



The Literacy Test and Its Making

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THE LITERACY TEST AND ITS MAKING

SUMMARY

Noteworthy provisions, other than the literacy test, in the act of 1917, 448. — The literacy test itself significant of a change in public opinion, 449. — The earlier acts aimed at selection only, 451. — The literacy test a measure of restriction, 452. — The bill of 1897, vetoed by President Cleveland, 453. — Speaker Cannon's successful manoeuvres against a similar bill in 1906, 455. — President Taft's veto of 1913, 456. — President Wilson's veto of 1915, 459. — The act of 1917 finally passed over the veto, 459.

“THE opinion which changes the law is in one sense the opinion of the time when the law is actually altered; in another sense it has often been in England the opinion prevalent some twenty or thirty years before that time; it has been as often as not in reality the opinion not of today but of yesterday.” Thus does Mr. Dicey sum up one of the features of law-making in that country; and he intimates that in the United States, the very home of democracy, the situation is not different.¹ Of the truth of this proposition there could scarcely be a better illustration than is furnished by the history of immigration legislation in this country, and in particular the history of the literacy test.

The amount of public attention claimed by the literacy test in the last few years, and the uniformity with which its enactment is recognized as marking an epoch in immigration legislation, are remarkable. So completely has this feature of recent immigration bills engrossed the public mind as to obscure the fact that

¹ A. V. Dicey, *Law and Public Opinion in England*, pp 7, 32.

each of these bills has been a general codifying act, embodying all that was best in previous legislation, and introducing a number of changes, some of them of wide scope and great importance. Thus the measure which became law on February 5, 1917, contains, in addition to many changes in the administrative features, noteworthy new provisions. The head tax is raised from \$4.00 to \$8.00, and children under sixteen, accompanying father or mother are exempted. The excluded classes are enlarged by the addition of persons of constitutional psychopathic inferiority (a phrase which has occasioned much hilarity on the part of the opponents of the bill), persons with chronic alcoholism, vagrants and stowaways; and the provisions regarding exclusion of polygamists, anarchists, and mental defectives are strengthened. The prohibitions regarding the stimulation of emigration are made more strict and explicit. Orientals (with the exception of Japanese, already excluded by the "Gentleman's Agreement") are excluded by a geographical delimitation. The fine imposed upon transportation agencies for bringing inadmissible aliens is raised from \$100 to \$200, and an additional sum, equal to the amount paid by the alien for his transportation from the initial point of departure, is exacted from the transportation company, to be returned to the alien. Provision is made for the placing of inspectors and matrons on immigrant carrying vessels. Arriving aliens are required to make a statement under oath regarding their purposes and intentions in coming. The ordinary period of deportation is raised from three years to five years, and the deportable classes are enlarged, particularly by the inclusion of aliens convicted of crimes and sentenced to imprisonment of one year or more. It is made impossible for a sexually immoral female alien to avoid deportation by

marriage to an American citizen. Provision is made for the deportation of aliens to the country from which they came, as well as to the port of embarkation. An elaborate set of provisions is established to prevent inadmissible aliens from entering illegally by means of enrolment in a ship's crew. Numerous other changes are made in the direction of increasing the responsibility of transportation companies and enlarging the fines and penalties.

The foregoing modifications by themselves would make the act one of the highest importance. To understand why, in the popular mind, the literacy test has so completely overshadowed all these other features it is necessary to have in mind an outline of the general history of immigration legislation in this country.

The initial attitude of the people of the youthful United States respecting the question of immigration was one of easy tolerance bordering on indifference on one side, and frank welcome on the other. In some regions immigrants were eagerly desired, and positive efforts were made to attract them; nowhere was there any well-defined antipathy toward the immigrant as such, nor any apprehension as to the effects of his presence in the country. This state of mind is easily comprehensible. On the one hand, the country was large and new, natural resources seemed unlimited, and the western bounds of settlement appeared indefinitely remote. On the other hand, the volume of immigration was slight, and those who came were for the most part closely allied in race and customs to those already here.

