like a constitutional law textbook.<sup>128</sup> One section discusses William Tyler Page’s *The American’s Creed*. In this section, the immigrant learns that America is a republic valuing “Freedom, Equality, Justice, and Humanity,” and is taught the declaration: “I Therefore Believe it is My Duty to My Country to Love it; to Support its Constitution; to Obey its Laws; to Respect its Flag; and to Defend it Against All Enemies.”<sup>129</sup>

The citizen programs set about teaching immigrants how to become an American by teaching American mannerisms and cultural characteristics.<sup>130</sup> While the citizenship test began as an

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124. J. Edgar Hoover, Dir., Fed. Bureau of Investigation, *The Test of Citizenship: Our Job Is to Keep to the Path of Americanism*, Address at the 49th Continental Congress of the Daughters of the American Revolution (Apr. 18, 1940) in 6 VITAL SPEECHES OF THE DAY 440, 440–43 (1940).

125. See U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: THE GARDNERS BECOME CITIZENS—A SUPPLEMENTARY LITERACY READER *passim* (1943); U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: THE BUSINESS OF OUR GOVERNMENT *passim* (1944); U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: OUR AMERICAN WAY OF LIFE 90–91 (1965) [hereinafter OUR AMERICAN WAY OF LIFE].

126. OUR AMERICAN WAY OF LIFE, *supra* note 125, *passim*.

127. See U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: OUR CONSTITUTION AND GOVERNMENT (Catheryn Seckler-Hudson ed., 1969).

128. See U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: LAWS FOR THE NATION 21–22 (1959); U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: OUR CONSTITUTION AND GOVERNMENT 7, 13, 58, 74, 184 (John G. Hervey ed., simplified ed. 1971); U.S. IMMIGRATION & NATURALIZATION SERV., FEDERAL TEXTBOOK ON CITIZENSHIP: OUR CONSTITUTION AND GOVERNMENT (Catheryn Seckler-Hudson ed., 1970).

129. HERVEY, *supra* note 128, at 64.

130. A number of different conceptual theories of Americanization have been proposed. See, e.g., MILTON M. GORDON, ASSIMILATION IN AMERICAN LIFE 84–159 (1964)

ambitious project whose scope included asking immigrants to conform to the American *volksgeist*, today's citizenship test proposes a much more limited scope—to define the essence of Americanization in terms of civic knowledge and understanding.

### III. THE CITIZENSHIP TEST PUZZLE

This part calls for a complete reassessment of the citizenship test currently in place. First, whatever the test's purpose is, it has obviously failed to meet the goals of the redesign plan. Second, important political values, such as equal protection, have been excluded from the test's subject matters. Additionally, the test provides a flawed picture of U.S. history. Third, other alternatives exist to a knowledge-based test; two alternatives are a performance test and a residency-based approach. Fourth, the test embraces a strong republican ideology under which an American citizen has more civic responsibilities than civil rights. Fifth, the underlying premise, under which the test is only for immigrants while natural-born citizens are exempt, is flawed.

#### A. Purpose

What is the United States' purpose in using a citizenship test? The answer to this question is unknown. As mentioned earlier, the committees involved in the redesign process determined that the former test had no clear purpose and called on the USCIS to clarify its role within the naturalization process.<sup>131</sup> The NAS warned that a "valid, reliable, and fair test" required a stated purpose.<sup>132</sup> Even after this criticism, the USCIS chose not to specify a purpose.<sup>133</sup> It did, however, indicate that the purpose of the redesign plan was to create a more meaningful test.<sup>134</sup>

Citizenship tests may serve different purposes. One purpose is to control the nature and volume of immigration. In this manner, a citizenship test becomes an additional obstacle to restrict immigration in general, or certain groups of immigrants

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(analyzing theories of Anglo-conformity, melting pot, and cultural pluralism); Philip Gleason, *American Identity and Americanization*, in CONCEPTS OF ETHNICITY 57, 57–143 (William Petersen et al. eds., 1980) (providing a sociological analysis of the concept of Americanism); Michael Walzer, *What Does It Mean to Be an "American"?*, 57 SOC. RES. 591 (1990) (offering a sociological and historical analysis of the essence of Americanism).

131. See *supra* notes 74–85 and accompanying text.

132. NAS REPORT, *supra* note 80, at 2.

133. Stuart Elliott et al., *Using the Standards to Evaluate the Redesign of the U.S. Naturalization Tests: Lessons for the Measurement Community*, 25 EDUC. MEASUREMENT: ISSUES & PRAC. 22, 23–24 (2006).

134. See *id.* at 22 (noting that the USCIS acknowledged the lack of uniformity and meaningfulness of the previous test).

in particular. A second purpose is the promotion of social cohesion; i.e., the test assures that immigrants have the essential knowledge needed to keep America stable based on the premise that some shared history and civic values are required to maintain a stable society. A third purpose is to encourage civic participation. Citizens in liberal democracies are expected to participate in public life and watch over elected officials. In order to carry out these responsibilities, immigrants must have an understanding of the basic history and political system, and develop a sense of shared values. Orientation is a fourth purpose; a citizenship test acts as a means to aid immigrants as they prepare for their new life by enriching their civic knowledge. A fifth purpose is to educate immigrants about the American political system and the rights and responsibilities of American citizens.

Historically, the test was introduced by anti-immigrant groups to serve as a means of immigration control.<sup>135</sup> But this does not seem to be the goal of the current test. First, the test-passing rate is extremely high: the overall passage rate is 92%.<sup>136</sup> More significant is that in the pilot that preceded the new citizenship test, the passing rate was 92%—compared to 84% in the old test—showing no racial differences.<sup>137</sup> In addition, “[a]t least 15 questions were eliminated as a result of the pilot because they proved too difficult,” indicating that there was no intention to use the test as a means to limit immigration in general or certain groups of immigrants in particular.<sup>138</sup>

The test promotes social cohesion; this claim holds that the learning process along with the acquirement of civic knowledge affects an immigrant’s commitment to traditional American values and, as a result, helps to keep American society stable. This assumption, however, is disputable. First, the relation between knowledge, the development of commitment to values,

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135. See Angela McCaffrey, *Hmong Veterans’ Naturalization Act: Precedent for Waiving the English Language Requirement for the Elderly*, 19 GEO. IMMIGR. L.J. 495, 516–20 (2005) (discussing exclusionary motives including racial homogeneity underlying the push for a literacy test requirement).

136. U.S. CITIZENSHIP & IMMIGRATION SERVS., APPLICANT PERFORMANCE ON THE NATURALIZATION TEST, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=6c40ec90d8668210VgnVCM10000082ca60aRCRD&vgnnextchannel=6c40ec90d8668210VgnVCM100000082ca60aRCRD> (last visited Jan. 29, 2011) (providing pass rate data through August of 2010).

137. See Julia Preston, *Tough Question for a New Test: What Does ‘American’ Mean?*, N.Y. TIMES, Sept. 28, 2007, at A1.

138. *Id.*; see *Civics (History and Government) Pilot Naturalization Test Questions*, SFGATE (July 12, 2007), [http://articles.sfgate.com/2007-07-12/news/17251934\\_1\\_first-amendment-constitution-senate-and-house](http://articles.sfgate.com/2007-07-12/news/17251934_1_first-amendment-constitution-senate-and-house) [hereinafter *Civic Pilot Naturalization Test*].

and the creation of social stability lacks empirical evidence. Does a list of disconnected events and values really foster social cohesion or create a sense of belonging? Second, if the promotion of social cohesion is the test's purpose, it is reasonable to require both residents and citizens to pass the test because a nation's stability depends on *all* of its people, citizens and noncitizens alike.

The test serves as a means to encourage civic participation; immigrants who are unfamiliar with America's values and political institutions—especially those who hail from nondemocratic societies—will gain from the learning process, which will in turn facilitate political engagement. This explanation sounds reasonable, yet it underestimates the influence of today's media and internet. Many immigrants are already familiar with U.S. history and civics. In addition, the correlation between civic knowledge and civic participation is unclear. There is little basis to support the proposition that knowledge of the colonial period, for example, is more essential in promoting civic participation than practical daily life knowledge. Similarly, there is little evidence to suggest that citizens who participate in the political discourse are indeed familiar with this knowledge or that it prompts their civic participation.

The test can also serve as a means for orientation, education, and integration. Generally, these goals do not require passing a formal test. While a test may be helpful to induce immigrants to learn the relevant information—it is a barrier aimed at ensuring that immigrants read the study materials—it does not ensure orientation and education because immigrants are not obligated to participate in integration courses and can pass the test without even opening the handbook. All that is necessary is memorizing one hundred very short answers to one hundred very short, standard questions.<sup>139</sup> The preparatory materials and the sample questions are published in advance.<sup>140</sup> In fact, reading the handbook complicates the issue because it includes much information, which, although important to becoming an American citizen, is not essential for the test. Indeed, the textbook itself advises immigrants to skip reading most of it because “[d]uring your naturalization interview, you will not be

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139. See U.S. CITIZENSHIP & IMMIGRATION SERVS., LEARN ABOUT THE UNITED STATES: QUICK CIVICS LESSONS FOR THE NATURALIZATION TEST (2009), available at [http://www.uscis.gov/files/nativedocuments/M-638\\_red.pdf](http://www.uscis.gov/files/nativedocuments/M-638_red.pdf) [hereinafter LEARN ABOUT THE UNITED STATES].

140. See *id.* USCIS also publishes Civics Flash Cards, which are very short answers to very short questions. U.S. CITIZENSHIP & IMMIGRATION SERVS., CIVICS FLASH CARDS FOR THE NEW NATURALIZATION TEST (2009), available at [http://www.uscis.gov/files/nativedocuments/M-623\\_red.pdf](http://www.uscis.gov/files/nativedocuments/M-623_red.pdf).

*tested on the additional information.*<sup>141</sup> One must be really naïve to assume that anyone would voluntarily read the handbook.

If none of the above claims are correct, what then is the purpose of the citizenship test? The INA suggests that the test is a means to demonstrate “a knowledge and understanding of the fundamentals of the history, and of the principles and form of government.”<sup>142</sup> But is this a purpose in itself or a means to achieve a higher goal, such as the promotion of social cohesion? Moving from memorization of trivial knowledge to a more demanding requirement of substantive understanding of U.S. civics was a central motive for the test’s redesign.<sup>143</sup> This begs the question: does the new test achieve this purpose? My answer to this question, in general, is “no.”

First, there are topics and questions in the test that seem irrelevant to knowledge and understanding of U.S. history and civics. One example of such a topic is geography. The applicant must “Name one of the two longest rivers in the United States,” know “What ocean is on the West Coast of the United States?” and “What ocean is on the East Coast?”<sup>144</sup> The applicant is also asked to “Name one state that borders Canada,” and another “state that borders Mexico.”<sup>145</sup> Although it can fairly be argued that general knowledge of the country’s geography is essential to good citizenry, it is doubtful whether these questions serve this purpose. Perhaps the most bizarre question is “Where is the Statue of Liberty?”<sup>146</sup> The location of the Statue of Liberty is disputed: some will answer New York, while others will state New Jersey (the questionnaire accepts both options).<sup>147</sup> But the important question is why knowing the location of the Statue of Liberty is essential to becoming an American citizen. While the Statue of Liberty is an important artifact of American history and may even represent America’s tradition of openness to immigration and its promise of freedom, this is not what the question asks. The test does not explore the symbolic or historical meaning of the Statue of Liberty, but merely its geographical location.

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141. LEARN ABOUT THE UNITED STATES, *supra* note 139, at 1.

142. 8 U.S.C. § 1423(a)(2) (2006).

143. See Elliott et al., *supra* note 133, at 22 (noting that the old test was not an appropriate measure of an applicant’s knowledge of U.S. history or government).

144. 2008 TEST REVISION, *supra* note 1 (questions 88–90).

145. *Id.* (questions 92 & 93). The pilot naturalization test contained similar questions about the tallest mountain in the United States or the location of the Grand Canyon. See *Civic Pilot Naturalization Test*, *supra* note 138, (questions 126 & 130).

146. 2008 TEST REVISION, *supra* note 1 (question 95).

147. *Id.*



A second issue relates to questions that may be at the periphery of U.S. history and civics, yet are not at its core. The test expects the immigrants to know the names of the current U.S. President, Vice President, Chief Justice, and Speaker of the House.<sup>148</sup> The importance of identifying the U.S. President is undeniable, but it should not follow that an immigrant needs to be a news consumer and quote the names of all the heads of the political branches.<sup>149</sup> For example, is it essential in becoming an American to know who John Boehner is? Could not there be less technical and more conceptual issues to be tested on? Would it not be more appropriate to ask immigrants to understand what the job of the Speaker of the House is instead of memorizing his name?

A third issue derives from the absence of questions regarding the *understanding* of U.S. history and civics. Most of the questions are technical: “In what month do we vote for the President?” “How many U.S. Senators are there?” “How many Justices sit on the Supreme Court?” While the test includes a few substantive questions—for example, “What is one right or freedom from the First Amendment?”<sup>150</sup>—it does not really require the immigrant to understand concepts of free speech and free exercise of religion, but just to memorize some rights. Perhaps a better question is “What is freedom of religion?” or “What is the ‘rule of law?’”<sup>151</sup> Answering these questions presumably demands some substantive understanding. However, since the questions and the answers are published in advance, all the applicant needs to do is to memorize the information.<sup>152</sup> This is akin to requiring students to demonstrate knowledge and understanding of U.S. constitutional law by passing an exam while publishing the questions and the answers in advance. The test, therefore, examines memory capability rather than understanding.<sup>153</sup>

Promoting the substantive understanding of U.S. history and civics was a key issue in the test redesign plan. The U.S.

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148. *Id.* (questions 28–29, 40 & 47).

149. The pilot test was more demanding; it asked the names of the current leader of the Senate Majority, the Secretary of State, and the Attorney General. *Civic Pilot Naturalization Test*, *supra* note 138 (questions 64, 67 & 68).

150. 2008 TEST REVISION, *supra* note 1 (question 6).

151. *Id.* (questions 10 & 12). The right answer to question 10 is “You can practice any religion, or not practice a religion.” The correct answers to question 12 are: “Everyone must follow the law,” “Leaders must obey the law,” “Government must obey the law,” and “No one is above the law.”

152. *Id.* at 1.

153. Pickus, *supra* note 54, at 123.

Commission on Immigration Reform called for a more meaningful test that focuses on a substantive understanding of civic values, an issue of great importance, particularly for immigrants emigrating from illiberal societies who know little about liberty, democracy, and equality.<sup>154</sup> It seems irrelevant whether immigrants know how many justices there are on the Supreme Court if they cannot properly understand why we need a Supreme Court in a liberal democracy or what role the Supreme Court has played in American history. They can become *summa cum laude* immigrants in U.S. history and civics, but in the wrong field: the field of memorization, not understanding.

Upon the test's release in 2008, the USCIS remarked that "[w]hile successfully passing the citizenship test cannot measure a person's loyalty to the nation, it can demonstrate an understanding of our basic civic principles. We believe, through study, that the applicants will understand and attach themselves to those principles."<sup>155</sup> This short sentence is revealing. It indicates the USCIS's faith that this set of questions is *the* essence of American constitutionalism. More important is the belief that, through study, immigrants will "attach themselves to those principles," a goal identical to that of Campbell and Crist's in 1914 when the test was first designed.<sup>156</sup> The goal of increasing attachment to the United States may (or may not) be legitimate, yet the right place for such a goal is not the citizenship test but the attachment requirement. In any event, it is hard to understand how asking how many Senators are in the Senate can increase the immigrant's attachment to the United States.

One difficulty in focusing on understanding basic rights and principles is that they are difficult to define in a straightforward, abridged manner. For example, what does free speech or equal protection mean: Does equality mean affirmative action? Does free speech permit burning the flag? Americans are divided on these issues and it may be hard to grasp a definite definition. This is a valid concern, but it could possibly be avoided. There is no need to adopt only one meaning, and a variety of

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154. IMMIGRATION REFORM REPORT, *supra* note 10, at 25–27, 46.

