

# Area 4. The migrant's language rights

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## Language rights in the Fourteenth Amendment of the US Constitution

Author: Ayman Al Sharafat (alsharafat.ayman@gmail.com)

### Abstract

This study analyses the Fourteenth Amendment of the US Constitution, which contains Equal Protection and Due Process Clauses. These two clauses are the constitutional linchpin on which language minorities have traditionally sought their rights realized. As the US Constitution has nothing explicitly regarding language issues, there are important questions over the 14th amendment, which still considerable controversy: What the scope of the amendment? What rights does it attempt to protect? Is language right included? and if yes, how?. All cases that follow relied upon either the Equal Protection or the Due Process Clauses or both to either validate or dismiss language rights claims. The United States Supreme Court has considered language-related statutes and policies on relatively fewer occasions. Most language rights cases have primarily involved interpretations of the Fourteenth Amendment. The Equal Protection and Due Process Clauses of the Fourteenth Amendment are the two most well-known clauses of a three-clause section, including the Privileges or Immunities Clause. Given the lack of a de jure official language in the United States Constitution, federal courts have considerable latitude in determining the constitutionality of linguistic regulations. In doing so, they have associated language rights and the ability to educate students in a multilingual setting with discriminatory measures, often applying the Fourteenth Amendment's Equal Protection or Due Process Clauses. This study shows that the Fourteenth Amendment, from its genesis as a protector of the privileges of citizenship for emancipated slaves, and then for the protection of minorities generally, was an important process for language minorities. In essence, the Fourteenth Amendment covers substantive as well as procedural rights and protects ethnic as well as racial minorities. However, it does not define de jure obligations of the US towards members of language minorities. With an exponential rising demographic of non-English speakers, it is apparent that the United States faces a growing challenge in terms of language rights and in appropriating the proper legislation and adjudication to account for this shift. Even federally enacted measures fall short because of their true intended purpose: to enable minorities transition to the English-speaking mainstream rather than recognizing substantive linguistic rights. Therefore, this study suggests that US Constitution should emulate the constitutions of countries that have a similar geopolitical makeup situation to the one currently found in the European Union and act specific provisions to protect the linguistic rights of such minorities and recognise the linguistic rights of individuals and groups as fundamental.

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Keywords: United States; constitution; language rights; migrant languages

#### Biodata

Ayman Al Sharafat, MA (1987) is currently a third-year PhD candidate in American studies at Eötvös Loránd University (ELTE) in Budapest, Hungary. Al Sharafat received an MA in American studies from the University of Jordan in 2016. He has two BCs degrees one in English literature and the other in political science. His interest in American history and civil rights was strengthened by getting a scholarship to do his PhD research at Eötvös Loránd University in Budapest. Al Sharafat has several scientific publications in American politics, history, democracy, and the economy and presented many papers in international conferences all over Europe. His PhD analyses language management efforts at the United States' presidency from Georg Washington to Donald Trump. Along with his studies, Al Sharafat is a lecturer at the American Studies department in Eötvös Loránd University, where he teaches courses in American history and foreign policy.

## **Interpreting the legal concept of nationality in Spain and Poland in the era of transnationality**

Author: Anna Bugajska (a.m.bugajska@gmail.com)

#### Abstract

The paper intends to compare and contrast the understanding of 'nationality' in Spanish and Polish legal systems in the light of the theory of transnationality. 'Transnationality' is a term used by Ong (1999) to reflect a complex network of interrelationships and identities resulting from the processes of globalization and migration, which creates challenges for the terms 'nationality', 'ethnicity', and 'citizenship' in the legal interpretation within the supranational organizations and the internal policies of individual countries, as with the current multi-sourced migrant crisis the societies become increasingly multinational and multicultural. We can think of transnational people as double passport holders, as people with different national or ethnic identification levels, and foreign employees with different national and economic identities, among others. The diversified makeup of the society can create tensions around the above notions that are destabilized as a result of varying interpretations (e.g. Boll, 2006; Forlati & Annoni, 2013). They directly impact the naturalization of migrants, which is frequently preferred, without considering the transnational identities and socio-psychological dimension of the cases of some migrants for whom naturalization means rejecting their original nationality, links with their homeland or

