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## TESTING CITIZENSHIP

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*In the last fifteen years, in the United States and elsewhere, there have been profound and remarkably rapid changes to long-established naturalization laws and regulations. In particular, aspiring citizens are now asked to pass increasingly rigorous language and knowledge tests to demonstrate that they can truly “belong” to the cultural mainstream in their new country. The political rhetoric accompanying these changes has focused heavily on concerns about national security and economic vitality in the context of the global recession. As U.S. scholars, lawmakers, and advocates consider how best to respond to renewed calls to overhaul American nationality laws, the recent experiences of other Western nations can shed light on the range of options that are potentially available. This Article therefore explores recent developments in the statutory and regulatory naturalization requirements in seven countries—the United States, Canada, the United Kingdom, the Netherlands, Germany, France, and Australia. This Article identifies potential options for reform to American nationality laws that are informed by recent developments here in the United States, as well as by the experiences of other mature democracies.*

#### INTRODUCTION

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; . . . and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.  
—Oath of Allegiance, 8 C.F.R. § 337.1 (2016).

On December 2, 2015, a heavily armed man and woman attacked a social services center in San Bernardino, California, killing fourteen people and wounding twenty-one more.<sup>1</sup> The investigation following the attack revealed that the assailants were a married couple, Rizwan Farook and Tashfeen Malik.<sup>2</sup> Malik had announced her allegiance to the Islamic State on social media before

<sup>1</sup> Adam Nagourney, Ian Lovett & Richard Pérez-Peña, *Shooting Rampage Sows Terror in California*, N.Y. TIMES, Dec. 3, 2015, at A1; Michael S. Schmidt & Richard Pérez-Peña, *F.B.I. Is Treating Rampage as Act of Terrorism*, N.Y. TIMES, Dec. 5, 2015, at A1.

<sup>2</sup> Nagourney, Lovett & Pérez-Peña, *supra* note 1, at A1.

the shootings.<sup>3</sup> Farook was a first-generation American, born in Illinois to Pakistani immigrant parents; Malik was a lawful permanent resident of the United States and a citizen of Pakistan.<sup>4</sup> Farook's U.S. citizenship status and Malik's possession of a valid "green card," and imminent eligibility for naturalization as a U.S. citizen, were seen as both salient and baffling by many commentators.<sup>5</sup> Following this attack, U.S. lawmakers called for an overhaul of the regulations governing the admission of visitors, refugees, and permanent migrants, as well as the criteria for naturalization.<sup>6</sup> Farook is far from the only United States citizen to attack American targets in recent years. Since the September 11, 2001 attacks, in addition to the San Bernardino shootings, nineteen men have been involved in attacks on United States targets purportedly inspired by their extremist commitments to Islam; ten were United States-born citizens, and five of whom were naturalized citizens.<sup>7</sup> The most recent of these attacks, the June 2016 shooting in an Orlando nightclub by twenty-nine-year-old Omar Mateen, a U.S. citizen whose parents were Afghan immigrants, led then-Republican presidential candidate Donald Trump to call for a ban on all Muslim immigrants and visitors entering the United States.<sup>8</sup>

Terrorist attacks carried out by naturalized or first-generation citizens are not a uniquely American phenomenon; such attacks have taken place throughout the Global North<sup>9</sup> during the last fifteen years. For example, widespread shock and disbelief followed the November 13, 2015 Paris bombings and shootings by extremists associated with the Islamic State of Iraq and Syria ("ISIS") when European Union officials announced that all of the suspected terrorists were

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<sup>3</sup> Schmidt & Pérez-Peña, *supra* note 1, at A1.

<sup>4</sup> *See id.*

<sup>5</sup> *See* Julie Turkewitz, *Suspect Was Born and Raised in U.S., Official Says*, N.Y. TIMES: SAN BERNARDINO SHOOTING (Dec. 3, 2015, 12:36 AM), <http://www.nytimes.com/live/san-bernardino-shooting/suspect-born-and-raised-in-the-united-states-parents-from-pakistan/> [<https://perma.cc/P32W-JGST>].

<sup>6</sup> *See* Carl Hulse, *House Readies a Bipartisan Press to Tighten Visa Waiver Program*, N.Y. TIMES, Dec. 8, 2015, at A1 (outlining a bill proposed a month prior that would put additional restrictions on "visitors from qualifying nations who have been in Syria and Iraq during the previous five years," and the bill's relation to the new visa waiver program proposed after the San Bernardino terrorist attack, which "eases entry into the United States for citizens of 38 countries").

<sup>7</sup> *See* Sergio Peçanha & K.K. Rebecca Lai, *The Origins of Jihadist-Inspired Attackers in the U.S.*, N.Y. TIMES (Dec. 8, 2015), <http://www.nytimes.com/interactive/2015/11/25/us/us-muslim-extremists-terrorist-attacks.html>.

<sup>8</sup> *See* Katie Zezima et al., *Orlando Gunman Said He Carried Out Attack to Get "Americans to Stop Bombing His Country," Witness Says*, WASH. POST (June 14, 2016), [https://www.washingtonpost.com/news/post-nation/wp/2016/06/14/fbi-director-orlando-shooting-probe-also-looks-backward-into-agency-files-on-shooter/?utm\\_term=.1747685e447e](https://www.washingtonpost.com/news/post-nation/wp/2016/06/14/fbi-director-orlando-shooting-probe-also-looks-backward-into-agency-files-on-shooter/?utm_term=.1747685e447e) [<https://perma.cc/3BXK-VVPV>].

<sup>9</sup> For the purposes of this Article, I treat Australia as also belonging to the Global North due to its historical and cultural ties to the United Kingdom.

citizens of European nations, either through birth or naturalization.<sup>10</sup> Similar outrage had followed the July 7, 2005, London bombings, when all four bombers were identified as British citizens, three of whom were born in the United Kingdom to Pakistani immigrant parents and one of whom was a naturalized British citizen born in Jamaica.<sup>11</sup> Like their American counterparts, European lawmakers have been swift to suggest that nationality laws should be amended in light of such atrocities so that increased scrutiny can be employed to ascertain the “suitability” of candidates for naturalization.<sup>12</sup> At home and abroad, legislators urgently debate how best to amend nationality laws to ensure that the admission and integration of permanent migrants neither pose a threat to national security nor risk undermining the nation’s perceived cultural cohesion.<sup>13</sup>

This urgency is compounded by the explosion of global migration in the early twenty-first century, and while national security issues are implicated in some migrants’ experiences, there are often many other concerns at stake. Families are fleeing war-torn Syria, taking refuge in neighboring countries in the Middle East, or traveling by land and sea to Europe.<sup>14</sup> Unaccompanied immigrant children are escaping gang violence in the Northern Triangle of Central America and traveling by freight train to the United States.<sup>15</sup> Environmental refugees,

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<sup>10</sup> See Tom Porter, *Paris Attacks: Police Arrest Man Carrying Same Passport as One Found Near Suicide Bomber*, INT’L BUS. TIMES (Nov. 17, 2015, 9:42 AM), <http://www.ibtimes.co.uk/paris-attacks-police-arrest-man-carrying-same-passport-one-found-near-suicide-bomber-1529087> [https://perma.cc/9BU8-36YM] (“On 16 November, EU foreign policy chief Federica Mogherini said that all of the attackers identified so far were European nationals.”).

<sup>11</sup> 7 July Bombings, BBC NEWS, [http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london\\_blasts/investigation/html/bombers.stm](http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london_blasts/investigation/html/bombers.stm) [https://perma.cc/H8SE-6YJZ] (last visited Sept. 11, 2016).

<sup>12</sup> Although ultimately withdrawn, French President François Hollande had even proposed that the French Constitution be amended so that dual nationals involved in terrorism could be stripped of their French citizenship. Adam Nossiter, *French President Drops Proposal to Revoke Citizenship in Terrorism Cases*, N.Y. TIMES, Mar. 30, 2016, at A4.

<sup>13</sup> See, e.g., JOHN DENHAM ET AL., U.K. HOME OFFICE, BUILDING COHESIVE COMMUNITIES: A REPORT OF THE MINISTERIAL GROUP ON PUBLIC ORDER AND COMMUNITY COHESION 18-34 (2001) (describing the United Kingdom’s efforts to promote community cohesion in the cities of Bradford, Burnley, and Oldham in the wake of violent community disorders).

<sup>14</sup> See Migration Policy Ctr., *The Syrian Refugee Crisis and Its Repercussions for the EU, SYRIAN REFUGEES*, <http://syrianrefugees.eu/> [https://perma.cc/B9EN-QVF9] (last visited Sept. 11, 2016) (reporting that 4.8 million Syrian refugees fled to Turkey, Lebanon, Jordan, Egypt, and Iraq, and one million Syrian refugees requested asylum in Europe).

<sup>15</sup> See U.N. HIGH COMM’R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 4 (2014), <http://www.unhcr.org/56fc266f4.html> [https://perma.cc/MP5K-YFEC] (“Beginning in October 2011, the U.S. Government recorded a dramatic rise . . . in the number of unaccompanied and separated children arriving to the United States from . . . El Salvador, Guatemala and Honduras.”).

displaced by flooding in Bangladesh or drought in sub-Saharan Africa, are seeking refuge in neighboring states.<sup>16</sup> Highly educated young workers from the developing world are seeking opportunities for higher incomes and a better life in the Global North.<sup>17</sup> In short, the world's population is on the move, in unprecedented numbers and in unprecedented ways.

The sheer scale of this mass movement of people across borders has no historical analogue.<sup>18</sup> In the 1960s, the world had approximately seventy-five million immigrants;<sup>19</sup> as of 2015, there are over 213 million—over three percent of the world's total population—and that number is steadily climbing.<sup>20</sup> Improved access to transportation, developments in communications and information technology, and increasingly connected transnational markets have all contributed to an increased flow of people and goods between nations, regions, and continents. These technological advances have not just facilitated the movement of people, they have also fundamentally altered the migrant experience—it is entirely possible for today's migrants to both live in their new home countries and maintain firm and enduring ties with daily life in their countries of origin. In many respects, this is a boon for twenty-first century immigrants, easing their transitions into their new communities and polities. Yet, at the same time, it poses a distinct challenge for their new home countries, which struggle to ascertain whether and how these newcomers “belong.” Nowhere is this tension more evident than in the legal regulation of citizenship and nationality, as receiving nations attempt to determine when and how the

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<sup>16</sup> See Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, 357 PHIL. TRANSACTIONS ROYAL SOC'Y B 609, 609 (2002) (discussing a growing trend of environmental refugees largely attributed to natural disasters and climate change caused by global warming).

<sup>17</sup> See B. Lindsay Lowell & Allan Findlay, *Migration of Highly Skilled Persons from Developing Countries: Impact and Policy Responses 1* (Int'l Migration Papers, Paper No. 44, 2001), [http://ilo.org/wcmsp5/groups/public/—ed\\_protect/—protrav/—migrant/documents/publication/wcms\\_201706.pdf](http://ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—migrant/documents/publication/wcms_201706.pdf) [https://perma.cc/8XYZ-Q46T] (summarizing the findings “on the impacts of high skilled emigration on developing countries and the policy options open to developed countries”).

<sup>18</sup> See *Global: UN Migrants, Population*, 17 MIGRATION NEWS 1 (2010), [https://migration.ucdavis.edu/mn/more.php?id=3585\\_0\\_5\\_0](https://migration.ucdavis.edu/mn/more.php?id=3585_0_5_0) [https://perma.cc/6T5X-DARU] (“The 128 million migrants in more-developed countries were 10.3 percent of their 1.2 billion population, while the 86 million in less-developed countries were 1.5 percent of their 5.7 billion people,” which means that more-developed countries have a “3.3 higher share of migrants than their share of global population.”).

<sup>19</sup> U.N. Dep't of Econ. & Soc. Affairs, Population Div., *The World at Six Billion*, 3, U.N. Doc. ESA/P/WP.154 (Oct. 12, 1999), <http://www.un.org/esa/population/publications/sixbillion/sixbilpart1.pdf> [https://perma.cc/PLA7-CUFM].

<sup>20</sup> See U.N. Dep't of Econ. & Soc. Affairs, *International Migration Report 2015: Highlights*, 1, U.N. Doc. ST/ESA/SER.A375 (2016) (outlining some of the trends in international migration throughout various regions and countries).

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benefits of full membership in the national polity—citizenship—should be extended to newcomers whose political, social, and/or cultural allegiances may lie elsewhere. The potential risks of misjudging aspiring citizens' suitability for naturalization may be significant in extreme cases, such as potential terrorist actors or supporters. Yet, developing legal standards for accurate assessment and/or prediction of individuals' allegiances and commitments has proven to be challenging here in the United States as well as in other Western democracies.<sup>21</sup>

Many of today's migrants identify as members of "transnational communities,"<sup>22</sup> i.e., groups whose citizenships and allegiances do not necessarily wholly correspond to their geographical locations. It is entirely possible for these migrants, who in some instances describe themselves as "expatriates"<sup>23</sup> and in others as "immigrants," to live "temporarily" for decades in a host country, developing professional careers and raising their families, without ever seeking to naturalize and become citizens. There are, of course, many reasons for this: naturalization may be entirely prohibited by law in the new country; naturalization may require relinquishing other allegiances; or naturalization may be theoretically possible, but practically impossible due to linguistic, financial, or other obstacles. Yet, even when naturalization is attainable, many migrants never seek citizenship in their country of residence because they prefer to hold on to their prior national allegiances. In contrast, others embrace the opportunity to naturalize in their new countries, even if the cost of doing so is the relinquishment of their former nationality. Others still are able to pursue naturalization in their new country while maintaining citizenship in their country of origin. Thus, dual citizenship, a phenomenon that was previously rare, is now increasingly common in many nations.<sup>24</sup> Whichever route individual immigrants pursue, the potential opportunity for acquisition of multiple citizenships and the acknowledgment of membership and belonging in

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<sup>21</sup> The difficulties in reaching an accurate assessment of newcomers' potential ideological allegiances have been discussed recently by scholars and commentators in response to then-Republican presidential nominee Donald Trump's proposal to introduce extreme vetting for any immigrants or visitors from majority Muslim nations. See Henry Johnson, *Trump's "Ideology Test" Could Bring Back a Hated McCarthy-Era Law*, FOREIGN POL'Y (Aug. 17, 2016, 2:28 PM), <http://foreignpolicy.com/2016/08/17/trumps-ideology-test-could-bring-back-a-hated-mccarthy-era-law/> [https://perma.cc/Z3ZZ-8R2B].

<sup>22</sup> See PEGGY LEVITT, *THE TRANSNATIONAL VILLAGERS* 7 (2001).

<sup>23</sup> "Expatriate" is a particularly freighted term, as it is predominantly used by Western migrants working in the developing world. See Mawuna Remarque Koutonin, *Why Are White People Expats When the Rest of Us Are Immigrants?*, GUARDIAN (Mar. 13, 2015, 6:52 AM), <https://www.theguardian.com/global-development-professionals-network/2015/mar/13/white-people-expats-immigrants-migration> [https://perma.cc/CP8M-6HEX].

<sup>24</sup> Randall Hansen & Patrick Weil, *Dual Citizenship in a Changed World: Immigration, Gender and Social Rights*, in DUAL NATIONALITY, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE U.S. AND EUROPE 1, 1 (Randall Hansen & Patrick Weil eds., 2002).

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multiple polities and communities—at least in the wealthy industrialized nations of the Global North—has never been greater than it is today.

In the last fifteen years, while individual migrants' options and opportunities for citizenship acquisition in the Global North have blossomed and multiplied, there has been a profound and remarkably rapid change to long-established naturalization provisions. The political rhetoric accompanying these changes has focused heavily on concerns about national security, as well as on national economic vitality in the context of the global recession.<sup>25</sup> Since September 11, 2001, almost every traditional immigrant-receiving nation in the Global North has revised its statutory requirements for naturalization, making the existing criteria more stringent and increasing the scrutiny given to each application from an aspiring citizen. As American scholars, lawmakers, and advocates consider how best to respond to calls to overhaul U.S. nationality laws, the experiences of other Western nations can, the least, shed light on the range of options that are potentially available. This Article, therefore, explores recent developments in the statutory and regulatory naturalization requirements in seven countries—the United States, Canada, the United Kingdom, the Netherlands, Germany, France, and Australia. This Article identifies potential options for reform to American nationality laws, informed by the recent developments here in the United States, as well as by the experiences of these other mature democracies.

In each of the nations discussed in this Article, the requirements for acquisition of citizenship through naturalization are now remarkably similar, typically including: (1) prescribed period of residency in the new country; (2) limited criminal history; (3) demonstrated financial stability; (4) demonstrated ties to family members, employers, or other in-country references/supporters; (5) competency in the official national language(s); and (6) commitment to nationally shared principles or values. Since 2001, the countries examined in this Article have amended their nationality laws to increase the number of years of residence required to apply for naturalization, to increase the number and scope of disqualifying criminal offenses that would preclude naturalization, and to increase the estimated capital or earnings required to meet the financial threshold for citizenship. The greatest changes, however, occurred in the arenas of linguistic competency and demonstrated commitment to national principles or values. Before 2001, only the United States and Canada employed formal tests to measure the linguistic aptitude and civic knowledge of aspiring citizens. In the last fifteen years, however, the United Kingdom, the Netherlands, Germany, France, and Australia (as well as other countries in the Global North not analyzed in this Article) have amended their statutory provisions governing naturalization to mandate rigorous formal testing. The linguistic tests employed

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<sup>25</sup> See generally 2 ACQUISITION AND LOSS OF NATIONALITY: POLICIES AND TRENDS IN 15 EUROPEAN STATES (Rainer Bauböck et al. eds., 2006) [hereinafter 2 ACQUISITION AND LOSS OF NATIONALITY] (compiling research discussing the historic developments, recent developments, and current institutional arrangements of nationality law in fifteen European countries).

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by these seven nations may be oral or written. They may involve multiple choice or essay questions. They may emphasize language, literature, history, culture, politics, or daily life in the receiving country. In all instances, a passing score is required to proceed to naturalization.

This Article considers this recent phenomenon of citizenship testing against the backdrop of increasing global migration. It begins with a brief discussion of the purposes and functions of citizenship tests. It outlines the current scholarly debate as to the role that citizenship testing may play in the naturalization process, both with respect to the policy goals that such tests are designed to further and the positive outcomes of the tests. Some scholars argue that citizenship tests should be intended to promote civic engagement by individual migrants.<sup>26</sup> Others propose that they should foster the integration of groups of potentially insular immigrant minorities.<sup>27</sup> Still others contend that the testing regimes ought to serve what is primarily a gatekeeping function, hindering access to the “good” of citizenship for potentially undesirable immigrants.<sup>28</sup> In other words, the tests should serve as another layer of immigration control, particularly to screen out individuals suspected of having ties to terrorist organizations. I argue that in the post-9/11 world, citizenship testing may indeed further these goals, either exclusively or in some combination, depending on individual national contexts. I also suggest that, in some respects, the potential practical outcomes of the tests for immigrant applicants—while important—are less relevant to the tests’ proponents than the expressive function that the tests serve for the polities that administer them. Thus, citizenship testing has the potential to play an important role in the nation’s self-definition as well as its cultural inclusiveness.

This Article then analyzes the nationality laws of the United States, Canada, the United Kingdom, the Netherlands, France, Germany, and Australia, with an emphasis on the mandatory citizenship and language test provisions. This is the first law review Article to critically analyze the evolution of citizenship testing in all seven countries. This Article examines the legal framework and substance of the tests and their most recent revisions—the 2008 amendments to the U.S. citizenship test, the 2014 amendments to the Canadian test, the 2013 amendments to the U.K. test, the 2014 amendments to the Dutch test, the 2011 amendments to the French test, the 2008 amendments to the German tests, and the 2009 amendments to the Australian test—as well as pending proposals for further reform in each of these countries. In so doing, this Article attempts to account for the recent mobilization and/or reform of the tests and their use as sociolegal instruments.

These case studies illustrate why very different countries with distinct national traditions and policies with respect to naturalization and integration of migrants all decided, in a remarkably short period of time, to promulgate new

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<sup>26</sup> See *infra* Section I.A.

<sup>27</sup> See *infra* Section I.B.

<sup>28</sup> See *infra* Section I.C.

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laws and regulations pertaining to uniform testing. Each of the countries considered in this Article is a mature democracy. In each country—at least according to the nationality laws and the rhetoric surrounding them—acquiring citizenship through naturalization is a meritocratic process, designed to enable willing and “worthy” would-be citizens to adopt a new nationality. Yet, at the same time, each country has, to some extent, further complicated the process of citizenship acquisition through naturalization with the imposition of increasingly demanding testing regimes. In each country, in the face of unprecedented levels of migration, national security concerns were invoked to justify restricting naturalization. In each instance, more rigorous testing criteria led to a decrease in the number of applicants for naturalization. In each case, however, there was no concurrent decrease in the number of immigrants residing in the host country and no apparent effect on the level of terrorism-related activity.

This Article then considers the theoretical and normative implications of the case study analyses. Some scholars have argued previously that the development of new citizenship-testing regimes in the United States, Canada, the United Kingdom, the Netherlands, Germany, France, and Australia signals convergence, or at the very least a growing resemblance, in the national concepts of integration and naturalization throughout the Global North. I contend, to the contrary, that the ostensible similarities between these new tests (and the rhetoric surrounding them) in the countries studied only serve to obscure the differences between the various “immigration nations.” This is because there are, in fact, fundamental differences in the underlying purposes of the tests and the functions that they have come to fulfill in specific national contexts. At the same time, the common challenges faced by each of these nations, the discernable trends in their responses, and their ultimate outcomes, shed light on potentially desirable law and policy outcomes that may transcend national boundaries. I argue that the experiences of the nations surveyed in this Article suggest that curtailing access to naturalization through prohibitively difficult tests and complex regulations has failed to achieve the express goals of many of the tests’ proponents. The case studies demonstrate that restricting access to citizenship does not lead to less migration; instead, it leads to less inclusion of immigrants already present in the nation and more isolation of newcomers. This phenomenon may, among other outcomes, lead ultimately to the radicalization of isolated minority groups and, paradoxically, to a heightened risk of one of the most widely perceived threats that advocates of naturalization testing seek to reduce. I, therefore, draw upon what I believe are the most effective attributes of the testing mechanisms used in the nations surveyed to explore potential revisions to the citizenship-testing regulations in the United States. Such revisions, I argue, have the potential to both benefit aspiring citizens and better protect our nation’s economic well-being and national security.

## I. THE POTENTIAL PURPOSES AND FUNCTIONS OF CITIZENSHIP TESTS

Citizenship matters, both to the individual citizen and to the national polity to which that citizen belongs. Citizenship is often considered to be a reliable proxy for “belonging,” not just in the formal sense of legal entitlements to state services and protections, but also as a cultural marker of adherence to shared values.<sup>29</sup> Yet, ascertaining whether an individual “belongs” sufficiently to a new nation to warrant the award of citizenship is not straightforward. Thus, citizenship tests have emerged throughout the Global North in the last fifteen years as a mechanism designed to measure whether an individual immigrant adheres to a nation’s fundamental values and shares the common cultural commitments of the majority of that nation’s citizens. Nationality law scholars and social scientists who have studied the evolution of citizenship-testing regimes acknowledge consistently that language and other tests for aspiring citizens now play a crucial role in the naturalization process in several countries, including some of the countries analyzed in this Article.<sup>30</sup> There is, however, sharp disagreement among such commentators, in two key respects, about how best to understand the tests. First, as a normative matter, there is disagreement about the underlying purposes of the tests and what the goals of an optimal testing regime should be.<sup>31</sup> Second, as a positive matter, there is disagreement about the function that such tests perform in practice, irrespective of the original intent of the legislators or regulators responsible for their introduction or administration.<sup>32</sup> Indeed, some scholars debate whether the statutory provisions governing the form and content of citizenship tests are congruent with the way that they are currently administered, suggesting that, in some circumstances, emergent political pressures have overtaken the formal legal requirements

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<sup>29</sup> See Amanda Klekowski von Koppenfels, *Testing for Integration and Belonging or a New Barrier to Entry? Citizenship Tests in the United States and Germany*, in *POLITIK DER INKLUSION UND EXKLUSION* 135, 136 (Ilker Ataç & Sieglinde Rosenberger eds., 2013) (“A citizen has the right to participate in selecting the government, to be elected to a variety of offices, to shape policy, to not be deported, and, above all, to ‘belong’ . . .”). See generally SEYLA BENHABIB, *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS* (2004) (examining national citizenship as a means of regulating and establishing membership in a political community).

<sup>30</sup> See, e.g., Marco Peucker, *Similar Procedures, Divergent Functions: Citizenship Tests in the United States, Canada, Netherlands and United Kingdom*, 10 *INT’L J. ON MULTICULTURAL STUD.* 240, 240 (2008) (discussing various scholars’ analyses of the importance of the citizenship tests).

<sup>31</sup> See generally Liav Orgad, “*Cultural Defence*” of Nations: *Cultural Citizenship in France, Germany and the Netherlands*, 15 *EURO. L.J.* 719 (2009) (discussing various scholars’ perspectives on the purposes and goals of citizenship tests).

<sup>32</sup> See Amitai Etzioni, *Citizenship Tests: A Comparative, Communitarian Perspective*, 78 *POL. Q.* 353, 353 (2007) (discussing various scholars’ understandings of the practical function of the tests and arguing that citizenship tests are “very often used as a tool to control the level and composition of immigration”).

governing the tests.<sup>33</sup> Some view the tests as designed simply to ensure that new citizens already have or can easily attain the requisite language skills and knowledge of their new home to flourish.<sup>34</sup> Others question whether such a goal is specifically intended to promote multicultural pluralism or, instead, to foster civic integration and assimilation into the “native” mainstream.<sup>35</sup> Some see the tests as a starting point for new citizens’ integration into society.<sup>36</sup> Others regard the tests as the endpoint, the “crowning of a successful process of integration.”<sup>37</sup> Perhaps most controversially, some commentators view the tests as a policy instrument to promote naturalization, whereas others see the tests as a screening tool or barrier to discourage or even discriminate against certain “disfavored” immigrants.<sup>38</sup> This Part of the Article, therefore, provides a brief overview of the existing literature theorizing the purposes and functions of citizenship testing—whether to promote inclusion or assimilation, to begin or to conclude a citizen’s journey, and to incentivize or to deter naturalization.