155. U.S. CITIZENSHIP & IMMIGRATION SERVS., FAQs: USCIS ANNOUNCES NEW NATURALIZATION TEST 3 (2007), available at [http://www.uscis.gov/files/nativedocuments/FAQs\\_Redesign\\_Naturalization\\_Test.pdf](http://www.uscis.gov/files/nativedocuments/FAQs_Redesign_Naturalization_Test.pdf) [hereinafter USCIS ANNOUNCES NEW NATURALIZATION TEST]; see Stephen Dinan, *U.S. Adopts a New Citizenship Exam*, WASH. TIMES, Sept. 28, 2007, at A1 (citing Alfonso Aguilar, a senior official at USCIS, for the proposition that "[t]he theory is as they study the fundamentals of our history and civics, they will also identify with them and become attached to our country").

156. FAQs: USCIS ANNOUNCES NEW NATURALIZATION TEST, *supra* note 155, at 3; see Gordon, *supra* note 11, at 372–73 (discussing Campbell and Crist's views).

interpretations may be taught. In fact, immigrants may be better off learning to define freedom of speech or equal protection through debating alternative meanings and will likely learn and understand the unwritten spirit behind the words on the page.<sup>157</sup>

### B. Subject Matter

What items of U.S. history and civics has the test adopted? What has been left out? The test is organized according to three topics: American government, American history, and integrated civics.<sup>158</sup> Within these topics, many questions focus on the U.S. Constitution.<sup>159</sup> The test emphasizes the idea that Americanism is a body of political ideas and principles. Other topics may be important too, but they are only secondary. As Charles Kesler notes, “[O]ur novels, poetry, painting, and so forth came later, after the founding had stamped us ‘American.’ These [matters] . . . deepened and broadened American culture but did not change its main lines.”<sup>160</sup> And still, why should we not ask immigrants about taxes, the Model Penal Code, or American culture? Although the line separating civics from American culture might be vague, different normative perspectives will arrive at different conclusions. Cultural conformists, for example, might argue that other topics should be included in the test, such as questions about Emerson or Whitman. Becoming an American is not only a matter of being familiar with *U.S. Reports*; history and civics may stand for other matters, such as poetry or art.

The U.S. Commission on Immigration Reform was well aware of the dispute over the meaning of Americanism and offered to provide immigrants with an orientation package that specifies the American way of life; this information, however, was deliberately left out of the test. The Commission suggested giving immigrants “a welcoming greeting,” which provides practical information about housing, employment, education, healthcare, transportation, and fire protection, as well as essential telephone numbers, the American calendar, a map, a list of weight and measurement conversions, and information about state tenant laws, family laws, and community services.<sup>161</sup>

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157. Of course, there is a trade-off between meaningfulness and level of difficulty; the more meaningful the test is, the more difficult it may be to pass.

158. See 2008 TEST REVISION, *supra* note 1.

159. See *id.*

160. See Charles Kesler, *The Promise of American Citizenship*, in IMMIGRATION & CITIZENSHIP IN THE 21ST CENTURY, *supra* note 54, at 22.

161. IMMIGRATION REFORM REPORT, *supra* note 10, at 30–34.

The U.S. Commission noted that Americanization is a political ideal that means “the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity.”<sup>162</sup> Yet not even one test item focuses on equal protection or what equality stands for.<sup>163</sup> The test presumes that it is more essential to know something about the Mississippi River than about equality. In addition, the test clearly prefers liberty to equality. It asks questions about freedoms and liberties while not even mentioning equality.<sup>164</sup> This is more salient in cases one would expect equality be included. For instance, the test asks “What are two rights in the Declaration of Independence?”<sup>165</sup> The “correct” answers are life, liberty, and pursuit of happiness.<sup>166</sup> But even if one considers the pursuit of happiness to be a right (and not just a political aspiration), one may reasonably expect to see a reference to “all men are created equal.”<sup>167</sup> Similarly, possible answers to the question “What are two rights of everyone living in the United States?” invites a long list of answers: freedom of expression, free speech, freedom of assembly, freedom to petition the government, freedom of worship, and the right to bear arms.<sup>168</sup> Yet, even if one considers the right to bear arms a right of “everyone” in the United States, and not just citizens, a doubtful proposition in a post-*Heller* world,<sup>169</sup> one may still wonder what happened to the Equal Protection Clause.

In *What Should Citizens (as Participants in a Republican Form of Government) Know about the Constitution?*, Sanford Levinson criticizes the old test items to conclude that the two most important things that citizens must know about the Constitution are “first, that each house enjoys absolute veto power over any legislation passed by the other house and, second,

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162. *Id.* at 26.

163. One can only find indirect references to equality through questions such as “What did Martin Luther King, Jr. do?”; “What did Susan B. Anthony do?”; or “What movement tried to end racial discrimination?” See 2008 TEST REVISION, *supra* note 1 (questions 77, 84 & 85).

164. See *id.* (questions 6, 9–10 & 48–51).

165. *Id.* (question 9).

166. *Id.*

167. Question 83 of the Civic Pilot Naturalization Test asked, “Name two of the natural, or inalienable, rights in the Declaration of Independence.” Life, Liberty, and the pursuit of Happiness are inalienable rights referred to in the Declaration of Independence. See *Civic Pilot Naturalization Test*, *supra* note 138. However, the final version of the test does not focus on *inalienable* rights, but only on *two* rights in the Declaration of Independence. See 2008 TEST REVISION, *supra* note 1 (question 9).

168. 2008 TEST REVISION, *supra* note 1 (question 51).

169. See *District of Columbia v. Heller*, 128 S. Ct. 2799 (2008).

that small states are grievously overrepresented in the Senate.”<sup>170</sup> While the first topic hardly appears in the new test—one question requires knowing that the President vetoes bills<sup>171</sup>—the second topic is completely ignored.<sup>172</sup> If these are the two most important things that citizens must know about the Constitution, the test really misses its point. And even if one disagrees with Levinson’s view, it is fair to ask whether oceans and rivers are more important matters than the New Deal or Jim Crow laws.

The test’s subject matter not only excludes important values but also social groups. Julian Park notes that, except for the Pilgrims, the test does not directly address the contribution of immigrant groups to American history, nor does it address Hispanic or Asian figures or events.<sup>173</sup> Park supports a test that asks about César Chávez, Dalip Singh Saund, Mae Jemison, Rosa Parks, and Fredrick Douglass, and does not hide America’s notorious history, such as the 1882 Chinese Exclusion Act or the World War II internment of Japanese-Americans.<sup>174</sup> According to Park, it is not sufficient to say that Martin Luther King, Jr., fought for equality of “all citizens.”<sup>175</sup> What is more essential is to recognize that he was a *black* leader who fought against *racial* discrimination.<sup>176</sup> Park’s criticism may be debated, but it is a simple fact that the new test includes only two questions about slavery or race-related issues in American history.<sup>177</sup> The pilot test contained more questions about race: it asked what Martin Luther King, Jr.’s dream was, and what the abolitionists fought to obliterate prior to the Civil War.<sup>178</sup> These questions, however, were entirely omitted in the final stage of the redesign process.<sup>179</sup>

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170. Levinson, *supra* note 12, at 1255–56.

171. 2008 TEST REVISION, *supra* note 1 (question 34).

172. Question 18 asks, “How many U.S. Senators are there?” The answer is 100. *Id.* One needs to read the handbook to understand that “[s]tates with a very small population have the same number of senators as states with very large populations.” LEARN ABOUT THE UNITED STATES, *supra* note 139, at 5.

173. See Julian Wonjung Park, *A More Meaningful Citizenship Test? Unmasking the Construction of a Universalist, Principle-Based Citizenship Ideology*, 96 CALIF. L. REV. 999, 1023 (2008).

174. *Id.* at 1027–30.

175. See *id.* at 1023 (criticizing the test’s failure to explain the racial aspect of King’s contributions).

176. *Id.*

177. 2008 TEST REVISION, *supra* note 1 (questions 60 & 76).

178. *Civic Pilot Naturalization Test*, *supra* note 138 (questions 108 & 120).

179. The USCIS’s criteria to choose the test items were the following:

1. Does the item involve critical thinking about government or history?
2. Does the item offer an inferred or implicit concept of government, history, or other areas?

The test subject matters raise another interesting issue. Some of the test questions are at least controversial.<sup>180</sup> One example is the question “What is one responsibility that is only for United States citizens?”<sup>181</sup> The possible answers are voting and serving on a jury.<sup>182</sup> Yet, voting and jury duty are not parallel responsibilities and, unlike other countries, such as Australia, voting is not a legal obligation in America.<sup>183</sup> Whereas the U.S. government can force a U.S. citizen to serve on a jury, it cannot force a citizen to vote.<sup>184</sup> Another example appears in the question “Name two rights that are only for United States citizens.”<sup>185</sup> The correct answers include: voting, applying for a federal job, running for office, and carrying a U.S. passport.<sup>186</sup> However, the U.S. Constitution does not directly grant the right to vote to citizens, and the Supreme Court ruled in *Bush v. Gore* that an “individual citizen has no federal constitutional right to vote for electors for the President . . . unless and until the state legislature chooses a statewide election.”<sup>187</sup> In addition, the answer “applying for a federal job” is misleading because, although most federal jobs are open only to U.S. citizens, the federal government hires noncitizens in certain circumstances.<sup>188</sup> A third example appears in the question “Name two national U.S. holidays.” Alongside Veterans Day, Columbus Day, Memorial Day, and Independence Day, the answer includes Christmas.<sup>189</sup> But, although it is widely celebrated by non-Christians, Christmas is a religious holiday and not a “national” U.S.

3. Does the item provide a geographical context for a historical or current event?
4. Does the item help the applicant better utilize the system? Is it useful in their daily lives?
5. Does the item help the applicant better understand and relate to our shared history?

See FAQs: USCIS ANNOUNCES NEW NATURALIZATION TEST, *supra* note 155, at 1.

180. Interestingly, the test leaves out some controversial issues, such as abortion, gay rights, and euthanasia.

181. 2008 TEST REVISION, *supra* note 1 (question 49).

182. *Id.*

183. Levinson, *supra* note 12, at 1244–46, 1246 n.44.

184. *Id.* at 1246 n.44.

185. *Civic Pilot Naturalization Test*, *supra* note 138 (question 76).

186. *Id.*

187. *Bush v. Gore*, 531 U.S. 98, 104 (2000). Levinson notes that a “popular election is a decision to be made by the states, subject, of course, to Equal Protection considerations [and other restrictions] . . . Should the state decide that *no one* can vote for a given office, it is not at all clear that the Constitution would prevent *that*.” Levinson, *supra* note 12, at 1245.

188. See 8 C.F.R. § 274a.12(c) (2010) (outlining when the federal government may hire noncitizens).

189. 2008 TEST REVISION, *supra* note 1 (question 100).

holiday; legally, it is a “public holiday.”<sup>190</sup> The other items of the test are no less controversial. For example, one might wonder whether “separation of powers” and “checks and balances” were the only things that “stop[ped] one branch of government from becoming too powerful.”<sup>191</sup> In addition, this question is a bit ambiguous. It is unclear if the question focuses on one specific branch or all government branches, in theory or in practice.<sup>192</sup>

The redesign plan offered an opportunity for thoughtful discussion on what is the most important subject matter U.S. citizens should know about U.S. history and civics. Instead, the USCIS ended up with a test that may be *more* meaningful than the old one, but is far from being a meaningful test. One reason for this outcome may be America’s lack of confidence about the essence of its national identity. Another reason may be the will to avoid a political battle over contested values. Emilio Gonzalez, the Director of the USCIS, celebrated the new test by declaring that, “This test genuinely talks about what makes an American citizen.”<sup>193</sup> Unless one finds the genuine meaning of American citizenship in the Mississippi River, this celebration seems overstated.

### C. Format

The test’s format is simple: the applicant must answer correctly six out of ten questions, chosen from a fixed and pre-published list of one hundred questions.<sup>194</sup> Yet this format, as aforesaid, was a highly criticized feature of the old test.<sup>195</sup> The NAS Report had found this format to have no scientific basis and had urged the development of test specifications that “should define how the test questions will sample from the larger construct, the proposed number of items, the item formats, the desired psychometric properties of the items, and the test instrument as a whole.”<sup>196</sup> The NAS Report noted that

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190. 5 U.S.C. § 6103(a) (2006).

191. 2008 TEST REVISION, *supra* note 1 (question 14).

192. The grammar and syntax of some of the test questions are substandard and badly written. For example, question 24 asks “Who does a U.S. Senator represent?” and question 81 asks “Who did the United States fight in World War II?” *Id.* Both questions should read “whom,” not “who.”

193. Preston, *supra* note 137, at A1 (quoting Emilio Gonzalez, director of Citizenship and Immigration Services) (internal quotation marks omitted).

194. 2008 TEST REVISION, *supra* note 1, at 1.

195. See *supra* notes 75–85 and accompanying text (discussing the old examination’s failure to test the applicant’s true understanding of civics).

196. NAS REPORT, *supra* note 80, at 13. Similarly, the HSD Report called into question the whole redesign process by noting that “USCIS must better communicate why

there should be a relation between the test purpose and its format.

This Article offers no evidence to determine whether the test's format is suitable to accomplish its purposes. Rather, it challenges the premise that knowledge and *understanding* of civics can simply be learned from a book. A knowledge-based test may be one method, but it is not the only method, and not necessarily the most effective one. Another option is a performance or a behavior-based test. While a knowledge-based test measures declarative knowledge, a performance test assesses one's behavior to determine whether one has gained the required knowledge and understanding. An example is a driving test. In order to receive a driving license, it is not sufficient to recite traffic laws but, rather, the testee must prove, in practice, an understanding of the laws. A different type of performance test assesses one's responses to theoretical case studies on real life situations, a method similar to a bar exam.

*In re Rodriguez* allows an example of the use of performance testing.<sup>197</sup> In 1896, Ricardo Rodriguez, a natural-born Mexican citizen, applied for U.S. citizenship. He was illiterate in both English and Spanish and could not understand U.S. constitutional principles. Rodriguez could not even name the U.S. President, though he was familiar with the name of the Mexican President.<sup>198</sup> In a federal circuit court hearing to determine Rodriguez's appeal upon the denial of his naturalization application, Fisk, a character witness, testified that, "I know the man. I know that he is a good man, and know that . . . whatever the principles of the [C]onstitution of the United States might be . . . he would uphold them if he knew what they were."<sup>199</sup> The judge consequently held that Rodriguez was entitled to American citizenship, noting that Rodriguez "is a very good man, peaceful and industrious, of good moral character, and law abiding to a remarkable degree."<sup>200</sup> The possession of traits as hardworking,

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it is seeking to reform the current tests when it is not seeking any change in the bottom-line impact the tests have on which applicants or what proportion of applicants pass the tests." HSD REPORT, *supra* note 84.

197. See *In re Rodriguez*, 81 F. 337, 337–38 (W.D. Tex. 1897) (using affidavits and testimony of character witnesses to ascertain Rodriguez's fitness to become a U.S. citizen). This decision was the basis for the inclusion of an exception allowing Mexican immigration in the early twentieth century. See Ariela J. Gross, "The Caucasian Cloak": *Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 GEO. L.J. 337, 347–48 (2007) (discussing the opinion's impact on naturalization of Mexicans).

198. *Rodriguez*, 81 F. at 337–38, 345.

199. *Id.* at 338.

200. *Id.* at 355 (internal quotation marks omitted).



peaceful, and law abiding allowed the judge to accept Rodriguez's appeal and made him eligible to become an American citizen.

For many years, prior to the 1986 citizenship test, naturalization was adjudicated in naturalization courts. The applicant was interviewed by attorneys of the court and was required to procure two character witnesses to swear to his fitness for citizenship.<sup>201</sup> This system was not without flaws either. One difficulty was in identifying behavior patterns that are sufficient to turn immigrants into Americans. Another difficulty was the need to develop standards of evaluation and determine the authority responsible for assessing the cases. However, a performance-based test does not need to be applied instead of a knowledge-based test, or as a supplemental test. It can serve as an alternative method of evaluation. Moving from a cognitive, knowledge-based test to a performance-based test may give citizenship to worthy persons who do not know much about U.S. history and, if applied as an alternative test,<sup>202</sup> may also encourage people to attend courses about U.S. history and government or become involved in the community.

Another alternative to a knowledge-based test is a residency-based approach that presumes knowledge and understanding of U.S. history and civics through continual residency in the United States. An alien living continuously in the United States, as Gerald Neuman indicates, is likely to “develop a network of personal associations, integrating into some segment of American society and adapting to its way of life.”<sup>203</sup> The acquisition of knowledge and understanding is not presumed through the memorization of facts but through the experience of living in the country; it is conveyed by everyday life, participation in national festivals, social interactions, the media, and exposure to school curriculums for pupils. Mere presence allows exposure to American democracy. True, in the age of globalization the link between territorial presence and the bond of citizenship is blurred—newcomers may acquire

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201. See, e.g., *id.* at 337 (discussing Rodriguez's hearing).