even religion (Rodríguez-Drincourt Álvarez, 1999). In the proposed paper I am interested in the differences in the understanding and interpretation of nationality, especially that Poles applying for the Spanish nationality face the identity and social psychology problems pointed to above. Whereas in the Spanish legal system, *la nacionalidad* can refer to both citizenship and nationality in the ethnic sense, the Polish system distinguishes between nationality (*narodowo's'c*) and citizenship (*obywatelstwo*), resulting in a different balance between the state as the bestower of nationality, the individual and the bond between them created via the bestowal of nationality. As Poles tend to have a strong sense of nationality, they would likely have issues with rejecting Polish nationality while applying for the Spanish one. The notion of nationality in cultural and legal systems has deep historical roots and complex history and has to be interpreted concerning them, as they find reflection in language. In the first part of the paper, I briefly sketch the challenges for the notion of nationality stemming from the migrant crisis and the theory of transnationality. In the second part I present the current legal understanding of nationality and its acquisition and loss in Spain and Poland. In the third part, I consider *la nacionalidad* and *narodowo's'c* in their respective cultural-linguistic contexts and the possibility of semantic shifts under the current geopolitical circumstances. Finally, I conclude the paper with insights on the interpretation of nationality in the light of the theory of transnationality, considering the cases described in part three. The proposed discussion intends to add to the existent international debate on the semantic underpinnings of nationality law, and demonstrate the possibilities of different interpretations.

Keywords: transnationality; nationality; legal interpretation; Spain; Poland

#### Biodata

Anna Bugajska, PhD, is an Associate Professor at the Jesuit University Ignatianum in Kraków. She holds a PhD in English Philology from the Jagiellonian University. She is the Head of the Institute of Modern Languages and the Language and Culture Studies Department at the Jesuit University Ignatianum. She cooperates with the General and Applied Ethics Department at the same university and with the College of Social Sciences and Humanities of the Tischner European University in Kraków. Dr Bugajska is a member of the Utopian Studies Society-Europe and cooperates with the International Society of Clinical Bioethics. Currently, she is a student of Spanish law at the Centre of Foreign Law Schools of the Jagiellonian University (in cooperation with the Universities of Alicante and Granada). Dr Bugajska conducts seminars in applied linguistics, sociolinguistics and utopianism, focusing on English for Specific Purposes (especially business, medical and legal English), ethics, and intercultural communication. She is interested in the intersection between law, literature, culture and language.

## **Linguistic abuse of migrants in the United States?**

Author: Pooja Dadhania (pdadhania@cwsl.edu)

#### Abstract

The weaponization of language access against migrants has a long history in the United States, being used since at least the inception of the modern asylum system to silence