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<sup>33</sup> See, e.g., THOM BROOKS, THE “LIFE IN THE UNITED KINGDOM” CITIZENSHIP TEST: IS IT UNFIT FOR PURPOSE? 4-5 (2013), [http://thombrooks.info/Brooks\\_citizenship\\_test\\_report.pdf](http://thombrooks.info/Brooks_citizenship_test_report.pdf) [<https://perma.cc/8SYU-KM4B>] (arguing that the statutory and regulatory parameters of the United Kingdom’s citizenship-testing regime bear little resemblance to the current form and content of the test).

<sup>34</sup> See Ines Michalowski, *Required to Assimilate? The Content of Citizenship Tests in Five Countries*, 15 CITIZENSHIP STUD. 749, 750 (2011).

<sup>35</sup> See Christian Joppke, *The Retreat of Multiculturalism in the Liberal State: Theory and Policy*, 55 BRIT. J. SOC. 237, 248 (2004) (arguing that the effect of “deethnicization” including “nondiscriminatory immigration policies, liberalized citizenship rules, and a general distancing from the old idea of ‘assimilation’ . . . is to remove the case for programmes of multicultural ‘recognition’ because there is no imposition above the liberal minimum that would call for a remedial act on the part of the immigrant-receiving state”).

<sup>36</sup> See Dora Kostakopoulou, *The Anatomy of Civic Integration*, 73 MOD. L. REV. 933, 957-58 (2010) (contending that there should be minimal requirements for the acquisition of citizenship in a liberal state and that there is no need to demonstrate full sociocultural assimilation at the time of naturalization).

<sup>37</sup> Anita Böcker & Dietrich Thränhardt, *Multiple Citizenship and Naturalization: An Evaluation of German and Dutch Policies*, 7 J. INT’L. MIGRATION & INTEGRATION 71, 83 (2006); see also BERNARD CRICK ET AL., U.K. HOME OFFICE, THE NEW AND THE OLD: THE REPORT OF THE “LIFE IN THE UNITED KINGDOM” ADVISORY GROUP 13 (2003), <https://ec.europa.eu/migrant-integration/index.cfm?action=furl.go&go=/librarydoc/the-new-and-the-old-the-report-of-the-life-in-the-uk-advisory-group> [<https://perma.cc/HJN8-SZRL>] (“[B]ecoming naturalised should not be seen as the end of a process but rather as a good beginning.”).

<sup>38</sup> See, e.g., Katherine Tonkiss, *What’s So Bad About Citizenship Testing?*, E-INT’L RELATIONS (Nov. 28, 2014), <http://www.e-ir.info/2014/11/28/whats-so-bad-about-citizenship-testing/> [<https://perma.cc/S8V7-AX2X>] (“Citizenship tests are at once a symbol of the nation and a tool of exclusion.”).

A. *Tests to Promote Inclusion or Measure Assimilation*

The first major scholarly debate about citizenship-testing concerns the extent to which these tests, which are legally created instruments, are designed to encourage cultural inclusion or promote full assimilation. As the analysis in Part II of this Article demonstrate, the rhetoric surrounding the recent adoption of formal citizenship-testing requirements in the United Kingdom, the Netherlands, Germany, France, and Australia repeatedly emphasizes concerns about the integration of purportedly insular migrant groups. Hand-in-hand with that concern is an oft-repeated notion that these immigrant groups have insufficient knowledge of or respect for the majority cultural traditions. The tests, therefore, purport to embody the national values that the majority “native” population wishes any would-be citizen to demonstrate. Failure to evince the requisite understanding and appreciation, or at the very least failure to pay lip service to the achievements, traditions, and values being lauded, makes a person “unworthy” or “unfit” for the valuable good of citizenship. This attempt to tie citizenship more firmly to shared identities, civic competencies, and public order appears to conceptualize naturalization as an “antidote” to increasingly diverse and seemingly disintegrating societies. Scholars question, however, the extent to which the tests in these contexts can, or ought to, function as tools of integration or social cohesion.<sup>39</sup>

In many respects, this impetus toward cohesion sits awkwardly alongside notions of pluralism and multiculturalism. Countries that celebrate social and cultural unity and value assimilation over multiculturalism, such as Germany and France, use the tests as barometers of integration, which is unsurprising. In countries such as the United Kingdom, the Netherlands, the United States, Canada, and Australia, it is incongruent. However, the emphasis in each of the latter five countries upon mandatory levels of linguistic competency in state languages, and the rote memorization of salient features of national laws, history, and political institutions for the citizenship tests certainly suggests a celebration of assimilation rather than pluralism. Some scholars therefore argue that citizenship tests represent an inexorable move toward a “thick” or ethnocultural understanding of what creates national unity, which is at odds with the traditional “thin” or civic-territorial definition of the liberal state.<sup>40</sup> Others characterize citizenship-testing requirements as a form of “repressive liberalism” whereby integration is mandatory but consistent with the other purported goals of progressive nation-states.<sup>41</sup> My analysis in Part II shows that,

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<sup>39</sup> See Michalowski, *supra* note 34, at 750.

<sup>40</sup> See Liav Orgad, *Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe*, 58 AM. J. COMP. L. 53, 56 (2010) (describing “legal counter-reactions to the new challenge raised by culturally diverse migrants in the area of immigration and citizenship law”).

<sup>41</sup> See, e.g., Christian Joppke, *Beyond National Models: Civic Integration Policies for Immigrants in Western Europe*, 30 W. EURO. POL. 1, 2, 14 (2007) [hereinafter Joppke, *Beyond National Models*] (“[C]ivic integration is interpreted as an instance of repressive liberalism,

in fact, different and competing pressures emerge in different national contexts. While it is tempting to argue, with a high level of generality, that citizenship testing is either assimilationist or liberal/integrationist, I propose instead that citizenship testing needs to be understood within the broader context of national legal regimes.

B. *Tests at the Initiation or Conclusion of the Naturalization Process*

The second most prevalent scholarly debate about citizenship-testing regimes involves whether the successful completion of such testing properly belongs at the beginning or end of the naturalization process. Some commentators argue that the timing of the tests is merely a question of procedural process set forth by regulation.<sup>42</sup> Others contend that differences in the timing of test administration reflect different theoretical understandings of the tests and their functions.<sup>43</sup> They contend that in countries that require a passing test score as a predicate for filing a naturalization application, the tests perform a screening function and are intended to operate as a proxy for a higher level of sociocultural and linguistic integration into the polity. Other legal requirements for naturalization, such as duration of residency, a clean criminal record, or economic viability, may be easier for certain immigrants to fulfill. But, by placing the test at the beginning of the process, the regulators signal that linguistic or cultural competence is of paramount importance, to which other requirements are subordinate.<sup>44</sup> In contrast, in countries that require testing at the end of the naturalization process, the test itself, and the knowledge and/or skills that it embodies, are seen as less important. Some scholars, therefore, contend that in countries where citizenship testing occurs at the conclusion of the naturalization process, the tests are more likely to function as instruments to promote both civic integration and naturalization itself; in contrast, in countries that require test scores at the beginning of the process, naturalization is perceived as a reward for an immigrant who has already achieved full integration into the mainstream.<sup>45</sup> The case studies in this Article demonstrate that the timing of citizenship tests matter.

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which is gaining strength under contemporary globalisation.”); Christian Joppke, *Transformation of Immigrant Integration: Civic Integration and Antidiscrimination in the Netherlands, France, and Germany*, 59 *WORLD POL.* 243, 269 (2007) [hereinafter Joppke, *Transformation of Immigrant Integration*] (“Whereas the point of equal opportunity is to enable people to become included in the economy and other vital aspects of social life, the point of social inclusion is to require people to become included.”).

<sup>42</sup> See Klekowski von Koppenfels, *supra* note 29, at 150.

<sup>43</sup> See Peucker, *supra* note 30, at 256 (finding, for example, that in the Netherlands, citizenship tests occur at the end of the naturalization process to ensure new citizens are fully integrated into society).

<sup>44</sup> *Id.*

<sup>45</sup> See Mireille Paquet, *Beyond Appearances: Citizenship Tests in Canada and the UK*, 13 *J. INT’L MIGRATION & INTEGRATION* 243, 255-56 (2012) (comparing the citizenship test in

As the analysis in Part II of this Article shows, the citizenship tests in various nations diverge in terms of their positions in the naturalization process and, therefore, the functions that they are designed to fulfill. The U.S., Canadian, French, and Australian tests occur at the end of the naturalization process.<sup>46</sup> In Canada and Australia, attending a testing site and taking the test is the last step before the administration of the oath of allegiance.<sup>47</sup> In the United States and France, a government official asks a series of questions drawn from the preparatory materials during the prenatalization interview, and then completes a final series of government record checks before the applicant can proceed to naturalization.<sup>48</sup> In all four instances, by the time the test questions are asked, the individual has ordinarily demonstrated *prima facie* eligibility for naturalization in terms of the requisite period of permanent residence, good moral character, financial stability, and so on. Thus, testing is used only once the would-be citizen passes the major barriers to permanent residence and then citizenship. In contrast, in the United Kingdom and the Netherlands, aspiring citizens are required to attend a test site and take a test much earlier in the process of naturalization.<sup>49</sup> Indeed, in those countries, there is even a premigration testing regime for would-be permanent residents or temporary migrants from certain countries of origin.<sup>50</sup>

In all of the countries surveyed in this Article, the language used by legislators in drafting new testing requirements emphasized that citizenship was a “privilege” that should be “earned.” Before the testing regimes were implemented, meritorious behavior, however understood, was the predicate requirement for “earning” citizenship. In the United States, for example, good moral character requirements and mandatory lengthy periods of lawful permanent residence are just two of the long-standing ways in which would-be citizens traditionally demonstrated their worthiness for citizenship.<sup>51</sup> In Europe and Australia, however, in recent years the phrase “earning citizenship” has taken on a different meaning, with tests of cultural competence and linguistic ability being used as proxies for “earning” a place in the receiving society. A passing score on such a test is increasingly seen as a threshold requirement to

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Canada, which occurs after immigration selection and control, to the U.K. citizenship test, which occurs at the beginning of the process, and as such, acts as a “barrier . . . [to] naturalization and permanent residency”).

<sup>46</sup> See *infra* Sections II.A, II.B, II.F, II.G.

<sup>47</sup> See *infra* Sections II.B, II.G.

<sup>48</sup> See *infra* Sections II.A, II.F.

<sup>49</sup> See *infra* Sections II.C, II.D.

<sup>50</sup> See *infra* Sections II.C, II.D.

<sup>51</sup> See HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 13 (2006) (proposing to keep the longstanding requirements of citizenship like the residency requirement and good moral standing but also to expand would-be citizens’ benefits and rights and treating them as “Americans in waiting”).

begin the process of naturalization, rather than a means to impart useful knowledge at the end of the process to an about-to-be citizen.

The United Kingdom government started using the phrase “earned citizenship” in 2007 to describe its newly heightened requirements for naturalization.<sup>52</sup> A similar rhetorical turn was evident during the recent reform of Australia’s naturalization laws. In the North American countries discussed in this Article, acquiring citizenship appears to be a stage in an ongoing (and incomplete) process of immigrant integration into the wider polity.<sup>53</sup> In contrast, in the European nations surveyed, citizenship is presented as the brass ring; it is the reward for the accomplishment of prior integration and the endpoint in the “outsider” immigrant’s journey to “insider” citizen status. Ensuring that the immigrant can pass language and civics tests before submitting other application materials is wholly consistent with this conception of citizenship as a reward for integration. The United Kingdom and the Netherlands even introduced “two-step” immigration regimes involving two levels of testing, whereby migrants must pass language and knowledge tests in order to obtain permanent residency (“indefinite leave to remain”), itself a predicate requirement for citizenship.<sup>54</sup> There is, therefore, no question that timing of the tests matters. Such timing raises another key question: whether citizenship tests can and/or should function as an incentive or a barrier to naturalization.

### C. *Tests as a Naturalization Incentive or Barrier*

The third, and perhaps most controversial, scholarly debate about citizenship-testing concerns the relationship between testing regimes and access to naturalization. The positive question of whether citizenship tests currently operate to promote or deter naturalization, and the normative question of whether they ought to do so, has been debated intensely by citizenship scholars in the countries surveyed in this Article. As the case studies in Part II show, each of the countries surveyed in this Article has adopted or reformed its citizenship tests purportedly in furtherance of specific policy goals—(1) to foster integration; (2) to promote assimilation; (3) to reward immigrants who have integrated fully into their new society; or (4) to encourage those on the path to doing so. The additional policy goal of either encouraging or discouraging naturalization has often been hinted at, but rarely explicitly addressed, by political leaders in the countries surveyed in this Article. When this topic is

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<sup>52</sup> See *UK Citizenship “Earned by Points,”* BBC NEWS (June 5, 2007, 6:14 PM), [http://news.bbc.co.uk/2/hi/uk\\_news/6722457.stm](http://news.bbc.co.uk/2/hi/uk_news/6722457.stm) [https://perma.cc/42DB-MTJW] (“Migrants would have to ‘earn’ British citizenship under a points-based system to be proposed by two ministers.”).

<sup>53</sup> See, e.g., Stella Burch Elias, *Immigrant Covering*, 58 WM. & MARY L. REV. (forthcoming 2017).

<sup>54</sup> See *infra* Sections II.C, II.D. The recent European trend toward “two-step immigration” emphasizes the notion of “earned” presence in the host country. Although it should be noted that both the United States and Canada have “conditional permanent residence” statuses, too.

broached, it is typically in the context of increasing or underscoring the “value” of the “privilege” of membership in the nation, eliding the assumption that, by making citizenship less accessible or attainable, its value increases.<sup>55</sup>

Some scholars suggest that citizenship tests serve (and are intended to serve) predominantly as barriers to naturalization in ethnically, culturally, and linguistically homogenous European nations.<sup>56</sup> The tests administered in such countries are, according to these commentators, more difficult, and thus more naturalization restrictive, than those administered in the “immigration” nations of the New World.<sup>57</sup> The underlying supposition is that countries with traditionally “closed” or restrictive approaches to naturalization have testing regimes that are designed to function as higher hurdles to naturalization than countries with traditionally open borders. In support of this hypothesis, its adherents point to the procedural details of the European tests, such as access to test preparation materials and the number of questions asked, as well as the potential scope of the questions and the educational level required to correctly answer those questions.<sup>58</sup> They argue that the rigors of the tests systematically exclude low-skilled workers with limited educational training or opportunities, in particular those of non-Western origin.<sup>59</sup>

There is certainly a sound basis for this argument. Some European governments have been explicit about the selective gatekeeping function of their citizenship tests. As Part II shows, the early versions of citizenship tests administered by some German states (*Länder*) were unapologetically anti-Muslim, and the current written tests administered by the German and Dutch federal governments continue to emphasize “Western” values. Some commentators have speculated that so-called “Fortress Europe” now uses extensive testing as a barrier to prevent citizenship acquisition by “undesirable”

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<sup>55</sup> See *infra* Sections II.B, II.G. (discussing Canada and Australia).

<sup>56</sup> See, e.g., Klekowski von Koppenfels, *supra* note 29, at 137; Dora Kostakopoulou, *Matters of Control: Integration Tests, Naturalisation Reform and Probationary Citizenship in the United Kingdom*, 36 J. ETHNIC & MIGRATION STUD. 829, 837 (2010).

<sup>57</sup> See Klekowski von Koppenfels, *supra* note 29, at 149; Michalowski, *supra* note 34, at 765 (“Contrary to the observations of Sara Wallace Goodman, who assumes that the only political ambition behind citizenship tests in Austria and Germany is to make access to citizenship ever more difficult, this contribution has reached the surprising conclusion that the content of citizenship tests in restrictive citizenship policy regimes can be as liberal . . . as the content of citizenship tests in open citizenship policy regimes.”).

<sup>58</sup> See, e.g., Sara Wallace Goodman, *Integration Requirements for Integration’s Sake? Identifying, Categorising and Comparing Civic Integration Policies*, 36 J. ETHNIC & MIGRATION STUD. 753, 760-61 (2010) (demonstrating a trend in countries to develop civic integration requirements that make the naturalization process much more arduous, ultimately creating a barrier to citizenship).

<sup>59</sup> *Id.* at 768 (explaining how countries like the Netherlands, France, and the United Kingdom “indirectly use integration requirements to limit the inflow or impact of certain categories of immigration” rather than changing immigration policy or quotas to directly keep certain groups of immigrants from becoming citizens).

immigrants because European countries' immigration policies are strained or failing.<sup>60</sup> They argue that in the United Kingdom, the Netherlands, France, Germany, and many other Western European nations, the majority of immigrants are "unchosen,"<sup>61</sup> i.e., almost exclusively family-reunification-based petitioners or refugees/asylum seekers, who are typically economically, educationally, and socially disadvantaged. The frequent inability of these groups to contribute to the highly skilled labor markets and their lack of linguistic or social integration has strained the sophisticated welfare states of the receiving countries and has led to both punitive "integration from abroad" initiatives and mandatory integration courses for those in the country. In contrast, the skills-focused, points-based migration frameworks of countries such as Canada and Australia are designed to ensure "high quality" permanent residents and aspiring citizens, who need not be subjected to restrictive hurdles at the end of their migration and naturalization experience.

This argument does not, however, account for the citizenship-testing regime in the United States, where the vast majority of migration is for family reunification purposes and where no points-based system exists. Nor does it explain recent developments in citizenship testing in Australia and Canada. As the case studies in Part II of this Article shows, in recent years, even longstanding "countries of immigration" with liberal citizenship policy regimes<sup>62</sup> have adopted more rigorous testing with increasingly naturalization-restrictive outcomes. The citizenship tests in the United States, Canada, and Australia all celebrate patriotism, patriotic symbols, and "liberal" governmental structures. The test preparation materials are replete with encouragements about the importance of citizenship and the valuable benefits that it bestows, which might suggest that the tests are in some fashion designed to incentivize naturalization. However, in Canada and Australia, recent reforms to the citizenship tests that made them more complex and more difficult to pass were presented to the public as ways of increasing the "value" of the "good" of citizenship by decreasing access to it. During the 2009 reform of Canada's nationality laws, Jason Kenney, then-Minister of Citizenship, Immigration, and Multiculturalism, explained that the changes to the citizenship test were

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<sup>60</sup> See, e.g., *id.*

<sup>61</sup> Former French President Nicolas Sarkozy used the phrases "chosen immigration" ("*l'immigration choisie*") and "suffered immigration" ("*l'immigration subie*"). *Id.* at 767-68.

<sup>62</sup> See Klekwas von Koppenfels, *supra* note 29, at 145 (referring to the United States, for example, as an "immigration country"). One widely respected measure of the liberality of access to citizenship for migrants in various countries is maintained by the Migrant Integration Policy Index ("MIPEX"). MIPEX measures policies to integrate migrants in all EU member states, Australia, Canada, Iceland, Japan, New Zealand, Norway, South Korea, Switzerland, Turkey, and the United States and provides a score based on performance across eight policy areas using 167 distinct indicators of inclusion. *What Is MIPEX?*, MIGRANT INTEGRATION POL'Y INDEX (2015), <http://www.mipex.eu/what-is-mipex> [<https://perma.cc/HYX8-LK2N>].

designed to protect the values of Canadian citizenship.<sup>63</sup> Similar language was used by the Australian government in 2007 when its citizenship test was introduced, including a statement that it intended to increase the value of Australian citizenship by using the testing mechanism as a hurdle that would be unsurpassable for many would-be citizens.<sup>64</sup>

Citizenship tests clearly have the potential to either incentivize or discourage naturalization at different rates among different immigrant populations in all of the countries analyzed in this Article, including in traditional “immigration nations” like the United States. In Part II describes how these effects have been felt in each of the countries analyzed in this Article, before moving on in Part III to recommendations for potential revisions to the United States’ citizenship-testing regime.

## II. NATIONALITY LAW AND CITIZENSHIP TEST CASE STUDIES

This Part of the Article provides an overview of the nationality laws and citizenship-testing regulations in the United States, Canada, the United Kingdom, the Netherlands, Germany, France, and Australia. This is the first law review Article to provide an analytical account of recent developments in citizenship testing in all seven countries. First, this Part considers what I term the “early adopters,” the United States and Canada, both of which are multicultural “immigration nations” and have had some version of citizenship tests for many years. Then, it considers the United Kingdom and the Netherlands, both of which are former colonial powers that have since made explicit legal, political, and social commitments to multiculturalism and diversity and have recently introduced particularly stringent testing for aspiring citizens and would-be permanent residents. Thereafter, it discusses Germany and France, nations that (for very different reasons) have long favored assimilation rather than multiculturalism and have only just adopted any form of citizenship testing in the early twenty-first century. Finally, it turns to Australia, which, like the United States and Canada, is a longstanding “nation of immigrants” but eschewed citizenship testing until 2007.

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<sup>63</sup> See Jason Kenney, Minister of Citizenship, Immigration, and Multiculturalism, Address at the Huron University Canadian Leaders Speakers Series, “Good Citizenship: The Duty to Integrate” (Mar. 18, 2009), <http://www.cic.gc.ca/english/department/media/speeches/2009/2009-03-18.asp> [<https://perma.cc/TH46-M8R5>] (“[O]ur immigration program, our citizenship program, our multiculturalism program must increasingly focus on integration, on the successful and rapid integration of newcomers to Canadian society, and on a deepening understanding of the values, symbols and institutions that are rooted in our history, not just for newcomers but for all Canadians.”).

<sup>64</sup> See *infra* Section II.G.

A. *The United States: The Original Tester*

The administration of formal civics and language tests to aspiring citizens is an American invention. The current version of the U.S. citizenship test was introduced in 2008, but its roots can be traced to the nineteenth century. Economist Edward Bemis devised the first citizenship test in 1887 as a means of discouraging (often illiterate) Southern and Eastern Europeans from immigrating to the United States.<sup>65</sup> Later, at a time of intense opposition to non-European migration, the American Protective Association and Immigration Restriction League “devoted itself single mindedly to agitation for the literacy test.”<sup>66</sup> Popular support for the test emerged as this organization launched a campaign suggesting that immigrants were sabotaging “American character” and “American citizenship” and that requiring any would-be citizens to demonstrate their knowledge of civics and the English language would protect the national interest.<sup>67</sup> This campaign was highly successful. The Immigration and Nationality Act of 1952,<sup>68</sup> which codified the National Origins Quota System that was designed to privilege immigrants of northern and western European origin over all others,<sup>69</sup> also formally enshrined the civics and literacy tests, drawing on “sociological theories of the time relating to cultural assimilation.”<sup>70</sup> The language and civics tests of the 1950s were perceived as effective barriers to Asian migration and to the migration of suspected or known communist sympathizers or other “undesirable[s].”<sup>71</sup> The passage in 1964 of the Hart-Celler Act, replacing the quota system with a system of “preferences” for

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<sup>65</sup> See Etzioni, *supra* note 32, at 354.

<sup>66</sup> JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925, at 103 (2d ed. 1970).

<sup>67</sup> *Id.*; see also CHERYL SHANKS, IMMIGRATION AND THE POLITICS OF AMERICAN SOVEREIGNTY, 1890-1990, at 34 (2001) (arguing that the enactment of the first immigration act in 1917 incorporated a literacy test to exclude illiterate immigrants and delineated an “Asian barred zone”).

<sup>68</sup> Immigration and Nationality (McCarran-Walter) Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. §§ 1101-1537 (2012)).

<sup>69</sup> This system set national quotas at a rate of one-sixth of one percent of each nationality’s population in the United States in 1920. *Id.* at 175. As a result, eighty-five percent of the 154,277 visas available annually were allotted to individuals of northern and western European lineage. See *The Immigration and Nationality Act of 1952 (The McCarran-Walter Act)*, U.S. DEP’T OF STATE, <https://2001-2009.state.gov/r/pa/ho/time/cwr/87719.htm> [<https://perma.cc/5QTR-N5UT>] (last visited Sept. 23, 2016).

<sup>70</sup> JOYCE VIALET, CONG. RESEARCH SERV., 80-223 EPW, A BRIEF HISTORY OF U.S. IMMIGRATION POLICY 20 (1980) (arguing that the Immigration and National Act of 1952 was more concerned with sociological assimilation rather than racial superiority).

<sup>71</sup> See generally Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGR. POL’Y CTR. (Jan. 2012), [http://www.immigrationpolicy.org/sites/default/files/docs/opportunity\\_exclusion\\_011312.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/opportunity_exclusion_011312.pdf) [<https://perma.cc/TY2A-KUBY>].

immigrants based upon their family ties and professional skills, nonetheless maintained the same civics and English language testing requirements.<sup>72</sup>

Indeed, the citizenship test remained largely unchanged until the 1986 Immigration Reform and Control Act,<sup>73</sup> which, in addition to a number of other measures designed to limit migration, particularly from Latin America, standardized the administration of the test throughout the United States and introduced more complex questions for would-be immigrants.<sup>74</sup> The newly configured test combined detailed questions about the Constitution and the powers of the federal government with “patriotic” inquiries into the symbolism of, for example, the American flag or the Fourth of July.<sup>75</sup>

In 2008, the content of the test was once again revised, this time to include more questions about governmental structures and democratic participation.<sup>76</sup> The 2008 revision of the citizenship test was greeted with universal concern by immigrants’ rights organizations, which feared that immigrants with limited education would struggle to master these more theoretical and sophisticated topics.<sup>77</sup> The International Institute of Boston pointed out at the time of the new test that even the old version discriminated against poorer, less educated immigrants, but warned that rising application fees, lengthened application forms, and the new, more difficult test “send[s] a strong signal to many patriotic new Americans that they are not welcome as full participants in their new country.”<sup>78</sup> This concern has persisted throughout the eight years that the current citizenship-testing regime has been in operation.

Under the current naturalization requirements set forth in the Immigration and Nationality Act, an aspiring American citizen must first live in the United States for five years as a lawful permanent resident or “green card” holder.<sup>79</sup> This period is reduced to three years for individuals who obtain lawful permanent residence through marriage to a United States citizen.<sup>80</sup> Such residence must be

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<sup>72</sup> Immigration and Nationality (Hart-Celler) Act, Pub. L. No. 89-236, 79 Stat. 911 (1965) (codified as amended in scattered sections of 8 U.S.C.).

<sup>73</sup> Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.).

<sup>74</sup> See Ariel Loring, *The Meaning of Citizenship: Tests, Policy, and English Proficiency*, 24 CATESOL J. 198, 200 (2013) (noting that the Immigration Reform and Control Act of 1986 standardized the naturalization test and strengthened educational requirements for citizenship).