202. In the Netherlands, getting a certification from an approved institution about sufficient knowledge of the Dutch language and society, or getting a “letter from the Municipal Executive stating that the applicant does not have to follow the integration programme because their command of Dutch is sufficient,” can serve as an alternative route for the citizenship test. COMMONWEALTH OF AUSTRALIA, AUSTRALIAN CITIZENSHIP: MUCH MORE THAN A CEREMONY 24 (2006) [hereinafter AUSTRALIAN CITIZENSHIP: MUCH MORE THAN A CEREMONY]. Such test alternatives—also existing in Australia, Britain, and Canada—do not exist in the United States. *Id.* at 9, 20, 22, 26.

203. GERALD L. NEUMAN, STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW 132 (1996).

knowledge of the United States prior to their arrival, in the same manner as they can create “inside-out communities,” that is, communities that physically reside inside this country, yet politically and culturally remain outside.<sup>204</sup> These exceptions, however, do not refute the generally reasonable assumption that continuous residence generates civic knowledge.<sup>205</sup>

The Naturalization Act of 1790 fixed a residency requirement of two years,<sup>206</sup> which was extended to five in 1795 and has remained the standard since.<sup>207</sup> Benjamin Franklin claimed that when a person gives a preference to America, “it is a proof of attachment which ought to excite our confidence [and] affection.”<sup>208</sup> This approach suggests that fulfilling a residency requirement is sufficient because anyone living in America for a certain period has become American.<sup>209</sup> As the U.S. Commission on Immigration Reform has noted,<sup>210</sup> the influence of residency is compounded when immigrant children learn in U.S. public schools, where they are taught American

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204. See Spiro, *supra* note 30, at 515–16 (noting that a modern immigrant likely “find[s] American society less alien than did his predecessor of a hundred years ago” due to increased globalization).

205. *Id.* at 514 (“In most cases physical presence will result in sustained, insinuating exposure to various facets of American life that are rooted in our political culture. . . . [I]n general one might rightly assume that mere presence will often prompt a kind of osmotic process in which the pervasive constitutional faith would seep into the newcomer’s consciousness, and that length of residence, even as a passive form of assimilation, would emerge a far better indicator of political assimilation than a score on any standardized test.”).

206. Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103, 103 (repealed 1795).

207. See Naturalization Act of 1795, ch. 20, § 1, 1 Stat. 414, 414 (repealed 1802) (extending residency requirement to five years); Darlene C. Goring, *In Service to America: Naturalization of Undocumented Alien Veterans*, 31 SETON HALL L. REV. 400, 409–10 (2000) (noting that the 1795 Act extended the residency requirement to five years, and that this requirement remains in effect).

208. THE POLITICAL THOUGHT OF BENJAMIN FRANKLIN 400 (Ralph Ketcham ed., 1965).

209. Franklin’s strategy, however, was not based on a *laissez faire* policy, i.e., the belief that an “invisible hand” would function as a means of melting pot to the American society. See Mary Jane Guy, *The American Common Schools: An Institution at Risk*, 21 J.L. & EDUC. 569, 571, 581 (1992) (contrasting Franklin’s proactive republican vision that the institution of public education would guarantee the melting pot effect with the *laissez faire* approach that would rely on organic changes naturally resulting in cultural pluralism). Rather, it was to diffuse the immigrants among the colonies to avoid the creation of large, geographically-concentrated foreign groups: “All that seems to me necessary is, to distribute them more equally, mix them with the English, establish English schools, where they are now too thick settled . . .” 7 JARED SPARKS, THE WORKS OF BENJAMIN FRANKLIN 73 (Boston, Hilliard, Gray & Co., 1838).

210. The U.S. Commission on Immigration Reform suggested a reform in immigrant children’s education based on language instruction programs and “the revival and emphasis on instruction of all kindergarten through grade twelve students in the common civic culture that is essential to citizenship.” IMMIGRATION REFORM REPORT, *supra* note 10, at 36–45.

history and civics.<sup>211</sup> Whereas a knowledge-based test presumes that an immigrant knows and understands U.S. civics upon answering fixed, relatively easy questions that can be learned online at Wikipedia or YouTube, a residency-based approach presumes that one gains knowledge merely through continuous physical presence in the United States without being required to pass a formal test.<sup>212</sup>

Changing the citizenship test format does not require special legislation. This is because the INA does not really provide for a specific test format.<sup>213</sup> The INA requires the demonstration of “knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States,” but leaves open the method of evaluation, which is left to the discretion of the government.<sup>214</sup> At least from a legal perspective, the adoption of a new test format can be implemented without further legislation; it is a political decision.

#### D. Ideology

Reviewing the test materials, one may reach interesting conclusions about the nature of U.S. citizenship and its underlying ideology. The most salient feature is the civic republican nature of the test, which places great emphasis on republican values of active civic participation, political deliberation, and lively engagement in public life. There are ten questions in the section “Rights and Responsibilities”: eight questions focus on civic responsibilities, and only two questions focus on civil rights.<sup>215</sup> A citizen is responsible for voting and serving on a jury,<sup>216</sup> defending the Constitution, obeying the laws, giving up loyalty to other countries, serving in the military (if

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211. See Joseph H. Carens, *Why Naturalization Should Be Easy: A Response to Noah Pickus*, in *IMMIGRATION & CITIZENSHIP IN THE 21ST CENTURY*, *supra* note 54, at 145.

212. It is thus not a real test but an alternative manner of acquiring citizenship. See Joseph Carens, *The Most Liberal Citizenship Test Is None at All*, in *HOW LIBERAL ARE CITIZENSHIP TESTS?* 19 (Ranier Böbeck & Christian Joppke eds., forthcoming 2010), available at [http://eudo-citizenship.eu/docs/RSCAS\\_2010\\_41.pdf](http://eudo-citizenship.eu/docs/RSCAS_2010_41.pdf) (arguing that individuals who have settled in a country for a substantial period of time should be allowed to become citizens without formal testing).

213. The C.F.R. provides that “[t]he applicant shall bear the burden of establishing by a preponderance of the evidence that he or she meets all of the requirements for naturalization.” 8 C.F.R. § 316.2(b) (2010).

214. 8 U.S.C. § 1423(a)(2) (2006).

215. 2008 TEST REVISION, *supra* note 1 (questions 48–49 and 52–57 cover voting and civil responsibilities, while questions 50–51 deal with civil rights). Other questions about rights appear in questions 6, 9, and 10. *Id.*

216. *Id.* (question 49). Voting also appears in questions 48 and 54. *Id.*

needed), and being loyal to the United States.<sup>217</sup> A responsible citizen should participate in the society by joining a political party or a civic group, helping with a campaign, writing to a newspaper, and supporting or opposing an issue or policy.<sup>218</sup> A responsible citizen should know when the last day to send in federal income tax forms is, or when to register for the Selective Service,<sup>219</sup> and must be familiar with the U.S. wars—ten out of one hundred questions focus on wars and war powers, not including the Civil War.<sup>220</sup>

Another salient feature is the constitutional nature of the test. To be American, knowing constitutional principles and institutions is essential.<sup>221</sup> This includes the formal text of the Constitution but also other sources: the Declaration of Independence, historical tradition, and the general political philosophy of American democracy, including, the idea of self-government, the rule of law, and the economic system of the United States.<sup>222</sup> The test, however, does not require an emotional connection to constitutional ideals or principles. Consequently, it asks about the Stars and Stripes, but does not explore the question of whether an immigrant has really developed a commitment to the flag.<sup>223</sup>

The citizenship test, therefore, is not ideologically neutral. It promotes a specific ideology of America and contains selective recollection of American history in a manner that excludes some social groups and infamous historical events. The question is whether the test ought to be ideologically neutral: Is it legitimate to promote liberal and republican ideas by using the citizenship test? This issue has never been discussed. Neutrality is an elusive concept. There is a large body of literature that illustrates how and why state neutrality is a myth and could not possibly be achieved.<sup>224</sup> Hence, the questions are what ideologies

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217. *Id.* (question 53).

218. *Id.* (question 55).

219. *Id.* (questions 56 & 57).

220. *Id.* (questions 32, 57, 72 & 78–83). Question 86 focuses on the September 11th attacks. *Id.*

221. Citizenship Day was established on September 17th, the same date of Constitution Day, perhaps to illustrate the interwoven relationship between citizenship and the Constitution. 36 U.S.C. § 106(a)–(b) (2006).

222. 2008 TEST REVISION, *supra* note 1 (questions 3, 11 & 12).

223. *Id.* (questions 96 & 97).

224. *See, e.g.*, WILL KYMLICKA, MULTICULTURAL CITIZENSHIP 109–12 (1996) (“[T]he idea that the government could be neutral . . . is patently false.”); STEPHEN MACEDO, DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY 196–98 (2000) (arguing that the notion of perfect fairness or neutrality is a “mirage” that cannot be reasonably achieved); DAVID MILLER, ON NATIONALITY 137 (1995) (arguing

ought to be promoted, for what reasons, and in what levels? In the most general sense, state neutrality requires a liberal democracy not to take sides among conflicting ways of life and conceptions of good.<sup>225</sup> One view of neutrality is “neutrality of impact”; under this view, the state should avoid policies that result in favoring one way of life.<sup>226</sup> Another view of neutrality is “neutrality of justifications”; this view focuses on the policy’s intentions or purposes. A policy is neutral—even if it burdens some people more than others—as long as the policy’s reasons are neutral.<sup>227</sup>

The citizenship test was historically designed by anti-immigrant groups to limit the entry of southern and eastern Europeans.<sup>228</sup> However, a close examination of the redesigned process reveals that the new test was intended to be fair and nondiscriminatory.<sup>229</sup> There was no intention of adopting a test for the purpose of ideological exclusion.<sup>230</sup> In other words: the justifications of the test seem to be ideologically neutral. This conclusion does not equally apply to the case of neutrality of impact. As noted, the test-passing rate is extremely high—the overall passage rate is 92%—with no racial differences.<sup>231</sup> A closer look presents a more complex picture. A study made by the USCIS in fiscal years 2003 and 2004 showed that the old citizenship test pass rates differ among various groups.<sup>232</sup> The study demonstrated that the test-passing rate was low among: (a) elderly—“only 46 percent of those 65 and older pass[ed] the test on their first try”—compared to an overall pass rate of 84%;

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that the goal of complete neutrality is impossible). The unfairness of the fact that a liberal state could not be neutral leads Kymlicka to the conclusion that it must be “compensated” by group-differentiated rights to minority groups. KYMLICKA, *supra*, at 110–13.

225. Anna Stilz, *Civic Nationalism and Language Policy*, 37 PHIL. & PUB. AFF. 257, 264 (2009).

226. Neutrality of impact is a difficult goal to put in practice because all policies unavoidably favor some groups more than others. See BRIAN BARRY, *JUSTICE AS IMPARTIALITY* 142–45 (1995) (arguing it is impossible to implement truly neutral policies because different groups will interpret and value the policies differently).

227. Stilz, *supra* note 225, at 265.

228. Amitai Etzioni, *Citizenship Tests: A Comparative, Communitarian Perspective*, 78 POL. Q. 353, 354 (2007).

229. See *supra* Part II.C (describing the effort by the U.S. Commission on Immigration Reform to further distance the naturalization process from its discriminatory past by making the citizenship test and its evaluation more uniform).

230. See *id.* (noting that the U.S. Commission on Immigration Reform focused its reform policy on fostering voluntary commitments to shared values rather than on forced Americanization as a tool for discrimination and exclusion).

231. Preston, *supra* note 137, at A1.

232. See Lynne Weintraub, *Different Learners, Different Services*, in CHENOWETH & BURDICK, *supra* note 57, at 59, 60 (summarizing the USCIS study results).

(b) refugees and asylum seekers—their pass rate was 77% and 74%, respectively, compared to an overall pass rate of 86% of other immigrant groups; and (c) immigrants from Central America and the Caribbean.<sup>233</sup> While there was no racial difference, there were differences according to country of origin. For example, there was a low pass rate for immigrants from the Dominican Republic (69.9%) and Vietnam (75%).<sup>234</sup> We still do not know whether these findings are applicable to the new citizenship test.

As a policy matter, the citizenship test should be tailored to the special needs of different immigrant groups. In this way the test may be more neutral in its impact. The “due consideration clause,” which allows immigration officers to take into consideration the applicant’s background and characteristics (age, education, etc.),<sup>235</sup> does not seem to lower the barriers faced by different immigrant groups. As a legal matter, however, there is little chance to invalidate a policy that is not neutral in its impact, especially in the immigration context.<sup>236</sup> Interestingly, although the test may affect various classes of immigrants differently, the Author has found no constitutional challenge brought against the ideological character of the test or against the test being a pretext to disguise a policy of intentional discrimination or disparate impact.

### *E. Justification*

Justification for the test derives from the justification of the purpose it serves and the test’s effectiveness in accomplishing this purpose. If, for example, knowledge and understanding of fundamental history and civics is necessary to keep the United States stable, and the test serves this purpose, the test is justified (or not) based on the value one attributes to this purpose. Yet, if this is an important purpose, why not ask every native-born American to pass a test at the age of eighteen (or another age)? In fact, it may even be more important to require test taking from native-born Americans. If the knowledge is essential to keep America stable, constitutionally ignorant

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233. *Id.*

234. *Id.*

235. CHENOWETH & BURDICK, *supra* note 57, at 44.

236. See Liav Orgad & Theodore Ruthizer, *Race, Religion and Nationality in Immigration Selection: 120 Years after the Chinese Exclusion Case*, 26 CONST. COMMENT. 237, 262–68 (2010) (noting that without clear racial motivations or other apparent evidence of discriminatory intent, the viability of a constitutional challenge is limited or nonexistent and is not supported by evidence of disparate impact).

citizens may threaten the country's social cohesion. And, while it could be possible to exclude noncitizens from U.S. citizenship, it is impossible to denaturalize a U.S. citizen for inability to recite constitutional principles.

Native-born Americans are not required to pass a citizenship test due to the presumption that they already know American history and civics because they studied in American schoolrooms.<sup>237</sup> But is this presumption correct? A recent study found that most Americans failed a civics test that is similar to the citizenship test.<sup>238</sup> The study presented a multiple choice exam to college freshmen and seniors at fifty colleges nationwide.<sup>239</sup> Freshmen scored on average 51.7% in 2006 and 51.4% in 2007; the seniors' average score was 53.2% in 2006 and 54.2% in 2007.<sup>240</sup> The sample exam included thirty-three questions on U.S. history and civics.<sup>241</sup> The results revealed that less than half of American citizens can name all three branches of government, that only 24% of college graduates know that official religion is prohibited by the First Amendment, and that only 21% know that "the phrase 'government of the people, by the people, for the people' comes from Lincoln's Gettysburg Address."<sup>242</sup> The data is more striking regarding office-holders whose average score was 44%—even less than freshmen students.<sup>243</sup> Moreover, 30% of elected officials did not know that "life, liberty, and the pursuit of happiness' are the inalienable rights referred to in the Declaration of Independence."<sup>244</sup> And while only 21% of American pupils could recognize a phrase from the Gettysburg address, two thirds knew that Paula Abdul was a judge on the show *American Idol*.<sup>245</sup>

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237. The *Report to the President of the Commission on Naturalization* noted that unlike naturalized Americans, native-born people grew up in the United States and were not ignorant of its values. NATURALIZATION COMM'N, *supra* note 41, at 11; see *Sugarman v. Dougall*, 413 U.S. 634, 659 (1973) (Rehnquist, J., dissenting) ("The process of naturalization was specifically designed by Congress to require a foreign national to demonstrate that he or she is familiar with the history, traditions, and institutions of our society in a way that a native-born citizen would learn from formal education and basic social contact.").

238. NAT'L CIVIC LITERACY BD., INTERCOLLEGIATE STUDIES INST., *OUR FADING HERITAGE: AMERICANS FAIL A BASIC TEST ON THEIR HISTORY AND INSTITUTIONS* 6 (2008).