This attitude persisted well into the nineteenth century. In fact, with the beginnings of a national industry, and the development of internal transportation systems, the demand for foreign labor began to be more

keenly felt, and immigration increased in response. It is not until about 1830 that there can be detected any well-marked current of thought opposed to the immigrant. From that date, however, objections to unregulated immigration became increasingly frequent and emphatic. These objections were all based on one common ground — the poor quality of the immigrants. With the exception of an occasional clear thinker, there was scarcely a notion of the possible dangers from the mere numbers of immigrants, regardless of their quality. The main defects observed in the existing stream of immigrants were four in number, criminality, disease, pauperism, and Roman Catholicism. While it is probable that the last of these considerations outweighed all the others among the motives which led to the formation of the Native American and Know-Nothing parties, yet for obvious reasons it could not receive full and frank expression, and in the anti-immigration agitation of the thirties, forties, and fifties particular stress was laid upon criminality and pauperism. One of the chief objects sought in this agitation was the assumption by the Federal government of the control and regulation of immigration. Petitions and memorials to this effect poured in upon Congress in shoals. But Congress could not be induced to take any steps in the direction of limiting immigration. The only Federal laws passed during this period had to do with the regulation of shipping conditions and the safeguarding of the lives and health of the immigrants, and were therefore in the nature of encouragement, rather than of limitation. Various states made attempts to exclude the manifestly undesirable, but these were rendered largely ineffectual by the rivalry among the states for good immigrants, and the repeated decisions declaring all such measures unconstitutional.

The Civil War and the concurrent cessation in immigration put a check to anti-immigration agitation for a number of years, and it was not until 1882 that Congress at last took the step of placing immigration affairs definitely in the hands of the Federal government.¹ And the significant thing is that the measures adopted at this time were exactly those which had been demanded thirty to fifty years earlier. Convicts, lunatics, idiots, and persons unable to take care of themselves without becoming public charges were to be excluded. Thus when the Federal government finally consented to take charge of immigration, the legislation embodying this step was based definitely on the principle of selection, that is, the qualitative sifting of immigrants, which was just the animating principle of the agitation of the thirties, forties, and fifties. But by this time, a new immigration danger was beginning to be recognized, and a new principle of regulation was being brought to the fore. The danger was that of too large numbers of immigrants; the principle, that of restriction — numerical limitation.

Congress, however, having adopted the principle of selection as the basis of legislation, stuck to it, and for the next thirty-five years the successive immigration laws had the general effect of increasing, perfecting, and amplifying the selective tests for admission. Nowhere in the complex body of legislation which has grown out of the act of 1882 can there be found, up to the year 1917, a single provision which is ostensibly restrictive on its face, nor one which, even in practice, has the effect of materially reducing the volume of immigration. The whole aim of the laws is to keep out the undesirables.

¹ The Chinese Exclusion acts, as well as the act of 1875 excluding prostitutes and criminals, are separate affairs

It now becomes clear why the literacy test has aroused such tremendous feeling, and attracted such widespread attention. While ostensibly a selective measure, putting the finishing touch to our classification of undesirables, it will affect so large a proportion of the ordinary immigration stream as to be really restrictive. In effect, therefore, it introduces a new principle. This feature has furnished the most vulnerable point of attack to the opponents of the bill, while it has been a more or less concealed argument in its favor on the part of its supporters. There can be no doubt that the agitation for the literacy test represents, in a very real way, the growing sentiment in favor of the actual restriction of immigration.

Where, when, and by whom the literacy test was first advocated as a legislative measure for controlling immigration is a matter of only historical interest. It began to attain prominence about the year 1890. The Joint Congressional Committee on Immigration, which held its hearings during that year, evidently had the literacy test in mind as a possible practical expedient, and its report contains testimony in favor of the test from numerous witnesses, many of them persons of foreign birth. The test was also advocated by Senator H. C. Lodge in an article in the *North American Review* for January, 1891, which was later introduced into a speech on the floor of the House. During the next three or four years the measure was included in several bills introduced in Congress, none of which attained any prominence.

In 1894 there was formed in Boston the Immigration Restriction League, which soon focussed its activities on the literacy test, and from that time to the present has been probably the most influential agency working distinctly toward this end. It was instrumental in the

formulation of the bill which was introduced in the Senate in December, 1895, by Senator Lodge, and in the House by Mr. McCall, and can claim the credit for many improvements in the immigration laws, in addition to the literacy test.

In the early part of the year 1896 there were introduced in both Houses of Congress bills to establish a literacy test. The measure passed in the House on May 20, 1896, by a vote of 195 to 26; on December 17 of the same year it passed the Senate by a vote of 52 to 10. After much discussion, and some changes in the wording of the test, the bill which finally came from conference provided for the exclusion of all persons over sixteen years of age, physically capable of doing so, who could not read and write the English language or some other language. Exception was made in favor of persons over fifty, who were parents or grandparents of a qualified immigrant, himself over twenty-one and capable of supporting such parent or grandparent; also the wife or minor child who accompanied or was sent for by husband or parent. It is noteworthy that in this bill the test included both reading and writing.

By this time, however, the bill had become something more than a measure establishing a literacy test. On the motion of Mr. Corliss of Michigan there had been added in the House an amendment, which, couched in general terms, purported to put a check to transitory immigration, or "birds of passage," but which was directly aimed at certain classes of Canadian laborers who habitually came across the border to do daily labor in the United States.