<sup>75</sup> See *id.*

<sup>76</sup> See Yvonne Abraham, *A Test of Principles, Not Presidents; U.S. Will Redesign Citizenship Exam*, BOS. GLOBE, Jan. 22, 2006, at A1.

<sup>77</sup> See Etzioni, *supra* note 32, at 353-54 (explaining that after the 2008 test was put into place, over 230 immigrant groups signed a letter raising the concern that the new test will be too high a bar for those less educated).

<sup>78</sup> *Id.* at 354.

<sup>79</sup> 8 U.S.C. § 1427(a) (2012).

<sup>80</sup> *Id.* § 1430(a).

“continuous”; in other words, there must not be a long-term continuous absence of 180 days or more.<sup>81</sup> The would-be citizen must have “good moral character,” an opaque phrase that signifies that the individual has no disqualifying criminal history in the five years preceding naturalization.<sup>82</sup> In addition, the aspiring citizen must demonstrate “attachment to the principles of the Constitution” of the United States by indicating her willingness to recite an oath of allegiance.<sup>83</sup> Further, she must demonstrate in an interview with an officer of the United States Citizenship and Immigration Services (“USCIS”) that she can understand, speak, read, and write English.<sup>84</sup> This is accomplished by speaking with the officer during the course of the naturalization interview, reading three sample English-language sentences aloud during the interview (one of which must be recited correctly), and writing out three sentences dictated by the officer (one of which must be written correctly).<sup>85</sup> Finally, the would-be citizen is required to demonstrate knowledge and understanding of the fundamentals of U.S. history and principles of government, according to the terms of the U.S. citizenship test.<sup>86</sup>

The current version of the American citizenship test comprises 100 potential questions on U.S. history, national symbols, and basic political issues such as political parties, voting procedures, and the Constitution.<sup>87</sup> Scholars have argued that this latest iteration of the test represents a move away from the traditional “power-centered” notion of American citizenship, comprising “allegiance to a strong federal government headed by a powerful executive.”<sup>88</sup> Now, there are fewer questions about the Stars and Stripes or the national anthem (although they are still in the test) and more conceptual questions about the “principles of American democracy.”<sup>89</sup> During the naturalization interview, the USCIS officer orally asks up to ten of these questions.<sup>90</sup> The applicant for naturalization must

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<sup>81</sup> *Id.* § 1427(a)-(b).

<sup>82</sup> *Id.* § 1427(a).

<sup>83</sup> *Id.* § 1448(a).

<sup>84</sup> *Id.* § 1423(a)(1).

<sup>85</sup> During my own naturalization interview in May 2014, I was asked to write one sentence: “The people elect Congress.” I passed.

<sup>86</sup> 8 U.S.C. § 1423(a)(2).

<sup>87</sup> *Learn About the United States: Quick Civics Lessons for the Naturalization Test*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2015), [https://www.uscis.gov/sites/default/files/USCIS/Office%20of%20Citizenship/Citizenship%20Resource%20Center%20Site/Publications/PDFs/M-638\\_red.pdf](https://www.uscis.gov/sites/default/files/USCIS/Office%20of%20Citizenship/Citizenship%20Resource%20Center%20Site/Publications/PDFs/M-638_red.pdf) [<https://perma.cc/RD6U-HQTE>].

<sup>88</sup> Julian Wonjung Park, *A More Meaningful Citizenship Test? Unmasking the Construction of a Universalist, Principle-Based Citizenship Ideology*, 96 CALIF. L. REV. 999, 1003 (2008).

<sup>89</sup> U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 87.

<sup>90</sup> *Id.*

answer six correctly in order to pass the test.<sup>91</sup> If the applicant fails the test, she may retake it within ninety days.<sup>92</sup> If she fails again, her application will be denied.<sup>93</sup> USCIS provides all individuals who have applied for naturalization with a booklet and CD-ROM titled “Learn About the United States: Quick Civics Lessons for the Naturalization Test.”<sup>94</sup> The booklet contains all 100 possible questions for the civics portion of the test and a vocabulary list that includes every word that may appear on the English language test.<sup>95</sup> Until 2015, the booklet and other test preparation materials were available only in English. In November of that year, however, in response to a recommendation from President Barack Obama’s Task Force on New Americans, a Spanish language practice test was released on the USCIS website—although the test itself must still be completed in English.<sup>96</sup>

Despite the availability of study materials for the U.S. test, many immigrants, particularly non-native English speakers with limited formal education, approach the test with trepidation.<sup>97</sup> Economically disadvantaged immigrants of color, in particular Spanish or Arabic speakers, report consistently that they would like to naturalize but are unable to do so because the test poses an insurmountable barrier.<sup>98</sup> Recent analyses of census data undertaken by the United States Department for Homeland Security,<sup>99</sup> the Center for Migration Studies of New York,<sup>100</sup> and the Migrant Integration Policy Index

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<sup>91</sup> *Id.*

<sup>92</sup> 8 C.F.R. § 312.5 (2016).

<sup>93</sup> *Id.*

<sup>94</sup> See U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 87.

<sup>95</sup> See *id.*

<sup>96</sup> See U.S. Citizenship & Immigration Servs., *Online Test Joins English Version to Expand Resources for Aspiring Citizens* (Nov. 19, 2015), <http://www.pressreleasepoint.com/uscis-offers-civics-practice-test-spanish> [<https://perma.cc/SX5Q-2PC9>] (allowing would-be citizens to waive the English language requirements only under very limited circumstances, like physical or mental disability or advanced age and long-standing residency in the United States).

<sup>97</sup> See Tara Bahrapour, *On Road to Citizenship, Many Stop Short*, WASH. POST, Mar. 3, 2013, at A01.

<sup>98</sup> See *id.* (describing the experiences of immigrants who have been prevented from naturalizing by their limited English).

<sup>99</sup> Bryan Baker & Nancy Rytina, *Estimates of the Lawful Permanent Resident Population in the United States: January 2013*, DEP’T HOMELAND SECURITY (Sept. 2014), [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_pe\\_2013\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2013_0.pdf) [<https://perma.cc/G97N-9X5K>].

<sup>100</sup> Robert Warren & Donald Kerwin, *The U.S. Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. ON MIGRATION & HUM. SECURITY 306, 307 (2015) (finding that a large number of naturalization-eligible immigrants may have difficulty meeting the naturalization requirements).

(“MIPEX”),<sup>101</sup> all suggest that the new more stringent prerequisites for naturalization, including the more sophisticated civics and language requirements, are deterring low-income, non-English speaking immigrants in the United States from applying for naturalization.

In comparison with the European countries considered in this Article, the absolute number of naturalizations remain high in the United States, averaging approximately 700,000 per year.<sup>102</sup> But this number represents a small proportion of those who are eligible to naturalize under the provisions of the Immigration and Nationality Act. Approximately 8.6 to 8.8 million lawful permanent residents are currently eligible to naturalize, which is roughly thirty-one percent of the foreign-born population residing in the United States.<sup>103</sup> Furthermore, the percentage of naturalization-eligible foreign-born lawful permanent residents who have successfully applied for naturalization has decreased considerably since the introduction of the new testing regime in 2008. Among those who entered the United States before 1990, the naturalization rate was seventy-nine percent.<sup>104</sup> In contrast, among those who have entered since 2005, and are therefore subject to the new testing regime, the naturalization rate is thirty-seven percent.<sup>105</sup> Of those individuals who have not applied for naturalization, 1.2 million do not speak English, 3 million have less than a high school education, and 1.8 million have incomes below the poverty level.<sup>106</sup> For such immigrants, naturalization appears to be almost unattainable. In contrast, naturalization rates increase with age, ability to speak English, and educational attainment. “For example, as the educational level of recent immigrants increases from ‘Less than high school’ to ‘Bachelor’s degree or higher,’ . . . naturalization rates increase from 55 percent to 78 percent”—which is almost the same rate as the rate of naturalization of those who entered the United States before 1990 and were subject to the previous citizenship-testing regime.<sup>107</sup> Thus, even in the “liberal” and “immigration friendly” United States, popular perceptions of the content and context of the citizenship and language tests can serve as impediments to naturalization. A similar phenomenon has been observed in Canada in the last five years.

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<sup>101</sup> U.S.A., MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/usa#/tab-political-participation> [<https://perma.cc/7H2Q-75NR>].

<sup>102</sup> *Naturalization Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/archive-news/naturalization-fact-sheet> [<https://perma.cc/ZBR4-BH7W>] (last visited Sept. 23, 2016).

<sup>103</sup> See Warren & Kerwin, *supra* note 100, at 306 (noting that the Center for Migration Studies estimates 8.6 million); Baker & Rytina, *supra* note 99 (explaining that the Department of Homeland Security estimates 8.8 million).

<sup>104</sup> Warren & Kerwin, *supra* note 100, at 315.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 314.

<sup>107</sup> *Id.*

B. *Canada: The Early Adopter*

In Canada, as in the United States, the practice of testing immigrants for citizenship has a long history, though the systematization and centralization of citizenship education and testing are more recent phenomena.<sup>108</sup> As in the United States, the impetus for citizenship testing began in the late nineteenth and early twentieth centuries. Canada imposed anti-Chinese immigration barriers and antipathy towards Asian immigrants heavily influenced the introduction of a mandatory testing regime for aspiring citizens.<sup>109</sup> In 1919, Canada's Immigration Act was amended to allow denial of residence to "illiterate immigrants," with literacy in English or French thereafter used as a proxy for desirability, often functionally equivalent to whiteness.<sup>110</sup> In 1923, Canada again enacted literacy requirements, intended specifically to exclude Chinese immigrants who often did not speak English or French.<sup>111</sup> Both the Canadian Citizenship Act of 1946<sup>112</sup> and its 1967 Amendment,<sup>113</sup> which introduced Canada's points system for immigrant selection, envisaged the admission of suitably qualified and committed new citizens without setting forth how that suitability should be assessed. This left regulators free to assess an immigrant's suitability for naturalization using whatever metric they preferred. The method adopted was oral examination by a government official. From 1967 until 1995, when the Liberal government created and implemented a centralized testing regime, politically appointed quasi-judicial "citizenship judges"<sup>114</sup> conducted oral interviews of would-be citizens to assess their eligibility for naturalization.<sup>115</sup> These interviews varied greatly in style and substance according to the preferences of the individual judges, the identities of the

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<sup>108</sup> See Reva Joshee, *Citizenship and Multicultural Education in Canada: From Assimilation to Social Cohesion*, in *DIVERSITY AND CITIZENSHIP EDUCATION* 127, 128-29 (James A. Banks ed., 2003).

<sup>109</sup> See ARLENE CHAN, *RIGHTING CANADA'S WRONGS: THE CHINESE HEAD TAX AND ANTI-CHINESE IMMIGRATION POLICIES IN THE TWENTIETH CENTURY* 26, 52 (2014).

<sup>110</sup> An Act to Amend the Immigration Act, S.C. 1919, c 25, § 3(6)(t).

<sup>111</sup> *Id.* (observing that the Chinese Immigration Act enacted in 1923 was the most comprehensive law to exclude Chinese immigrants).

<sup>112</sup> Canadian Citizenship Act, S.C. 1946, c 15, pt. II.

<sup>113</sup> An Act to Amend the Canadian Citizenship Act, S.C. 1967, c 4, §§ 1-2.

<sup>114</sup> Citizenship judges still play an active role in the adjudication of Canadian naturalization applications. They are still responsible for final approval of citizenship, in certain circumstances still interview candidates, and continue to assist with the administration of the citizenship oath at naturalization ceremonies. A list of current citizenship judges is available on the Citizenship and Immigration Canada website. *Profiles of Citizenship Judges*, GOV'T CAN., <http://www.cic.gc.ca/English/department/commission/cit-judges.asp> [<https://perma.cc/FB59-YSBP>] (last visited Oct. 1, 2016).

<sup>115</sup> See Paquet, *supra* note 45, at 249.

immigrant applicants, and the geographical location in which the interviews took place.<sup>116</sup>

In 1995, Canada became the first nation after the United States to introduce a uniform national citizenship-testing regime.<sup>117</sup> The rationale for the introduction of the test was twofold—it was presented by the government as a way to save money and as a way to encourage a higher volume of naturalization by Canada’s growing immigrant communities. First, during a time of budgetary austerity for the Canadian federal government, a standardized test appeared to be a low-cost alternative to costly individual interviews with citizenship judges.<sup>118</sup> Second, during a period of heightened political tension regarding national unity (most notably tension between the French-speaking Québécois population and English-speaking provinces, culminating in the 1995 referendum on sovereignty), the Canadian federal government was eager to promote integration and participation in the political process by immigrant communities through naturalization. The introduction of the test was seen as a way to more effectively handle a higher volume of petitions for naturalization.<sup>119</sup> In Canada, as in the United States, the introduction of the test and its subsequent iterations can thus be seen as both a political statement and a bureaucratic tool.

The Canadian citizenship test remained unchanged for fifteen years and then went through two rounds of revisions in quick succession in 2010. The first set of changes, in March of that year, were ostensibly intended to “give immigrants a richer picture of Canada’s history, culture, law and politics” than that provided by the original 1995 version of the test.<sup>120</sup> A sixty-three page guide, “Discover Canada,” was published to help immigrants prepare for the test, and was filled with facts about Canadian history and politics that applicants for naturalization were required to memorize.<sup>121</sup> Jason Kenney presented the changes to the test as a means to increase the value of Canadian citizenship by making the passing score harder to achieve.<sup>122</sup> From 1995 to 2010, the passing score for the Canadian citizenship test was twelve out of twenty questions answered correctly (or sixty percent).<sup>123</sup> On average, between ninety-two and ninety-six percent of candidates successfully completed the test.<sup>124</sup> The March 2010 reform raised the passing score to fifteen out of twenty questions answered correctly (or seventy-

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*; see also Roberta J. Russell, *Bridging the Boundaries for a More Inclusive Citizenship Education*, in *CITIZENSHIP IN TRANSFORMATION IN CANADA* 134, 138-39 (Yvonne M. Hébert ed., 2002).

<sup>119</sup> See Russell, *supra* note 118; see also Paquet, *supra* note 45.

<sup>120</sup> *Citizenship-Test Failures Skyrocket*, CBC NEWS (Nov. 28, 2010, 8:50 PM), <http://www.cbc.ca/news/canada/citizenship-test-failures-skyrocket-1.875819>.

<sup>121</sup> *Id.*

<sup>122</sup> See Kenney, *supra* note 63.

<sup>123</sup> See *Citizenship-Test Failures Skyrocket*, *supra* note 120.

<sup>124</sup> *Id.*

five percent), including a handful of questions that had to be answered correctly or a candidate would automatically fail the test.<sup>125</sup> At the same time, the new testing regime tightened controls for linguistic competency, eliminating the discretion that test administrators previously enjoyed to determine oral fluency in English or French.<sup>126</sup> The test passage rate dropped to an all-time low of approximately seventy percent in the months following the introduction of the new test.<sup>127</sup> In October 2010, in response to the higher failure rates and record number of appeals requiring (costly) individual adjudication by citizenship judges, the test was revised once again and the mandatory correct answers were no longer required.<sup>128</sup> The pass rate appears to have now settled in the range of approximately seventy to eighty percent of test-takers.<sup>129</sup>

The requirements for naturalization as a Canadian citizen are very similar to those in the United States.<sup>130</sup> To qualify for naturalization, an aspiring Canadian citizen must have lawful permanent resident status, he must have resided in Canada for 183 days during each of four calendar years during the six years prior to submitting the application for naturalization, and he must have resided in Canada for a total of 1460 days during the same six-year period.<sup>131</sup> He must not be imprisoned at the time of filing, and he may only have a limited criminal history, comprising no jail sentence of more than one year, along with no record of an indictable crime.<sup>132</sup> Like his American counterpart, he must be willing to attend a naturalization ceremony where he will recite an oath of citizenship that is legally and symbolically important.<sup>133</sup> He must also prove that he is able to speak and understand “adequate” English or French and must demonstrate “an adequate knowledge” of Canada and the rights and responsibilities of Canadian citizens.<sup>134</sup> Passing the Canadian citizenship test satisfies both of the latter requirements.

Most applicants for Canadian citizenship aged fourteen to sixty-four must take the current version of the written citizenship test; as in the United States,

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> As of this writing, Canada’s new Liberal government has proposed legislation to relax the existing naturalization requirements, but no bill has yet passed. *See* Stephanie Levitz, *Liberals Introduce Changes to Citizenship Act*, CANADIAN PRESS (Feb. 25, 2016), <http://www.msn.com/en-ca/news/canada/liberals-introduce-changes-to-citizenship-act/ar-BBpYxDC> [https://perma.cc/9JRX-QLQR].

<sup>131</sup> Citizenship Act, R.S.C. 1985, c C-29, § 5(1)(c).

<sup>132</sup> *Id.* § 22.

<sup>133</sup> *Id.* § 24.

<sup>134</sup> *Id.* § 5(1)(d)-(e).

there are age-based exemptions from testing.<sup>135</sup> Applicants have thirty minutes to complete the test, which consists of twenty questions.<sup>136</sup> Fifteen (or seventy-five percent) of the questions must be answered correctly in order to obtain a passing score.<sup>137</sup> The topics tested include Canadian First Nations (i.e., aboriginal peoples), national history, federal and provincial government, rights and responsibilities of citizens, national languages, national symbols, geography, and the economy.<sup>138</sup> Canadian officials describe the questions as either fact based, such as “Name two Canadian symbols,” or conceptual, such as “What is the meaning of the Remembrance Day poppy?”<sup>139</sup>

“Discover Canada” is very similar to the USCIS guide.<sup>140</sup> “Discover Canada” is available for free download from the Citizenship and Immigration Canada (“CIC”) website in various formats, including an audio version narrated by “Notable Canadians,” as well as in hard copy format.<sup>141</sup> Questions based on the samples provided in the booklet are “shuffled” by test administrators to prevent cheating during the administration of the tests.<sup>142</sup> In addition to distributing the “Discover Canada” booklet, the Canadian government also provides financial support for test preparation courses held at colleges, schools, libraries, and settlement agencies and organizations.<sup>143</sup> It is certainly true that Canada has a strong record of encouraging large numbers of immigrants to naturalize. The number of naturalizations that take place in Canada each year is much higher than that of any European country surveyed in this Article in each year from 2004 through 2008, as well as in 2011 and 2014.<sup>144</sup> Although the number of naturalizations that take place in Canada is comparatively high, the number of potential applicants for naturalization is even higher, and data prepared by CIC suggest that the November 2010 version of the test is serving as a deterrent,

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<sup>135</sup> *Prepare for the Citizenship Test*, GOV'T CAN., <http://www.cic.gc.ca/english/citizenship/cit-test.asp> [<https://perma.cc/LJU4-S8DW>] (last modified Aug. 2, 2016).

<sup>136</sup> *Operational Bulletin 244B*, GOV'T CAN. (Feb. 25, 2011), <http://www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob244B.asp> [<https://perma.cc/M4TN-3BN9>].

<sup>137</sup> *Id.*

<sup>138</sup> *Prepare for the Citizenship Test*, *supra* note 135; *see also Discover Canada: The Rights and Responsibilities of Citizenship*, GOV'T CAN., <http://www.cic.gc.ca/english/resources/publications/discover/index.asp> [<https://perma.cc/KR3U-GA8B>] (last modified Jan. 11, 2015).

<sup>139</sup> *Citizenship-Test Failures Skyrocket*, *supra* note 120.

<sup>140</sup> *See Operational Bulletin 244B*, *supra* note 136 (stating the citizenship application process and requirements).

<sup>141</sup> *Id.*

<sup>142</sup> *Citizenship-Test Failures Skyrocket*, *supra* note 120.

<sup>143</sup> *See* Joshee, *supra* note 108, at 128.

<sup>144</sup> *See* OECD, INTERNATIONAL MIGRATION OUTLOOK 2016, at 403-04 tbl.A.6 (2016), [http://dx.doi.org/10.1787/migr\\_outlook-2016-en](http://dx.doi.org/10.1787/migr_outlook-2016-en) [<https://perma.cc/8GWS-T524>].

rather than an incentive, to aspiring citizens.<sup>145</sup> One early survey, which looked at geographic variation in pass rates, suggested that immigrants with low socioeconomic status and a lack of formal education were failing the new citizenship test at unprecedentedly high rates.<sup>146</sup> This phenomenon appears to be in tension with statements made by successive Canadian governments, both Conservative and Liberal, about the value of naturalization.

In Canada, as in the United States, citizenship (at least theoretically) is supposed to be the common bond that holds together an ethnically diverse society and political community. Naturalization is, therefore, highly important for integration and inclusion policies and processes and has been actively promoted by successive governments of all political parties.<sup>147</sup> The naturalization process, including preparing for the citizenship test, is purportedly intended to strengthen the new citizens' full commitment and loyalty to society, the new country, its people, and basic values. In other words, the knowledge derived from preparing for the tests is intended to promote patriotic pride and enhance civic identity. In Canada, as in the United States, however, the rhetoric surrounding citizenship testing and the legal framework requiring such testing emphasizes commitment and loyalty to the new country, but it does not address cultural commitments, moral values, or "assimilation," which stands in marked contrast to the citizenship tests employed in Europe and Australia.

In effect, both the Canadian and American citizenship tests serve primarily as a bureaucratic tool—a "final check" in the naturalization process. In both countries, the citizenship test is one of the last steps in the naturalization process—indeed, along with the language test, it is the penultimate step before the administration of the naturalization oath. Candidates for citizenship in both the United States and Canada are asked to take the test following an assessment by immigration and naturalization officials (USCIS and CIC, respectively). Test takers are already established permanent residents, and anyone taking the test has already met the other threshold requirements for citizenship. Thus, citizenship tests in these two early-adopting countries are instruments mobilized at the end of the naturalization process. The tests themselves do not function as an overt means of selection or a screening tool for the governments to prevent certain immigrants from applying for citizenship. Nonetheless, given the increasing complexity of the most recent iterations of the tests, the reduced passage rates compared to historical highs, and the potential deterrent function

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<sup>145</sup> See *Citizenship-Test Failures Skyrocket*, *supra* note 120.

<sup>146</sup> See *id.*

<sup>147</sup> See, e.g., ANNA KORTEWEG ET AL., CERIS, FINAL REPORT: CITIZENSHIP RESEARCH SYNTHESIS 2009-2013, at 2 (2014), <http://ceris.ca/wp-content/uploads/2015/01/CERIS-Research-Synthesis-on-Citizenship.pdf> [<https://perma.cc/Q3P9-GJ22>] (“[A]vailable evidence shows that Canada has fared quite well with its citizenship policy to date, and that this success is likely the reason why large-scale immigration to Canada enjoys relatively high levels of public and political support.”).

they appear to have in some immigrant communities with regard to applying for naturalization, it would be inaccurate to view them as purely symbolic.

C. *The United Kingdom: The Pursuit of Integration*

During the last fifteen years, there have been a series of amendments to the nationality laws of the United Kingdom. As a former colonial power, the United Kingdom has a diverse population, with immigrant communities drawn from all corners of the globe. The United Kingdom also has longstanding and explicit legal and policy commitments to multiculturalism.<sup>148</sup> It has, however, only recently ushered in civics and language tests as prerequisites for both naturalization and long-term (or indefinite) residency.<sup>149</sup> The Nationality, Immigration and Asylum Act of 2002 introduced, for the first time, both a mandatory citizenship test and a formal naturalization ceremony involving a mandatory citizenship oath.<sup>150</sup> The first such ceremonies were held in February 2004 and the formal naturalization-testing regime, the centerpiece of which is the “Life in the U.K.” test, was launched in 2005.<sup>151</sup> The introduction of the test was recommended by the Life in the United Kingdom Advisory Group,<sup>152</sup> which was formed in September 2002 to “advise the Home Secretary on the method, conduct and implementation of a ‘Life in the United Kingdom’ naturalisation test.”<sup>153</sup> The Advisory Group was convened as part of a multipronged response to riots which took place in 2001 in Bradford, Oldham, and Burnley, three towns

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<sup>148</sup> In the 1970s, then-Home Secretary Roy Jenkins described the British model of multiculturalism in the following terms: “[N]ot a flattening process of assimilation but equal opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance.” Will Somerville, Dhananjayan Sriskandarajah & Maria Latorre, *United Kingdom: A Reluctant Country of Immigration*, MIGRATION POL’Y INST. (July 21, 2009), <http://www.migrationpolicy.org/article/united-kingdom-reluctant-country-immigration/> [<https://perma.cc/HW5T-66U4>]; see also Joseph Turner, *Testing the Liberal Subject: (In)security, Responsibility and “Self-Improvement” in the UK Citizenship Test*, 18 CITIZENSHIP STUD. 332, 334 (2014) (noting that scholars have criticized the implementation of citizenship tests as contrary to liberalism and inclusion, but arguing that such tests are consistent with liberalism).

<sup>149</sup> See Paquet, *supra* note 45, at 250.

<sup>150</sup> Nationality, Immigration and Asylum Act 2002, c. 41, §§ 1, 3, sch. 1; see also British Nationality Act 1981, c. 61, § 6, sch. 1 (setting forth requirements for naturalization prior to 2002).

<sup>151</sup> See *Citizenship Ceremonies*, BRENT COUNCIL, <https://www.brent.gov.uk/your-community/nationality-citizenship/citizenship-ceremonies/> [<https://perma.cc/PD97-29ZB>] (last visited Sept. 20, 2016); see also Turner, *supra* note 148, at 338 (“This meant that after 2005, all applicants of naturalisation would either need to attend an ESOL and citizenship course or pass the ‘Life in the UK’ test.”).

<sup>152</sup> The Life in the United Kingdom Advisory Group is sometimes called “The Crick Committee” after its chairman, Bernard Crick. See CRICK ET AL., *supra* note 37, at 47.