asylum seekers and foreclose their abilities to present their claims meaningfully. One long-standing example of the US government's failure to provide language access to migrants is its refusal to provide an interpreter at asylum interviews. The ramifications of the government's failure to provide interpreters at asylum interviews are the severe-without suitable provision of interpreters; the asylum process is rendered meaningless for applicants with limited English proficiency. In my article, I explore and advance legal challenges to the US government's failure to provide interpreters to asylum applicants during asylum interviews. I challenge this deprivation of language access as a constitutional procedural due process violation because it denies limited English proficient asylum seekers meaningful access to the statutorily created affirmative asylum process. The linguistic abuse of asylum seekers and language access for migrants in the United States more generally remain understudied issues in legal scholarship. This article is the first to advance a constitutional argument for a more robust mooring of language access in asylum interviews to promote equal access to the affirmative asylum process for limited English proficient asylum seekers. I draw upon social science research to highlight the importance of professional interpretation in immigration proceedings. I ground the procedural due process argument for government-provided interpreters in asylum interviews in US case law. I also explore and ultimately reject statutory and executive action options for advancing language access rights in asylum interviews. The Department of Homeland Security's failure to provide interpreters can silence limited English proficient asylum seekers by depriving them of the opportunity to present their claims meaningfully. Asylum seekers, especially those who are low income or speak rare languages, face significant challenges in finding suitable interpreters. Many are forced to use non-professional interpreters who are not qualified to interpret in complex legal settings. Inaccurate interpretation can have severe ramifications, like unwarranted denials of asylum applications, resulting in asylum applicants being removed to countries where they face persecution. The failure to provide interpreters at asylum interviews is one example of the weaponization of language access, designed to erect barriers to protection in the United States and certain subordinate categories of migrants. Only by challenging and changing these procedures will limited English proficient asylum seekers have equal access to the asylum system. Without language access, the proverbial courtroom doors-here, the doors to the asylum office-will remain closed for many. (For a copy of the full paper, please see: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3727506](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3727506))

Keywords: asylum; language access; due process; migrant's rights; linguistic abuse

#### Biodata

Professor Dadhania's scholarship focuses on the impact of the immigration law regime on marginalised noncitizen communities and how immigration status intersects with other forms of legal and experiential marginalization. Ultimately, she strives to understand how immigration laws meet and fall short of their intended outcomes and how they uphold or fail to uphold the principles of proportionality and equality under the law. Professor Dadhania has published and has articles forthcoming in the *California Law Review*, *Columbia Law Review*, and *U.C. Irvine Law Review*. Professor Dadhania's scholarship has been inspired by her previous legal experience representing noncitizen survivors of persecution, abuse, and torture. Before joining the faculty at California Western, Professor Dadhania was a Clinical Teaching Fellow and Supervising Attorney at the Center for Applied Legal Studies at Georgetown University

Law Center, an asylum clinic. Previously, Professor Dadhania was an Equal Justice Works Fellow at the Legal Aid Foundation of Los Angeles (LAFLA), where she provided direct legal services focusing on immigration and family law. She was also a law clerk on the US Court of Appeals for the Ninth Circuit and the US District Court for the Southern District of California.

## **Assessing language in citizenship tests: What and how countries are doing**

Authors: Miguel Fernández Álvarez (m.fernandez@upm.es); Jesús García Laborda (jesus.garcialaborda@uah.es)

### Abstract

Language tests have become an important component of most citizenship examinations worldwide (De Jong, Lennig, Kerkhoff & Poelmans, 2009; Kunnan, 2009). However, each country has their policy and requirements (McNamara & Ryan, 2011; Loring, 2012). We find examples of tests where candidates need to demonstrate a much higher proficiency level than others (which are much more lenient) (Kunnan, 2009). In order to bring consistency to language tests in Europe, different governments asked the Association of Language Testers in Europe (ALTE) in the late 90s to develop language tests for migration, residency or citizenship purposes with the subsequent creation of the Language Assessment for Migration and Integration (LAMI) Group, which has been instrumental in the development of such tests during the last decades in Europe. Traditionally, citizenship tests (including the linguistic component) have been delivered as paper and pencil tests, and test candidates were required to do the exam at a testing centre for security reasons. However, the current fast-paced digital world we live in is starting to influence the way languages for citizenship purposes are being assessed. Some tests have already been transformed into computer-based tests that candidates have to take at a testing centre (Cooke, 2009), while others can be completed from any location. Web based exams have become generalized in the last twenty years, but there has been a special need for online testing worldwide during the 2020 crisis due to COVID-19 pandemic, influencing how languages will be assessed. This presentation focuses on how technology shapes language tests for citizenship to respond to the new demands of stakeholders and adjust to the new realities we are facing in the present era. An analysis of citizenship tests (focusing on both the civics and the language components) is offered in the first section of the paper. After this initial overview, our attention turns to computer-based language citizenship tests and some of the issues associated with them. We introduce and describe e-securitization, which brings together the fields of language testing, cyber security and artificial intelligence. Before offering our conclusions and a brief overview of future areas for research, we present some examples of computer-based language for citizenship purposes used in several countries together with apps and resources available to prepare for such tests, including examples of Massive Online Open Courses (MOOCs).