Having passed both Houses in its final form, the bill went to President Cleveland, and on March 2, 1897, was returned by him, with a long and carefully worded veto message, in which the President characterized the meas-

ure as a "radical departure from our national policy relating to immigration," which policy he believed to be justified by the prosperity of the country; he made numerous criticisms of the wording as well as the content of the bill, and objected in particular to the Corliss amendment. It has been stated on good authority that this last provision was what really determined the veto.

The House promptly passed the bill over the veto by a vote of 193 to 37 on March 3, but no time was left for action by the Senate. Probably it would not have passed that body in any case, as a change of sentiment among its members, attributed to the vigorous and active work of the steamship companies and other opponents, had reduced the Senate vote in its favor to a bare majority.

During the next few years the measure was kept before Congress, largely through the activity of the Immigration Restriction League, and received favorable votes in both Houses, but not at the same time. In the mean time, the Industrial Commission had rendered its report, which included many suggestions for the improvement of the immigration law. The literacy test was not among them, tho the Chairman and one other member put themselves on record as favoring this measure. A general immigration bill was framed to accord with these recommendations, to which the literacy test (now worded to require ability to read only) was eventually added. In spite of the fact that there was a majority of the Senate in favor of this test, such powerful opposition developed that it was finally dropped in order to save the entire bill. This bill became the act of March 3, 1903.¹

¹ In preparing the foregoing narrative the writer has drawn freely on Mr. Prescott F. Hall's valuable book on immigration, in which many further details of great interest may be found.

The bulk of opinion in both Houses, however, remained strongly in favor of a reading test, and when the next immigration bill was framed in the Senate, provision was made on amendment for the application of such a test. The bill passed the Senate without a dissenting vote and went to the House. There another bill, known as the Gardner bill, was substituted, which did not differ materially and also contained, as Section 38, a literacy test. It was perfectly clear that there was ample sentiment in its favor to pass this test, and the entire bill. The Speaker of the House, Mr. Cannon, was, however, violently opposed to the literacy test, and used all his great influence for its defeat. Not only did he secure the enactment of a rule preventing a ye-and-nay vote upon this particular feature, but (according to the charges of the American Federation of Labor) actually left the chair, went upon the floor of the House and induced members to go into the cloak rooms or to vote against the measure. The test was finally defeated by what is probably one of the most remarkable amendments ever offered in Congress. On June 25, 1906, Mr. Grosvenor of Ohio rose on the floor of the House and moved to strike out Section 38, and insert the following: "Section 38. That a commission is hereby created . . . (which) shall make full inquiry, examination, and investigation into the subject of immigration." The amendment passed and the bill passed. In conference the Senate was induced to drop the literacy test in return for the elimination of the "Littauer amendment," a "liberal" provision added in the House, and the bill became the act of February 20, 1907.

Immediately thereafter, President Roosevelt appointed the Immigration Commission. This Commission spent nearly four years and \$900,000 in the study of immigration, embodied its findings in a report which

could not be crowded onto President Eliot's five-foot shelf, unanimously recommended the restriction of immigration, and, with a single dissenting voice, agreed that the best form of restriction was a literacy test. Senator Dillingham of Vermont and Representative Burnett of Alabama, chairmen of the respective Committees on Immigration and both members of the Immigration Commission, were now the leaders in immigration affairs in Congress, and have been in charge of all subsequent immigration bills of importance.

Supported by the findings and recommendations of the Immigration Commission, bills strengthening the provisions of the immigration law, improving its administration and including the literacy test, were again introduced into Congress. In January, 1913, after a long debate and many modifications, a bill, satisfactory to both Houses and containing a literacy test, was passed by both Houses and went to President Taft for his signature. The President expressed himself as in doubt regarding the merits of the educational test and in order to assure himself in the matter held a public hearing in the White House. Finally, at the last moment, the President returned the bill to the Senate on February 14 without his signature. The veto message was brief. After the customary expressions of regret and acknowledgment of the many valuable features in the bill the President said, "But I cannot make up my mind to sign a bill which in its chief provision violates a principle that ought, in my opinion, to be upheld in dealing with immigration. I refer to the literacy test. For the reasons stated in Secretary Nagel's letter to me I cannot approve that test. The Secretary's letter accompanies this." The letter referred to is lengthy, contains an elaborate and somewhat specious arraignment of the literacy test, and

recommends distribution as a preferable means of correcting the evils of immigration. One of its most significant passages is the following: "So far as the industrial conditions are concerned, I think the question has been superficially considered," — after nearly twenty years of debate in Congress and the reports of the Industrial Commission and the Immigration Commission. Another passage bears the clear implication that if the literacy test could have been supported as a selective measure the Secretary might have approved it, but that it could not, and as a restrictive measure it introduced a principle which he could not accept. It is a fair inference that this letter was the determining factor in the President's decision to veto. Subsequently, Mr. Taft stated in a public address that he vetoed the measure because he did not believe it was a good selective test.