<sup>153</sup> *Id.* at 3.

with large immigrant populations in northern England.<sup>154</sup> The Advisory Group's report critiqued the longstanding British multiculturalism policy as being too indifferent to the plight of isolated immigrant communities.<sup>155</sup> It recommended that official integration policies shift towards greater inclusiveness and emphasis on the connecting bond of a commonly used language, shared key values, and the sense of belonging to the national "British" community.<sup>156</sup> The Advisory Group found that "[t]he more we all know about each other, . . . the less likely are serious problems to arise and the more we can help each other. The new [naturalization] requirements are to be seen not as a new hurdle, but as a much needed entitlement."<sup>157</sup>

The original version of the "Life in the U.K." test, introduced by the Labour government in 2005, was a continuation of the Advisory Group's work.<sup>158</sup> The test was intended to ensure that future British citizens spoke sufficient English and displayed a basic knowledge of life in the United Kingdom, two requirements seen as decisive conditions for active participation in public life and successful integration.<sup>159</sup> "Integration" was itself conceptualized

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<sup>154</sup> See U.K. HOME OFFICE, CM 5387, SECURE BORDERS, SAFE HAVEN: INTEGRATION WITH DIVERSITY IN MODERN BRITAIN 10 (2002), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/250926/cm5387.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/250926/cm5387.pdf) [<https://perma.cc/NN4N-P993>]. See generally TED CANTLE, U.K. HOME OFFICE, COMMUNITY COHESION: A REPORT OF THE INDEPENDENT REVIEW TEAM (2002), <http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/DownloadDocumentsFile.aspx?recordId=96&file=PDFversion> [<https://perma.cc/7LAB-BDPH>] (providing a general discussion and analysis of race riots and community relations in Britain); DAVID RITCHIE, OLDHAM INDEP. REVIEW, ONE OLDHAM ONE FUTURE (2001), <http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/DownloadDocumentsFile.aspx?recordId=97&file=PDFversion> [<https://perma.cc/5FCB-5STEP>] (same).

<sup>155</sup> See CRICK ET AL., *supra* note 37, at 8-9 (noting that even some settled immigrant communities still do not have widespread English-language knowledge and do not receive much-needed services); U.K. HOME OFFICE, *supra* note 154, at 10 ("The reports into last summer's disturbances in Bradford, Oldham and Burnley painted a vivid picture of fractured and divided communities, lacking a sense of common values or shared civic identity to unite around. The reports signalled the need for us to foster and renew the social fabric of our communities, and rebuild a sense of common citizenship, which embraces the different and diverse experiences of today's Britain.").

<sup>156</sup> See CRICK ET AL., *supra* note 37, at 13 (recommending "a comprehensive but flexible Programme of Studies that will lead not only to formal, legal citizenship but also focus at every level on what people need to settle in and begin to be equipped to be citizens in the full sense as is now being taught and learnt in our schools: active citizenship, interacting supportively and effectively, critically if needs be, but acting responsibly towards each other, other communities and public authorities").

<sup>157</sup> *Id.* at 8.

<sup>158</sup> See Turner, *supra* note 148, at 333.

<sup>159</sup> See *id.* at 338 ("In the inception of the test, old tropes (like the focus on the unifying and symbolic quality of the English language) blended with new models of civic citizenship,

comprehensively, not just along structural, social, and cultural dimensions but also by applying identificational aspects such as feelings of belonging and loyalty to the political community.<sup>160</sup>

The version of the test introduced in 2005 was computer based and had twenty-four multiple choice questions chosen from a pool of 200 based on information given in several chapters of a learning handbook.<sup>161</sup> Applicants paid a small fee to take the test at one of seventy-five testing centers located throughout the United Kingdom.<sup>162</sup> Applicants were given forty-five minutes to complete the test and were required to answer eighteen out of twenty-four questions correctly (or seventy-five percent) to pass.<sup>163</sup> The original test question set emphasized everyday life in Britain, with the stated intention of assisting integration into their new society.<sup>164</sup> The test focused on political structures, traditions, and practical everyday life issues. Topics included: “[a] changing society,” including “migration in the UK; changing role of women; children; family and young people”; “UK today,” including “population; nations and regions of the UK; religion; customs and traditions”; “[h]ow the United Kingdom is governed,” including questions on the “British Constitution, the U.K. in Europe and the world”; “[e]veryday needs,” including “housing; services in and for the home; money and credit; health; education; leisure; travel and transport”; and “[e]mployment,” including questions regarding “looking for work; equal rights and discrimination; at the workplace; working for yourself; childcare and children at work.”<sup>165</sup> There were no questions about British history, a notoriously complex topic for immigrants—and even native Britons—to master. Indeed, the Home Office website at that time stated that “it would be unfair for migrants to have to answer questions that many British people would have difficulties with.”<sup>166</sup> The test was designed to be demanding, but fair and accessible, and the website had testimonials such as: “I’ve never used a computer before, but found it quite easy,” and “The test wasn’t as hard to use or

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pluralism and notions of individual responsibility. The citizenship test was after all proposed as a model of ‘Integration with Diversity.’”).

<sup>160</sup> *See id.*

<sup>161</sup> Peucker, *supra* note 30, at 252.

<sup>162</sup> Paquet, *supra* note 45, at 252 (“Applicants pay between £5.99 and £9.99 for study materials, and £34 to take the test (in addition to the cost of the application).” (citation omitted)).

<sup>163</sup> Brooks, *supra* note 33, at 6.

<sup>164</sup> *See* U.K. HOME OFFICE, LIFE IN THE UNITED KINGDOM: A JOURNEY TO CITIZENSHIP 13 (2004) (“The object of the Programme [of Studies recommended by the Life in the United Kingdom Advisory Group] and the assessments required is, we repeat, to be helpful to integration, not to set a rigid task.”).

<sup>165</sup> Peucker, *supra* note 30, at 252.

<sup>166</sup> *Id.* at 256.

as stressful as I expected.”<sup>167</sup> In 2013, the last year that this version of the test was in use, the pass rate was approximately eighty-five percent.<sup>168</sup>

In 2013, the Conservative-led coalition government introduced a revised version of the “Life in the U.K.” test.<sup>169</sup> According to then-Immigration Minister Mark Harper: “We’ve stripped out mundane information about water meters, how to find train timetables, and using the internet” to “focus[] on values and principles at the heart of being British.”<sup>170</sup> In other words, the test was altered to reflect a different sociopolitical vision of national identity and belonging. Harper claimed that the new version of the test would foster immigrants’ integration and self-sufficiency, rather than dependency, because “[i]nstead of telling people how to claim benefits it encourages participation in British life.”<sup>171</sup> The 2013 version of the test, which is still in use, focuses on British history, the very topic that the previous government chose to exclude from testing because it was a potential deterrent to immigrants applying for naturalization. Sample questions based on the “Life in the UK Handbook” include: “A very impressive hill fort can still be seen today at Maiden Castle, in the English county of \_\_\_\_.” “King Richard III of the House of York was killed in the Battle of Bosworth Field in \_\_\_\_.”<sup>172</sup>

The United Kingdom-based nonprofit Migrants Rights Network described the 2013 version of test as being “like an entry examination for an elite [private] school.”<sup>173</sup> This elitism and complexity was, according to Harper, a deliberate choice, designed to reduce immigration to the United Kingdom. He explained: “We have made radical changes to the immigration system and are determined to reduce net migration from the hundreds of thousands into the tens of thousands by the end of the Parliament.”<sup>174</sup> Alongside the new citizenship test, the Conservative-led government also introduced a higher threshold for English

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<sup>167</sup> *Id.*

<sup>168</sup> See U.K. Home Office & U.K. Visas and Immigration, *Freedom of Information Release: Data for Life in the UK Test, Jan 2010 to Oct 2013*, Gov.UK (Jan. 15, 2014), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271513/Stats\\_for\\_FOI\\_29392\\_Life\\_Test\\_in\\_UK\\_for\\_questions\\_1\\_2\\_15-01-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271513/Stats_for_FOI_29392_Life_Test_in_UK_for_questions_1_2_15-01-2014.pdf) [<https://perma.cc/4C45-WVAB>] (listing test passage rate for January 2013 at 86.31%).

<sup>169</sup> See Turner, *supra* note 148, at 338.

<sup>170</sup> *UK Citizenship Test “to Cover Britain’s Greats,”* BBC NEWS (Jan. 28, 2013), <http://www.bbc.com/news/uk-21221773> [<https://perma.cc/ZM9D-8CNX>].

<sup>171</sup> *Id.*

<sup>172</sup> For these practice questions and others, see *Life in the UK Test*, THEUKTEST.COM, <http://www.theuktest.com/life-in-the-uk-test/1> [<https://perma.cc/P2TC-5P7F>] (last visited Oct. 1, 2016). The practice questions are based on information in the “Life in the UK Handbook.” See generally U.K. HOME OFFICE, *LIFE IN THE UNITED KINGDOM: A JOURNEY TO CITIZENSHIP* (3d ed. 2013) (covering topics including British history, British government, “[e]veryday needs,” and employment, among others).

<sup>173</sup> *UK Citizenship Test “to Cover Britain’s Greats,” supra* note 170.

<sup>174</sup> *Id.*

language competency, requiring all would-be citizens or permanent residents to have a speaking and listening qualification in English at a high intermediate level.<sup>175</sup> As in the United States and Canada, age-based and disability-based exemptions from the testing requirements were included under the new rules, but with the express understanding that such exemptions were to be rare.<sup>176</sup> Once the new requirements were in force, significantly fewer individuals registered to take the test during the period from April 2013 to July 2013, and the test pass rate decreased from approximately eighty-five percent in December 2012 to approximately sixty-nine percent in October 2013.<sup>177</sup> Both applications and pass rates remained at a low level in 2014.<sup>178</sup>

Today, in order to become a British citizen, an applicant for naturalization must have resided in the United Kingdom for at least five years (three years if married to a British citizen) and must have had permanent resident status and have been “free of immigration time restrictions” in the United Kingdom for at least twelve months preceding the date of application.<sup>179</sup> In order to qualify for “indefinite leave to remain,” a person must have resided in the United Kingdom (i.e., must have been granted “leave to remain”) for five to ten years.<sup>180</sup> In addition to this period of residence, the naturalization applicant must be “of good character,” which essentially means that she has no record of conviction for a

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<sup>175</sup> See U.K. Home Office, *Tougher Language Requirements Announced for British Citizenship*, GOV.UK (Apr. 8, 2013), <https://www.gov.uk/government/news/tougher-language-requirements-announced-for-british-citizenship> [<https://perma.cc/PY7R-QUXR>]. The new standard referred to is level B1 of the Council of Europe’s Common European Framework of Reference for Languages, which is defined as one who “[c]an understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc. Can deal with most situations likely to arise whilst travelling in an area where the language is spoken. Can produce simple connected text on topics which are familiar or of personal interest. Can describe experiences and events, dreams, hopes and ambitions and briefly give reasons and explanations for opinions and plans.” *Description of Competence in English (CEFR)*, COMMON EUROPEAN FRAMEWORK REFERENCE FOR LANGUAGES, <http://www.comoneuropeanframework.org/cef> [<https://perma.cc/MF72-QLYL>] (last visited Sept. 5, 2016).

<sup>176</sup> See, e.g., *Life in the UK Test*, GOV.UK, <https://www.gov.uk/life-in-the-uk-test> [<https://perma.cc/GCL4-FKQX>] (last visited Sept. 5, 2016) (“You can make special requests when you book your test, eg if you have a disability and need extra equipment or help accessing the centre. . . . You don’t need to take the test if you’re under 18 or over 65.”).

<sup>177</sup> See U.K. Home Office & U.K. Visas and Immigration, *supra* note 170 (listing test passage rates and other statistics for each month between January 2010 and October 2013).

<sup>178</sup> U.K. HOME OFFICE, *LIFE IN THE UK TEST DATA 2012 - 2013; 2013 - 2014*, at 21 (2014), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/378804/ho\\_performance\\_data\\_2013\\_14\\_q4\\_v09.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378804/ho_performance_data_2013_14_q4_v09.pdf) [<https://perma.cc/KPT9-KYD4>].

<sup>179</sup> British Nationality Act 1981, c. 61, § 6, sch. 1.

<sup>180</sup> See generally British Immigration Act 2014, c. 22.

serious crime.<sup>181</sup> She must also demonstrate that she is “closely connected to the United Kingdom,”<sup>182</sup> is willing to make a pledge and oath or affirmation of allegiance at the citizenship ceremony,<sup>183</sup> and has a sufficient knowledge of English, Welsh, or Scots Gaelic which is “good enough . . . to deal with everyday situations.”<sup>184</sup> Finally, she must achieve a passing score on the “Life in the U.K.” test.<sup>185</sup>

In marked contrast with both the United States and Canada, a passing score on the citizenship test is now a mandatory requirement for not only naturalization but also indefinite leave to remain in the United Kingdom.<sup>186</sup> The test’s content and the level of difficulty are similar for both naturalization and indefinite leave to remain.<sup>187</sup> Candidates are also now required to take the test at an authorized testing center and acquire proof that they have passed it, *before* they submit an application for naturalization or indefinite leave to remain.<sup>188</sup> A passing grade on the test is one of the preconditions for assessment of an application for either of these statuses by the U.K. Border Agency.<sup>189</sup> The test, therefore, serves as an active instrument at the very start of the naturalization process. Unlike the U.S. and Canadian models, the decision to take the test is made by the applicant herself and access to the test is not controlled by the administrative body in charge of the naturalization process.<sup>190</sup> Because of its timing, at the very beginning of the naturalization process, the test performs a gatekeeping function over access to basic rights derived from both permanent legal residence and full citizenship. In many ways, this positions the current version of the U.K. test as a “reward” for preexisting integration,<sup>191</sup> rather than as a vehicle for integration.

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<sup>181</sup> British Nationality Act 1981, c. 61, § 6, sch. 1; *see also* UK VISAS AND IMMIGRATION, CHAPTER 18: NATURALISATION AT DISCRETION (NATIONALITY INSTRUCTIONS), ANNEX D: THE GOOD CHARACTER REQUIREMENT §§ 2-5 (2015), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406368/Chapter\\_18\\_Annex\\_D\\_v02.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406368/Chapter_18_Annex_D_v02.pdf) [<https://perma.cc/8L36-ME7H>] (setting forth guidance regarding criminal convictions and the “good character” requirement).

<sup>182</sup> Peucker, *supra* note 30, at 251.

<sup>183</sup> *Id.* at 251.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 251 n.17.

<sup>187</sup> *See Life in the UK Test*, *supra* note 176 (“You need to take the test as part of your application for British citizenship or settlement in the UK.”); *see also* Paquet, *supra* note 45, at 251.

<sup>188</sup> *See Life in the UK Test*, *supra* note 176; *see also* Paquet, *supra* note 45, at 251-52.

<sup>189</sup> *See* Paquet, *supra* note 45, at 252.

<sup>190</sup> *Id.*

<sup>191</sup> *See* Christian Joppke, *Comparative Citizenship: A Restrictive Turn in Europe?*, 2 LAW & ETHICS HUM. RTS. 1, 12 (2008).

The U.K. case study provides a useful insight into the ways in which both the theoretical purposes and practical functions of a citizenship-testing regime can evolve over time. Here, even though the statutory scheme governing the citizenship and language tests remains unchanged, a different government with a different agenda is now using the testing regime as an instrument to pursue very different policy goals from those that were initially intended. The same statutory and regulatory provisions that were initially intended to promote immigrant inclusion and incentivize naturalization are now being employed as a potential mechanism for immigrant exclusion. The test now functions practically as a means of deterring would-be applicants for naturalization and as a screening tool to ensure preexisting assimilation for aspiring permanent residents. The U.K. case study demonstrates the perils of contending—or at least the perils of contending at a high level of generality—that citizenship testing is either per se assimilationist or liberal/integrationist. And the United Kingdom’s experience also demonstrates how citizenship testing is a highly context-specific sociolegal phenomenon, which can change over time.

D. *The Netherlands: The Culmination of Integration*

There are many parallels between recent changes in United Kingdom immigration and nationality laws and developments during the same time period in the Netherlands. Like the United Kingdom, the Netherlands is a former colonial power with a sizeable immigrant population.<sup>192</sup> Similar to their British counterparts, successive Dutch governments have struggled to balance explicit longstanding policy commitments to respect diversity and promote multiculturalism with emerging concerns about national security and economic vitality.<sup>193</sup> Their response to this challenge has been to radically revise the Dutch approach to “*inburgering*,” or civic integration of immigrants, and a key component of that revision has been the overhaul of Dutch citizenship and language testing requirements.

The Dutch Nationality Act of 1984 was the first legal instrument permitting naturalization by migrants resident in the Netherlands.<sup>194</sup> Before that date, the previous governing statute, which had been in force since 1892, allowed individuals to obtain Dutch nationality only at birth through patrilineal descent.<sup>195</sup> The 1984 Act, in contrast, allowed first generation immigrants to naturalize relatively easily and permitted second-generation immigrants (i.e., first generation immigrants’ children, who were born in the Netherlands) to opt for citizenship as a matter of course.<sup>196</sup> Under the 1984 Act, the naturalization

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<sup>192</sup> See generally Peucker, *supra* note 30 (comparing naturalization procedures in the United Kingdom, the Netherlands, the United States, and Canada).

<sup>193</sup> See *id.* at 248-49.

<sup>194</sup> Rijkswet op het Nederlanderschap, 19 december 1984, Stb. 1984, 628.

<sup>195</sup> Wet op het Nederlanderschap en het ingezetenschap, 12 december 1892, Stb. 1892, 268.

<sup>196</sup> Rijkswet op het Nederlanderschap, 19 december 1984, Stb. 1984, 628.

applicant was required to demonstrate that he was integrated into Dutch society.<sup>197</sup> The 1984 Act also introduced a very basic Dutch language test, which, as one scholar explained, “hardly anyone failed.”<sup>198</sup> Both the language and integration/civic knowledge requirements were fulfilled by successfully passing an oral interview with a municipal civil servant.<sup>199</sup> In the course of an informal conversation, the applicant was expected to show basic command of Dutch and basic knowledge of Dutch society and the Dutch political system.<sup>200</sup>

Over a decade later, in 1998, in response to heightened tension between “native” Dutch communities and recently arrived migrants (called “newcomers” to distinguish them from long-standing migrant communities), the Dutch government extended the measures designed to assess the integration of would-be citizens to all individuals seeking to permanently settle in the country, in addition to applicants for naturalization.<sup>201</sup> The Newcomers Integration Act of 1998 required immigrants, including those immigrating for family reunification purposes, to either pass an oral interview with a local official or to take an “integration course” providing instruction in the Dutch language and Dutch cultural mores.<sup>202</sup> These integration interviews were widely regarded as the functional equivalent of the oral testing of aspiring citizens by local government employees and were designed to promote immigrant inclusion in broader Dutch society.<sup>203</sup>

In the years following the Newcomers Integration Act, many immigrants’ advocates complained about the lack of nationwide common guidelines.<sup>204</sup> They argued that reliance upon oral interviews by local government officials, or upon courses held by a variety of very different institutions, had led to regional variations in content and level of difficulty.<sup>205</sup> This, they argued, was

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<sup>197</sup> *Id.*

<sup>198</sup> Joppke, *supra* note 191, at 17; *see also* Ricky van Oers, Betty de Hart & Kees Groenendijk, *The Netherlands*, in 2 ACQUISITION AND LOSS OF NATIONALITY, *supra* note 25, at 391, 413 (“Failing the language test was the most important ground for refusal of applications for naturalisation. However, less than 5 per cent of applications were refused.”).

<sup>199</sup> *See* van Oers, de Hart & Groenendijk, *supra* note 198, at 423.

<sup>200</sup> *Id.* at 413 (“In the 1984 Act, integration in Dutch society was defined as having a reasonable knowledge of Dutch language and having been accepted in Dutch society.”).

<sup>201</sup> *Id.* at 403.

<sup>202</sup> Wet inburgering nieuwkomers, 9 april 1998, Stb. 1998, 261. European immigrants, and immigrants from Australia, Canada, Japan, New Zealand, Switzerland, and the United States were—and continue to be—exempt from these requirements.

<sup>203</sup> *See* Peucker, *supra* note 30, at 248.

<sup>204</sup> *See* Gerard-René de Groot, *Reflections on Integration and Access to Nationality/Citizenship Through Naturalisation: A Comparative Perspective*, in THE NEXUS BETWEEN IMMIGRATION, INTEGRATION AND CITIZENSHIP IN THE EU 21, 22-23 (Sergio Carrera ed., 2006) (“A consequence of this informal approach was that the level of integration required for naturalisation differed considerably from place to place.”).

<sup>205</sup> *Id.* at 23.

fundamentally unfair, and so they advocated for a system that harmonized criteria throughout the country to create more equality of opportunity and fairness for all immigrants.<sup>206</sup> The Dutch government's response in 2003 was to institute a nationwide formal testing regime for aspiring citizens.<sup>207</sup> As in the United Kingdom, the Dutch testing regime has evolved through two very different iterations. The first version of the tests, introduced in 2003, involved two distinct components. First, as a threshold matter, naturalization applicants were required to complete a computer-based citizenship knowledge exam.<sup>208</sup> Applicants were allowed forty-five minutes to take the test, which contained forty multiple-choice questions.<sup>209</sup> The citizenship test assessed the applicant's basic understanding of "Dutch society, the political system and constitutional order."<sup>210</sup> Typical question topics included Dutch politics, the labor market, income and tax provisions, welfare benefits, health care provisions, and the public transport system.<sup>211</sup> The test emphasized everyday life issues, such as shopping in the supermarket or understanding the weather forecast.<sup>212</sup> "The pass mark of the citizenship test [was] 70 per cent, i.e. twenty-eight questions out of forty . . ."<sup>213</sup> If an applicant successfully passed the citizenship knowledge exam, she could proceed to a separate test to assess her Dutch language proficiency, including listening, reading, speaking, and writing skills.<sup>214</sup> The language test took three hours and consisted of over 100 tasks and questions.<sup>215</sup> During the time period that this two-part test was in operation, approximately fifty percent of test-takers passed.<sup>216</sup>

It is somewhat ironic that, as in the United Kingdom, concern about fairness and immigrant isolation/lack of integration prompted the 2003 revisions to the Nationality Act, including the introduction of the citizenship tests.<sup>217</sup> But, as in the United Kingdom, what had been envisaged initially as an instrument of integration was altered by a successor government with a different political

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<sup>206</sup> See Ricky van Oers, *From Liberal to Restrictive Citizenship Policies: The Case of the Netherlands*, 10 INT'L J. ON MULTICULTURAL SOC'YS 40, 52 (2008).

<sup>207</sup> Rijkswet op het Nederlanderschap, 27 februari 2003, Stb. 2003, 113. The 2003 Act just made operative two earlier acts that contained the substantive provisions regarding formal testing. See Rijkswet van 18 april 2002, Stb. 2002, 222; Rijkswet van 21 december 2000, Stb. 2000, 618.

<sup>208</sup> de Groot, *supra* note 204, at 23.

<sup>209</sup> Peucker, *supra* note 30, at 248.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at 248-49.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 248.

<sup>216</sup> van Oers, *supra* note 206, at 50.

<sup>217</sup> *Id.* at 40 (describing the addition of citizenship tests as a supposedly more concrete method of insuring integration).

agenda to function as a tool of immigrant exclusion.<sup>218</sup> After the new scheme went into effect, the number of naturalization applications decreased dramatically from nearly 37,000 in 2002 to approximately 19,300 in 2004.<sup>219</sup> By 2006, the number of applicants had settled at approximately fifty percent below the 2002 baseline level.<sup>220</sup> According to one Dutch scholar, Ricky van Oers: “Elderly people, those with limited or no education and women in disadvantaged situations” were deterred from applying for naturalization because of the formalized testing regime.<sup>221</sup> His colleague, Mario Peucker, argues that it was not just the increased requirements, but rather those requirements combined with a lack of assistance and encouragement from the authorities, which apparently served as such a powerful deterrent.<sup>222</sup> In any event, it is apparent that the new tests were widely perceived as more demanding and more difficult to pass. This created both practical obstacles and emotional and motivational barriers by signaling to immigrants that their welcome as new citizens was contingent upon their performance on the tests.

At the same time that aspiring Dutch citizens who were permanently resident in the Netherlands were required to sit for formal tests to assess their degree of integration, a debate began about how to encourage integration of newly arriving immigrants.<sup>223</sup> This debate culminated in the passage of the Integration Abroad Act of 2005.<sup>224</sup> This Act required every person aged between sixteen and sixty-five seeking to enter the Netherlands on an immigrant visa (i.e., a nontemporary visa), to go to the Dutch embassy in his or her country of citizenship or residence, and to participate in language courses and civic training.<sup>225</sup> At the end of the courses, an aspiring immigrant was required to pass two examinations at the Dutch embassy: an oral examination testing elementary knowledge of the Dutch language and a computer-based exam testing elementary knowledge of Dutch society.<sup>226</sup> These tests were more basic versions of the tests administered in the Netherlands for aspiring citizens.

Following widespread condemnation of the testing regimes mandated by both the 2003 amendments to the Nationality Act and the 2005 Integration Abroad Act, the Dutch government introduced the Civic Integration Act of 2006, which superseded the requirements of both prior statutes.<sup>227</sup> The previous computer-based multiple-choice citizenship knowledge test was replaced with a new

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<sup>218</sup> See Joppke, *Beyond National Models*, *supra* note 41, at 6-7.

<sup>219</sup> van Oers, de Hart & Groenendijk, *supra* note 198, at 419.

<sup>220</sup> van Oers, *supra* note 206, at 50.

<sup>221</sup> *Id.* at 51.

<sup>222</sup> See Peucker, *supra* note 30, at 249.

<sup>223</sup> See van Oers, *supra* note 206, at 41.

<sup>224</sup> Wet inburgering in het buitenland, 22 december 2005, Stb. 2006, 409 (amending Vreemdelingenwet 2000, 23 november 2000, Stb. 2000, 495).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Wet inburgering, 30 november 2006, Stb. 2006, 625.

“integration examination,” which remains in effect today (although its content was updated once again in 2013).<sup>228</sup> The integration examination has two components: an orally administered “practical test” to assess the applicant’s proficiency in Dutch in real-life situations (essentially, this is a set of role play simulations) and a “central examination.”<sup>229</sup> The “central examination” comprises three sub-tests: (1) a “[c]omputer-based test on Dutch society and politics”; (2) an “[o]ral examination by telephone, where questions are asked and assignments are given”; and (3) a “[c]omputer-based ‘Electronic Practical Examination’, in which the applicant has to answer questions on practical issues in the Netherlands (e.g. how to register a new-born baby).”<sup>230</sup>

For individuals seeking entry to the Netherlands on a temporary long-stay residence permit, the Civic Integration Act requires that they pass a version of the two-part integration exam.<sup>231</sup> The preimmigration test also involves viewing a video entitled “Coming to the Netherlands,” which includes images of gay couples kissing and female nudity.<sup>232</sup> Any Muslim faith leaders applying to immigrate, such as imams immigrating to preach at Dutch mosques, must also attend a mandatory course on “Dutch law, including the rights of women and freedom of speech.”<sup>233</sup> Three-and-a-half years after entry to the Netherlands, immigrants are then required to take the same integration examination required of naturalization applicants.<sup>234</sup> Failure to take the test within the required time period leads to fines and may lead to other civil penalties.<sup>235</sup>

As in the United States, Canada, and the United Kingdom, there are exemptions from the mandatory testing requirements for elderly people and individuals with serious physical or mental disabilities, who are referred to a special testing center in Amsterdam.<sup>236</sup> The Amsterdam center assesses which, if any, components of the examination such applicants should be required to

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<sup>228</sup> *Id.*

<sup>229</sup> See Peucker, *supra* note 30, at 249-50.