239. *Id.*

240. *Id.*

241. *Id.* at 9. The questions were taken from the citizenship test, the National Assessment of Education Progress Test, and the "American history 101" exam, or were newly developed. *Id.* at 23–27.

242. *Id.* at 6–7, 9.

243. *Id.* at 19.

244. *Id.* at 7.

245. *Id.* at 15; see THE BRADLEY PROJECT ON AMERICA'S NAT'L IDENTITY, *E PLURIBUS UNUM*, 17–18 (2008) ("While 99 percent of the seniors [at the 55 top-ranked colleges and

What do these figures teach us? On the one hand, they show that a decent percentage of native-born American citizens do not possess the same level of civic knowledge that is required from immigrants.<sup>246</sup> From this reasoning, it is possible to conclude that the test's level of difficulty should be lowered or that fundamental reform is needed in the education system. On the other hand, it could mean that these figures, and effectively the test the native-born Americans took, are not significant. Had American citizens studied for the test, as immigrants do, they could have received better results. More importantly, American citizens may not *know* the required knowledge, but they *understand* the spirit of U.S. civics. Thus, while they may not know the name of the Supreme Court Chief Justice, they understand why a liberal democracy needs a Supreme Court and what its role is in America.

An example of a proposed test for native-born and naturalized citizens alike comes from Australia.<sup>247</sup> Recently, it was suggested that all citizens would have to pass a test before they could count on the electoral votes.<sup>248</sup> Under this proposal, which has not yet passed, while failing to pass the test would not lead to denaturalization or deprivation of rights, it may lead to the postponement of voting eligibility.<sup>249</sup> In addition, the Australian government has implemented a new citizenship education kit for upper primary and lower secondary school students to teach citizens similar knowledge to that required from immigrants.<sup>250</sup> The Minister of Immigration and Citizenship in Australia has stated that the same knowledge is equally important for all Australians.<sup>251</sup>

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universities] could identify Beavis and Butthead and 98 percent Snoop Doggy Dogg, less than one in four could identify the phrase 'government of the people, by the people, and for the people' as coming from the Gettysburg Address."); David S. Broder, *One Nation No More?*, WASH. POST, July 3, 2008, at A17 (referring to similar results found in the 2006 National Assessment of Educational Progress Civics Test).

246. The empirical relation between native-born citizenship and civic knowledge, which is doubtful regarding American citizens born in the United States, is perhaps more doubtful regarding American citizens born outside the United States to at least one U.S. citizen parent.

247. See Sarah-Jane Bennett & Meghan Tait, *The Australian Citizenship Test*, 1 QUEENSLAND L. STUDENT REV. 76, 86–87 (2008) (proposing that all citizens be required to pass such a test before being eligible to register to vote).

248. *Id.*

249. See *id.* (suggesting that passing a test before acquiring eligibility to vote would only prevent "full enjoyment of citizenship").

250. *New Australian Citizenship Educational Resource Kit*, WORKPERMIT (Nov. 9, 2009), <http://www.workpermit.com/news/2009-11-09/australia/new-australian-citizenship-educational-resource-kit.htm>.

251. *Id.*



The double standard of the citizenship test raises the question of equality. The principle of equality in the context of the citizenship test has two aspects. The first aspect of equality is between different classes of noncitizens applying for U.S. citizenship. The claim could be against classifications among noncitizens, that is, for an equal application of the test among aliens. The second aspect is inequality between citizens and noncitizens. Joseph Carens considers the test as a discriminatory means against noncitizens. Carens believes that “[t]he most liberal citizenship test is none at all.”<sup>252</sup> Carens, however, considers not only the citizenship test, but also the idea of naturalization requirements, to be discriminatory; in his view, most distinctions between citizens and noncitizens are arbitrary.<sup>253</sup> A less radical version of the argument sustains the distinctions drawn between citizens and noncitizens, and the need for appropriate naturalization barriers, yet considers a citizenship test only for noncitizens as discriminatory. In this context, one argument that is often made to distinguish between citizens and noncitizens is that citizenship tests are “a substitute for education: those born in the country or those who arrived very young can generally be expected to have acquired a basic knowledge of the country’s history, institutions, and cultural practices through school.”<sup>254</sup> Therefore, “[s]ince immigrants have generally not been schooled in the country, they lack this education and the test serves as a substitute.”<sup>255</sup> As an empirical matter, the premise under which native-born Americans know the required civic knowledge is, to put it mildly, followed by little support. As a normative matter, even if this proposition is correct, it should not necessarily lead to the conclusion that the test is justified. There may be some substitutes for a formal test, such as orientation courses or public education for pupils. Hence, although U.S. law generally sustains classifications between citizens and noncitizens,<sup>256</sup> holding that

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252. Carens, *supra* note 212, at 19.

253. See *id.* at 19–20; Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POL. 251, 251–53 (1987) (arguing that there is no legitimate basis for state restrictions on immigration).

254. Randall Hansen, *Citizenship Tests: An Unapologetic Defense*, in HOW LIBERAL ARE CITIZENSHIP TESTS?, *supra* note 212, at 25, 25.

255. *Id.*

256. See, e.g., *Nguyen v. INS*, 533 U.S. 53, 56–59 (2001) (holding different requirements for a child of a noncitizen and a citizen based on which parent is the citizen to be constitutional); *Fiallo v. Bell*, 430 U.S. 787, 788–89 (1977) (discussing the preferential immigration status given to noncitizens who qualify as children or parents of U.S. citizens or permanent residents); *Harisiades v. Shaughnessy*, 342 U.S. 580, 581–91 (1952) (upholding the right of the United States to deport aliens based on Communist Party membership).

citizenship is a privilege subject to the conditions set by Congress,<sup>257</sup> the topic of the equality of the test is not immune from constitutional scrutiny. Applicants who take the test have usually been living in the United States for many years and are generally protected under the Equal Protection Clause.<sup>258</sup> They may not have an equal right to citizenship, but they may have, at least, a right not to be discriminated against in access to rights and privileges on the basis of a test.

#### IV. CITIZENSHIP TESTS AROUND THE WORLD

Citizenship tests have become a salient issue following the September 11th attacks. In the last several years, at least seven countries have introduced, for the first time, a citizenship test: Australia, Austria, Britain, Denmark, France, Germany, and the Netherlands.<sup>259</sup> Comparatively, the United States's test level is far less difficult. This Part presents citizenship tests in four countries.<sup>260</sup> It demonstrates that, in a comparative perspective, no other country asks so little in its citizenship test.

##### A. *Britain*

The British new citizenship philosophy is that "citizenship is more esteemed and valued when it is earned, not given."<sup>261</sup> Hence, to become British, one has to go through a burdensome

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257. See, e.g., *Morrison v. California*, 291 U.S. 82, 89 (1934) (finding it constitutionally permissible to require a person of foreign descent to prove citizenship in order to assert the rights of citizenship).

258. See, e.g., *Bernal v. Fainter*, 467 U.S. 216, 217–28 (1984) (holding that denying aliens the opportunity to become notary publics violated the Equal Protection Clause); *Ambach v. Norwick*, 441 U.S. 68, 68–81 (1979) (upholding the right of states to deny teaching jobs in public schools to aliens that are eligible for U.S. citizenship, but refuse to become citizens); *Sugarman v. Dougall*, 413 U.S. 634, 641–46 (1973) (holding that a law denying all aliens the right to hold positions in New York's classified competitive civil service violated the Equal Protection Clause); *In re Griffiths*, 413 U.S. 717, 717–18 (1973) (determining that states may not constitutionally prohibit a resident alien from taking a bar exam solely due to lack of citizenship); *Graham v. Richardson*, 403 U.S. 365, 376 (1971) (holding that state statutes denying welfare benefits to aliens who had not lived in a particular state a specified number of years violated the Equal Protection Clause).

259. See CHRISTIAN JOPPKE, *CITIZENSHIP AND IMMIGRATION* 124–44 (2010) (discussing and comparing citizenship tests); A RE-DEFINITION OF BELONGING? LANGUAGE AND INTEGRATION TESTS IN EUROPE (Ricky van Oers et al. eds., 2010).

260. Portions of this section are adapted from Liav Orgad, *Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe*, 58 AM. J. COMP. L. 53, 63–83 (2010).

261. Mario Peucker, *Similar Procedures, Divergent Function: Citizenship Tests in the United States, Canada, Netherlands and United Kingdom*, 10 INT'L J. MULTICULTURAL SOC'YS. 240, 253 (2008) (internal quotation marks omitted).

process with a points-based system.<sup>262</sup> Starting from 2007, every immigrant must demonstrate “sufficient knowledge of [the] language”—which can be English or Scottish Gaelic or Welsh—and “sufficient knowledge about life in the United Kingdom.”<sup>263</sup> Demonstrating this knowledge is satisfied by passing the *Life in the UK Test*.<sup>264</sup> The test is taken before an immigrant can settle in the United Kingdom (a settlement permit grants permission to stay in the United Kingdom indefinitely).

The *Life in the UK Test* suggests an interesting philosophy of how to become a British citizen. On the one hand, the test excludes any reference to British history. To become British, one does not need to know something about the Magna Carta, the 1689 Bill of Rights, or the Petition of Right, nor about common law tradition. On the other hand, to become British, one must be familiar with British geography, demography, constitutional institutions and principles, national holidays, and a long list of practical knowledge of education, healthcare, housing, employment, and everyday needs.<sup>265</sup> One has to know, for example, what people do on Valentine’s Day (send cards to those they secretly admire); what the Grand National is (an annual steeplechase); and whether the Queen can marry someone who is not Protestant (she cannot).<sup>266</sup> The applicant has to know what the minimum age for buying tobacco is, how to buy a ticket for the underground railway, and that dogs must wear a collar showing the name and address of the owner.<sup>267</sup> This is not surprising because the test is not about fundamentals of British history but about life in the UK. Hence, while William Blackstone does not seem to be essential for daily life in the United Kingdom, information about leisure may be. The applicant has to provide an answer to questions such as: “[Suppose] you spill someone’s pint in the pub . . . What, according to the book, usually happens next?”<sup>268</sup> The essence of

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262. *Id.* at 252.

263. Nationality, Immigration & Asylum Act 2002, ch. 41, § 1; Peucker, *supra* note 261, at 251.

264. Peucker, *supra* note 261, at 253.

265. See LIFE IN THE UNITED KINGDOM TEST: CITIZENSHIP STUDY GUIDE (2007).

266. HENRY DILLON, HOW BRITISH ARE YOU? 36, 38–40, 121–22 (2008).

267. LIFE IN THE UNITED KINGDOM: TEST STUDY MATERIALS, <http://www.lifeintheunitedkingdomtest.co.uk> (last visited Jan. 25, 2011) (discussing these questions in Chapter 2—Section 1, Chapter 5—Section 7, and Chapter 5—Section 6 respectively).

268. *Can You Pass a Citizenship Test?*, BBC NEWS (June 16, 2005), <http://news.bbc.co.uk/2/hi/4099770.stm>. The possible answers are A) You would offer to buy the person another pint; B) You would offer to dry their wet shirt with your own;

Britishness under the test is, as Trevor Phillips asserts, “what people do [in Britain] . . . British is as British does.”<sup>269</sup> Unlike America, which supplies this information as an immigration “orientation package,” Britain actually requires immigrants to be tested on it.

The British test’s format differs from the American one. First, the British do not have a closed, pre-published list of questions. The questions are taken randomly from a pool of two hundred unpublished questions based on the handbook of *Life in the United Kingdom: A Journey to Citizenship*.<sup>270</sup> Next, unlike the U.S. test, which is taken in a face-to-face interview, the British apply a computer-based test.<sup>271</sup> Eighteen out of twenty-four questions must be answered correctly.<sup>272</sup> The format includes multiple choice questions, choosing one correct answer from four options, and true or false questions.<sup>273</sup> Passing the test means that the applicant proves sufficient knowledge of the language, and no additional language test is required.<sup>274</sup> And last, while the U.S. test is taken at the end of the naturalization process—as one of the last steps in the process—the British test is a prerequisite for obtaining a permanent residence permit.<sup>275</sup>

The official purpose of the British citizenship test is to promote effective integration of newcomers and thereby to achieve community cohesion and create a sense of belonging.<sup>276</sup> The *Denham Report, Building Cohesive Communities*—aimed at investigating the causes and implications of the 2001 violent riots in Bradford, Burnley, and Oldham—finds that a key cause for the riots was “lack of a strong civic identity or shared social values to unite diverse communities.”<sup>277</sup> It points out that British youths grow up “ignorant of other cultures and lifestyles,” and

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and C) You may need to prepare for a fight in the car park. The right answer is “A.” Details on the test are available at LIFE IN THE UK TEST, <http://www.lifeintheuktest.gov.uk/>.

269. See Trevor Phillips, *Britishness and Integration*, in BRITISHNESS: TOWARDS A PROGRESSIVE CITIZENSHIP 38, 42 (Nick Johnson ed., 2007).

270. Peucker, *supra* note 261, at 252.

271. *Id.* at 244, 252.

272. LIFE IN THE UNITED KINGDOM TEST: CITIZENSHIP STUDY GUIDE, *supra* note 265, at 11, 19.

273. *Id.* at 15.

274. Ricky Van Oers, *Justifying Citizenship Tests in the Netherlands and the UK*, in ILLIBERAL LIBERAL STATES: IMMIGRATION, CITIZENSHIP AND INTEGRATION IN THE EU 113, 119–20 (Elspeth Guild et al. eds., 2009).

275. Peucker, *supra* note 261, at 244, 251 & n.17.

276. *Id.* at 253–54.

277. HOME OFFICE, BUILDING COHESIVE COMMUNITIES: A REPORT OF THE MINISTERIAL GROUP ON PUBLIC ORDER AND COMMUNITY COHESION 7, 11–12, 18 (2001).

that this reality is a source of conflicts.<sup>278</sup> It thus recommends promoting an idea of citizenship that gives citizens a shared sense of belonging and “expresses common goals and aspirations.”<sup>279</sup> Shared identity, the Report states, is needed to unite diverse people and to create social cohesion.<sup>280</sup> Similar conclusions appear in the *Cantle Report*, published by the Home Office.<sup>281</sup> The *Cantle Report* found the lack of a meaningful concept of British citizenship to be a key factor of the riots and recommended the “develop[ment of] clear values . . . [of] . . . what it means to be a citizen of a modern multi-racial Britain.”<sup>282</sup> At this stage, it is unclear if the test fulfills its declared purpose.<sup>283</sup>

The adoption of a new citizenship test forces the British to redefine the concept of Britishness. In 2004, after a long debate on the essence of being British, the Home Office published its view of what it means to be British:

To be British seems to us to mean that we respect the laws, the elected parliamentary and democratic political structures, traditional values of mutual tolerance, respect for equal rights and mutual concern; and that we give our allegiance to the state (as commonly symbolised in the Crown) in return for its protection. To be British is to respect those over-arching specific institutions, values, beliefs and traditions that bind us all, the different nations and cultures together in peace and in a legal order.<sup>284</sup>

This prescription of the essence of the British identity is basically shared by most liberal democracies. Respecting the rule of law or the democratic political structure is British, just as it is French, German, or Dutch. Christian Joppke rightly points out the paradox of trying to have a specific national identity while invoking universal principles and values. “The British state is caught in the paradox of universalism,” Joppke observes, “it perceives the need to make immigrants and ethnic minorities parts of *this* and not of *any* society, but it cannot name and enforce any particulars that distinguish the ‘here’ from

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278. *Id.* at 12 (quoting HERMAN OUSELEY, COMMUNITY PRIDE NOT PREJUDICE—MAKING DIVERSITY WORK IN BRADFORD 2 (2001)).

279. *Id.*

280. *Id.* at 11–12.

281. *See* HOME OFFICE, COMMUNITY COHESION: A REPORT OF THE INDEPENDENT REVIEW TEAM CHAIRED BY TED CANTLE 11 (2002) (maintaining that community cohesion requires common values, social order, and an attachment to the place and identity).

282. *Id.* at 9

283. The passage rate is about 70%. *See* Peucker, *supra* note 261, at 252.

284. *See* HOME OFFICE, LIFE IN THE UNITED KINGDOM: A JOURNEY TO CITIZENSHIP 15 (2004).