An attempt was promptly made to pass the bill over the veto. This was successful in the Senate, the vote being 72 to 18, but failed in the House by a margin of five votes (213 to 114).

Congress, however, had its mind thoroly made up. Before President Wilson had been in the chair two years there was presented to him an immigration bill essentially similar to the preceding one, the final votes having been 50 to 7 in the Senate, and 227 to 94 in the House. It was well understood in advance that the President was opposed to the literacy test, but his willingness to hear both sides was evinced by the fact that he followed the precedent set by his predecessor and held a public hearing in the White House. In the end, however, he also followed precedent by returning the bill without his signature (January 28, 1915). His veto message was a painstaking document, in which he referred to the literacy test as a means "to limit the number of immi-

grants by arbitrary tests " which would " reverse the policy of all the generations of Americans that have gone before." He expressed himself as willing to follow the wishes of the people, but as quite unconvinced that the bill in question represented their wishes in this particular. He queried whether any political party had ever declared in favor of such a measure and been entrusted with the reins of government — an unfortunate allusion in view of the fact that McKinley was elected in 1896 on a platform which specifically favored an educational test. He laid much emphasis upon another section of the bill which seemed to close the door to political refugees from abroad; but even more strongly he objected to the literacy test, which proposed to turn away from tests of character to tests of opportunity, and the purpose of which was " restriction, not selection." He asked that the question be embodied in party platforms and voted upon, as it was " too fundamental to be settled otherwise " — a phrase hardly calculated to soothe the feelings of a somewhat irritated Congress.

The vote in the House on the repassage of the bill over the veto was 261 to 136, another failure by a bare margin. There is little doubt that it would have passed the Senate had opportunity been given.

Again two years were consumed in carrying the bill through Congress and presenting it to the President. Soon after the middle of January, 1917, an immigration bill with a literacy test was once more in President Wilson's hands. The provisions of the test were similar to those in other recent bills, refusing admission to " all aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish." Exceptions were made in favor of the

father or grandfather over fifty-five years of age, the wife, mother, grandmother, or unmarried or widowed daughter of an admissible alien or citizen; also in favor of aliens fleeing from religious persecution, aliens who have resided continuously for five years in the United States and return within six months and aliens in transit. The test was to consist of reading not less than thirty or more than forty words in ordinary use, printed on a slip of paper, in any language or dialect chosen by the alien.

It was expected that President Wilson would veto this bill, and he did (January 29, 1917). This message was briefer, and much more indifferent in tone than the former one. Nothing was said this time about the wishes of the people. The unwillingness to depart from tradition or to impose tests of opportunity was reiterated. But special emphasis was laid upon the "religious persecution" clause, on the ground that its application would be likely to cause international difficulties by putting the United States in the position of criticizing foreign governments. It is interesting to compare this objection with one of the President's two chief criticisms of the earlier bill, namely, that the provisions for the exclusion and deportation of anarchists and their kind would close the door to aliens planning in this country for the overthrow of foreign governments.

The action of Congress was prompt and decisive. On February 1, the House passed the bill over the veto by a vote of 287 to 106 and on February 5, the Senate finally settled the matter by a vote of 62 to 19, making the thirty-second time that the test has passed one House or the other, the average of 14 record votes in the House being 216 to 79, and of 10 record votes in the Senate, 53 to 15.

Thus the demand for the restriction of immigration, which has been an increasing factor in our national thought for over twenty-five years, has at last found expression in a measure which ostensibly completes the selective system of admission, and for which, by all tests, the people were ready two decades ago. How long it will take to secure the passage of a frankly restrictive law, such as that urged by Senator Dillingham, or that in Mr. Gardner's new proposal, time alone can tell.

It is an interesting ground for speculation whether these repeated presidential vetoes of a measure which has received such abundant support in Congress reflect any general difference in attitude toward a question of this sort on the part of the Executive and the Legislative. Obviously the cases are too few to serve as a basis for generalization. Very probably individual factors would offer a sufficient explanation in each case. Yet it is significant that President Cleveland remarked subsequently that if he had known as much about immigration at the time as he did later, he would have signed the bill in spite of its objectionable features. Possibly a partial explanation may be that the regulation of immigration is a technical matter, and the President, having little time to inform himself, is more impressed by tradition and the superficial "liberality" of free admission than is Congress, which has ample opportunity to become conversant with the facts.

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