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Keywords: citizenship; computer-based tests; language tests; migration; technology

#### Biodata

Dr Miguel Fernández Álvarez is an Assistant Professor in the Department of Linguistics Applied to Science and Technology at the Universidad Politécnica de Madrid (Spain), where he teaches English for Specific Purposes. He has a PhD in English Philology from the University of Granada. His PhD dissertation focused on the design and validation of the English component for the University Entrance Exam. His research areas include bilingual education, second language acquisition and language assessment. He has participated in several research projects on language assessment and bilingual education. His research areas include bilingual education, second language acquisition and language assessment. Dr Fernández Álvarez is the author of A Test Impact Study under the No Child Left Behind Act: The case of the ACCESS for ELLs and has published numerous articles in language assessment and bilingual education. He is currently working on language mediation issues and their implications for both teaching and assessment in the classroom.

Jesús García Laborda, PhD, EdD, MA, Med, BA, is currently Dean in the College of Education and an Associate Professor at the Universidad de Alcalá (Madrid, Spain). He received his PhD in Linguistics (2000) and his EdD in Language Education from the Universidad Complutense de Madrid. He obtained his MA from the University of Wisconsin-Milwaukee (1993) and his Med from Georgia-Athens (1992). Apart from his focus on TESOL, his recent publications include language for tourism, teacher training and education. He has published in some international journals such as *Computers & Education*, *Educational Technology & Society*, *Eurasian Journal of Educational Research*, *Modern English Teacher* and many more. He has taught in Spain, the United States, Bosnia and Herzegovina, and Croatia during their reconstruction after the late 90s. His main areas of interest are computer-assisted language learning, ESP, low stakes testing, and teacher training.

## **Migration and asylum: The role of the translator**

Author: Gerhard Edelmann (gerhard.edelmann@univie.ac.at)

#### Abstract

Translators and interpreters have a great responsibility in migration and asylum matters because decisions based on their translations will affect the basic rights of persons

seeking protection. Therefore, adequate quality of translation and interpretation must be ensured.

I am currently working on a presentation of Austrian law in Spanish and a German-Spanish glossary for Austrian court interpreters. These aids will be used both for written translations and as a document for oral interpretation. One of the chapters deals with asylum issues. In my contribution, using the example of asylum and migration issues, I will highlight the vital criteria to be applied for a professional translation of legal terms in this field. It is the state of the art that any legal translation work begins with a comparison of the legal systems concerned, which constitute conceptual systems, and the analysis of the relevant terms to determine equivalences or, in the absence of equivalent terms, to find suitable translations. My research questions are: 1) Which is the function of the translation? 2) How to deal with the different legal systems and the pluricentric of legal language? And 3) How to deal with terms used differently in common language versus in strict legal language? In my contribution, I assume that texts on migration and asylum issues shall be translated from Spanish to German and vice versa. Based on practical examples relating to denying the right to asylum, I will discuss the research mentioned above questions and the most important criteria for achieving an adequate translation. The main conclusions will be: The translator must bear in mind the function of the translation. If it is intended for professionals, they must seek to write the text in a way as if experts had written it in the target language. If it is intended for lay people, the translator must decide how the text can be made understandable for the addressees. The translator has to determine the relevant legal system. In German speaking countries, individuals must choose between three legal systems—i.e., German, Austrian and Swiss, which show significant differences. For instance, *el internamiento previsto para los expedientes de expulsión* in Spanish law is called *Schubhaft* in Austria and Germany, but *Ausschaffungshaft* in Switzerland. In addition, European law frequently uses terminology that differs from national laws. A special feature of the language in asylum and migration issues is that in common language the terms are not distinguished as precisely as in the technical language—e.g. *Ausweisung—Abschiebung, deportación—expulsión*. Common language in Spain, for example, uses terms like *devolución en caliente* and *expulsión exprés*. There are legal terms used in special cases in national legislation as, for example, the *Acuerdo entre el Reino de España y el Reino de Marruecos de 1992*. The translator has to identify the meaning of these expressions and translate them taking into account the translation function.