“there.”<sup>285</sup> However, the Home Office has recently suggested refreshing the concept of Britishness by adding to the test a new section on British history and social mores.<sup>286</sup> For instance, the handbook will teach the immigrants “[t]he art of queuing,” that is, the “British practice of forming an orderly line.”<sup>287</sup> Phil Woolas, the Minister of State for Borders and Immigration, declared: “The simple act of taking one’s turn is one of the things that holds our country together.”<sup>288</sup> What is interesting is not only the fact that he finds queuing to be a “British” practice, but also that he finds it necessary to hold the British nation together. In light of increasing concern about immigration in Britain, this does not seem to be the last word in defining Britishness.<sup>289</sup>

### B. *The Netherlands*

The Dutch citizenship philosophy is that “one cannot study to be Dutch, one has to feel Dutch.”<sup>290</sup> Thus, the content of the citizenship test is kept in secret. During recent years, Dutch citizenship policies have shifted the focus from social inclusion to the exclusion of unwanted immigrants.<sup>291</sup> Current policy is aimed at *inburgering* immigrants.<sup>292</sup> The term *inburgering* means “having become like the natives, autochthonous.”<sup>293</sup> It is a process

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285. See Christian Joppke, *Immigration and the Identity of Citizenship: The Paradox of Universalism*, 12 CITIZENSHIP STUD. 533, 538 (2008).

286. See James Slack, *Immigrants Who Jeer at British Troops in the Street to Be Barred from Gaining Citizenship*, DAILY MAIL (U.K.) ONLINE (Aug. 3, 2009, 4:04 PM), <http://www.dailymail.co.uk/news/article-1203857/Immigrants-jeer-British-troops-street-barred-gaining-citizenship.html> (discussing how the new test will not only test knowledge of history; the applicant will be awarded points for knowledge in areas of special skills and qualifications, but will lose points for antisocial behavior).

287. Melissa Kite, *Immigrants to Be Taught How to Queue*, DAILY TELEGRAPH (Feb. 13, 2010, 9:00 PM), available at <http://www.telegraph.co.uk/news/uknews/immigration/7230274/Immigrants-to-be-taught-how-to-queue.html>.

288. *Id.* (internal quotation marks omitted).

289. See Claire Ellicott, *We Are Living in Broken Britain—and Almost Half of Us Want to Emigrate, Says Poll*, DAILY MAIL (U.K.) ONLINE (Feb. 9, 2010, 12:45 PM), <http://www.dailymail.co.uk/news/article-1249531/We-living-broken-Britain-Most-voters-pessimistic-state-country.html> (describing general dissatisfaction of British voters with the state of the country and suggesting much larger problems than the peoples’ inability to form orderly lines).

290. Peucker, *supra* note 261, at 249 n.13 (internal quotation marks omitted).

291. See Leonard F.M. Besselink, *Integration and Immigration: The Vicissitudes of Dutch ‘Inburgering’*, CHALLENGE: LIBERTY & SECURITY, 1–5 (June 24, 2008), [http://www.libertysecurity.org/IMG/pdf\\_Integration\\_and\\_immigration\\_the\\_vicissitudes\\_of\\_Dutch\\_inburgering\\_rev\\_.pdf](http://www.libertysecurity.org/IMG/pdf_Integration_and_immigration_the_vicissitudes_of_Dutch_inburgering_rev_.pdf) (discussing how integration of minorities into Dutch society has transformed from a social policy into an immigration issue).

292. *Id.* at 1–3.

293. *Id.* at 2 (internal quotation marks omitted).

of acculturation under which, in order to become Dutch, the immigrant has to subscribe to Dutch values. The year of 2005 was a turning point in the Dutch multiculturalist view with the introduction of the Integration Abroad Act of 2005.<sup>294</sup> This Act incorporates a new concept in worldwide migration. Every individual aged between eighteen and sixty-five wishing to enter the Netherlands on a nonvisitor visa must go to the Dutch embassy in his or her country of citizenship or country of residence and participate in language courses and civic training.<sup>295</sup> At the end, he or she must pass two tests in the Dutch embassy: an oral exam testing elementary knowledge of Dutch language and a computerized exam testing elementary knowledge of Dutch society.<sup>296</sup> Passing the tests does not guarantee citizenship, but merely admission. After being admitted, the applicant must attend further integration courses.<sup>297</sup> The applicant has to pass an additional exam, testing a higher level of Dutch language, and finally, an exam testing a higher level of knowledge of Dutch society and daily life situations.<sup>298</sup> The content of the exams is undisclosed, and there is no official handbook for exam preparation. Failing to pass the tests within a period of three-and-a-half years may result in administrative fines—up to €1,000—and the denial of the application.<sup>299</sup> The Dutch require applicants to integrate in advance—even before receiving a temporary residence permit (*mvv*). This new requirement is due to a change in the very premise of citizenship. As Christian Joppke observes, it is a “philosophical shift from naturalization as a ‘tool’ of integration to naturalization as ‘end-point’ of successful integration.”<sup>300</sup>

Until 2003, Dutch naturalization requirements were generally minimal: showing no criminal record and passing a

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294. Besselink, *supra* note 291, at 4.

295. See IMMIGRATIE- EN NATURALISATIEDIENST, RESIDENCE IN THE NETHERLANDS, 1–6 (2010), available at [http://english.ind.nl/Brochures\\_en\\_Formulieren/index.aspx](http://english.ind.nl/Brochures_en_Formulieren/index.aspx) (under heading Brochures and Factsheets click on link titled “Staying in the Netherlands,” which is directly beneath the “Living and working in the Netherlands” heading).

296. *Id.* at 5.

297. DISCOURSES ON LANGUAGE AND INTEGRATION 70–71 (Gabrielle Hogan-Brun et al. eds., 2009).

298. *Id.* at 67–68.

299. See Leonard F.M. Besselink, *Unequal Citizenship: Integration Measures and Equality*, in THE NEXUS BETWEEN IMMIGRATION, INTEGRATION AND CITIZENSHIP IN THE EU 14, 15 (Sergio Carrera et al. eds., 2006) (explaining that there are administrative fines for failing to pass the test).

300. See Christian Joppke, *Comparative Citizenship: A Restrictive Turn in Europe?*, 2 L. & ETHICS HUM. RTS. art. 6, at 11 (2008), available at <http://www.bepress.com/lehr/vol2/iss1/art6/>.

short interview were all that was necessary.<sup>301</sup> Failures of immigrant integration, notably among immigrants from Moroccan and Turkish origin, have led to the opposite policy.<sup>302</sup> A recent public survey indicates that 57% of the Dutch population believes that allowing immigration was “the biggest mistake in Dutch history.”<sup>303</sup> In light of this background, the goal of the citizenship test seems to be immigration control with orientation and education as only secondary. One can conclude this from the test’s historical background but also from the list of exemptions: the citizenship tests do not apply to EU citizens, nor to citizens of Australia, Canada, Japan, New Zealand, Switzerland, and the United States.<sup>304</sup> Indeed, after the implementation of the test, the number of citizenship petitions dropped by two-thirds, and the passing rate has been reduced to 70%.<sup>305</sup>

The Dutch test contains various topics: from Dutch history, through Dutch way of life, and up to Dutch culture. The test examines beliefs and values-adoption, and not just history and civics.<sup>306</sup> Before taking the test, the applicant has to watch a two-hour film about the Dutch society.<sup>307</sup> The film gives the impression that it would be better to stay out. It starts with statements such as “it’s too cold here,” “my goodness, they really are white,” “Dutch people really have very little patience,” and “people suffer from culture shock here.”<sup>308</sup> The applicant is exposed to Dutch customs, such as leaving house curtains open, shaking hands with women, and bringing birthday presents. One of the scenes shows homosexuals kissing and topless women,<sup>309</sup> and no exemption is made for religious scholars. Some test questions do not have a right-or-wrong answer and often do not

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301. EVELYN ERSANILLI, FOCUS MIGRATION: COUNTRY PROFILE—NETHERLANDS 4 (2007), available at [http://focus-migration.hwwi.de/typo3\\_upload/groups/3/focus\\_Migration\\_Publikationen/Laenderprofile/CP11\\_Netherlands.pdf](http://focus-migration.hwwi.de/typo3_upload/groups/3/focus_Migration_Publikationen/Laenderprofile/CP11_Netherlands.pdf).

302. See *id.* at 3 & fig.2 (explaining that Turks and Moroccans are among the “most disadvantaged” in the Netherlands and illustrating that they also comprise the two largest groups of foreign nationals).

303. See *Dutch: Mass Immigration Our Biggest Mistake Ever*, NIS NEWS (Mar. 27, 2008), [http://www.nisnews.nl/public/270308\\_1.htm](http://www.nisnews.nl/public/270308_1.htm) (internal quotation marks omitted).

304. IMMIGRATIE- EN NATURALISATIEDIENST, *supra* note 295, at 7.

305. Peucker, *supra* note 261, at 248–50.

306. J.F.I. KLAVER & A.W.M. ODÉ, CIVIC INTEGRATION AND MODERN CITIZENSHIP 67 (2009).

307. DISCOURSES ON LANGUAGE AND INTEGRATION, *supra* note 297, at 68.

308. Details about the film, *Coming to the Netherlands*, are available at <http://www.naarnederland.nl/documentenservice/pagina.asp?pagkey=53774> (last visited Jan. 9, 2011).

309. Jeremy Bransten, *EU: Netherlands Leading Trend to More Stringent Immigration Rules*, RADIO FREE EUROPE RADIO LIBERTY (Apr. 5, 2006), <http://www.rferl.org/content/article/1067418.html>.



have a right answer at all as they relate to social norms—for example, how “wrong” is it when an immigrant visits the widow of a deceased coworker instead of sending a card, or does not keep a tidy front yard? Under a system recently suggested by the Dutch government, immigrants will be further required to be tested on the words of the *Wilhelmus*, the Dutch national anthem.<sup>310</sup> In addition, Dutch citizens wishing to sponsor the entry of their family members will first have to pass the citizenship test themselves.<sup>311</sup>

The Dutch test format is different than the American. First, the Dutch require taking the citizenship test twice—before admission and before naturalization. Second, unlike the United States, where the test can be repeatedly taken, failing the Dutch test means that the applicant has to wait six months for another test, and it cannot be repeated after three failures.<sup>312</sup> Third, the Dutch apply a knowledge-based computerized test, but the format is complicated: the language test takes more than three hours and has more than one hundred questions, and the citizenship test takes forty-five minutes and requires answering correctly twenty-one out of thirty questions.<sup>313</sup> And last, unlike the U.S. test, which examines knowledge and understanding, the Dutch test goes one step further: it explores whether the immigrant legally *accepts* the Dutch values and, in some cases, morally *agrees* with them.<sup>314</sup> It seeks moral transformation.

### C. Germany

In September 2005, the German *Land* Baden-Württemberg introduced a series of new questions for the purpose of assessing the loyalty of people requesting naturalization. Under this policy, loyalty is assessed by an interview examining the applicant's personal beliefs and moral judgments:

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310. *Dutch MPs Want Immigrants to Learn National Anthem*, EXPATICA (Dec. 2, 2009), [http://www.expatica.com/nl/news/dutch-news/Most-Dutch-MPs-want-immigrants-to-learn-national-anthem-\\_58516.html](http://www.expatica.com/nl/news/dutch-news/Most-Dutch-MPs-want-immigrants-to-learn-national-anthem-_58516.html).

311. *Stricter Rules Imposed for 'Import Brides'*, NRC HANDELSBLAD (Oct. 5, 2009, 5:13 PM), [http://www.nrc.nl/international/article2377713.ece/Stricter\\_rules\\_imposed\\_for\\_import\\_brides](http://www.nrc.nl/international/article2377713.ece/Stricter_rules_imposed_for_import_brides).

312. Peucker, *supra* note 261, at 249.

313. The audio portion of the test has four types of questions: repeat sentences, answer short questions, repeat short stories, and indicate opposites. See Eva-Maria Schneidhofer, *Citizenship Tests as Instruments of Power: The Case of the Dutch Integration Exams* 32 (Aug. 15, 2008) (unpublished M.A. thesis, Universiteit van Amsterdam) (on file with author).

314. Ines Michalowski, WZB Soc. Sci. Research Ctr., *Citizenship Tests in Five Countries—An Expression of Political Liberalism?* (Oct. 2009), <http://bibliothek.wzb.eu/pdf/2009/iv09-702.pdf>.

- You have heard of the September 11 attacks in New York and of March 11 2004 in Madrid. In your opinion, were the perpetrators terrorists or freedom fighters? Explain your answer.
- What is your opinion of the practice that parents force their children to marry?
- Imagine that your adult son comes to you and declares that he is a homosexual and would like to live with another man. How would you react?
- Your daughter applies for a job in Germany but she is rejected. Later, you discover that a black African from Somalia got the job. How would you react?<sup>315</sup>

The Baden-Württemberg questionnaire is unusual in the intrusiveness of its questions—thirty in total—about gender equality, religion, politics, marital relations, and culture—all in a two-hour oral exam.<sup>316</sup> The *Land's* Minister of the Interior explained the test's rationale: "Until now, we have always asked what the immigrants know about our Constitution . . . [b]ut there's a big difference between what one knows and what one believes or identifies with."<sup>317</sup> Originally, the questions applied only to applicants from one of the fifty-seven member states of the Organisation of the Islamic Conference and "all other applicants appearing to be Muslim."<sup>318</sup>

In March 2006, the Hessian *Land* issued a new citizenship test containing one hundred questions on nine subjects: Germany and Germans, German history, human rights, elections, federal authority, state authority, Germany in Europe, culture and science, and national symbols.<sup>319</sup> The test is less intrusive but still

315. The Baden-Württemberg questionnaire is on file with the Author.

316. Kate Connolly, *Germans to Put Muslims Through Loyalty Test*, DAILY TELEGRAPH (Dec. 31, 2005, 12:01 AM), <http://www.telegraph.co.uk/news/worldnews/europe/germany/1506712/Germans-to-put-Muslims-through-loyalty-test.html>.

317. Charles Hawley, *A German State Quizzes Muslim Immigrants on Jews, Gays and Swim Lessons*, SPIEGEL ONLINE (Jan. 31, 2006, 2:39 PM), <http://www.spiegel.de/international/0,1518,397482,00.html> (internal quotation marks omitted).

318. ISLAMIC HUMAN RIGHTS COMM'N, *THE ÜBER-CITIZEN AND GERMAN KULTURKAMPF* –S.10 GERMAN NATURALISATION LAW: A FRONT? 3 (2007) (emphasis omitted) (internal quotation marks omitted). Following criticism, the Muslims-only application had changed to any applicant "whose loyalty to the German Basic Law is doubted." *Migration Report: January 2006*, EUROPEAN FORUM FOR MIGRATION STUDIES, [http://www.efms.uni-bamberg.de/dokz06\\_e.htm](http://www.efms.uni-bamberg.de/dokz06_e.htm) (last updated Mar. 7, 2006). For a criticism of the questionnaire, see Rüdiger Wolfrum & Volker Röben, *Gutachten zur Vereinbarkeit des Gesprächsleitfadens für die Einbürgerungsbehörden des Landes Baden-Württemberg mit Völkerrecht*, MAX PLANCK INST. FOR COMPARATIVE PUB. LAW & INT'L LAW (Mar. 8, 2006), [http://www.mpil.de/shared/data/pdf/gutacht\\_gespraechsleitfaden\\_einbuerbung.pdf](http://www.mpil.de/shared/data/pdf/gutacht_gespraechsleitfaden_einbuerbung.pdf).

319. *Proposed Hesse Citizenship Test*, SPIEGEL ONLINE (May 9, 2006), <http://www.spiegel.de/international/0,1518,415242,00.html>.

includes questions on ethics, politics, and culture. The applicant first has to explain—it is not a multiple choice exam—the concept of Reformation, the Holocaust, “Israel’s right to existence,” and some constitutional principles, such as free speech and equality.<sup>320</sup> Next, the applicant has to explain “which . . . methods are permitted and which are not” in educating children, and their standpoint on the statement “[a] woman should not be allowed to move freely in public or travel unless escorted by a close male relative.”<sup>321</sup> In the next part, the applicant has to name German athletes, composers, and musicians.<sup>322</sup> The applicant needs to be familiar with symphonies of Beethoven and name Nietzsche, Kant, and Schopenhauer as German philosophers.<sup>323</sup> Some questions require a high degree of knowledge, for example, “What sporting event does [the film *The Miracle of Bern*] deal with” (the 3:2 victory of Germany over Hungary in the 1954 World Cup Final).<sup>324</sup>

Since September 2008, a federal test has replaced the *Länder* tests.<sup>325</sup> The federal test includes thirty-three multiple choice questions selected randomly from a catalog of 310, from which the applicant must correctly answer seventeen.<sup>326</sup> It is a less intrusive test, focusing on history, geography, constitutional principles, national symbols, and German customs, such as “what Germans traditionally do at Easter” (painting eggs).<sup>327</sup> The novelty of the federal test is to apply an American-style knowledge-based test. However, passing the test is not the sole criterion for becoming German. Revisions of the Nationality Act require applicants to demonstrate an “adequate knowledge of German” language by taking compulsory integration courses,<sup>328</sup>

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320. *Id.* (internal quotation marks omitted) (questions 9, 15, 17, 38 & 88).