<sup>230</sup> *Id.* at 250.

<sup>231</sup> Wet inburgering, 30 november 2006, Stb. 2006, 625.

<sup>232</sup> See *The Netherlands*, FOCUS MIGRATION (Nov. 2007), [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) [<https://perma.cc/3TN8-SZCQ>] (describing study materials required for the integration exam, including this controversial video that “seemed to be designed to provoke Muslim migrants and because not everybody considers homosexuality and topless sunbathing to be core Dutch values”).

<sup>233</sup> AMITAI ETZIONI, *NEW COMMON GROUND: A NEW AMERICA, A NEW WORLD* (2009); see also *The Netherlands*, *supra* note 232 (“There is a widespread fear that Muslims are not adapting to Dutch norms, like tolerance toward homosexuals and the equality of men and women. . . . The extended integration obligation is mostly aimed at people on welfare and spiritual leaders such as imams.”).

<sup>234</sup> Wet inburgering, 30 november 2006, Stb. 2006, 625.

<sup>235</sup> *Id.*

<sup>236</sup> See Peucker, *supra* note 30, at 249.

complete and which components may be waived.<sup>237</sup> Any illiterate immigrants aspiring to become permanent residents or citizens (in practice this group appears to consist solely of refugees or elderly relatives of naturalized Dutch citizens) have to demonstrate that they tried to learn Dutch in a training institute.<sup>238</sup> They are also examined at the same specialized testing center in Amsterdam.<sup>239</sup> Furthermore, “[i]f they are assessed as capable of learning Dutch within five years, they will have to take the test again once they have acquired the required level of Dutch proficiency.”<sup>240</sup>

The 2007 reforms to the citizenship and language tests, with their emphasis on practical issues and questions, were designed to make the exams more accessible than their 2003 forerunners.<sup>241</sup> But, once again, they appear to have had the opposite effect because they have increased the complexity of the testing process, while, at the same time, creating obvious barriers for non-Western (particularly Muslim) immigrants. As a consequence, applications for naturalization remain at a historically low level, as does the naturalization test pass rate.<sup>242</sup> This is likely due, in part, to the fact that in contrast with the other countries discussed in this Article, the Dutch government does not produce test preparation materials or guidance. There is no sample vocabulary list as in the United States. There is no handbook with sample questions and answers to the civics questions as in the United States, Canada, or the United Kingdom. In contrast, in the Netherlands, the questions in the citizenship knowledge, reading, writing, listening, and speaking portions of the tests are changed every six months to prevent people from “studying” in advance.<sup>243</sup> Moreover, funding for the mandatory integration courses was cut in 2013, requiring immigrants themselves to pay, which is a further disincentive for low-socioeconomic status immigrants.<sup>244</sup> One government official justified this approach by claiming that “one cannot study to be Dutch, one has to feel Dutch.”<sup>245</sup> As one scholar notes, this represents a “philosophical shift from naturalization as a ‘tool’ of integration to naturalization as ‘end-point’ of successful integration.”<sup>246</sup> Critics of this

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<sup>237</sup> *Id.*

<sup>238</sup> *See id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 250.

<sup>242</sup> *The Netherlands, MIGRANT INTEGRATION POL'Y INDEX* (2015), <http://www.mipex.eu/netherlands> [<https://perma.cc/KZZ4-UET5>] (“The peak [of naturalizations] in 1996 reached 78,731. The number fell again in 2003, after introduction of the formal language and integration test, from around 45,000 in the early 2000s to a steady 26,000-31,000 over the past decade.”).

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> Danait Teklay, *The Last Frontier of Globalization: Asylum and Citizenship in the Netherlands*, 30 *MACALESTER INT'L* 152, 161 (2012).

<sup>246</sup> Joppke, *supra* note 191, at 16.

system suggest that it is like “asking [immigrants] to pass final exams at the beginning of the course.”<sup>247</sup> Indeed, MIPEX has condemned this apparent “integration policy” as a “policy of no policy.”<sup>248</sup>

The comparatively stringent contours of the Dutch testing regime appear to be somewhat at odds with the country’s other requirements for naturalization. The current statutory prerequisites for naturalization in the Netherlands share many common attributes with the naturalization requirements in the United States, Canada, and the United Kingdom. Aspiring citizens must have been lawful permanent residents for a five-year period.<sup>249</sup> They must not be the subject of pending criminal proceedings or a “prison sentence, training or community service order or a large fine” during the last four years.<sup>250</sup> They must attend a naturalization ceremony and give an oath of allegiance.<sup>251</sup> At this time they must also renounce all other citizenships—since 2003, dual nationality is not permitted for naturalized Dutch citizens.<sup>252</sup> Further, under Article 8 of the Nationality Act, aspiring citizens must demonstrate that they are “sufficiently integrated into Dutch Society,”<sup>253</sup> which they achieve by passing the integration tests. With the exception of the prohibition on dual nationality, these requirements are virtually indistinguishable from those of the United States, Canada, and the United Kingdom. With that same exception, these requirements have also remained virtually unchanged for the last fifteen years. Yet, the number of naturalizations (and the proportion of the eligible immigrant population opting to naturalize) in the Netherlands is markedly lower than that in the United States, Canada, or the United Kingdom today, as well as considerably lower than it has been historically in the Netherlands itself.<sup>254</sup> The only apparent reason for this change is the implementation of the more complex and demanding citizenship tests.

In the Netherlands, as in the United Kingdom, policy determinations about citizenship testing thus appear to be playing an outsized role in comparison with statutory or regulatory provisions. Through changes to the testing regime and the support (or lack thereof) given to aspiring citizens, the process of acquiring

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<sup>247</sup> JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* 103 (2007) (critiquing a school ban on Muslim female students wearing headscarves because it forces integration, which should be a more gradual process).

<sup>248</sup> *The Netherlands*, *supra* note 242 (stating under “Key Findings” that “[i]mmigrant adults are demanded but not supported to learn [the Netherlands’] language and its core civic values”).

<sup>249</sup> *Naturalisation, IMMIGR. & NATURALISATION SERV.*, <https://ind.nl/EN/individuals/residence-wizard/dutch-citizenship/naturalisation> [<https://perma.cc/DZ27-WAR6>] (last visited Oct. 21, 2016).

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Rijkswet op het Nederlanderschap, 19 december 1984, *Stb.* 1984, 628.

<sup>254</sup> *See The Netherlands*, *supra* note 242.

citizenship has shifted from a means of facilitating the integration of immigrants to an opportunity only available after a person has already fully integrated into Dutch society. Access to the “good” of Dutch citizenship, now more than ever, is predicated upon educational attainment and financial resources, as well as preexisting understanding of and integration into Western European society. The Dutch example demonstrates, once again, how important the evolving political environment and policy concerns can be in determining the practical effects of nationality laws and regulations.

E. *Germany: The Reward for Acculturation*

Germany provides a particularly interesting counterpoint to the countries discussed thus far in this Article. In contrast with the United States, Canada, the United Kingdom, and the Netherlands, the Federal Republic of Germany has no explicit, longstanding commitment to diversity and inclusion. To the contrary, it has clear legal and policy commitments to cultural unity and social assimilation, and its nationality laws and naturalization requirements reflect these priorities.<sup>255</sup> Of all the countries discussed in this Article, Germany provides the most paradigmatic example of a country with an ethnocultural conception of national belonging. As a consequence, its naturalization requirements, including its regulations governing the examination of aspiring citizens, are designed to safeguard the social, political, and cultural cohesion of the nation.<sup>256</sup>

From the formation of the German state in 1871 until 2000,<sup>257</sup> with the significant exception of individuals expelled from the country by the Nazis, access to German citizenship was limited to individuals who could demonstrate that they were ethnically German.<sup>258</sup> Transmission of citizenship was via *jus sanguinis*,<sup>259</sup> and the children of non-Germanic immigrants who were born in

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<sup>255</sup> See Orgad, *supra* note 31, at 725-26 (discussing the “German *Kultur* nation”).

<sup>256</sup> *Id.* at 726.

<sup>257</sup> At the time of formation of the German Empire in 1871, individual states’ nationality laws continued to apply. See, e.g., *Law Respecting the Acquisition and Loss of the Quality of Prussian by a Prussian Subject, and His Admission to Foreign Citizenship*, U. FRANKFURT (Dec. 31, 1842), <http://www.uni-frankfurt.de/51530558/Prussian-Citizenship-Law-1842.pdf> [<https://perma.cc/ERT7-EDXR>]. On July 22, 1913, the Nationality Law of the German Empire and States established national German citizenship, either derived from the citizenship of one of the component states or acquired through the central government. Reichs- und Staatsangehörigkeitsgesetz [RuStAG] [Nationality Act], July 22, 1913, REICHSGESETZBLATT [RGBl.] at 583.

<sup>258</sup> Orgad, *supra* note 31, at 726 (“Contrary to France, German citizenship was originally based on ethnicity, that is, where the immigrant’s ancestors came from.”). Interestingly, this group included the *Spätaussiedler*, “ethnic German resettlers” from the successor states of the former Soviet Union.

<sup>259</sup> *Jus sanguinis*, literally “right of the blood,” is a principle of nationality law whereby citizenship is determined by descent from a parent, rather than by place of birth (the latter is *jus soli*, “right of the soil”). Orgad, *supra* note 31, at 726.

Germany and lived their whole lives in the country were ineligible for German citizenship. Then, in 1999, Germany revised its naturalization rules with the Amended Nationality Act, which introduced, for the first time, a path to citizenship for immigrants living in Germany and their children.<sup>260</sup> The Amended Nationality Act was primarily designed to create an opportunity for second- and third-generation immigrants, who were born and raised in Germany, had attended German schools, were fluent German speakers, and were thus widely perceived to be well integrated into German society.<sup>261</sup> Under the Amended Nationality Act, aspiring citizens were, therefore, required to demonstrate that they had “adequate knowledge of German”<sup>262</sup> and “knowledge of the legal system, society and living conditions in Germany.”<sup>263</sup> Initially, citizenship applications under the Amended Nationality Act were processed entirely at the local level by state government officials, who reviewed written application materials and conducted oral interviews of aspiring citizens.<sup>264</sup> These officials enjoyed great discretion to interpret the provisions of the Amended Nationality Act when determining whether an individual applicant’s knowledge of German or civics rose to a level that was “adequate.”<sup>265</sup> There was wide geographic variation in approval rates of naturalization applications.<sup>266</sup> Many immigrants’ advocates expressed their concerns about inequitable application of the law depending on the geographic location in which the immigrant applied for naturalization, the personal preferences of the local official conducting the review, and the individual characteristics of the aspiring citizen, such as her race, ethnicity, religion, or country of origin.<sup>267</sup>

Partially in response to these concerns, the requirements for naturalization, including the guidelines for testing aspiring citizens, were further revised through the Immigration Act in 2004.<sup>268</sup> The Immigration Act amended the existing naturalization provisions to require that aspiring citizens demonstrate knowledge of German language and civics, with such knowledge to be assessed

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<sup>260</sup> Gesetz zur Reform des Staatsangehörigkeitsgesetz [StAG] [Amended Nationality Act], July 15, 1999, BUNDESGESETZBLATT, Teil I [BGBl I] at 1618.

<sup>261</sup> Orgad, *supra* note 31, at 726.

<sup>262</sup> Gesetz zur Reform des Staatsangehörigkeitsgesetz [StAG] [Amended Nationality Act], July 15, 1999, BGBl I at 1618.

<sup>263</sup> *Id.*

<sup>264</sup> See Veysel Oezcan, *Changes to German Law Help Boost Naturalization Numbers*, MIGRATION POL’Y INST. (Aug. 1, 2003), <http://www.migrationpolicy.org/article/changes-german-law-help-boost-naturalization-numbers> [<https://perma.cc/M2TD-HVLL>].

<sup>265</sup> Orgad, *supra* note 31, at 726.

<sup>266</sup> See Oezcan, *supra* note 264 (comparing naturalization rates for the different German states).

<sup>267</sup> See Orgad, *supra* note 31, at 725.

<sup>268</sup> Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern [Zuwanderungsgesetz] [Immigration Act], July 30, 2004, BUNDESGESETZBLATT, Teil I [BGBl I] at 1950.

by means of a formal test, according to nationally recognized and agreed-upon standards.<sup>269</sup> The Immigration Act required most<sup>270</sup> would-be citizens to attend at least 600 hours of German language instruction and thirty hours of culture, history, and civics classes.<sup>271</sup> These courses were spearheaded and coordinated by the Federal Office for Migration and Refugees, which has offices throughout the country.<sup>272</sup> Affordable and nationally standardized *Integrationskurse* (“integration classes”) were introduced and were taught at locations throughout Germany.<sup>273</sup> Despite this national syllabus of instruction, the assessment of naturalization applicants’ linguistic and civics knowledge remained a local matter. From 2005 to 2008, each German state, or *Land* (plural, “*Länder*”), produced and administered its own citizenship test, designed to meet the federal statutory requirements that the aspiring citizen demonstrate adequate knowledge of German as well as the nation’s laws, social mores, and way of life.<sup>274</sup> The content of these tests varied considerably, with state administrations pursuing their own agendas, purportedly in furtherance of the federal government’s objectives. Two *Länder* in particular, Baden-Württemberg and Hesse, introduced controversial tests that appeared to be focused on excluding Muslim immigrants.<sup>275</sup>

The Baden-Württemberg test, introduced in 2005, took the form of a questionnaire with thirty questions about gender equality, religion, conversion, politics, marital relations, and teenager culture.<sup>276</sup> Known colloquially as “the conscience test,” it was originally administered exclusively to immigrants hailing from the fifty-seven states that compose the Organization of the Islamic Conference or “applicants ‘appearing to be Muslims.’”<sup>277</sup> Sample questions included: “Is it right that women obey their husbands, and for men to beat their wives, when they are disobedient?” “If your adult daughter dressed like a

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<sup>269</sup> *Id.*

<sup>270</sup> Under the Amended Nationality Act, there are exceptions for minor children and individuals who have already demonstrated that their level of German language ability exceeds level B1 of the Council of Europe’s Common European Framework of Reference for Languages. Gesetz zur Reform des Staatsangehörigkeitsgesetz [Amended Nationality Act], July 15, 1999, BGBLI at 1618.

<sup>271</sup> Etzioni, *supra* note 32, at 356.

<sup>272</sup> FED. OFF. FOR MIGRATION & REFUGEES, <http://www.bamf.de/EN/Startseite/startseite-node.html> [<https://perma.cc/GP5E-VGMS>] (last visited Oct. 2, 2016).

<sup>273</sup> See Etzioni, *supra* note 32, at 356. The courses currently cost one Euro per hour. See Germany, MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/germany> [<https://perma.cc/TA2X-87W8>].

<sup>274</sup> See Orgad, *supra* note 31, at 725.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* For a comprehensive discussion of the format and content of the test, see generally Rainer Grell, *Dictung und Wahrheit: Die Geschichte des ‘Muslim-Tests’ in Baden-Württemberg*, 30 FRAGEN, DIE DIE WELT ERREGTEN (2006).

<sup>277</sup> Orgad, *supra* note 31, at 725.

German woman, would you prevent her from doing so?” “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?”<sup>278</sup> Brigitte Losch, a Green Party Member of Parliament in Baden-Württemberg, decried the test as “an unbelievable form of discrimination and abuse of equal rights.”<sup>279</sup>

In March 2006, the state of Hesse issued its own naturalization test containing 100 narrative (i.e., non-multiple choice) written questions on nine subjects: (1) Germany and Germans; (2) basics of German history; (3) Constitution and basic rights; (4) elections, political parties, and lobbies; (5) Parliament, Government, and Armed Forces; (6) federal state, constitutional state, welfare state; (7) the Federal Republic of Germany in Europe; (8) culture, education, and science; and (9) German national symbols.<sup>280</sup> The questions were highly varied, and to some extent subjective, with no set answers. The Hesse questions included: “List three reasons why you want to become a German citizen.” “What does the term ‘Reformation’ mean to you, and who started it?” “From whom does all state power emanate in the Federal Republic of Germany? What advantages does this have for German citizens?”<sup>281</sup> In addition to general knowledge questions about famous German works of art and literature, composers, musicians, philosophers, athletes, brands, and media outlets, there were also a series of questions designed to gauge the political, religious, and cultural commitments of naturalization applicants. Examples of questions designed to elicit potentially controversial responses from Muslim applicants included: “Explain the term ‘Israel’s right to existence.’” “A woman should not be allowed to move freely in public or travel unless escorted by a close male relative. What is your standpoint on this?” “In films, theatre plays and books, sometimes the religious sentiments of people of various beliefs are offended. What do you consider to be appropriate measures for an individual to take in defence against such a thing, and what not?” “Parents do not always agree with the way their children behave. Which educational methods are permitted and which are not?” “If someone said: ‘Free media are indispensable to a democratic society’, would you agree or disagree?”<sup>282</sup> As with the Baden-Württemberg test, the test administered in Hesse was initially only mandatory for Muslims applying for German citizenship.<sup>283</sup> It was then changed to any applicant “whose loyalty to the German Basic Law is doubted.”<sup>284</sup>

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<sup>278</sup> Grell, *supra* note 276, at 183-86.

<sup>279</sup> Etzioni, *supra* note 32, at 354.

<sup>280</sup> The German news source, *Der Spiegel*, published an English translation of all 100 questions online. *Becoming German: Proposed Hesse Citizenship Test*, SPIEGEL ONLINE (May 9, 2006, 1:58 PM), <http://www.spiegel.de/international/becoming-german-proposed-hesse-citizenship-test-a-415242.html> [<https://perma.cc/F4TU-HKP4>].

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> See Orgad, *supra* note 31, at 725.

<sup>284</sup> *Id.* at 725 n.26. “German Basic Law” refers to the German Constitution.

In 2007, the Immigration Act was amended once again,<sup>285</sup> and a nationally standardized test question set replaced the controversial individual *Länder* tests.<sup>286</sup> Individual states are still responsible for test administration, but they are required to use the federal government's test questions and format.<sup>287</sup> The federal test, which is still in use today, includes thirty-three random multiple choice questions, of which the applicant must correctly answer seventeen (or fifty-one percent).<sup>288</sup> "The questions come from a catalogue of 310 questions, and the *Länder* can pick and choose their own questions" from the pre-approved list.<sup>289</sup> The federally-sanctioned test questions focus on three main topic areas: "[l]iving in a democracy," "[h]istory and responsibility," and "[p]eople and society."<sup>290</sup> The subjects tested involve German "history, geography, constitutional principles, Europe, national symbols and German customs, such as 'what Germans traditionally do at Easter'," rather than testing how individual immigrants would react when confronted with social situations.<sup>291</sup>

In 2008, when the standardized federal naturalization test was introduced, immigrants' rights advocates argued that the questions were too difficult and would deter many applicants from applying for naturalization.<sup>292</sup> Left-wing politicians similarly expressed fears that "this exam would make gaining citizenship much more difficult."<sup>293</sup> But such concerns were dismissed by the federal government and their state counterparts, who insisted that "if [immigrants] want to live here forever, [they] should know something about the country."<sup>294</sup> The content of the tests makes clear that "know[ing] something about the country" involves more than just general knowledge of key facts. The underlying ideological concept of shared national cultural mores has clearly

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<sup>285</sup> Gesetz zur Umsetzung Aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union [Änderungsgesetzes zum Zuwanderungsgesetz] [Amendment to Immigration Act], Aug. 19, 2007, BUNDESGESETZBLATT, Teil I [BGBL I] at 1970.

<sup>286</sup> See Reichs- und Staatsangehörigkeitsgesetz [RuStAG] [Nationality Act], July 22, 1913, REICHSGESETZBLATT [RGLB] at 583, as amended, § 10(7).

<sup>287</sup> See *id.* (stating that the federal government is authorized to create the naturalization test).

<sup>288</sup> Orgad, *supra* note 31, at 725; see *The Naturalisation Test*, FED. OFF. FOR MIGRATION & REFUGEES (Jan. 18, 2011), <http://www.bamf.de/EN/Willkommen/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest.html?nn=1448618> [<https://perma.cc/P8DT-5ZQJ>].

<sup>289</sup> Orgad, *supra* note 31, at 725-26; see *The Naturalisation Test*, *supra* note 288.

<sup>290</sup> *The Naturalisation Test*, *supra* note 288.

<sup>291</sup> Orgad, *supra* note 30, at 726.

<sup>292</sup> See, e.g., Tristana Moore, *German Citizenship Is Put to Test*, BBC NEWS (Sept. 4, 2008, 10:28 AM), <http://news.bbc.co.uk/2/hi/europe/7597534.stm> [<https://perma.cc/P87M-WT8Q>] (reporting criticisms that questions were "obscure and badly formulated" and would "creat[e] more hurdles and barriers" to naturalization).

<sup>293</sup> *Id.* (quoting Volker Beck, a Green Party Member of the Bundestag).

<sup>294</sup> *Id.* (quoting Ehrhart Koerting, a member of the Berlin Senate).

influenced the framing of the test questions. Indeed, Jörg Schönbohm, the Minister of the Interior of the Land of Brandenburg at the time of the adoption of the new federal test, explained that the inclusion of questions about German culture and society was essential, because “those who come here have to adopt the German *Leitkultur*. Our history has developed over a thousand years. We cannot allow that this basis of our community be destroyed by foreigners.”<sup>295</sup>

This fear that foreign influences would somehow undermine the established majority culture may seem far-fetched but may nonetheless be sincerely felt. Some scholars argue that such concerns are little more than thinly veiled expressions of xenophobia and discrimination, particularly against Muslim immigrants from Central Asia and the Middle East. Christian Joppke espouses, for example, that there is “nothing specifically ‘German’ about the culture that immigrants [are] asked to share” and that the “only non-procedural element of this culture . . . was a commitment to ‘Christian-occidental culture’ which included references to ‘Judaism’, ‘antique philosophy’, ‘Humanism’, and ‘Roman law’ but notably not to ‘Islam’.”<sup>296</sup> Whether this interpretation is true or not, both the naturalization test questions and the language requirements under the German testing regime are extremely sophisticated, requiring a highly advanced degree of cultural and linguistic competency that would be very difficult for non-natives to attain, particularly for those with non-European educational backgrounds. In comparison with the American, Canadian, British, and Dutch testing regimes discussed thus far, the German scheme introduced in 2008 is the most orientated toward ethnocultural conformity. The function performed by the test is both one of practically fostering assimilation and also theoretically safeguarding cultural continuity.

In 2014, the German Parliament once again amended German naturalization laws and regulations with the Second Act Amending the Nationality Act.<sup>297</sup> This statute, which removed several preexisting restrictions on dual nationality, allows a larger group of potential new citizens access to German nationality, including through naturalization.<sup>298</sup> Despite the change, however, the current naturalization requirements continue to pose a high bar for all but the most educated of applicants. Under the current statute, aspiring German citizens must meet a series of criteria similar to, but slightly more exacting than, those in force in the other countries surveyed in this Article. In order to naturalize as a German

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<sup>295</sup> Orgad, *supra* note 31, at 726.

<sup>296</sup> Christian Joppke, *Exclusion in the Liberal State: The Case of Immigration and Citizenship Policy*, 8 EUR. J. SOC. THEORY 43, 56 (2005) (citation omitted).

<sup>297</sup> Zweites Gesetz zur Änderung des Staatsangehörigkeitsgesetzes [Second Act Amending the Nationality Act], Nov. 13, 2014, BUNDESGESETZBLATT, Teil I [BGBL I] at 1714.

<sup>298</sup> See *Law on Nationality*, FED. FOREIGN OFF., [http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Staatsangehoerigkeitsrecht\\_node.html#doc480780bodyText1\[https://perma.cc/Z7GG-4AY7\]](http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Staatsangehoerigkeitsrecht_node.html#doc480780bodyText1[https://perma.cc/Z7GG-4AY7]) (last visited Oct. 2, 2016) (“[T]he Second Act Amending the Nationality Act, which entered into force on 20 December 2014, significantly reduces the number of those obliged to opt for one nationality.”).

citizen, an immigrant must reside permanently in Germany and must have lived in the country for at least eight years.<sup>299</sup> She must have a completely clean criminal record.<sup>300</sup> She must show that she is able to support herself financially without any form of public assistance and that she is unlikely to require public assistance in the future.<sup>301</sup> She must typically renounce all other nationalities.<sup>302</sup> She must demonstrate her commitment to the German Constitution by declaring loyalty to the rule of law, judicial independence, human rights, foreign interests of the Federal Republic of Germany, as well as other values.<sup>303</sup> Finally, she must demonstrate “adequate knowledge of German” and German laws, German society, and everyday life in Germany by attaining passing scores on the naturalization and language tests.<sup>304</sup>

Social scientists studying citizenship and naturalization in Germany since 2000 have repeatedly identified two significant barriers to naturalization for immigrants living in Germany and their descendants—the ban on dual nationality and the complexity of the citizenship tests.<sup>305</sup> For many years, the assumption was that the ban on dual nationality was the predominant factor preventing immigrants from applying to naturalize.<sup>306</sup> However, contrary to expectations, once the 2014 reforms were introduced, which removed the barriers on dual nationality for many aspiring citizens,<sup>307</sup> naturalization rates did not increase. In fact, annual naturalization rates in Germany remain much lower than they did in the early 2000s, when the ban on dual nationality was in full force. Indeed, naturalization rates have fallen from a high of around 140,000 in the early 2000s to less than 100,000 today.<sup>308</sup> It appears then that the decline in applications for naturalization is related to the introduction of the new federal citizenship-testing regime.<sup>309</sup> Moreover, applications for naturalization are lowest among non-EU nationals, women, elderly people, and refugees from the

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<sup>299</sup> See Reichs- und Staatsangehörigkeitsgesetz [RuStAG] [Nationality Act], July 22, 1913, RGBL at 583, as amended, § 10(1).