Keywords: legal translation; function of the translation; legal systems; pluricentricity

#### Biodata

Gerhard Edelman teaches at the Center of Translation Studies at the University of Vienna a wide range of subjects—e.g., legal and economic translation (Spanish-German); terminology; translation theory, translation history, and literary translation. He has also conducted workshops for Austrian court interpreters. His fields of research include specialised language (law, economics), terminology; literary translation, and translation history. He is the author of articles on translation, and co-author of a Spanish-German dictionary of idioms, a compilation of a Spanish-German glossary of legal terms for the Austrian Court Association.

## **Linguistic justice and immigration in europe**

Author: Timothy Jacob-Owens (timothy.jacob-owens@eui.eu)

## Abstract

This paper addresses the question of how European liberal democracies should respond to 'post immigration linguistic diversity' (cf. Modood, 2013)-that is, the array of languages spoken by minority groups of immigrant origin, such as Turkish in Germany and Urdu in the United Kingdom (UK). My central claim is that liberal democratic states should tolerate and accommodate the use of these languages, for instance, by providing translation and interpretation in the delivery of public services and actively promoting them through measures such as inclusion in-state school curricula and on public street signage. In the existing philosophical literature on linguistic justice and multiculturalism, it is widely argued that only so-called 'old' or 'historical' minorities should be granted strong promotional language rights of this latter kind (e.g. Kymlicka, 1995; Patten, 2014; Van Parijs, 2011). By contrast, I contend that immigrant-origin communities also have a legitimate claim to linguistic promotion, grounded in the novel concept of an evolving claim to 'societal cultural membership'. This concept builds on the theory of 'social membership' developed by Joseph Carens (2013). I then demonstrate that this view is largely reflected-albeit in fragmentary form-in international law. I first show that legal obligations of linguistic toleration and accommodation are entailed by general norms of international human rights law, such as freedom of expression and the right to private life, regarding the (quasi-)jurisprudence of the United Nations Human Rights Committee and European Court of Human Rights. I then explore how the evolving personal scope of application of international minority rights can be read as entailing linguistic promotion vis-à-vis groups of immigrant origin. In this context, I also refer to the limited promotional measure foreseen in the international norms protecting migrant workers and refugees. In the final part of the paper, I assess the extent to which my theory of linguistic justice is also reflected in the current practice of Germany and the UK, drawing on doctrinal analysis and interviews conducted with community representatives and public officials. These case studies reveal a range of relevant practices, including the widespread reading of British equality law as requiring public bodies to provide translation and interpretation services, provision of heritage language education for Arabic-, Polish-, and Turkish-speaking communities in German schools, and the symbolic recognition of Bengali, Mandarin, and Punjabi on public street signs in London. These examples demonstrate that the proposed theory can work in practice and lay the ground for achieving linguistic justice for immigrant-origin groups in Europe.