321. *Id.* (questions 39 & 46).

322. *Id.* (questions 83 & 92).

323. *Id.* (questions 80 & 83).

324. *Id.* (question 90); *The Miracle of Bern*, SPIEGEL ONLINE (June 7, 2006), <http://www.spiegel.de/international/0,1518,420110,00.html>.

325. KAY HAILBRONNER, EUDO CITIZENSHIP OBSERVATORY, COUNTY REPORT: GERMANY 11 (2010), available at <http://eudo-citizenship.eu/docs/CountryReports/Germany.pdf>.

326. *New German Citizenship Questions Flunk Cultural Sensitivity Test*, DEUTSCHE WELLE (Aug. 7, 2008), <http://www.dw-world.de/dw/article/0,,3469730,00.html>.

327. GESAMTKATALOG DER FÜR DEN EINBÜRGERUNGSTEST ZUGELASSENEN PRÜFUNGSFRAGEN [General Catalogue of the Naturalization Test Approved Examination Questions], available at [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Einbuengerungstest/Einbuengerungstest\\_Allgemein.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Einbuengerungstest/Einbuengerungstest_Allgemein.pdf?__blob=publicationFile) (last visited Jan. 29, 2011). Question samples are on file with the Author.

328. Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, RGBL. at III 102-1, as amended, § 10(1)(6), available at <http://bundesrecht.juris.de/rustag/BJNR005830913.html>. The integration course is divided into 600 hours of

and to “confirm[ ] his or her commitment to the free democratic constitutional system.”<sup>329</sup> The applicant should possess “knowledge of the legal system, the society and living conditions in the Federal Republic of Germany” to gain German citizenship,<sup>330</sup> and “a basic knowledge of the legal and social system and the way of life in the Federal territory” to gain a long-term residence permit.<sup>331</sup> In addition, spouses of German citizens can be naturalized only after “it is ensured that they will *conform* to the *German way of life*.”<sup>332</sup> It is unclear, however, what conforming to the “German way of life” really means.

#### D. Australia

In December 2006, the Howard Government released a discussion paper requesting the public’s opinion on certain aspects of implementing a citizenship test.<sup>333</sup> The government stated that “Australian citizenship is more than just a ceremony,” and declared that immigrants should “*understand* the Australian way of life and our shared values and demonstrate a *commitment* to contributing to that way of life and *accepting* those values.”<sup>334</sup> The government asked the public four questions:

- 1) Should Australia introduce a formal citizenship test?
- 2) How important is knowledge of Australia for Australian citizenship?
- 3) What level of English is required to participate as an Australian citizen?
- 4) How important is a demonstrated commitment to Australia’s way of life and values . . . ?<sup>335</sup>

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language courses and an additional 30 hours of orientation courses. Nadja Baeva, *Promoting Germany’s Language Melting Pot*, DEUTSCHE WELLE (June 19, 2005), <http://www.dw-world.de/dw/article/0,,1615057,00.html>. At the end, the immigrant has to pass a proficiency test. See Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, RGBL. at III 102-1, as amended, § 10(1)(7), available at <http://bundesrecht.juris.de/rustag/BJNR005830913.html>.

329. Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, RGBL. at III 102-1, as amended, § 10(1)(1), available at <http://bundesrecht.juris.de/rustag/BJNR005830913.html>.

330. *Id.* § 10(1)(7).

331. Aufenthaltsgesetz [AufenthG] [Residence Act], July 30, 2004, RGBL. at III 102-1, § 9a(2)(4), available at [http://www.gesetze-im-internet.de/aufenthg\\_2004/\\_9a.html](http://www.gesetze-im-internet.de/aufenthg_2004/_9a.html).

332. Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, BGBL at 1970, § 9(1)(2), available at <http://bundesrecht.juris.de/rustag/BJNR005830913.html> (emphases added).

333. See AUSTRALIAN CITIZENSHIP: MUCH MORE THAN A CEREMONY, *supra* note 202, at 7.

334. *Id.* at 5 (emphases added).

335. *Id.* at 7.

A key question was whether it is sufficient to require the demonstration of knowledge and understanding of Australian values, or should a commitment to these values be also required.<sup>336</sup>

The discussion paper provoked a fierce debate. Although some public interest groups opposed the idea of a citizenship test, the general public was largely for it.<sup>337</sup> While the British government established a committee to investigate the nature of Britishness,<sup>338</sup> the Australian government took a different road: it asked the Australian people to define what Australianness means. After a long deliberation, the government published a detailed citizenship handbook, which included a list of Australian values that must be upheld in order to become Australian citizen: “dignity and freedom of the individual”; “freedom of speech”; “freedom of religion and secular government”; “freedom of association”; “support for parliamentary democracy and the rule of law”; “equality under the law”; “equality of men and women”; “equality of opportunity”; “peacefulness”; “tolerance, mutual respect and compassion for those in need.”<sup>339</sup>

On July 1, 2007, the Howard Government introduced a comprehensive citizenship reform.<sup>340</sup> The residence requirement was extended to four years; the English language requirement was made more stringent; and, for the first time, a citizenship test was introduced.<sup>341</sup> The test focused on various topics, such as the Constitution, the government, geography, national symbols, holidays, the economy, and history.<sup>342</sup> An applicant was to be familiar with the indigenous Australians, the Great Barrier Reef, and the country’s flora and fauna.<sup>343</sup> Reading materials included early European exploration and a long list of civil rights and civic responsibilities, as well as Captain James Cook, the Anzac

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336. *Id.* at 13.

337. See Katharine Betts & Bob Birrell, *Making Australian Citizenship Mean More*, 15 *PEOPLE & PLACE* 45, 53 (2007), <http://elecpress.monash.edu.au/pnp/view/issue/?volume=15&issue=1> (revealing that 77% of Australian citizens polled in 2006 were in favor of a formal citizenship test).

338. *COMM’N FOR RACIAL EQUALITY, CITIZENSHIP AND BELONGING: WHAT IS BRITISHNESS?* (2005), [http://ethnos.co.uk/what\\_is\\_britishness\\_CRE.pdf](http://ethnos.co.uk/what_is_britishness_CRE.pdf).

339. See AUSTRALIAN GOV’T, *BECOMING AN AUSTRALIAN CITIZEN 5–7* (2007) [hereinafter *BECOMING AN AUSTRALIAN CITIZEN*] (proclaiming that these values and principles are “central to Australia remaining a stable, prosperous and peaceful community”).

340. See *Australian Citizenship Act 2007* (Cth), available at <http://www.comlaw.gov.au/>.

341. *Id.* ss 21(2)(e), 21(2A), 22(1)(a), 23A. The Citizenship Testing Act amended the Australian Citizenship Act to introduce a citizenship test. *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1, available at <http://www.comlaw.gov.au/>.

342. *BECOMING AN AUSTRALIAN CITIZEN*, *supra* note 339, at 5–9, 13, 16, 35–37.

343. *Id.* at 9, 11.

diggers, art, and sport.<sup>344</sup> Sample questions asked: “Who was the first Prime Minister of Australia?” and “What is the floral emblem of Australia?”<sup>345</sup> In November 2008, the Rudd Government implemented a slightly different test that focused on “Australia’s democratic values rather than obscure historical or sporting facts.”<sup>346</sup> Among the topics are questions relating to the system of government and Australian values—including mateship (Australia’s tradition of mutual help).<sup>347</sup> The applicant must know, for instance, that the golden wattle is Australia’s national flower; kangaroos and emus are depicted on Australia’s coat of arms; the opal is Australia’s national gemstone; and that Australia’s values are based on the “Judaeo-Christian heritage.”<sup>348</sup>

The Australian Citizenship Act 2007 requires immigrants to demonstrate, by passing a test, an “adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship.”<sup>349</sup> The handbook, however, goes one step forward. It declares that “[b]ecoming an Australian citizen means that you are making an *ongoing commitment* to Australia and *all* that this country stands for.”<sup>350</sup> Australian citizenship “rests on sentiments of nationhood and enduring attachment to what Australians hold in common.”<sup>351</sup> The citizenship handbook centers on the Australian Citizenship Pledge and seeks to verify that the applicant has the necessary information for knowing what obligations he or she swears to uphold.<sup>352</sup> In the pledge, one takes

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344. *Id.* at 3–4, 17, 21, 26, 28.

345. *Id.* at 45 (questions 3 & 5).

346. See Gwenda Tavan, *Testing Times: The Problem of ‘History’ in the Howard Government’s Australian Citizenship Test*, in DOES HISTORY MATTER? MAKING AND DEBATING CITIZENSHIP, IMMIGRATION AND REFUGEE POLICY IN AUSTRALIA AND NEW ZEALAND 125, 125–26 (Klaus Neumann & Gwenda Tavan eds., 2009) (quoting Nicola Berkovic, *Howard’s Migrant Test to Be Dumped*, AUSTRALIAN (Nov. 22, 2008, 12:00 AM), <http://www.theaustralian.com.au/news/nation/howards-migrant-test-to-be-dumped/story-e6frg6nf-1111118108067>) (internal quotation marks omitted).

347. AUSTRALIAN GOV’T, AUSTRALIAN CITIZENSHIP: OUR COMMON BOND 17–18, 23–29 (2009) [hereinafter AUSTRALIAN CITIZENSHIP: OUR COMMON BOND].

348. *Id.* at 14, 18. The chapters on “Australia Today” and “Our Australian Story” are nontestable sections. *Id.* at 38–71. In these chapters, the applicant can learn about Australia’s art, theater, music, poetry, etc. *Id.* at 43–45.

349. *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1, available at <http://www.comlaw.gov.au/>.

350. AUSTRALIAN CITIZENSHIP: OUR COMMON BOND, *supra* note 347, at 3 (emphases added) (“Our stability, our culture and our laws have been shaped by our history. By joining the Australian community, you will inherit this history . . .”).

351. BECOMING AN AUSTRALIAN CITIZEN, *supra* note 339, at 1.

352. See *id.* at 1, 3 (stating that “new citizens are asked to pledge loyalty to Australia and its people” and that they are “expected to know something of Australia’s history and heritage, [its] land and its people, and of the unique national culture which has evolved in Australia over time”).

eternal obligations to be loyal to Australia and its people, share their beliefs, respect their rights, and obey the law.<sup>353</sup>

The official purpose of the Australian citizenship test is to ensure successful integration and to protect the Australian way of life.<sup>354</sup> The government, however, has presented no evidence that mere civic knowledge can contribute to the protection of the Australian way of life or promote social cohesion and stability.<sup>355</sup> Within the public debate, some argued that the real purpose of the test was to serve as a device for immigration control, a “form of population gatekeeping” to be used as “a political tool to keep potentially disaffected voters inside.”<sup>356</sup> But, like the U.S. case, the argument seems unreasonable in light of the very high passing-rate of the test, which, between October 2007 and March 2009, stood at 96.7% on the first or subsequent attempts.<sup>357</sup>

The Australian test is knowledge-based and focuses on civic issues. However, unlike the Americans, the Australians do not ask applicants to understand Australian values but instead require them to sign a legal statement, the *Australian Values Statement*, in which every immigrant above the age of eighteen pledges understanding of Australia’s values as follows:

I understand:

- Australian society values respect for the freedom and dignity of the individual, freedom of religion, commitment to the rule of law, Parliamentary democracy, equality of men and women and a spirit of egalitarianism that embraces mutual respect, tolerance, fair play and compassion for those in need and pursuit of the public good
- Australian society values equality of opportunity for individuals, regardless of their race, religion or ethnic background
- [T]he English language, as the national language, is an important unifying element of Australian society.

I undertake to respect these values of Australian society during my stay in Australia and to obey the laws of Australia.

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353. *Id.* at 44. The Citizenship Pledge goes as follows: “From this time forward, I pledge my loyalty to Australia and its people Whose democratic beliefs I share, Whose rights and liberties I respect, and Whose laws I will uphold and obey.” *Id.*

354. Tavan, *supra* note 346, at 125.

355. *See id.* at 129 (questioning the Australian government’s assumption that testing applicants on Australian values and customs would increase their commitment to those ideals).

356. *Id.* at 139–41.

357. DEPT OF IMMIGRATION & CITIZENSHIP, AUSTRALIAN GOV’T, AUSTRALIAN CITIZENSHIP TEST: SNAPSHOT REPORT 4–5 (2009).

I understand that, if I should seek to become an Australian citizen:

- Australian citizenship is a shared identity, a common bond which unites all Australians while respecting their diversity
- Australian citizenship involves reciprocal rights and responsibilities. The responsibilities of Australian Citizenship include obeying Australian laws, including those relating to voting at elections and serving on a jury.<sup>358</sup>

The format of the Australian test differs from that of the American test. First, the Australian test must be passed prior to completing the citizenship petition—not at the end of the naturalization process as in the American case.<sup>359</sup> Second, the Australian test is a computer-based multiple choice exam; passing the exam requires at least fifteen out of twenty correct answers.<sup>360</sup> Third, Australia does not pre-publish test items. The questions are randomly selected from a large pool and are based on the information included in the citizenship handbook.<sup>361</sup> Fourth, the Australian format includes three mandatory questions on privileges and responsibilities that must *all* be answered correctly.<sup>362</sup> And finally, attending a citizenship course offers an alternative route for passing the citizenship test.<sup>363</sup>

Citizenship tests have recently become popular.<sup>364</sup> A comparative view helps to understand the uniqueness of the U.S. test. First and foremost, the U.S. test is about knowledge and understanding of U.S. history and civics. This is not the case in other countries: the British require the applicants to demonstrate “sufficient knowledge” of (daily) *Life in the UK*; the Germans ask for an “adequate knowledge” of the legal system, the society, and the German *way of life*; the Dutch request the demonstration of “sufficient knowledge” of the Dutch *society*; and the Australians expect “an adequate knowledge” of Australians’ *responsibilities and privileges*. Unlike the United States, in which passing the test is a requirement at the end of the naturalization process, in

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358. AUSTRALIAN GOV'T, DEP'T OF IMMIGRATION & CITIZENSHIP, LIVING IN AUSTRALIA: AUSTRALIAN VALUES STATEMENT—PROVISIONAL AND PERMANENT, *available at* <http://www.immi.gov.au/living-in-australia/values/statement/long/> (last visited Oct. 17, 2010).

359. BECOMING AN AUSTRALIAN CITIZEN, *supra* note 339, at 44; CHENOWETH & BURDICK, *supra* note 57, at 36–38.

360. AUSTRALIAN CITIZENSHIP: OUR COMMON BOND, *supra* note 347, at 4.

361. *Id.*

362. BECOMING AN AUSTRALIAN CITIZEN, *supra* note 339, at 43.

363. AUSTRALIAN CITIZENSHIP: OUR COMMON BOND, *supra* note 347, at 5.

364. *See sources cited supra* note 259.



some countries it is a prerequisite for admission (the Netherlands), or getting a residence permit (Australia and Britain). And, at least the Dutch test focuses not only on knowledge but also on moral attitudes. As for the test format, the United States, which pre-publishes its exam questions and answers, is the only country surveyed that has no alternative in place for taking the test (such as passing an integration course). In all the countries surveyed, the test is a computer-based examination, usually lasting an hour, and is not conducted face-to-face, as in the United States.<sup>365</sup> The United States is perhaps the only country in which the questions always remain the same, that is, unchanging; the Netherlands, for example, changes the test questions every six months.<sup>366</sup> For better or worse, the United States has adopted a test, which, from a comparative view, is very relaxed.