<sup>300</sup> *Id.* § 10(1)5.

<sup>301</sup> *Id.* § 10(1)3.

<sup>302</sup> *Id.* §§ 10(1)4, 12. This provision is the so-called *Optionsregelung*, to which the 2014 amendments introduced a number of exceptions, depending on the immigrant’s country of origin and individual circumstances.

<sup>303</sup> *Id.* §§ 10(1)1, 16.

<sup>304</sup> *Id.* §§ 10(1)6-7, (4)-(6).

<sup>305</sup> See *Germany*, *supra* note 273.

<sup>306</sup> See *id.* (stating that policies such as language tests abroad, restrictions on dual nationality, and others “may be disproportionate and ineffective from an integration perspective, with many unintended consequences and negative long-term effects”).

<sup>307</sup> See *id.* (“In 2014, [Germany] took the near-final step to embrace dual nationality for the 2nd generation born [German] citizens since the 1999 landmark citizenship reform recognised that [Germany] was a country of immigration.”).

<sup>308</sup> See *id.*

<sup>309</sup> See *id.*

developing world.<sup>310</sup> In short, those with low socioeconomic status and the least formal education—those who in many respects are the most vulnerable members of German society—are the least likely to apply for German citizenship.

In Germany, the statutory and regulatory provisions governing citizenship testing have thus had a direct and measurable effect on access to naturalization, performing a clear gatekeeping function. The legal framework is aligned with the original policy goals of restricting access to naturalization to those who had already achieved a high level of acculturation into German society. Even attempts to relax restrictions to encourage more naturalization have not been successful because of the high bar set by the citizenship-testing regime, and because access to the benefits of citizenship remain tied to an applicant's ethnicity, national origin, prior educational achievement, and socioeconomic status.

F. *France: The Mandate for Assimilation*

France, like Germany, is a country with an explicit commitment to cultural assimilation rather than to multiculturalism and diversity. It differs from Germany in three crucial respects, however. First, while the German notion of national cultural cohesion is founded on cultural and ethnic ties and belonging, the French understanding of national assimilation is founded on shared civic and linguistic ties without regard to fundamental aspects of individual identity. Article I of the French Constitution states: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion."<sup>311</sup> Successive French governments have interpreted this provision strictly; the French census, for example, tracks "nationality" as a category and distinguishes between those who are born in France, those who have acquired French citizenship, and those who are foreign immigrants, but it does not refer to race or ethnicity, and there are no official government statistics examining immigrants' or new citizens' race or religion.<sup>312</sup> Second, unlike Germany, France is a former colonial power and has a long history as an "immigration nation," with well-established and vibrant communities of migrant workers,

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<sup>310</sup> *See id.*

<sup>311</sup> 1958 CONST. art. 1 ("La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion."). An English translation of the French Constitution can be found at *Welcome to the English Website of the French National Assembly: Legal Texts*, ASSEMBLÉE NATIONALE, <http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly#Preamble> [https://perma.cc/Y8V3-L527] (last visited Oct. 2, 2016).

<sup>312</sup> *See generally Publications and Statistics for France or Regions*, NAT'L INST. STAT. & ECON. STUD., <http://www.insee.fr/en/themes/theme.asp?theme=2> [https://perma.cc/M2WA-465Q] (last visited Oct. 2, 2016).

refugees, and nationals of former French colonial possessions.<sup>313</sup> Indeed, since 1889, French nationality laws have been revised more than a dozen times—demonstrating the extent to which successive governments have grappled with the question of how best to regulate the acquisition of French citizenship by “outsiders.”<sup>314</sup> Third, and finally, France is committed to the transmission of citizenship via both *jus sanguinis* and *jus soli*, and has permitted naturalization by second- and third-generation immigrants for over 100 years.<sup>315</sup> As a consequence, today, immigrants and their descendants comprise a significant proportion of the French population.<sup>316</sup>

During the twentieth century, a series of statutes were passed amending the criteria by which immigrants and their descendants might acquire French citizenship. Many of them involved testing the linguistic and cultural assimilation of would-be citizens. Since 1927, the degree to which an aspiring citizen is truly “assimilated” into the French mainstream has been a matter of great concern to the French authorities. Since that date, an immigrant applying for naturalization has been required to demonstrate that he is sufficiently fluent in the French language and also “culturally assimilated.”<sup>317</sup> The original mechanism for measuring linguistic and cultural assimilation introduced in 1927 was the “*procès-verbal d’assimilation*” (statement of assimilation), a transcript produced by a local government official following a five- to twenty-minute “assimilation interview” with the candidate for naturalization, during which the candidate was expected to demonstrate French language skills and cultural fluency.<sup>318</sup>

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<sup>313</sup> See Kimberly Hamilton, Patrick Simon & Clara Veniard, *The Challenge of French Diversity*, MIGRATION POL’Y INST. (Nov. 1, 2004), <http://www.migrationpolicy.org/article/challenge-french-diversity> [https://perma.cc/4XCU-SKX2].

<sup>314</sup> See CHRISTOPHE BERTOSSI & ABDELLALI HAJJAT, EUDO CITIZENSHIP OBSERVATORY, COUNTRY REPORT: FRANCE § 2.2 (2013), <http://docplayer.net/21285571-Eudo-citizenship-observatory.html> [https://perma.cc/AD9X-NU2S] (“Since 1889, nationality legislation has been reformed more than a dozen times (1893, 1909, 1914, 1917, 1923, 1924, 1925, 1927, 1937, 1938, 1941, 1945, 1961, 1973, etc.), but it was the 1889 and 1927 laws that established the principles of French modern nationality law.”).

<sup>315</sup> See ROGERS BRUBAKER, CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY 97-98 (1992) (describing the French Civil Code of 1804 as contemplating naturalization, and describing statutes in 1851 and 1889 that permitted naturalization of third- and second-generation immigrants, respectively).

<sup>316</sup> See *France*, FOCUS MIGRATION (Mar. 2007), <http://focus-migration.hwwi.de/France.1231.0.html?&L=1> [https://perma.cc/L2EU-HHTG] (describing continual growth in immigration since at least the Second World War that resulted in immigrants comprising 8.1% of the French population as of 2007).

<sup>317</sup> See ABDELLALI HAJJAT, LES FRONTIÈRES DE L’“IDENTITÉ NATIONALE”: L’INJONCTION À L’ASSIMILATION EN FRANCE MÉTROPOLITAINE ET COLONIALE 132 (2012).

<sup>318</sup> See *id.* at 121-32; see also BERTOSSI & HAJJAT, *supra* note 314, § 2.2.

In 1973, the French Code of Nationality was amended to state that particular scrutiny would be paid to the degree of assimilation evinced by foreign spouses of French citizens.<sup>319</sup> In addition to examining the linguistic ability of the foreign spouse during the *procès-verbal d'assimilation*, the 1973 law mandated that local government officials explore in detail the foreign spouse's understanding of French culture.<sup>320</sup> The 1973 law emphasized that officials should exercise their discretion to reject applications on the basis of "*défaut d'assimilation*" (lack of assimilation) from individuals seeking to naturalize based on marriage.<sup>321</sup> Lack of assimilation became a growing concern during the 1970s and 1980s, not just with respect to the foreign-born spouses of French citizens, but also with respect to the French-born children of immigrants and nationals of former French territorial possessions. The latter group, who obtained French citizenship through France's *jus soli* provisions, were often characterized as "French without being aware of it or wanting it."<sup>322</sup> Some scholars argue that these concerns about lack of assimilation by newcomers were fueled largely by the increasing diversity of race, religion, and national origin among naturalization applicants during this time.<sup>323</sup>

In 1993 and 2003, the nationality laws were amended once again. In 1993, measures were introduced that were designed to restrict access to naturalization for the children of nationals of former French colonies.<sup>324</sup> But, exceptions were made for those who "belong[ed] to the French cultural and linguistic entity."<sup>325</sup> Such individuals were still required to attend an interview with a local official to assess their level of fluency in French, but if the official was satisfied that they were native French speakers and culturally assimilated, they were allowed to apply for naturalization without meeting stringent residency requirements that now applied to all other applicants.<sup>326</sup> In 2003, for the first time, a more formal requirement was introduced stating, that in addition to being "well assimilated," naturalization applicants had to prove that they had sufficient knowledge about the "rights and duties" of French citizens.<sup>327</sup> According to the drafters of this bill, its purpose was to ensure that new citizens understood the significance of

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<sup>319</sup> CODE DE LA NATIONALITÉ FRANÇAISE art. 39 (1973).

<sup>320</sup> BERTOSSI & HAJAT, *supra* note 314, § 2.5.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* § 2.7 ("While Europeans were 95 per cent of the new French during the years immediately following the Second World War, they were only 20 per cent of the new citizens in 1993. . . . Since 1992, people from Maghreb countries represent more than 40 per cent of the new French citizens . . .").

<sup>324</sup> Paul Lagarde, *La nationalité française rétrécie*, 82 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 535, 543 (1993).

<sup>325</sup> CODE CIVIL [C. CIV.] [CIVIL CODE] art. 21-20.

<sup>326</sup> *Id.*

<sup>327</sup> *Id.* art. 21-24.

becoming a citizen.<sup>328</sup> The assessment of a naturalization applicant's knowledge of citizenship remained the purview of the local government official, who would ask a series of questions on this topic during the assimilation interview.

At the same time that these changes were introduced to French nationality laws, France's immigration laws were also amended to reflect a growing concern about immigrant integration into the cultural mainstream. In France, as in the United Kingdom and the Netherlands, proactive "integration measures" were introduced in the early 2000s for all permanent migrants, not just those seeking citizenship. Under a law promulgated in 2006,<sup>329</sup> and amended in 2016,<sup>330</sup> every non-European immigrant entering France for the first time must participate in a "*parcours personnalisé d'intégration républicaine*" (personalized republican integration course) and sign an "*Contrat d'accueil et d'intégration*" (integration and welcome contract) with the French Office of Immigration and Integration before receiving a permanent residence permit.<sup>331</sup> By signing the contract, the immigrant agrees to respect the "fundamental values of the Republic," take French language lessons, and participate in a civics program.<sup>332</sup> During this program, among other instructional activities, the immigrant learns about French values through watching a film, "*Vivre Ensemble en France*," (Living Together in France) which is designed, in part, to encapsulate "the French idea of nationhood as based on *liberté, égalité, fraternité*" (liberty, equality, fraternity).<sup>333</sup> The concept of secularism ("*laïcité*") is emphasized particularly,

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<sup>328</sup> BERTOSSI & HAJAT, *supra* note 314, § 2.10.

<sup>329</sup> Décret 2006-1791 du 23 décembre 2006 relatif au contrat d'accueil et d'intégration et au contrôle des connaissances en français d'un étranger souhaitant durablement s'installer en France et modifiant le code de l'entrée et du séjour des étrangers et du droit d'asile (partie réglementaire) [Decree 2006-1791 of December 23, 2006 on the Accommodation and Integration Contract and on the Examination of French Knowledge for Foreign Persons Seeking Permanent Residency in France and Modifying the Entry and Residency Code for Foreign Persons and the Right of Asylum (Regulations)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 31, 2006, p. 20346; Loi 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration [Law 2006-911 of July 24, 2006 on Immigration and Integration], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 25, 2006, p. 11047.

<sup>330</sup> Loi 2016-274 du 7 mars 2016 relative au droit des étrangers en France [Law 2016-274 of Mar. 7, 2016 on the right of foreigners in France], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 8, 2016.

<sup>331</sup> The Accommodation and Integration Contract is available from the French government. *Integration and Welcome Contract*, MINISTRY FOR EMP., SOC. COHESION & HOUSING, [http://travail-emploi.gouv.fr/IMG/pdf/cai\\_anglais.pdf](http://travail-emploi.gouv.fr/IMG/pdf/cai_anglais.pdf) [https://perma.cc/E57F-4FBC] (last visited Oct. 2, 2016).

<sup>332</sup> *Id.*

<sup>333</sup> Orgad, *supra* note 31, at 724. The film is available online. *Living Together in France*, L'OFFICE FRANÇAIS DE L'IMMIGRATION ET DE L'INTÉGRATION, [http://www.ofii.fr/s\\_integrer\\_en\\_france\\_47/living\\_together\\_in\\_france\\_759.html](http://www.ofii.fr/s_integrer_en_france_47/living_together_in_france_759.html) [https://perma.cc/VQ2A-NBWH] (last visited Sept. 7, 2016).

and, as with the Dutch video for new immigrants, there appears to be a particular focus on challenging the beliefs of socially conservative Muslim immigrants.<sup>334</sup> This is a leitmotif throughout all of the civics and citizenship materials, and some scholars argue that the interview process at the end of the training program is designed to test moral values as much as it is designed to test knowledge of events or laws.<sup>335</sup>

In 2011, Nicholas Sarkozy's conservative government amended the nationality laws once again. The requirement introduced in 2003 that new citizens demonstrate a basic understanding of their "rights and duties" was replaced with a more stringent requirement that they pass a formal test on French language, history, culture, and society to prove that they were familiar with the "essential principles and values of the Republic."<sup>336</sup> For the first time, a multiple-choice written citizenship test was prepared to assess this knowledge.<sup>337</sup> The test would have been launched on July 1, 2012, but when the Socialist party won the nationwide elections in June of that year and formed a new government, they passed a law abandoning the test.<sup>338</sup> Nonetheless, the general topics identified for the test are now tested orally during the required

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<sup>334</sup> See Orgad, *supra* note 31, at 723-24.

<sup>335</sup> See *id.* at 724 (stating that the interview process tests "language skills and personal outlook").

<sup>336</sup> Loi 2011-672 du 16 juin 2011 relative à l'immigration, l'intégration et à la nationalité [Law 2011-672 of June 16, 2011 on immigration, integration and nationality], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 17, 2011, p. 10290. The relevant provision states: "No one may be naturalized unless he proves his assimilation into the French community, comprising sufficient knowledge of French language, history, culture, and society, in accordance with the level and method of evaluation required by the decree of the *Conseil d'État*, and of the rights and responsibilities conferred by French nationality as well as commitment to the principles and essential values of the Republic." *Id.*

<sup>337</sup> Décret 2012-126 du 30 janvier 2012 relatif au niveau et à l'évaluation de la connaissance de l'histoire, de la culture et de la société françaises requis des postulants à la nationalité française au titre de l'article 21-24 du code civil [Decree 2012-126 of January 30, 2012 on the Evaluation of Knowledge of History, Culture and French Society Required of Applicants for French Nationality Under Article 21-24 of the Civil Code], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 31, 2012, p. 1768.

<sup>338</sup> Décret 2013-794 du 30 août 2013 portant modification du décret n° 93-1362 du 30 décembre 1993 relatif aux déclarations de nationalité, aux décisions de naturalisations, de réintégration, de perte, de déchéance et de retrait de la nationalité française [Decree 2013-794 of August 30, 2013 Amending Decree No. 93-1362 of December 30, 1993 on the Nationality Declarations, Naturalization Decisions, Reintegration, Loss, Forfeiture and Withdrawal of French Nationality], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 31, 2013, p. 14794; see also BERTOSSI & HAJAT, *supra* note 314, § 3.1; *France Scraps Citizenship Test, Job Requirement*, INTERAKSYON.COM (Oct. 20, 2012, 8:42 AM), <http://www.interaksyon.com/article/46041/france-scraps-citizenship-test-job-requirement> [<https://perma.cc/EYU5-3BZ2>].

interview with the designated local official.<sup>339</sup> A test preparation booklet, the “*Le livret du citoyen*” (Citizen’s Booklet) is provided to help aspiring citizens prepare for their interview.<sup>340</sup> The booklet contains sample questions on topics including: values and principles of the Republic, local government, history, famous naturalized French citizens, France as a European and world power, geography, and human rights.<sup>341</sup> Moreover, at the same time that the standardized naturalization test questions and topics were introduced, the French language requirement was made more exacting. Immigrants can no longer demonstrate their linguistic competency by completing an individual “assimilation interview” with an immigration officer.<sup>342</sup> Instead, they are required to produce a “*Diplôme d’études en langue française*” (Certificate of French Language Studies) at level B1 of the Common European Framework of Reference for Languages.<sup>343</sup>

The preoccupation with linguistic and cultural assimilation (rather than diversity and multiculturalism) is evident in the relationship between the current testing provisions and the other accompanying naturalization requirements in France. To naturalize as a French citizen, an applicant must live in France with his family.<sup>344</sup> He must have been a permanent resident of the country for five years (which may be reduced in certain circumstances, such as studying at a French university for two years, or waived entirely for those who have performed military service or who are native French speakers).<sup>345</sup> He must demonstrate that he has a sufficient and stable income and is integrated into the workforce.<sup>346</sup> He must demonstrate good moral character and undergo a criminal records check.<sup>347</sup> He must indicate which other nationalities he wishes to keep or renounce if he is granted French citizenship.<sup>348</sup> Finally, he must demonstrate “assimilation into the French community” by submitting his French language certificate and correctly answering questions about French history, culture, society, and the “essential principles and values of the Republic.”<sup>349</sup> In France,

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<sup>339</sup> CODE CIVIL [C. CIV.] [CIVIL CODE] art. 21-24.

<sup>340</sup> The booklet is available in hard copy and for download from the Interior Ministry. *Immigration, asile, accueil et accompagnement des étrangers en France*, MINISTÈRE DE L’INTÉRIEUR, <http://www.immigration.interieur.gouv.fr/Accueil-et-accompagnement/Le-livret-du-citoyen> [<https://perma.cc/87R7-CG4U>] (last visited Sept. 8, 2016).

<sup>341</sup> See generally MINISTÈRE DE L’INTÉRIEUR, *LIVRET DU CITOYEN* (2015).

<sup>342</sup> BERTOSSI & HAJAT, *supra* note 314, § 2.10.

<sup>343</sup> See *id.* Note that this is the same level of linguistic competence required for English in the United Kingdom, Dutch in the Netherlands, and German in Germany. See *supra* Sections II.C, II.D, II.E.

<sup>344</sup> CODE CIVIL [C. CIV.] [CIVIL CODE], art. 21-16.

<sup>345</sup> *Id.* arts. 21-17, 21-18, 21-19, 21-20.

<sup>346</sup> *Id.* art. 21-16.

<sup>347</sup> *Id.* art. 21-27.

<sup>348</sup> *Id.* art. 21-27-1.

<sup>349</sup> *Id.* art. 21-24.

as in the Netherlands and Germany, naturalization applications are processed locally in each county.<sup>350</sup> Local officials consider two threshold criteria before processing the applications. First, does the naturalization applicant have her current principal residence in France?<sup>351</sup> Second, has the naturalization applicant adequately shown her “assimilation into the French community” by producing a language studies certificate and correctly answering an interviewer’s questions about French history, society, and culture?<sup>352</sup> Approximately forty percent of applications are deemed “unacceptable” at this threshold stage,<sup>353</sup> before any of the other naturalization criteria are even considered—showing the significance attached to cultural and linguistic competency.

Unsuccessful applicants for naturalization, who are denied the opportunity to proceed with their application on the basis of lack of assimilation, have the right of appeal to a central administrative authority in Nantes, and thereafter to the highest administrative tribunal, the *Conseil d’État*.<sup>354</sup> Since the 2003 reforms to the nationality laws, almost all of these appeals have involved “a lack of non-linguistic assimilation” by Muslim applicants.<sup>355</sup> The most well known of these cases involved a woman named Faiza Silmi.<sup>356</sup> Before applying for naturalization, Silmi lived in France for eight years, spoke fluent French, was married to a French citizen, and had three French children.<sup>357</sup> During her assimilation interview with a municipal official, she answered the factual questions correctly and demonstrated that she spoke fluent French. However, the official decided that the veil she was wearing, the niqab, was incompatible with French values and denied her application.<sup>358</sup> The *Conseil d’État* affirmed the municipal official’s denial of citizenship on the basis of Silmi’s insufficient assimilation into the French Republic. It ruled that by wearing the niqab, Silmi had adopted a “radical religious practice” that was incompatible with the “values essential to the French community, notably the principle of gender equality.”<sup>359</sup>

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<sup>350</sup> See BERTOSSI & HAJJAT, *supra* note 314, § 4.4.

<sup>351</sup> *Id.* § 3.2.

<sup>352</sup> *Id.* §§ 2.10, 3.2.

<sup>353</sup> *Id.* § 3.2.

<sup>354</sup> *Id.* (detailing the appellate judge’s role in determining whether there was a mistake in law or fact, or an abuse of discretion).

<sup>355</sup> *Id.*

<sup>356</sup> CE, June 27, 2008, Rec. Lebon 286798. For contemporary accounts of the proceeding in the popular press, see Stéphanie Le Bars, *Une Marocaine en burqa se voit refuser la nationalité française*, LE MONDE, July 12, 2008, at 9; see also Laura Agustín, Opinion, *What Not to Wear – If You Want to Be French*, GUARDIAN (Aug. 6, 2008), <https://www.theguardian.com/commentisfree/2008/aug/06/france.islam> [<https://perma.cc/P6U2-CX2Z>].

<sup>357</sup> Le Bars, *supra* note 356, at 9.

<sup>358</sup> CE, June 27, 2008, Rec. Lebon 286798.

<sup>359</sup> *Id.*

Silmi had thus failed to demonstrate that she was sufficiently assimilated into French society to attain the benefits of citizenship.<sup>360</sup>

The effect of the recent changes to the French citizenship-testing regime on naturalization rates has been pronounced. From 2003 to 2010, the total number of naturalizations in France was relatively stable, with approximately 140,000 individuals naturalizing each year.<sup>361</sup> In 2011, after the new testing requirements were introduced, just 114,569 immigrants were able to naturalize.<sup>362</sup> In 2012 and 2013, between 95,000 and 96,000 individuals naturalized.<sup>363</sup> As in the other countries discussed in this Article, non-Western nationals and individuals of low socioeconomic status with limited education were most affected by the changes. In 2012, for example, only 74,276 non-EU citizens became French citizens.<sup>364</sup>

As the evolution in the statutory provisions governing naturalization and admission for permanent residence demonstrate, in France, as in the Netherlands and the United Kingdom, naturalization is now seen not as the start of the process of integrating newcomers, but rather, in the words of French Interior Minister Manuel Valls, a naturalized citizen himself, “the natural conclusion of a successful integration.”<sup>365</sup> Even though the statutory provisions governing access to French nationality have not changed dramatically, the rationale behind the notions of successful assimilation have undergone a transformation. The move away from a requirement that (predominantly European) immigrants demonstrate basic competency in the French language to an expectation that (predominantly non-European) immigrants should be able to show linguistic, social, and cultural assimilation as well as shared moral values with the mainstream “native” population is striking. The modern French citizenship-testing regime embodies a highly “culturized” conception of nationality.<sup>366</sup> It measures preexisting assimilation and adoption of majority values, rather than celebrating diversity. An immigrant can only pass the tests and proceed with an application for naturalization if he is highly integrated into French society. As a consequence, it poses an almost insurmountable barrier for many individuals who would otherwise pursue French citizenship.

#### G. *Australia: The Late Adopter*

Australia, like the United States and Canada, is a self-described “nation of immigrants.” Almost half of the current Australian population was born overseas

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<sup>360</sup> *Id.*

<sup>361</sup> *France*, MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/france> [<https://perma.cc/LP52-R9D9>].

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *France Scraps Citizenship Test, Job Requirement*, *supra* note 338.

<sup>366</sup> See Christophe Bertossi & Jan Willem Duyvendak, *Introduction: Penser le “Modèle”*, *Changer de Question*, 21 *MIGRATIONS SOCIÉTÉ*, mars-avril 2009, at 25, 28.

or has at least one parent who was born overseas.<sup>367</sup> As in the United States and Canada, naturalization has been available for many years; the Australian Nationality and Citizenship Act of 1948, was the first statutory provision to set forth the requirements for naturalization as an Australian citizen.<sup>368</sup> Unlike the United States and Canada, however, Australia did not adopt a citizenship test as part of its naturalization requirements until 2007.<sup>369</sup>

In 2007, Australia updated its citizenship laws when it passed the Australia Citizenship Act which, among other things, lengthened the required residency period in Australia for prospective citizens to four years.<sup>370</sup> Shortly thereafter, the Liberal-National coalition government introduced a bill proposing a more stringent English language test and a “history and values” test.<sup>371</sup> The Minister for Immigration and Citizenship introduced the bill to Parliament with the explanation that the reforms proposed were intended to make Australian citizenship more difficult to acquire and, therefore, more “valuable.”<sup>372</sup> The introduction of the “history and values” test was portrayed as a crucial tool for “increasing the value of Australian citizenship.”<sup>373</sup> The theory was that by clearly articulating what it meant to be Australian to aspiring citizens, and by restricting access to citizenship, those individuals would more fully appreciate the value of citizenship, which would ultimately promote greater social inclusion.<sup>374</sup>

The version of the test introduced in 2007 was designed to assess a naturalization applicant’s knowledge of the English language, understanding of the naturalization process, and knowledge of Australia, its core values, and the responsibilities and privileges of citizenship.<sup>375</sup> The test was composed of

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<sup>367</sup> See *Australia*, MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/australia> [<https://perma.cc/J47P-DGSR>].

<sup>368</sup> *Nationality and Citizenship Act 1948* (Cth). Initially, citizenship was only available to British, Irish, and European immigrants; until 1956, non-European immigrants were banned from applying for naturalization. Moreover, British and Irish citizens enjoyed privileges not available to other European immigrants until the law was amended in 1973. See *The Changing Face of Modern Australia: 1950s to 1970s*, GOV’T AUSTL., <http://www.australia.gov.au/about-australia/australian-story/changing-face-of-modern-australia-1950s-to-1970s> [<https://perma.cc/YG3T-MTAR>] (last visited Sept. 9, 2016).

<sup>369</sup> *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1.

<sup>370</sup> *Australian Citizenship Act 2007* (Cth) § 22.

<sup>371</sup> *Australian Citizenship Amendment (Citizenship Testing) Bill 2007* (Cth) sch 1 items 4-5.

<sup>372</sup> See Farida Fozdar & Brian Spittles, *The Australian Citizenship Test: Process and Rhetoric*, 55 AUSTL. J. POL. & HIS. 496, 506 (2009).