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Keywords: linguistic justice; language rights; immigration; immigrant-origin minorities; Europe

#### Biodata

Timothy Jacob-Owens is a doctoral researcher in law at the European University Institute (EUI) in Florence and a research associate with the Global Citizenship Observatory at the Robert Schuman Centre for Advanced Studies. His interests lie broadly in comparative and international law and legal and political theory, with a particular focus on language rights and linguistic justice. Timothy has been a visiting researcher at King's College London and the University of Edinburgh and has taught at Edinburgh School of Law in his doctoral studies. He has also acted as a consultant to the Council of Europe's anti-racism human rights monitoring body, the European Commission against Racism and Intolerance. He is editor-in-chief of the European Journal of Legal Studies and a former coordinator of the EUI's Constitutionalism and Politics Working Group. Before coming to the EUI, he was a trainee at the Council of Europe, an intern at the European Centre for Minority Issues, and a research assistant at the Europa-Universität Flensburg. Timothy holds an M.Phil in Linguistics from the University of Bristol and an LL.M. in Comparative, European and International Laws from the EUI.

## **References to legal provisions. Theoretical formulas and their application in multilingual instruments on migrants**

Author: Anna Jopek-Bosiacka (a.jopek-bosiacka@uw.edu.pl)

#### Abstract

The purpose of this research in progress is to establish the semantic scopes of basic English legal reference formulas such as 'under', 'pursuant to', 'by virtue of', 'in accordance with' on the basis of legislative drafting guidelines (both common law and EU) in the light of the guideline included in the *Polish in-house style guide for EU translators translating into Polish* (2020, pp. 104-106) that their use is based on the distinction between three legal situations: 1) the achievement of a specific legal effect in a particular legal act or its provision—e.g., amendment of legislation, creation of a body); 2) referring to a norm of competence—e.g., defining a power, an obligation to act); and 3) quotation, reference to a norm, an indication of lack of contradiction—e.g. stating the fact of the specific wording or existence of a provision). The Polish style guide authoritatively assigns certain formulas to certain legal situations and considers some English-language formulas and their Polish equivalents as correct and others as erroneous. Furthermore, in the *English Style Guide for EU translators translating into English* (2021, p. 59), we read that 'English uses a more targeted set of formulas than most languages. To find the appropriate one, you need to know what the provision does', but further the English guide gives no clear-cut distinctions, instead suggests that 'there is no single right way' (2020, p. 59). Motivated by the above distinctions and no clear-cut definitions, the research question is whether such differences in the meaning of reference formulas are reflected in Anglo-Saxon principles of legislative drafting. For example, whether the expression 'pursuant to' is only limited to contexts of reference to

a competence norm (*Polish style guide*, 2020, p. 106). The validity of the relevance of this research is further supported by the empirical analysis of legislative acts and international agreements on migrants, to which the Polish legal acts on foreigners refer. The analysis of extracted contexts proves diverse uses, contexts and meanings of reference formulas in English and Polish—both in implemented and translated texts. The review of English-language legislative drafting guidelines (English, American, Australian, Canadian) will provide more conclusive answers on exact scopes of the meaning of various reference formulas, possible cross-cultural patterns and overall qualitative analysis semantic picture. The answers obtained will be of vital importance to translators of multilingual legislation and international instruments.

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Keywords: legislative drafting; reference formulas in law; legal semantics; legal translation; legal interpretation

## Biodata

Dr habil. Anna Jopek-Bosiacka is an Associate Professor at the University of Warsaw and the Institute of Applied Linguistics director. She has published three books and several articles and chapters on legal translation and legal communication from a cross-cultural perspective. The books specifically cover such topics as legal and judicial translation (Warsaw PWN 2006), legal discourse as cross-cultural communication (Warsaw, University of Warsaw 2010) and prerequisites of logic and theory of law for legal translation (Wolters Kluwer 2019). She is the editor-in-chief of *Lingua Legis* specialised and legal translation journal. She has worked as a sworn translator of the English language. She is also a qualified lawyer (attorney at law). Since 2005, she has been the tutor of the Jurilinguistics student research society, which, in addition to conferences and workshops, organises a nationwide competition for students on law in translation. Her research interests are legal and specialized translation, discourse analysis, public communication, legal rhetoric and argumentation, theory of law and logic, comparative law.