In the United States, the historical interest in the citizenship test was to serve as an effective means of controlling immigration. This goal, however, is not the current interest of the U.S. test.<sup>367</sup> Yet, to a large extent, it seems to be the current interest of Europe and Australia where the adoption of the test has often been justified on the ground of immigration control.<sup>368</sup> Indeed, after the implementation of the citizenship test, there was a dramatic drop in the number of naturalized citizens.<sup>369</sup> While citizenship in Europe becomes more communitarian, the United States remains loyal to civic republicanism; on the whole, the U.S. citizenship test represents a generally pro-immigrant policy.

The reasons for the gap between Europe and the United States derive not only from the different purposes of the test, but also from the *laissez faire* philosophy of immigrant integration in the United States. Noah Pickus characterizes this philosophy as “don’t invest, don’t expect.” Under this approach, the United States will not invest much in quick immigrant integration but, at the same time, “the United States does not expect that newcomers will learn much about [its] history and

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365. AUSTRALIAN CITIZENSHIP: MUCH MORE THAN A CEREMONY, *supra* note 202, at 20, 24; AUSTRALIAN CITIZENSHIP: OUR COMMON BOND, *supra* note 347, at 4; CHENOWETH & BURDICK, *supra* note 57, at 37.

366. AUSTRALIAN CITIZENSHIP: MUCH MORE THAN A CEREMONY, *supra* note 202, at 24.

367. *Supra* Part II.A.

368. See Ricky van Ores, Eva Ersbøll & Dora Kostakopoulou, *Mapping the Redefinition of Belonging in Europe*, in A RE-DEFINITION OF BELONGING?, *supra* note 259, at 312–21 (describing the adoption of citizenship tests by Austria, Denmark, France, and the Netherlands in order to limit immigration).

369. *Id.* at 321–25 (describing the cases of Austria, Denmark, Germany, and the Netherlands).

values.”<sup>370</sup> Pickus also points out that the recent ongoing debate in Europe had long been resolved in the United States, which has been debating its test for more than a century.<sup>371</sup>

#### V. TOWARD A MORE MEANINGFUL TEST

To pass the U.S. citizenship test, an applicant must answer correctly six out of ten questions in a face-to-face interview.<sup>372</sup> Imagine that the immigration officer first asks the applicant question number eighty-six: “What major event happened on September 11, 2001, in the United States?”<sup>373</sup> Imagine, further, that the applicant does not provide the “correct” answer, which is, “Terrorists attacked the United States,”<sup>374</sup> but says “the Great Satan was humiliated by our greatest freedom fighters.” Or imagine that the applicant knows that the right answer, according to the handbook, is, “Terrorists attacked the United States,” but adds that he personally does not believe in this interpretation, or at least has no conclusive evidence to support it. What should the officer do: should he say “wrong” answer and move forward to the second question? Should he continue to investigate whether the applicant really believes the 9/11 attacks were justified? Or should he stop the interview and disqualify the applicant?

This Part discusses three issues that must be addressed in any future debate on the citizenship test. The first issue is the legal source of the test and its purpose: Does the test merely examine civic knowledge and understanding, or is it legally possible to use the current test in order to examine the applicant’s character and attachment to the principles of the U.S. Constitution? The second issue relates to different interpretations of the concept of “understanding.” Is cognitive understanding the sole requirement, or is it legally possible to employ a broader concept of moral, psychological, and emotional understanding? The third issue touches upon the meaning of the required “knowledge.” Is knowledge merely about the law, that is, what is right, or also about social norms, that is, what is good?

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370. See Noah Pickus, *Laissez-Faire and its Discontents: U.S. Naturalization and Integration Policy in Comparative Perspective*, Paper prepared for conference on “Citizenship in a Globalized World: Perspectives from the Immigrant Democracies,” University of New South Wales, Australia (2010) (unpublished paper on file with Houston Law Review).

371. *Id.* (“The U.S. has fought over its naturalization test for more than one hundred years and many of the issues now roiling Europe have been addressed previously [in America].”).

372. CHENOWETH & BURDICK, *supra* note 57, at 37.

373. 2008 TEST REVISION, *supra* note 1.

374. *Id.*

*A. The Concept of a Test*

Matthew Hale received his J.D. degree from Southern Illinois University in 1998.<sup>375</sup> He passed the Illinois State bar exam and applied for admission to the Illinois State Bar Association.<sup>376</sup> In the application, Hale “disclosed his racial and anti-Semitic views” and his involvement in activities intended to promote white supremacy.<sup>377</sup> He revealed his position as the leader of the World Church of the Creator, an organization advocating discrimination against Jews, blacks, and other people of color, as well as his position as the founding leader of the American White Supremacist Party.<sup>378</sup> In addition, Hale disclosed his “admiration of Adolph Hitler and his intention to ‘gain power by peaceable means’ so that [he] could deport Jews, blacks and other ‘mud races.’”<sup>379</sup> Hale’s application to the bar was denied.<sup>380</sup> The Illinois Bar Committee on Character and Fitness found Hale “unfit” to practice law in the State of Illinois.<sup>381</sup>

Hale did not give up and appealed the decision.<sup>382</sup> In a 2-1 decision, the inquiry panel denied Hale’s petition.<sup>383</sup> It found that Hale’s “life mission is to bring about peaceable change in the United States in order to deny the equal protection” of Jews, blacks, and other nonwhite minorities.<sup>384</sup> Yet Hale presented a unique case: he confessed his racist views while, at the same time, declaring his intention to “comply with all of the rules and laws governing the conduct of an attorney, regardless of whether he agreed or disagreed with such rules and laws.”<sup>385</sup> Hale announced that he intended to comply with the

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375. Avi Brisman, *Rethinking the Case of Matthew F. Hale: Fear and Loathing on the Part of the Illinois Bar Committee on Character and Fitness*, 35 CONN. L. REV. 1399, 1401 (2003).

376. *Id.*

377. *Id.*

378. *Matt Hale and the Creativity Movement*, ANTI-DEFAMATION LEAGUE, [http://www.adl.org/learn/ext\\_us/Hale.asp](http://www.adl.org/learn/ext_us/Hale.asp) (last visited Jan. 24, 2011).

379. Brisman, *supra* note 375, at 1402 (quoting *In re Hale*, Comm. on Character & Fitness (Ill. App. Ct. 1998), reprinted in GEOFFREY C. HAZARD, JR., SUSAN P. KONIAK & ROGER C. CRAMTON, *THE LAW AND ETHICS OF LAWYERING* 875, 876 (3d ed. 1999) [hereinafter *In re Hale*]).

380. *In re Hale*, *supra* note 379, at 875.

381. *Hale v. Comm. on Character & Fitness for Ill.*, 335 F.3d 678, 679 (7th Cir. 2003). Setting admission requirements for the bar is generally a matter of state law. *Schwartz v. Bd. of Bar Exam’rs of N.M.*, 353 U.S. 232, 239 (1957).

382. Brisman, *supra* note 375, at 1408.

383. *Id.* at 1404.

384. *In re Hale*, *supra* note 379, at 877–78.

385. *Hale v. Comm. on Character & Fitness for Ill.*, No. 01 C 5065, 2002 U.S. Dist. LEXIS 4262, at \*4 (N.D. Ill. Mar. 12, 2002).

antidiscrimination clause of the Illinois Rules of Professional Conduct, which prohibits discriminatory treatment based on race and religion.<sup>386</sup> Hale thereby distinguished between his private beliefs as an ordinary citizen, which he admitted were racist, and his position as a lawyer, in which he promised to follow the law, regardless of personal beliefs, and to advocate a legal change only “by peaceful means.”<sup>387</sup> Hale contended that his situation was like that of a judge who follows the law even when personally disagreeing with it.<sup>388</sup>

In the inquiry panel, the majority was not convinced that Hale could separate his private views from future acts as an officer of the court and, consequently, found an inseparable link between beliefs and future conduct.<sup>389</sup> It concluded that “[w]hile Matthew Hale has not yet threatened to exterminate anyone, history tells us that extermination is sometimes not far behind when governmental power is held by persons of his racial views.”<sup>390</sup> A man who has dedicated his life to incite racism is likely to implement racist views once he has a chance. The dissenting opinion, however, found Hale’s claim reasonable. It argued that one can believe in extremist views and, at the same time, practice law in accordance with the Constitution.<sup>391</sup> The sole possession of repugnant *views*, without racist *activities*, is not enough to exclude a person from the Illinois Bar Association. In order to reach a decisive decision, the Committee on Character and Fitness established a hearing panel that heard testimonies from character witnesses for Hale and who testified that his privately held racism would not influence his fitness to practice law.<sup>392</sup> The hearing panel, however, denied Hale’s application.<sup>393</sup> Hale filed a petition to the Supreme Court of Illinois, which was denied.<sup>394</sup>

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386. Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct provides that “a lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, or national origin.” ILL. RULES OF PROF’L CONDUCT § 8.4(a)(5) (1990) (repealed 2010).

387. *In re Hale*, *supra* note 379, at 877.

388. *Id.*

389. *Id.* at 882–84.

390. *Id.* at 883–84. The decision was based on Hale’s views rather than activities. The Inquiry Panel stated that “the reasons for [its] decision relates [sic] to the applicant’s active advocacy of core beliefs.” *Hale*, 2002 U.S. Dist. LEXIS 4262, at \*4–6 (alterations in original) (internal quotation marks omitted).

391. *In re Hale*, *supra* note 379, at 884 (“Until there is such conduct, the holding and even active advocacy of beliefs, no matter how repugnant to current law, cannot be the basis for denial of certification to an applicant who will subscribe to the oath.”).

392. *Hale*, 2002 U.S. Dist. LEXIS 4262, at \*5.

393. *Id.*

394. *In re Hale*, M.R.16075, 1999 Ill. LEXIS 1639 (Ill. Nov. 12, 1999), *cert. denied*, *Hale v. Comm. on Character & Fitness of the Ill. Bar*, 530 U.S. 1261 (2000).

Hale's case is slightly different than that of an application for citizenship. On the one hand, admission to the bar ought to require a higher standard than becoming a naturalized citizen because a lawyer is an officer of the court. On the other hand, unlike Hale's case, in which a failure in *ex ante* rejection can be reversible by an *ex post* disbarment,<sup>395</sup> a citizenship decision cannot simply be overruled due to prejudicial behavior.<sup>396</sup> While a member of the bar can lose a license to practice law for misconduct, it is generally impossible to denaturalize a U.S. citizen due to misconduct. Yet the issue is one of principle: Should someone who holds racist views be entitled to U.S. citizenship? Should homophobes, Klansmen, or sexists be denied citizenship because of their beliefs? If not, is it because doing so would be intolerant of someone's right to challenge even fundamental national values? Or does tolerance include a right, maybe even a duty, to promote tolerance, on the theory that admitting intolerant people ultimately leads to higher levels of intolerance in society? One option is to exclude applicants because of their hateful beliefs. Exclusion is based here on the assumption that people who hold such beliefs are undesirable due to their beliefs. A different way of handling it is to tolerate such beliefs, yet exclude applicants who hold them on the ground that intolerant beliefs are likely to lead to intolerant behavior. In this case, exclusion is based on concern about future undesirable intolerant behavior.<sup>397</sup>

Do we want a test aimed at exploring an applicant's intolerant attitudes, utterances, or behavior? This is a difficult dilemma. Those who support a politically neutral naturalization process or hold that the First Amendment should protect hateful expressions in an immigration interview, or believe that ideology does not indicate future actions, may reach the conclusion that such a test is irrelevant and may even be unlawful. On the other hand, those who think that beliefs are considered indicative of future wrongdoing and that the state must take a stance in extreme cases (whatever these cases might be) may reach the conclusion that one's beliefs should somehow be taken into account. If this is the case, at least three options exist. One extreme option is to directly ask applicants about their beliefs (this extreme option was carried out, as we have seen, by the

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395. Jason O. Billy, *Confronting Racists at the Bar: Matthew Hale, Moral Character, and Regulating the Marketplace of Ideas*, 22 HARV. BLACKLETTER L.J. 25, 35 (2006).

396. Catherine Yonsoo Kim, *Revoking Your Citizenship: Minimizing the Likelihood of Administrative Error*, 101 COLUM. L. REV. 1448, 1448–51 (2001).

397. Neuman, *supra* note 30, at 256–57.

German *Land* Baden-Württemberg).<sup>398</sup> A second option is to not be involved in intrusive questions, but take into account views and beliefs when the applicant openly advocates hateful views without provocation. A third option is to take into account an applicant's refusal to answer specific questions. In this case, the question is whether an applicant's silence can serve as evidence to deny an application.<sup>399</sup>

Even those who generally oppose restrictions on free speech regarding citizens—or even oppose restrictions on free speech intended to exclude or deport noncitizens based on their membership in, or expression of sympathy with, the Communist Party—may still hold that some words express sentiments so disgusting that the society could, or should, deny a citizenship petition based on these views (whatever the views are). In this case, or in any other case of viewpoint-based restrictions on naturalization, the question is: What is the legal source for denying the application? One ground can be the “attachment requirement.” The claim could be that a person who holds certain views is not attached to the principles of the U.S. Constitution. As mentioned, the INA provides that no person shall be naturalized unless he or she is “attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.”<sup>400</sup> The immigration regulations further define this clause as follows:

- (a) General. An applicant for naturalization must establish that during the statutorily prescribed period, he or she has been and continues to be attached to the principles of the Constitution of the United States and *favorably disposed* toward the good order and happiness of the United States. Attachment implies a *depth of conviction* which would lead to *active support* of the Constitution. Attachment and favorable disposition relate to *mental attitude*, and contemplate the exclusion from citizenship of applicants who are *hostile* to the basic form of government of the United States, or who *disbelieve* in the principles of the Constitution.

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398. *Supra* Part IV.C.

399. The U.S. Supreme Court upheld an applicant's refusal to answer questions about beliefs in the context of bar admission. The Court relied on the First Amendment to rule that an application cannot be denied solely based on a refusal to answer intrusive questions. *See, e.g., In re Stolar*, 401 U.S. 23, 30–31 (1971) (plurality opinion); *Baird v. State Bar of Ariz.*, 401 U.S. 1, 4–5, 8 (1971) (plurality opinion).

400. 8 U.S.C. § 1427(a) (2006).

- (b) Advocacy of peaceful change. At a minimum, the applicant shall satisfy the general standard of paragraph (a) of this section by demonstrating an *acceptance* of the democratic, representational process established by the Constitution, a willingness to obey the laws which may result from that process, and an understanding of the means for change which are prescribed by the Constitution. The right to work for political change shall be consistent with the standards in paragraph (a) of this section only if the changes advocated would not abrogate the current Government and establish an entirely different form of government.<sup>401</sup>

This unique provision requires a separate discussion, but it is sufficient to note that it hints at an alternative concept of test. A test that is aimed at exploring attachments to the Constitution is more demanding as it requires investigating the applicant's "mental attitude" and "active support" of some constitutional essentials, not just civic knowledge.<sup>402</sup> Hale, under this test, would not be attached to the Constitution because he is hostile to fundamental constitutional principles, such as equality and the rule of law. In addition, under the attachment clause, an applicant can advocate a peaceful legal change, but only if the desired change "would not abrogate the current Government and establish an entirely different form of government."<sup>403</sup> At a minimum, the applicant must accept the democratic, representational process established by the Constitution. The idea of "acceptance" is more demanding than understanding. One interpretation is the *legal* requirement to obey/follow/respect the law, whether one agrees or disagrees with it. Another interpretation is the *moral* requirement to agree/adhere/identify with the law in the sense of holding a favorable disposition.

Can an immigration officer examine the applicant's attachment to the U.S. Constitution in a citizenship test? Legally speaking, it could be possible. Under conventional wisdom, the legal source for the citizenship test is the civics requirement of the INA.<sup>404</sup> However, there are good reasons to challenge this proposition. Historically, the citizenship test grew from

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401. 8 C.F.R. § 316.11 (2010) (emphases added).

402. *Id.*

403. *Id.*

404. 8 U.S.C. § 1423(a)(2) (2006). The Department of Homeland Security Report, for example, begins with the premise that "[t]he statutory basis for testing naturalization applicants on . . . U.S. history and civics is the Immigration and Naturalization Act of 1952." HSD Report, *supra* note 84, at 3.

controversy over the question: Is the attachment requirement satisfied by mere knowledge or by constitutional understanding?<sup>405</sup> As noted, until 1986, when the federal test was first created, immigrants were asked to demonstrate their attachment to the Constitution in a naturalization court by answering questions on the subject of civics.<sup>406</sup> More importantly, as a matter of law, the INA does not directly specify the requirements the test needs to satisfy and does not directly provide for a specific concept of a test. The door is open for alternative ways of satisfying the INA requirement. Similarly, the *Code of Federal Regulations* only provides that the civics requirement be satisfied by passing a “standardized citizenship test” that “shall be limited to subject matters covered in the Service authorized Federal Textbooks on Citizenship.”<sup>407</sup> At the very least, the immigration law does not prevent the adoption of another test, or even the improvement of the covered subject matters in the handbook.