<sup>373</sup> *Australian Citizenship—Your Right, Your Responsibility*, DEP’T IMMIGR. & BORDER PROTECTION, <https://www.border.gov.au/about/reports-publications/discussion-papers-submissions/australian-citizenship-your-right-your-responsibility> [<https://perma.cc/8U4W-FMCX>] (last visited Sept. 15, 2016).

<sup>374</sup> See *id.*

<sup>375</sup> *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1 item 4.

twenty written multiple-choice questions.<sup>376</sup> An applicant was required to answer twelve of the twenty questions (or sixty percent) correctly, three of which had to relate to the “privileges and responsibilities of citizenship,” in order to pass the test.<sup>377</sup> As in the United States, Canada, the United Kingdom, and France, applicants for naturalization in Australia were given a test preparation booklet, titled *Becoming an Australian Citizen*.<sup>378</sup> The topics covered in the booklet included political structures, national and international history, sporting achievements, geography, and culture.<sup>379</sup>

The introduction of the test was controversial for many reasons. Some commentators argued that the choice of test questions symbolized a retreat from a “nascent ‘multicultural’ identity,” back to one redolent of the times of the “White Australia Policy,” because they “confidently celebrat[ed] connections with an Anglo-Saxon heritage, the European Enlightenment, and Judeo-Christian roots.”<sup>380</sup> In particular, they noted that the test omitted or marginalized the contributions of Aboriginal peoples and their history and influence on Australian culture.<sup>381</sup> Other critics argued that the 2007 test ignored the influence and continuing contribution of non-Anglo-Saxon migrant groups, including Southern and Eastern Europeans, as well as migrants from the Middle East and Asia.<sup>382</sup> Significantly, the 2007 test questions largely excluded any reference to the Asia-Pacific region in which Australia is geographically located.<sup>383</sup>

In the months immediately following the introduction of the new test, there was a marked drop in the number of naturalization applications. In September 2007, a total of 21,000 applications for citizenship were filed.<sup>384</sup> In December of the same year, just 3190 applications were filed.<sup>385</sup> Moreover, the pass rates for the new test varied considerably according to the immigrants’ countries of origin and their educational background. Approximately ninety-seven percent of migrants who entered Australia on skilled-worker visas passed the test.<sup>386</sup> In contrast, only approximately eighty percent of “humanitarian entrants” (i.e., refugees and asylum seekers or victims of domestic violence) achieved a passing

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<sup>376</sup> Fozdar & Spittles, *supra* note 372, at 507.

<sup>377</sup> *Id.*

<sup>378</sup> See Kerry Ryan, *Citizenship by the Booklet*, INSIDE STORY (Mar. 5, 2013), <http://insidestory.org.au/citizenship-by-the-booklet> [https://perma.cc/4RS5-V7Y5] (discussing the debate in the United Kingdom over what should be included in the booklet and invoking Australia’s example).

<sup>379</sup> *Id.*

<sup>380</sup> See Fozdar & Spittles, *supra* note 372, at 497.

<sup>381</sup> See *id.* at 506.

<sup>382</sup> See *id.*

<sup>383</sup> See *id.* (calling this form of whitewashed history the “black armband” version).

<sup>384</sup> *Id.* at 507.

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* at 508.

mark.<sup>387</sup> Particularly low pass rates were noted among refugees from Sudan (seventy percent), Afghanistan (seventy-five percent), and Iraq (eighty-four percent).<sup>388</sup> This prompted a number of commentators, including one member of Parliament, to speculate that “in all probability [the test] will prove to be a barrier of exclusion rather than a vehicle of inclusion.”<sup>389</sup>

In 2009, partially in response to these concerns, the test was revised and simplified. Complex questions about relatively obscure historical figures—such as Donald Bradman, known as “the greatest cricket batsman of all time,” who broke nearly all batting records during his first tour of England in 1930—were removed, as were questions with the most overt cultural inflections.<sup>390</sup> The test preparation booklet *Becoming an Australian Citizen*, was replaced by *Australian Citizenship: Our Common Bond*, a more basic text designed to be accessible for non-native English speakers.<sup>391</sup> It was also translated into thirty-seven “community languages.”<sup>392</sup> Video clips from the booklet can be viewed on the Australian government’s YouTube channel.<sup>393</sup>

*Becoming an Australian Citizen* states that: “In particular, new citizens are asked to embrace the values of Australia. As important as the responsibilities and privileges of citizenship, these values provide the everyday guideposts for living in Australia.”<sup>394</sup> In contrast, Part I of *Australian Citizenship: Our Common Bond* discusses “Australia and its Peoples” and provides information on Australian history, geography, traditions, and symbols,<sup>395</sup> while Part II addresses “Australia’s Democratic Beliefs, Rights, and Liberties.”<sup>396</sup> Here, “Australian beliefs” are identified as: respect for all individuals regardless of background; 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; and tolerance, mutual respect and compassion for

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<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 19 Feb. 2008, 734 (Petro Georgiou, Member of Parliament).

<sup>390</sup> *Cricket Dumped from Citizenship Test*, SPECIAL BROADCASTING SERVS. (Oct. 19, 2009, 9:35 AM), [www.sbs.com.au/news/article/2009/10/19/cricket-dumped-citizenship-test](http://www.sbs.com.au/news/article/2009/10/19/cricket-dumped-citizenship-test) [<https://perma.cc/UTK7-X63R>].

<sup>391</sup> COMMONWEALTH OF AUSTL., AUSTRALIAN CITIZENSHIP: OUR COMMON BOND 5 (2014), <http://www.border.gov.au/Citizenship/Documents/our-common-bond-2014.pdf> [<https://perma.cc/Q72M-D2TM>].

<sup>392</sup> *Id.* at 4.

<sup>393</sup> *Australian Citizenship Test Resource*, DEP’T IMMIGR. & BORDER PROTECTION, <https://www.border.gov.au/Trav/Citi/pathways-processes/Citizenship-test/Australian-citizenship-test-resource> [<https://perma.cc/8UUS-EX4V>] (last visited Sept. 14, 2016).

<sup>394</sup> Fozdar & Spittles, *supra* note 372, at 505.

<sup>395</sup> COMMONWEALTH OF AUSTL., *supra* note 391, at 8.

<sup>396</sup> *Id.* at 16.

those in need.<sup>397</sup> Uniquely Australian values such as the “fair go” and “mateship” are also included.<sup>398</sup> However, in many respects, the “beliefs” identified and emphasized in the test are Judeo-Christian ethics, a parliamentary political heritage, and the spirit of the European Enlightenment—topics that can also be found in similar form in the Canadian, British, German, and French citizenship tests.<sup>399</sup>

Overall, the changes to the citizenship test introduced in 2009 appear to have achieved the goal of promoting access to naturalization. In 2007 to 2008, 107,662 people naturalized, a full 62,000 fewer than the year before the test started.<sup>400</sup> During 2013 to 2014, a record number of 163,017 immigrants naturalized from at least 190 different countries of origin.<sup>401</sup> The top three nationalities represented during that period were India (whose nationals comprised seventeen percent of successful applicants), the United Kingdom (whose nationals comprised sixteen percent of successful applicants), and the Philippines (whose nationals comprised seven percent of successful applicants).<sup>402</sup> It is suggested that this turnaround is due in part to the revised content of the test and test preparation booklet, in part to the availability of free test preparation courses, and in part to the number of exemptions from the testing requirements for minors, seniors, and individuals with mental and physical disabilities.<sup>403</sup>

In 2007, the impetus towards cultural cohesion and immigrant integration that prompted reform of the nationality laws and the introduction of the citizenship test also led to the promulgation of new regulations governing the admission of immigrants to Australia.<sup>404</sup> As with the Netherlands and France, all provisional, permanent, and some temporary visa applicants since October 15, 2007, must make a premigration commitment to Australian values. Prospective residents are required to read a booklet, *Life in Australia*, which contains information on Australian history, culture, and social structures.<sup>405</sup> They are then required to

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<sup>397</sup> *Id.* at 17-21.

<sup>398</sup> *Id.* at 17, 57.

<sup>399</sup> *See supra* Sections II.B, II.C, II.E, II.F.

<sup>400</sup> Michael Klapdor et al., *Australian Citizenship: A Chronology of Major Developments in Policy and Law*, PARLIAMENT AUSTRAL. (Sept. 11, 2009), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/0910/AustCitizenship#\\_Toc224109068](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/AustCitizenship#_Toc224109068) [https://perma.cc/H2KX-DAG7] (describing the ways the global recession contributed to the shrinking of naturalizations, along with the new test).

<sup>401</sup> *Australia, supra* note 367.

<sup>402</sup> *Id.*

<sup>403</sup> *See id.*

<sup>404</sup> *See Fozdar & Spittles, supra* note 372, at 511.

<sup>405</sup> *See generally* DEP'T OF IMMIGRATION & BORDER PROT., *LIFE IN AUSTRALIA: AUSTRALIAN VALUES AND PRINCIPLES* (2016),

sign an “Australian Values Statement”<sup>406</sup> on their visa application to affirm that they “respect . . . values of Australian society.”<sup>407</sup>

In Australia, as in the European nations discussed in this Article, there appears to be a particular preoccupation with the integration (or lack thereof) of Muslim immigrants and aspiring citizens. The parliamentary report on the 2007 Australian Citizenship Law, which introduced the new Australian citizenship test, stated that “[t]he concept of a citizenship test to aid integration is a policy measure increasingly employed in Europe . . . . The debate there is clearly framed around the integration of large Muslim communities in European nations, and the notion of ‘home-grown terrorism’ in post-11 September Western societies.”<sup>408</sup> As a consequence, the new Australian citizenship-testing requirements were, apparently, designed to assess the social and cultural integration of would-be citizens.

Yet, in many respects the contours of the post-2009 Australian citizenship test appears to have more in common with the American and Canadian testing regimes than they do with those employed in the European nations surveyed in this Article. The framing of the test questions, with respect to Australia’s democratic beliefs, rights, and liberties, or government and the law, is more consistent with the American or Canadian approach to civics instruction.<sup>409</sup> The test is objective and general knowledge oriented and does not ask applicants to discuss their own moral values—unlike, for example, the Dutch or French tests. Moreover, the test is presented as an integral part of preparing the applicant for citizenship; one stated aim of the test is to help naturalization candidates understand the meaning of the Australian Citizenship Pledge.<sup>410</sup> In this respect, it seems that the Australian testing regime straddles the approach taken by the North American and European nations.

This straddling of the two different approaches is also evident in the role that testing plays in the naturalization process. The requirements for naturalization, as set forth in the Australian Citizenship Act are as follows: First, an applicant for naturalization must be a lawful permanent resident and must have resided in Australia for a minimum of four years.<sup>411</sup> Second, the applicant must be of “good character,” which involves the “enduring moral qualities of a person” and

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[https://www.border.gov.au/LifeinAustralia/Documents/lia\\_english\\_full.pdf](https://www.border.gov.au/LifeinAustralia/Documents/lia_english_full.pdf)  
[<https://perma.cc/7ZXW-DL6T>].

<sup>406</sup> *Australian Values Statement*, DEP’T IMMIGRATION & BORDER PROTECTION, <https://www.border.gov.au/Trav/Life/Aust/living-in-australia-values-statement-long> [<https://perma.cc/YM47-RYRD>] (last visited Sept. 14, 2016).

<sup>407</sup> *Id.*

<sup>408</sup> *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1.

<sup>409</sup> See *supra* Sections II.A, II.B.

<sup>410</sup> See COMMONWEALTH OF AUSTRALIA, *supra* note 391, at 3.

<sup>411</sup> *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1.

whether they are likely to uphold and obey the laws of Australia.<sup>412</sup> In order to demonstrate “good character,” an applicant needs to show that they have a clean criminal record.<sup>413</sup> Third, the applicant must be willing to make a “Australian Citizenship Pledge” to the Commonwealth of Australia.<sup>414</sup> Fourth, and finally, the applicant must successfully complete the citizenship test.<sup>415</sup> As in the United States and Canada, the citizenship test occurs at the end of the naturalization process, immediately before the agency issues its decision, and the successful applicant may then proceed to a citizenship ceremony at which the oath of allegiance is administered.<sup>416</sup> But, as in the United Kingdom, the Netherlands, and France, almost all persons who take the citizenship test will have already studied the premigration booklet and signed the “Australian Values Statement.” In this respect, the Australian model represents a hybrid approach, as is perhaps appropriate for the country with the most recently developed citizenship-testing program.

### III. RETHINKING CITIZENSHIP TESTING

As the case studies in this Article demonstrate, citizenship tests, designed to measure an immigrant’s understanding of her potential new nation’s language, laws, history, society, and culture, now play a crucial role in the naturalization process in many developed countries. From the “immigration nations” of the United States, Canada, and Australia, to the *jus sanguinis* traditions of Germany, to the multiculturalism of the Netherlands and the United Kingdom, to the assimilationist policy commitments of France, countries with widely varying approaches to naturalization, citizenship, inclusion, and belonging have all chosen to promulgate laws and regulations mandating or altering citizenship testing in recent years. Comparing and contrasting the recent experiences of the seven nations surveyed in this Article provides a rich platform for exploring the potentially desirable—and undesirable—attributes of citizenship-testing regimes that may be useful to lawmakers as they contemplate what changes, if any, should be made to nationality laws and regulations. In this Part, I outline briefly what I believe to be the key theoretical and normative implications of the case study analyses.

As a foundation for that analysis, the table in the Appendix summarizes the key characteristics of each country’s citizenship-testing regime that were explored in detail in the case studies in Part II. That table summarizes the form

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<sup>412</sup> *Good Character and Offences*, DEP’T IMMIGR. & BORDER PROTECTION <https://www.border.gov.au/Trav/Citi/App/What-documents-do-you-need/good-character-and-offences> [<https://perma.cc/GE9W-LLMH>] (last visited Sept. 14, 2016).

<sup>413</sup> *Id.*

<sup>414</sup> *Id.*

<sup>415</sup> *Australian Citizenship Amendment (Citizenship Testing) Act 2007* (Cth) sch 1.

<sup>416</sup> *See Application Process for Australian Citizenship*, DEP’T IMMIGR. & BORDER PROTECTION, <http://www.border.gov.au/Trav/Citi/App/How-to-apply/Application-process-for-Australian-citizenship> [<https://perma.cc/U43C-JE98>] (last visited Sept. 16, 2016).

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and content of the tests, the timing, the purported policy goals informing the tests, and the practical outcome with respect to test pass rates and naturalization rates. Based on the analyses in the case studies, I note in the table whether I believe the country takes an “inclusionary,” “integrationist,” or “assimilatory” approach to naturalization in general and citizenship testing in particular. “Inclusionary” countries, such as the United States and Canada, use citizenship testing at the end of the naturalization process as a tool of new citizen inclusion. “Integrationist” countries, such as the United Kingdom and the Netherlands, use the tests at the beginning of the naturalization process, both to promote and measure the extent of an aspiring citizen’s integration into the mainstream. Finally, “assimilatory” countries, such as France and Germany, use the tests to perform a gatekeeping function at the outset of the naturalization process to ensure that naturalization applicants are already socially and culturally assimilated. As the case studies show (and the table reflects), it is possible for countries whose legal frameworks do not change to move from one classification to another based on policy decisions that change the implementation of statutory and regulatory provisions. Thus, when testing was first introduced in the United Kingdom, the testing regime could broadly be categorized as “inclusionary,” but today it is “integrationist.” Similarly, when testing was first introduced in Australia, it could best be described as “integrationist,” but today its practical operation is “inclusionary.”

A. *National Context Matters: Testing Performs Different Functions in Different Nations*

As the overview of the scholarly literature on citizenship testing in Part I of this Article discussed, several citizenship and nationality law scholars have argued that the increased use of citizenship testing portends convergence on an exclusionary (or at the very least assimilatory) approach to naturalization. These scholars suggest that the very fact that several countries have introduced mandatory citizenship tests as a fundamental part of their nationality laws and regulations indicates a growing resemblance between the different nations’ evolving understandings of immigration integration and the ultimate value of citizenship. These scholars point to three trends that, they argue, transcend national boundaries: (1) a move away from citizenship testing as a way to foster diversity and inclusion and towards a means of measuring absolute assimilation; (2) a move away from citizenship testing as a tool for migrant integration and towards a difficult to reach “brass ring” at the end of the integration process; and (3) an increased use of citizenship tests as a sophisticated form of immigration control and a barrier to the inclusion of insider groups.<sup>417</sup> I believe, however, that the case studies in this Article demonstrate that the explicit purpose, the implicit functions, and the (unintended or intended) positive consequences of citizenship tests depend greatly on the national context. In other words, the tests

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<sup>417</sup> See *supra* Part I.

reflect nation-specific citizenship and integration policies, the current political and public debate on integration in which the amended naturalization procedures are embedded, and the procedural details of such testing schemes.<sup>418</sup> Hence, according to my analysis, some countries have indeed adopted an assimilatory approach, while others have taken an integrationist approach, and others have prioritized inclusion of aspiring citizens.<sup>419</sup>

To date, no one has analyzed the potential convergence on a global scale, between citizenship-testing laws and policies in Europe, North America, Australia, and elsewhere. Nevertheless, social scientists and legal scholars who have written about the evolution of citizenship testing in Europe during the last decade have suggested pan-European congruity of laws and policies. These scholars criticize citizenship tests as potentially discriminatory policy instruments designed to exclude purportedly “undesirable” immigrants.<sup>420</sup> They note, particularly, the emergence of animus towards minority Muslim populations in France and Northern Europe and suggest that the exclusionary practices and policies underpinning the latest versions of the citizenship tests demonstrate a remarkable degree of congruence across national boundaries. Several scholars have identified the increasingly widespread use of citizenship tests as a sign of convergence of national policies of different states, although they do not always account for the various characteristics and effects of tests. Joppke, for example, sees the adoption of similar testing mechanisms to promote civic integration in the Netherlands, France, and Germany as emblematic of a “retreat from multiculturalism” throughout Europe.<sup>421</sup> Silvia Adamo goes further, characterizing citizenship tests as baseline building blocks of contemporary naturalization laws and policies throughout the European Union, signaling that, in modern Europe, even immigrants of longstanding residence in their preferred new country must “earn” citizenship.<sup>422</sup> Maarten Vink and Gerard-René de Groot, in contrast, see the citizenship tests in Western Europe as just one component of a universal trend toward the increasing complexity of the naturalization process, inspired by rising fear of outsider groups.<sup>423</sup>

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<sup>418</sup> See Peucker, *supra* note 30, at 240.

<sup>419</sup> Implicit in these categorical distinctions is a recognition that countries have the rights and powers to restrict naturalization, yet choose to do so with varying degrees of openness.

<sup>420</sup> E.g., Etzioni, *supra* note 32, at 354 n.11 (quoting SHANKS, *supra* note 67, at 34); Fozdar & Spittles, *supra* note 372, at 510; see also 2 ACQUISITION AND LOSS OF NATIONALITY, *supra* note 25, at 132; Joppke, *supra* note 34, at 245.

<sup>421</sup> Joppke, *supra* note 35, at 243-44, 254 (arguing that several factors have led to a retreat from multiculturalism policies, mostly because assimilation is no longer the goal and liberal states only want immigrants to commit to liberal policies, not denounce their identities).

<sup>422</sup> Silvia Adamo, *Northern Exposure: The New Danish Model of Citizenship Test*, 10 INT’L J. ON MULTICULTURAL SOCIETIES 10, 24 (2008).

<sup>423</sup> Maarten O. Vink & Gerard-René de Groot, *Citizenship Attribution in Western Europe: International Framework and Domestic Trends*, 36 J. ETHNIC & MIGRATION STUD. 713, 725-

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This Article's examination of the salient features of the nationality laws and citizenship tests in the seven sample countries suggests, however, that the increased use of citizenship tests does not necessarily signal convergence. Different nations with different histories, different traditions, and different legal frameworks have decided, in a relatively short period of time, to begin testing would-be citizens' understandings of the nation and commitment to membership. Nevertheless, these tests evolved amidst differing social, political, and legal contexts, creating different tests designed to serve different purposes.

In each of the European countries analyzed in this Article—the United Kingdom, the Netherlands, Germany, and France—there appears to be a growing consensus that citizenship is a privilege and should be treated as a scarce good, access to which should be heavily controlled. Immigrants in these countries are now, more than ever, required to “earn” their place in their new host society by demonstrating their commitment not just for appreciating the nation's history and culture but also by overtly adhering to national values. Adherence to national values is particularly emphasized when the applicants for naturalization are from non-Western countries or self-identify as Muslim. Instead of being a mechanism for immigrant inclusion, the process of applying for naturalization has become a “reward” for achieving a high level of integration into the host society in each of these nations. This trend is particularly apparent in the United Kingdom, which initially took an inclusionary approach to citizenship, using the test as a tool to educate new citizens about “Life in the U.K.” Today, the United Kingdom has a much more integrationist scheme that requires proof of significant integration as a prerequisite for proceeding through the naturalization process.

This same trend is not, however, so readily apparent in the non-European nations surveyed. The 2008 reform of the citizenship test in the United States did not necessarily make it more challenging for immigrants to pass—although naturalization rates are lower today than they were before the introduction of the revised test. Rather, the post-2008 test continued to require would-be citizens to understand basic civics as a starting point for their shared membership in the wider polity. Similarly, despite the increasingly restrictive political rhetoric that accompanied the citizenship test reforms in Australia and Canada in recent years, the tests used in those countries continue to emphasize inclusion, civic responsibilities, and the “settler” tradition of these “immigrant nations.”<sup>424</sup> The Australian case study shows how dominant this tradition can be. At the inception of the test, Australia followed the model used by the “integrationist” countries of the United Kingdom and the Netherlands. Australian policymakers announced that they were learning from the European (and particularly the

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27 (2010) (detailing how requirements regarding legal residence, length of residence, language, and knowledge, as well as ceremonies and costs, may act as a bar to citizenship).

<sup>424</sup> See Christian Joppke, *Through the European Looking Glass: Citizenship Tests in the USA, Australia, and Canada*, 17 CITIZENSHIP STUD. 1, 7, 9 (2013).

British) experience when they introduced their new testing requirements.<sup>425</sup> But, public reactions led to revision of the test questions to make them more reflective of “Australian values.” As a consequence, the contours of the test itself, and the wider legal context in which it is used, suggest that Australia continues to have more in common with the North American testing framework, putting Australia’s testing regime firmly in the “inclusionary” category.

It appears that however superficially the gap has narrowed between the legal predicates for acquiring citizenship in various nations throughout the world, in practice there is still a vast difference between European nations and their New World counterparts. This is not to say that there are no meaningful similarities between the ways that citizenship tests are both used and discussed in each of the countries surveyed. Nevertheless, the most punitive and discriminatory aspects of the European testing regimes—especially those that single out particular religious or national groups—have yet to be featured in the American, Canadian, or Australian citizenship tests. Both Canada and Australia are, however, currently considering reforms to their citizenship-testing regimes, and so whether this fundamental difference will endure remains to be seen.

The comparative analysis in this Article demonstrates that citizenship tests that appear to be similar in many ways can, in fact, serve very different purposes. The tests are thus an abstract sociolegal tool, whose practical function is only apparent when considered within the broader context of a given nation’s social and legal framework. U.S. lawmakers considering any revisions to the current testing regime should, therefore, carefully consider the priorities that they wish to pursue in formulating an equitable and effective citizenship-testing regime. U.S. legislators are, of course, free to decide that they wish to use citizenship testing as a tool to discourage and inhibit naturalization. Indeed, the current election cycle has focused on the potential use of testing as a tool of immigrant exclusion.<sup>426</sup> A comprehensive analysis of the normative dimensions of naturalization inhibition or encouragement is beyond the scope of this Article, but there is rich scholarly literature on the topic, arguing that restricting access to naturalization can cause a wide range of economic and social harms.<sup>427</sup>

B. *Requiring Extensive Proof of Migrant Integration Does Not Promote Immigrant Inclusion*

In almost every country surveyed in this Article, the recent introduction of formal language and citizenship tests, or the amendment of the standards governing existing tests, was justified on the grounds that the testing regime would promote immigrant integration. In the United Kingdom, for example, the introduction of the “Life in the U.K.” test was heralded as a way to promote

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<sup>425</sup> *Id.* at 6.

<sup>426</sup> *See, e.g.*, Johnson, *supra* note 21.

<sup>427</sup> *See, e.g.*, MOTOMURA, *supra* note 51, at 144; KUNAL M. PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600–2000, at 3 (2015).

migrant integration, on the grounds that “[t]he more we all know about each other, . . . the less likely are serious problems to arise and the more we can help each other.”<sup>428</sup> Similarly, the revisions to that test in 2013 were described as designed to “encourage[] participation in British life.”<sup>429</sup> But, the practical effect of the new testing regime, in particular the post-2013 (more challenging) version of the citizenship test, was to significantly reduce naturalization rates among those resident immigrants eligible to naturalize.<sup>430</sup>

This same downturn in the number of naturalizations occurred in Canada, the Netherlands, Germany, France, and Australia after more complex test questions were introduced.<sup>431</sup> While the number of permanent immigrants entering these countries each year either remained constant or increased slightly, the number of naturalizations decreased.<sup>432</sup> In other words, fewer immigrants chose to participate fully in the sociopolitical life of their new home country by taking on the privileges and responsibilities of citizenship. This decrease in the number of eligible immigrants applying for and attaining naturalization does not suggest greater inclusion of immigrant communities in the body politic. To the contrary, it suggests that requiring immigrants to evince a high level of knowledge about their new home as a predicate for naturalization deters them from applying for citizenship and thus from playing a fuller role in their new host society.<sup>433</sup>

Some advocates of more restrictive naturalization policies, such as politicians like Kenney in Canada<sup>434</sup> and Harper in the United Kingdom,<sup>435</sup> might argue that restricting the availability of naturalization to a smaller number of better-

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<sup>428</sup> CRICK ET AL., *supra* note 37, at 8.

<sup>429</sup> BROOKS, *supra* note 33, at 23 (quoting Mark Harper, *New Life in the UK Test Goes Live*, GOV.UK (Mar. 25, 2013), <https://www.gov.uk/government/news/new-life-in-the-uk-test-goes-live—2> [<https://perma.cc/S64G-CLH6>]).

<sup>430</sup> See *United Kingdom*, MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/united-kingdom> [<https://perma.cc/C97C-NNT2>].

<sup>431</sup> See *supra* Part II.

<sup>432</sup> See generally MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/> [<https://perma.cc/VR6Y-RD7G>].

<sup>433</sup> While it is theoretically possible to be well integrated into society without acquiring citizenship, being a citizen is nonetheless a widely recognized marker of substantial integration into the mainstream, and remaining a noncitizen is often regarded as a marker of continued “outsider” status. See, e.g., JOSEPH H. CARENS, IMMIGRANTS AND THE RIGHT TO STAY 5-6 (2010) (arguing that noncitizens should be granted amnesty and legal status to stay in the United States after they have lived in the United States “for a long time”); MOTOMURA, *supra* note 51, at 6 (“This boundary between lawful immigrants and citizens is the line of greatest intimacy but also of most pointed exclusion between outsider and insider.”).

<sup>434</sup> Kenney, *supra* note 63 (explaining the need to make sure that immigrants seeking to become citizens are ready for the responsibilities and expectations that entails and to provide them the tools to integrate more rapidly).

<sup>435</sup> *UK Citizenship Test ‘to Cover Britain’s Greats,’ supra* note 170 (“We have made radical changes to the immigration system and are determined to reduce net migration from the hundreds of thousands into the tens of thousands by the end of the Parliament.”).

assimilated immigrants is a superior approach to successful “inclusion” than permitting a larger number of poorly assimilated migrants to naturalize. But that argument is unpersuasive because it creates an out group of lawful residents who are permanently excluded from full participation in the life of their new home nation. Thus, in countries where the explicit policy goal remains the inclusion of existing immigrant communities, making naturalization less attainable by making language and citizenship tests harder to pass appears to be counterproductive.

C. *To Promote Naturalization, Citizenship and Language Education Is Essential*

If legislators seek to encourage naturalization, in furtherance of either an integrationist or inclusionary agenda, then some form of linguistic and/or civics education is essential. According to MIPEX, in each of the countries surveyed in this Article, low-income immigrants with limited formal education are least likely to apply for naturalization, even when they have fulfilled all of the statutory criteria for naturalization.<sup>436</sup> This is particularly true of migrants hailing from non-Western countries of origin.<sup>437</sup> In each of the countries surveyed, the introduction of more rigorous language requirements or more complex civics questions did not affect the rate of naturalization by skilled migrants with post-secondary education, but it did reduce dramatically the naturalization rate among other migrant groups.<sup>438</sup>

The potential success of historically disadvantaged groups, such as refugees and asylum seekers, on the citizenship tests—and ultimately their access to naturalization—appears to be tied directly to the availability of free or highly affordable test preparation materials and language or civics classes. This is most evident in countries that have changed their approach to the provision of such classes in recent years. In the Netherlands, for example, there are no test preparation materials, but aspiring citizens are required to attend mandatory integration courses designed to cover much of the material that might be tested during the “practical test” and “central examination” portions of the naturalization process.<sup>439</sup> Before 2013, these courses were free and formed the

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<sup>436</sup> *Canada*, MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/canada> [<https://perma.cc/VFB7-GKXZ>]; *France*, *supra* note 361; *Germany*, *supra* note 273; *The Netherlands*, *supra* note 242; *United Kingdom*, *supra* note 430; *U.S.A.*, MIGRANT INTEGRATION POL’Y INDEX (2015), <http://www.mipex.eu/usa> [<https://perma.cc/NA3T-K38V>] (explaining that naturalization in the United States has higher fees than many other countries and less support for immigrants in need of language and civics education); *see also Australia*, *supra* note 367 (expressing concern about potential changes in policy from budget cuts and a new government consultation).

<sup>437</sup> *See, e.g., The Netherlands*, *supra* note 242 (explaining that non-EU naturalizations decreased after a formal language and integration test was implemented).

<sup>438</sup> *See, e.g., United Kingdom*, *supra* note 430.

<sup>439</sup> *See* Peucker, *supra* note 30, at 249-50.

foundation of the naturalization applicant's preparation for the tests.<sup>440</sup> In 2013, government funding for the courses was cut, and immigrants are now required to pay a fee in order to participate.<sup>441</sup> Course enrollment and naturalization applications have plummeted as a consequence.<sup>442</sup> In contrast, in Germany and Australia, recent initiatives to increase the availability of accessible test preparation materials in a variety of languages and formats, and the provision of free or extremely affordable classes for immigrants, have had favorable effects on the rate of applications for naturalization by historically disadvantaged groups.<sup>443</sup> The Dutch, German, and Australian experiences suggest that if equal access to naturalization, irrespective of race, national origin, socioeconomic class, or educational background, is a policy goal, then providing adequate access to test preparation materials is an essential component of an effective citizenship-testing regime.

D. *Test Format Is Less Important Than Testing Context and Content*

The countries surveyed in this Article use a variety of different testing formats. The United Kingdom, Germany, and Australia use written tests.<sup>444</sup> France uses a purely oral test.<sup>445</sup> The United States, Canada, and the Netherlands use a combination of written and oral tests.<sup>446</sup> Naturalization applicants complete the U.K., Dutch, and Australian citizenship tests on a computer.<sup>447</sup> The American, Canadian, and German tests require handwritten answers.<sup>448</sup> The Canadian, U.K., and Australian tests are multiple choice.<sup>449</sup> The American, Dutch, German, and French test questions are open ended, allowing the test-taker to give a narrative answer.<sup>450</sup> Some scholars who have previously debated the ideal attributes of a citizenship-testing regime have suggested that written multiple-choice tests are the most effective and equitable option because they are the most standardized and therefore the least open to discriminatory

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<sup>440</sup> See *supra* Section II.D.

<sup>441</sup> See Peucker, *supra* note 30, at 248-51.

<sup>442</sup> See *The Netherlands*, *supra* note 242.

<sup>443</sup> See *supra* Sections II.E, II.G.

<sup>444</sup> See *supra* Sections II.C, II.E, II.G.

<sup>445</sup> See *supra* Section II.F.

<sup>446</sup> As noted in Part II, the American writing requirements are minimal—simply one correct sentence in English—whereas the Dutch requirements are extensive. In Canada, an immigration officer prescreens applications to decide whether an applicant can complete the written test or will need to attend an oral interview, based on the officer's assessment of the applicant's English or French language capacity.

<sup>447</sup> See *supra* Sections II.C, II.D, II.G.

<sup>448</sup> See *supra* Sections II.A, II.B, II.E.

<sup>449</sup> See *supra* Sections II.B, II.C, II.G.

<sup>450</sup> See *supra* Sections II.A, II.D, II.E, II.F.

interpretation by immigration officials.<sup>451</sup> Others argue that oral questions, such as those used in the United States citizenship test, are the most appropriate because immigrants with all levels of educational background are most likely to be comfortable speaking the language of their new country, rather than reading or writing in that language.<sup>452</sup>

The case studies in this Article show, however, that it is impossible to generalize about what format of citizenship testing is most appropriate because the tests themselves take place within such widely varied national contexts. So much depends upon the explicit policy goals of the test administrators. In countries such as the Netherlands, where the stated goal of the testing is to ensure that an individual applicant is already fully integrated into Dutch society,<sup>453</sup> it makes sense to use a variety of different testing techniques to assess the applicant's knowledge of the Dutch language, history, politics, and society along multiple possible metric. In countries like the United States, Canada, and Australia, where the purported goal of citizenship testing is to promote the integration of as many new citizens as possible, a more readily accessible testing regime is appropriate.<sup>454</sup>

Moreover, the case studies in this Article demonstrate that, irrespective of the priorities being pursued by the test administrators, the content of the tests and the regulatory remit of the examiners is a more decisive determinant of an applicant's success than the testing format. Both the United Kingdom and Australia currently use computer-based multiple-choice tests. But, in recent years, the United Kingdom redesigned its testing materials to make them more complex and culturally specific, while Australia redesigned its materials to make them more accessible and culturally inclusive.<sup>455</sup> As a consequence, Australia has enjoyed a higher test pass rate and, concurrently, a higher naturalization rate, than the United Kingdom.<sup>456</sup> Similarly, the United States and France both assess naturalization applicants' civics knowledge via oral examination by a government official. Both countries provide test preparation materials containing the full range of answers to the potential test questions. Nevertheless, the role of the interviewer is very different in both countries. In the United States, the USCIS official's role in administering the test questions is limited to

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<sup>451</sup> See, e.g., Etzioni, *supra* note 32, at 356 (criticizing the narrative question set used previously in the German state of Hesse).

<sup>452</sup> Cf. Walter C. Parker, *Diversity, Globalization, and Democracy Education*, in *DIVERSITY AND CITIZENSHIP EDUCATION*, *supra* note 108, at 433, 441-46 (discussing the importance of oral, rather than written communication and collaborative education for immigrants).

<sup>453</sup> See van Oers, *supra* note 206, at 52.

<sup>454</sup> Cf. de Groot, *supra* note 204, at 25 (arguing that integrationist nations, such as the Netherlands and the United Kingdom, are overly concerned with sufficient integration in their naturalization process).

<sup>455</sup> See *supra* Sections II.C, II.G.

<sup>456</sup> See *Australia*, *supra* note 367.

determining whether the naturalization applicant's answers comport with those provided on an official answer sheet.<sup>457</sup> In contrast, under the *Conseil d'État's* case law in France, the local government official is charged with parsing the naturalization applicant's "[n]on linguistic assimilation" based upon the content of his answers, his demeanor, and the civic values he evinces in answering the official's questions.<sup>458</sup> Once again, the case studies show that context is of paramount importance. For U.S. lawmakers, any decision to alter the existing citizenship-testing format must take into account the potential effect that any changes will have on the accessibility of the test preparation materials and the test itself, as well as any impact on the role of the official administering the test.

E. *To Promote Naturalization, Devolved Decision-Making Authority Is Potentially Perilous*

If legislators seek to encourage naturalization, in furtherance of either an integrationist or inclusionary agenda, then devolving decision-making authority to subnational governmental actors may be problematic. The seven countries surveyed in this Article have adopted differing approaches to engagement with local authorities in assessing immigrant suitability for naturalization. In the United States, Canada, the United Kingdom, and Australia, citizenship tests are conducted by federal (or in the case of the United Kingdom, national) government officials.<sup>459</sup> In the Netherlands, Germany, and France, the naturalization process, including citizenship testing, is administered by local government employees.<sup>460</sup> I have written elsewhere about the potential benefits of involving state and municipal governmental actors in immigrant integration initiatives, both here in the United States<sup>461</sup> and from a comparative perspective.<sup>462</sup> In the United States, there is certainly renewed interest in state engagement with immigrant settlement and integration. In recent months, for example, the same events that have prompted U.S. lawmakers to question our current naturalization standards have also prompted state politicians to argue that they should play a greater role in both the immigration and refugee settlement processes.<sup>463</sup>

The recent experiences of the Netherlands, Germany, and France, suggest, however, that caution may be warranted when contemplating a role for local

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<sup>457</sup> See Park, *supra* note 88, at 1032-37.

<sup>458</sup> See BERTOSSI & HAJJAT, *supra* note 314, § 3.2.

<sup>459</sup> See *supra* Sections II.A, II.B, II.C, II.G.

<sup>460</sup> See *supra* Sections II.D, II.E, II.F.

<sup>461</sup> Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703, 707 (2013).

<sup>462</sup> Stella Burch Elias, *Comprehensive Immigration Reform(s): Immigration Regulation Beyond Our Borders*, 39 YALE J. INT'L L. 37, 39 (2013).

<sup>463</sup> See, e.g., Mary Troyan, *After Attacks in Paris, Governors Refuse to Accept Syrian Refugees*, USA TODAY (Nov. 16, 2015), <http://www.usatoday.com/story/news/politics/2015/11/16/alabama-refuses-syrian-refugees-paris-terror-attack/75857924/> [<https://perma.cc/QR47-ZNNC>].

government officials in the naturalization process. In the Netherlands, complaints about significant and inequitable variations in testing standards and outcomes in different regions of the country led to successive statutory and regulatory reforms, designed to implement nationally applicable test procedures.<sup>464</sup> In Germany, when the *Länder* were permitted to develop their own testing regimes, the result was blatantly discriminatory instruments, such as those produced in Baden-Württemberg and Hesse.<sup>465</sup> In France, allowing municipal officials wide discretion to determine whether an applicant evinces both linguistic and nonlinguistic assimilation has led to a pattern and practice of denying Muslim applicants' naturalization applications, which many commentators consider to be religious discrimination.<sup>466</sup> In each of these countries, in the absence of firm guidance and standardized control by central government authorities, allegations abound against local officials for discrimination on the basis of race, religion, and national origin during the citizenship-testing process. This is not, of course, to say that relying on the judgment of local officials is necessarily ill-advised. Rather, it is important to either ensure that local test administrators operate within a nationally agreed upon framework, applying objective standards to ensure parity throughout the citizenship-testing system, or to concede at the outset that devolution of control from the national level to localities is very likely to lead to geographic variation in naturalization results.

F. *To Promote Migration and Naturalization, Premigration Testing Should Be Educational, Not Exclusionary*

If legislators seek to encourage migration that will ultimately lead to naturalization in furtherance of either an integrationist or inclusionary agenda, then premigration testing should fulfill a predominantly educational function. As the analysis in Part II demonstrates, four of the countries surveyed—the United Kingdom, the Netherlands, France, and Australia—require incoming migrants to complete some form of premigration civics education. In the United Kingdom, an applicant for permanent residence must pass exactly the same citizenship test as an applicant for naturalization.<sup>467</sup> Applicants for permanent residence must pass the test before they submit an application to the U.K. Border Agency.<sup>468</sup> In the Netherlands, since the passage of the Integration Abroad Act of 2005,<sup>469</sup> anyone entering the Netherlands on a permanent immigrant visa must first undertake language and civics courses at the Dutch Embassy in their

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<sup>464</sup> See de Groot, *supra* note 204, at 22-23; van Oers, *supra* note 206, at 52.

<sup>465</sup> See Orgad, *supra* note 31, at 725-26.

<sup>466</sup> See BERTOSSI & HAJJAT, *supra* note 314, § 3.1.

<sup>467</sup> Peucker, *supra* note 30, at 251 n.17.

<sup>468</sup> Paquet, *supra* note 45, at 251-52.

<sup>469</sup> Wet inburgering in het buitenland, 22 december 2005, Stb. 2006, 409 (amending Vreemdelingenwet 2000, 23 november 2000, Stb. 2000, 495).

country of origin.<sup>470</sup> At the conclusion of the courses, the would-be immigrant must pass an oral language test and a computer-based civics test in order to obtain their visa.<sup>471</sup> In France, since 2006,<sup>472</sup> every non-European seeking a permanent resident visa must sign a contract agreeing to “respect the fundamental values of the Republic,” take French language lessons, and participate in a one-day civic training program.<sup>473</sup> At the end of the training program, which heavily emphasizes the French values of secular democracy and respect for individual liberty, the immigrants must pass an interview designed to test both their knowledge about France and their moral convictions.<sup>474</sup> In Australia, since 2007, all provisional, permanent, and some temporary visa applicants must acknowledge on their visa application that they have read and understood the *Life in Australia* booklet and must sign an “Australian Values Statement” attesting that they will “respect Australia’s laws and values.”<sup>475</sup>

The increasing overlap in these four countries between the requirements for naturalization as a citizen and admission as an immigrant underscores the rapidly evolving function of the naturalization process in the early twenty-first century. The impetus toward nationwide policies designed to integrate minority communities, and to ensure that newcomers have basic instruction in the language and cultural mores of the country that they will be joining, is potentially appealing. Countries, such as the United States, that currently offer no formal educational programs for newly arrived immigrants could potentially benefit from adopting such an approach. The Australian model of low-key premigration education without the threat of withholding an immigrant visa appears well-suited to the task. However, the more aggressive premigration testing methods used by the United Kingdom and the Netherlands<sup>476</sup> appear designed to discourage both immigration and, ultimately, naturalization. The same could be said of the French programs designed to assess not just a new

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<sup>470</sup> *Id.*

<sup>471</sup> *Id.*

<sup>472</sup> Décret 2006-1791 du 23 décembre 2006 relatif au contrat d’accueil et d’intégration et au contrôle des connaissances en français d’un étranger souhaitant durablement s’installer en France et modifiant le code de l’entrée et du séjour des étrangers et du droit d’asile (partie réglementaire) [Decree 2006-1791 of December 23, 2006 on the Accommodation and Integration Contract and on the Examination of French Knowledge for Foreign Persons Seeking Permanent Residency in France and Modifying the Entry and Residency Code for Foreign Persons and the Right of Asylum (Regulations)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 31, 2006, p. 20346; Loi 2006-911 du 24 juillet 2006 relative à l’immigration et à l’intégration [Law 2006-911 of July 24, 2006 on Immigration and Integration], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 25, 2006, p. 11047.

<sup>473</sup> CODE CIVIL [C. CIV.] [CIVIL CODE] art. 21-24.

<sup>474</sup> *Id.*

<sup>475</sup> *Australian Values Statement*, *supra* note 406.

<sup>476</sup> Scott, *supra* note 247, at 103.

immigrant's understanding of French history and society, but also his or her fundamental values. It is self-evident that such assessments could be used to discriminate against members of minority racial, religious, or political groups. Countries like the United States, seeking to promote naturalization as the end goal of a successful migration experience, should therefore be wary of the use of premigration testing for anything other than purely educational purposes.

G. *The Tests Perform a Vital Expressive Function for All Citizens*

As the analysis in the case studies in Part II has shown, a great deal of time and effort has been expended devising and developing the citizenship tests used in each of the countries surveyed. The content of the tests embodies the testing nations' histories, cultural achievements, political commitments, and social aspirations. In assimilatory countries, like Germany, with a "thick" or ethnocultural understanding of what it means to belong to the national community, the tests are designed to ensure that applicants have fully assimilated—linguistically, culturally, and socially. In other words, the tests are designed to assure the native citizens that they can trust that the newcomers are now truly "German" and have therefore "earned" their place as citizens.<sup>477</sup> In inclusionary countries such as the United States, Canada, or Australia, the tests comport with a more traditional "thin" or civic-territorial definition of the liberal state.<sup>478</sup> In those nations, the tests are designed to showcase for newcomers the proud civic traditions, as well as the common rights and responsibilities of citizens, whose ranks they will be joining.<sup>479</sup>

In both the longstanding immigration nations and in the European countries that have only permitted naturalization in recent years, the citizenship tests and their preparation materials play a role in defining the nation's self-identity. This is evident in the heated debates about which events, historical figures, ethnic groups, symbols, and concepts should be included in the various tests. Hence, for example, controversy surrounded changes to the "Life in the U.K." test from

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<sup>477</sup> See Orgad, *supra* note 40, at 69-70.

<sup>478</sup> See, e.g., Joppke, *Beyond National Models*, *supra* note 41, at 18-19; Joppke, *Transformation of Immigrant Integration*, *supra* note 41, at 273.

<sup>479</sup> John Reitz offers an alternative, but complementary, perspective that is useful to further examine the characteristics of the seven nations discussed in this Article. Reitz proposes that the countries may be classified according to whether they are state-centered or market-centered political economies. John C. Reitz, *Comparative Law and Political Economy*, in *COMPARATIVE LAW AND SOCIETY* 105, 106 (David S. Clark ed., 2012). He argues that the United States and the United Kingdom are more "market-centered" and thus have adopted a thinner concept of the state in general, in terms of market regulation and economic welfare, and also in terms of sociocultural "belonging." See *id.* at 127. In contrast, the continental European countries, such as Germany and France, have much heavier and thicker "state-centered" political economies that inform their greater emphasis upon social solidarity. See *id.* at 120-21.

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a test about everyday life to a test about British history,<sup>480</sup> and there were complaints about the exclusion of Aboriginal Australians or non-European settlers from the original Australian test materials.<sup>481</sup> Any future changes to the content of the current U.S. citizenship test must, therefore, take into account the potential impact on both immigrant test-takers and the wider citizenry. The history we choose to emphasize, the cultural achievements we choose to celebrate, and the values we choose to promote, taken together, all have the potential to define who we are as a nation.

#### CONCLUSION

Unprecedented levels of global migration, worldwide recession, and ongoing threats to national security have led the United States, along with many other countries in the Global North, to revisit its naturalization requirements in recent years. This Article has shown that a variety of different approaches has been adopted in the United States, Canada, the United Kingdom, the Netherlands, Germany, France, and Australia in pursuit of naturalization policies that are inclusionary, integrationist, or assimilatory. In each case, significant changes have been made to the statutory and regulatory provisions governing the examination of aspiring citizens. In each instance, the goal of these changes has been to safeguard national security and to promote economic prosperity by ensuring that all immigrants, including those belonging to potentially marginalized communities, demonstrate an adequate level of integration into the dominant mainstream culture. In each instance, the changes have required, overall, a higher level of linguistic competence in the country's official language and a more in-depth knowledge of the country's history and society. In each case, following the introduction of these new heightened standards, the naturalization rate dropped, particularly among socioeconomically disadvantaged immigrants with limited formal education from developing countries. As a result, the most vulnerable members of society are most likely to remain on the margins of society because they are unable to obtain the benefits of full membership in their new country.

The recent experience of the seven countries discussed in this Article, including the United States, demonstrates that raising citizenship-testing standards does not act as an incentive for immigrants to integrate more fully into their new country. Instead, it deters them from beginning the naturalization process in the first place. In other words, more stringent requirements, initially intended to encourage immigrant integration, have, in fact, done the opposite and curtailed access to naturalization. Moreover, decreased naturalization rates have not affected overall migration rates in any of the countries studied, and these migration rates have remained consistently high throughout this period. Absent other concurrent restrictions, complex citizenship-testing regimes do not

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<sup>480</sup> See *supra* Section II.C.

<sup>481</sup> See *supra* Section II.G.

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lead to less migration, but rather to less inclusion of arriving immigrants and migrants already settled permanently in the nation. This phenomenon may, among other outcomes, lead ultimately to the radicalization of more members of isolated minority groups and a heightened risk of involvement in extremist activity. More mundanely, it may lead to an immigrant's limited access to education and/or to meaningful employment opportunities.

In order to aid aspiring citizens and better protect our nation's national security and economic wellbeing, any future changes to the United States' citizenship-testing scheme should draw upon the experiences of the other nations surveyed in this Article. First and foremost, any changes to the current civics and language requirements must be designed to comport with longstanding American values and priorities. This means that any changes to the tests must be designed to promote immigrant inclusion, with naturalization itself serving as a step in the integration process rather than its end point. It also means that the tests should operate to facilitate, not curtail, naturalization. The tests should seek to foster immigrant inclusion by promoting standards that all immigrants can attain, irrespective of socioeconomic, educational, racial, religious, or national background. The tests' format should be tailored to the goal of maximizing values and priorities. The tests should be administered using nationally consistent, objective, and measurable standards to avoid impermissible discrimination against traditionally disadvantaged applicants. Any new measures designed to test immigrants before they file an application for naturalization should be designed to inform and educate only and should not have an exclusionary or punitive function. Finally, any changes to the content of the tests should be undertaken with the understanding that the tests serve an important function in articulating nationally shared values and constructing our shared national identity. By taking these considerations into account, we will be able to develop a citizenship-testing regime that can more adequately address the challenges we now face.

APPENDIX: KEY CHARACTERISTICS OF EACH COUNTRY'S  
CITIZENSHIP\*

Country	Year Authorized by Statute	Test Form	Prep Materials	Test Timing	Policy Goals	Outcomes	Country Classification
The United States	1952, revised 1986 & 2008	10 oral questions for civics out of 100 potential questions (6 correct answers to pass); 1 written sentence for English language	Booklet & CD ROM	Final stage of naturalization process (before oath)	To promote understanding of fundamentals of U.S. history & principles of government	91% pass rate; decrease in naturalization rates since 2008 test introduced	Inclusionary
Canada	1995, revised 2010	20 written questions out of 120 potential questions (15 correct answers to pass); simultaneously tests English or French competency	Booklet & free classes	Final stage of naturalization process (before oath)	To strengthen new citizens' commitment & loyalty to the country, its society, its people & its basic values	70-80% pass rate	Inclusionary
The United Kingdom	2005, revised 2013	24 written (computer-based) questions out of 200 potential questions (18 correct answers to pass); level B1 ("high intermediate") English competency	Booklet & web-based materials	First step of naturalization process (before applying for permanent residence)	Originally to promote participation in public life & successful integration; now to measure immigrants' existing integration & self-sufficiency	69% pass rate; decrease in naturalization rates since 2013 test introduced	Integrationist (originally inclusionary)
The Netherlands	1998, revised 2003 & 2007	"Practical test" (real life simulations) & a "central examination," consisting of computer-based written questions & phone-based oral exam	None	First step of naturalization process (premigration simplified tests; then full test before naturalization)	To measure the success of immigrants' existing integration	Under 50% pass rate; decrease in both naturalization & test pass rates since 2007 test introduced	Integrationist
Germany	2000, revised 2005 & 2008	33 written questions out of 310 potential questions (17 correct answers to pass); level B1 ("high intermediate") German competency	Booklet, web-based materials & some states offer courses	First step of naturalization process (premigration A1 German language test & basic civics course also required)	To measure assimilation & appreciation of German laws, culture & social mores	Over 90% pass rate; very low naturalization rate	Assimilatory
France	2003, attempted revision in 2010 & 2011	Oral interview with official; level B1 ("high intermediate") French competency	Booklet	First step of naturalization process (premigration integration contract & basic civics course also required)	To measure linguistic & cultural assimilation & knowledge of "rights & duties" of French citizens	60% pass rate; decrease in naturalization rate since 2010 & 2011 proposals for reform	Assimilatory
Australia	2007, revised 2009	20 written (computer-based) questions out of unspecified number of questions (12 correct answers to pass)	Booklet	Final stage of naturalization process (before oath, but premigration pledge & booklet also required)	Originally to "increase the value of Australian citizenship"; now to measure "adequate knowledge of Australia & the responsibilities & privileges of citizenship"	98.6% pass rate; increase in naturalization rate since 2009 test introduced	Inclusionary (originally integrationist)

\* All information in this table has been synthesized from discussions earlier in this Article. For elaboration and citations, see Sections II.A, II.B, II.C, II.D, II.E, II.F, and II.G. For the United States pass rate, see *Applicant Performance on the Naturalization Test*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/us-citizenship/naturalization-test/applicant-performance-naturalization-test> [https://perma.cc/E877-ZAJ9] (last visited Sept. 16, 2016). For the year of Australia's revised statute, see *Australia to Revise Citizenship Test*, WORKPERMIT.COM (Nov. 24, 2008), <http://www.workpermit.com/news/australia-revise-citizenship-test-20081124> [https://perma.cc/Q62R-XCSF].