Nonetheless, adoption of a test that examines an applicant’s attachment is difficult for various reasons. One difficulty is practical: the attachment requirement has generally become a technical demand to recite the oath of allegiance. In general, the immigration officer does not second-guess a formal acceptance of the U.S. Constitution demonstrated by pledging the oath of allegiance.<sup>408</sup> Another difficulty is more substantive: ideological exclusion can infringe not only upon the applicant’s rights—such as freedom of conscience, free speech, privacy, and human dignity—but, in some cases, may be illiberal.<sup>409</sup> A third difficulty is inherent in the ambiguity of the attachment requirement. As Sanford Levinson presents in his excellent book, a great debate surrounds the following questions: what does “attachment” mean?; what does the “Constitution” mean?; and what “principles” of the Constitution should one be attached to?<sup>410</sup>

### B. *The Concept of Understanding*

Even if one believes that the test should focus on the civics requirement, what does “understanding” really mean? In spite of

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405. See Spiro, *supra* note 30, at 497 (noting that some nineteenth century courts required “more than a profession of attachment, but also an understanding of the principles themselves”).

406. *Supra* Part II.B.

407. 8 C.F.R. §§ 312.3(a)(1), 312.2(c)(2) (2010).

408. See Spiro, *supra* note 30, at 504 (calling the naturalization oath “toothless” and arguing “it has never been enforced by U.S. authorities”).

409. Orgad, *supra* note 260, at 92–95.

410. LEVINSON, *supra* note 30, at 122–54.



the U.S. Commission's recommendation for change and its desire to proceed beyond the memorization of facts and focus on the fundamental meaning of becoming a U.S. citizen, the current test still does not measure an immigrant's "understanding," let alone "substantive understanding," of U.S. history and civics.<sup>411</sup> Yet, the broader issues that need to be addressed are: Is understanding cognitive or is it also psychological? How much understanding is sufficient to perceive ideas such as the rule of law, self-government, or freedom of religion? Does the understanding of political values imply, or should it imply, at least the acceptance of these values? Should we understand the past in order to understand a current form of government? And can the requirement of memorizing some facts ever be considered understanding?

The concept of understanding was greatly developed by Immanuel Kant. Kant distinguished between pure reason (*vernunft*) and understanding (*verstand*).<sup>412</sup> Understanding, Kant explained, is an experimental exercise that requires intuitions and judgments.<sup>413</sup> What we already understand is critical to what we come to understand; it is a process, not a one-time event. Wilhelm Dilthey further argued that understanding in the field of cultural science (law, economics, etc.) requires taking into account one's personal life and "self-knowledge in historical context."<sup>414</sup> There is a vast amount of literature on the philosophical and psychological meanings of the concept of understanding, and the conditions that should be met in order to satisfy different levels of understanding.<sup>415</sup> Understanding requires close observation, time, practical involvement, and interest—actions that are quite often more than mere words.<sup>416</sup>

What concept of understanding should be demanded from immigrants? Can one really understand democracy and the rule of law if one believes, like Hale, that Jews should be destroyed? Does one understand the U.S. Constitution, including the amendment procedure of Article V, if one asks to gain power by peaceful means to overthrow the American regime, like Hale hoped to do? Should understanding imply a

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411. *Supra* Part III.A.

412. Paul Guyer & Allen W. Wood, *Introduction to IMMANUEL KANT, CRITIQUE OF PURE REASON* 40 (Paul Guyer & Allen W. Wood eds., trans., Cambridge Univ. Press 1998) (1781).

413. IMMANUEL KANT, *CRITIQUE OF PURE REASON* 211 (Paul Guyer & Allen W. Wood eds., trans., Cambridge Univ. Press 1998) (1781).

414. DONNA M. ORANGE, *EMOTIONAL UNDERSTANDING* 14 (1995).

415. *Id.* at 12–32.

416. *Id.* at 22.

conviction that resembles acceptance of some procedures and substance? If “acceptance” is required, what does it mean? Acceptance is a tricky thing: one may accept things one doesn’t like, but nobody may be forced to ‘like’ what one accepts. Does acceptance mean obeying the law or having affective identification with it? At minimum, acceptance implies the legal obligation to obey the law, as demonstrated by a ritual declaration. This is a useful test; yet, as we have seen in the Hale case, the inquiry panel was dissatisfied by Hale’s declaration to abide by the law and based its ruling on a speculative assessment of future conduct in light of Hale’s views.<sup>417</sup>

The INA does not specify a particular concept of “understanding.”<sup>418</sup> It is thus legally possible to adopt different levels of understanding. Choosing a specific level is a political decision. The U.S. Commission was for a broad concept of understanding—“*substantive* understanding” and “the cultivation of a shared *commitment* to the American values of liberty, democracy and equal opportunity.”<sup>419</sup> This concept goes beyond blind memorization of cognitive knowledge; yet, it does not go so far as to examine inner devotion or internal agreement, nor does it relate to belief in or identification with some ideas. Rather, it requires a *commitment* to the U.S. form of government and some American values. Unlike attachment, which implies depth of conviction and active support of the Constitution, commitment leaves room for private disagreement as long as one pledges to act or refrain from acting in a specific way and “commit[s] to serve the best interests of the United States . . . [ and respects] freedom of speech and religion; and . . . commit[s] not to discriminate against others on the basis of nationality, race, sex, or religion.”<sup>420</sup> The difficult question is how deep should this commitment be and what are the ideas “covered” by it. One option is to see commitment as acceptance of some essential ideas. These ideas, in the U.S. case, were drafted by Thomas Jefferson on July 4, 1776:

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these rights, Governments are instituted among Men,

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417. Brisman, *supra* note 375, at 1402–06.

418. See 8 U.S.C. § 1423(a)(2) (2006).

419. IMMIGRATION REFORM REPORT, *supra* note 10, at 26, 46 (first emphasis added).

420. *Id.* at 31.

deriving their just Powers from the Consent of the Governed.<sup>421</sup>

In *The Social Contract*, Rousseau thought that without a civil profession of faith, namely, articles of faith to which everyone subscribes, it would be impossible to maintain a good society. Rousseau denied the idea that the State should involve itself with its citizens' beliefs. Rather, he determined that one should hold any belief one chooses. However, a State has a right (and often a duty) to demand the maintenance of essential dogmas of civil faith:

There is, therefore, a purely civil profession of faith, the articles of which it belongs to the sovereign to establish, not exactly as dogmas of religion, but as sentiments of sociability, without which it is impossible to be a good citizen or a faithful subject. While not having the ability to obligate anyone to believe [in] them, the sovereign can banish from the state anyone who does not believe them. It can banish him not for being impious but for being unsociable, for being incapable of sincerely loving the laws and justice . . . .<sup>422</sup>

Rousseau's tenets of civic faith can be disputed,<sup>423</sup> but his principle is important. While the sovereign must refrain from obligating citizens to believe in specific values, it can exclude those who do not sustain them because a civil profession of faith is the moral foundation essential for maintaining a society.<sup>424</sup> In this view, becoming an American citizen could have been a process of "constitutional conversion" to American tenets of faith. Yet the citizenship test does not seek to achieve constitutional conversion but merely to ensure that an immigrant knows and understands some principles. To be clear: my view does not support testing people's level of commitment to political ideas. Intrusive tests can easily become illiberal means, and it is practically difficult to draw the line between legitimate and illegitimate forms of tests.<sup>425</sup> But the citizenship test is the peak of a process, which includes learning and preparing, and the current process is anything but a means to promote a form of

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421. *Id.* at 32 (quoting the Declaration of Independence).

422. JEAN-JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* 102 (Donald A. Cress trans., 1987).

423. Rousseau's articles of faith include "the existence of a powerful, intelligent, beneficent divinity that foresees and provides; the life to come; the happiness of the just; the punishment of the wicked; the sanctity of the social contract and of the laws." *Id.*

424. *Id.*

425. Orgad, *supra* note 260, at 92–95.

commitment to the U.S. form of government or its political values.

*C. The Concept of Knowledge*

Another related issue centers around the concept of “knowledge.” The current test examines knowledge of U.S. civics and history.<sup>426</sup> Yet, what is knowledge? The distinction between knowledge and belief is not always clear. If, for example, one says, “The Twin Towers were destroyed by a terrorist attack,” is it knowledge or belief?<sup>427</sup> Another question is what level of comprehension is sufficient to possess knowledge? Part IV shows that the British and the Dutch require “sufficient knowledge” yet the Germans and the Australians ask for an “adequate knowledge.”<sup>428</sup> Again, the INA leaves the issue unresolved and does not identify the level of knowledge required to become an American citizen. Knowledge obviously requires appropriate information. To know what the rule of law is or what freedom of religion is, the applicant should have information about these concepts. Yet in order to pass the U.S. citizenship test, as Part II presents, the applicant does not even need to read the handbook, which supplies the information, but just memorize very short answers to very short pre-published questions.<sup>429</sup> In addition, the INA prefers to define the concept of knowledge as cognitive abilities derived from a learning process: one knows what one learns.<sup>430</sup> However, as Part III shows, another method might prefer a concept of knowledge as personal experience.<sup>431</sup>

An important distinction is between knowledge about what is right (lawful/unlawful) and what is good (unwritten social norms).<sup>432</sup> Questions about what is right focus on the law. Their goal is to verify the applicant’s knowledge about lawful and unlawful norms and lifestyles; for example, is nudism lawful in the Netherlands? Is polygamy unlawful in the United States? Is same-sex marriage lawful in Germany? Or is wearing a *burqa*

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426. *Supra* Part II.A.

427. Plato held that knowledge, unlike belief, is infallible. *See* PLATO’S THE REPUBLIC 200 (Davies & Vaughan trans., 2d ed. 2003).

428. *Supra* Part IV.D.

429. *Supra* Part III.A.

430. *See* Park, *supra* note 173, at 1011 (arguing the new citizenship test defines citizenship as an assimilative process requiring immigrants to internalize constitutional principles).

431. *Supra* Part III.C.

432. Ines Michalowski, *Citizenship Tests in Five Countries—An Expression of Political Liberalism?* SOC. SCI. RES. CTR. BERLIN, 9 (Oct. 2009), <http://bibliothek.wzb.eu/pdf/2009/iv09-702.pdf>.

lawful in public schools in France? These questions focus on the legal aspect of the norm, not on its morality. A different set of questions tests the applicant's knowledge about social norms. Ines Michalowski finds that the Netherlands asks immigrants to demonstrate knowledge of Dutch norms and lifestyles, such as "not to take directly formulated criticism personally and not to be offended by it[,] . . . [to] make appointments for meetings, stand in line when waiting, bring along a small present if suitable, inform neighbors when having a party, and keep the front yard tidy."<sup>433</sup> Michalowski terms these "how-to-guide-on-etiquette questions."<sup>434</sup> The rationale is to introduce the applicant to some norms that enjoy a broad social consensus and, although not legally binding, are acceptable and even desirable in the society.

The U.S. citizenship test does not ask questions about dominant American social norms. It asks to name three of the thirteen original states or one of the two longest rivers in the United States.<sup>435</sup> Through these kinds of questions, USCIS attempts to teach the applicant important history and geography. But another question could be, "Name two social norms in the United States." Through this kind of question, the USCIS could teach immigrants American social norms, such as saluting the flag, standing up when the national anthem is playing, or celebrating Thanksgiving. These issues, although not legally binding, are no less important than other items for the daily life of people in the United States and their successful integration.

The United States, more than any other nation, is a constitution-based nation. American nationalism is largely defined by the principles of the U.S. Constitution.<sup>436</sup> Unlike Europe's ethnic and cultural nationalism, American nationalism is basically civic; the United States is an idea-based nation. An idea-based nation, as the report of the Bradley Project mentions, is unique: "[It] starts anew with each generation and with each new group of immigrants" and thus "is inherently fragile."<sup>437</sup> Constitutionally-alienated new citizens, unwilling to accept core constitutional principles or having no commitment to core

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433. *Id.* at 18.

434. *Id.*

435. 2008 TEST REVISION, *supra* note 1 (questions 64 & 88).

436. *See, e.g.*, ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 279–81 (Henry Reeve trans., The Lawbook Exchange, Ltd. 2003) (1838) (finding America's constitutional principles to be America's civil religion); Pickus, *supra* note 54, at 110 (finding "constitutional citizenship" to be the core of American civic nationalism).

437. THE BRADLEY PROJECT ON AMERICA'S NATIONAL IDENTITY, *supra* note 245, at 16 (concluding that immigrants "are expected to accept American ideals and institutions and its history as their own").

political ideas, present a challenge to every nation but in particular to a constitution-based nation. Civic (or constitutional) nationalism means a community built around shared civic ideas and political principles.<sup>438</sup> Because sustaining these values and principles is essential to maintain the society, membership is open to any person who is willing to respect and accept them.

The great seal of the United States contains the Latin motto *E Pluribus Unum*, which means “out of many one.” The motto was originally adopted in 1782 to symbolize one unified nation out of many states, but it also suggests that out of many diverse immigrants emerges one nation.<sup>439</sup> As Michael Walzer points out, the “manyness” of America is reflected by its diverse cultures and individual choices to maintain distinct cultures; the “oneness” of America centers on America’s constitutionalism: “[T]he flag, the Pledge, the Fourth, the Constitution.”<sup>440</sup> In Walzer’s view, adherence to these ideas is the test of political commitment to America; this is because they are “all we have.”<sup>441</sup>

#### VI. CONCLUSION: THE FUTURE OF CITIZENSHIP TESTS

The manner in which new Americans are “created” is a political decision. “We” are those who define who “we” are, what nation “we” want to be, what number and kind of people “we” allow to join our community, and what rules apply to our naturalization process. It is a matter of “our” choice. The choices made today are likely to influence society tomorrow. The citizenship test is a great platform to examine these choices. It shapes who “we” are as a people and, at the same time, functions as a mirror by reflecting the qualities that “we” value in others. Thus, the citizenship test puts us to a test that no other decision does.

The last decade has witnessed the highest number of naturalization petitions of any decade.<sup>442</sup> In the fiscal year of 2008 alone, more than one million people became naturalized Americans.<sup>443</sup> The citizenship test is of great importance, not just

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438. It does not mean that civic nationalism does not protect or promote a common culture, but a common culture is usually instrumental to achieve a civic goal, if not a worthy project in itself.

439. William Van Alstyne, *Trends in the Supreme Court: Mr. Jefferson’s Crumbling Wall—A Comment on Lynch v. Donnelly*, 1984 DUKE. L.J. 770, 774; Perea, *supra* note 42, at 275.

440. Walzer, *supra* note 130, at 597, 602.

441. *Id.* at 602.

442. OFFICE OF IMMIGRATION STATISTICS, *supra* note 3, at 52 tbl.20.

443. *Id.*

because it is a required step in the naturalization process, but because it defines what “American” means. And yet, the citizenship test has rarely been questioned or challenged. This Article asks to contribute to the literature on the U.S. citizenship test by providing original historical research on the development of the test, its procedures, and its content. It suggests a close examination of the test redesign process and its outcome and challenges, based on a normative analysis and a comparative view of the test’s purpose, subject matter, format, ideology, and justification, as well as the conventional wisdom regarding its legal source. Additionally, it identifies three key issues that must be addressed in any future debate about the test: the concept of the test, the concept of understanding, and the concept of knowledge.<sup>444</sup>

The United States has a rich history as an immigrant absorption country, but it has yet to determine a citizenship philosophy.<sup>445</sup> Among other issues, policymakers should clarify what the citizenship test is about, specify its purpose, and assess its format and subject matter. Moreover, policymakers should investigate the essence of the process of becoming an American citizen and the role the test plays in this process. At stake is the American future.

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444. *Supra* Part V.

445. Elizabeth F. Cohen, *Carved from the Inside Out: Immigration and America’s Public Philosophy of Citizenship*, in *DEBATING IMMIGRATION* 32, 32 (Carol M. Swain ed., 2007).