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NATIONALITY LAWS OF THE UNITED STATES

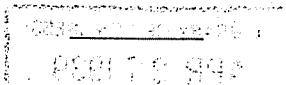
MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT PROPOSING A REVISION AND CODIFICATION OF THE NATIONALITY
LAWS OF THE UNITED STATES, PREPARED AT THE REQUEST OF THE
PRESIDENT OF THE UNITED STATES, BY THE SECRETARY OF
STATE, THE ATTORNEY GENERAL, AND THE
SECRETARY OF LABOR



IN THREE PARTS

PART 1

PROPOSED CODE WITH EXPLANATORY COMMENTS

Printed for the use of the Committee on Immigration and Naturalization

JUNE 13, 1938—Read, and, with the accompanying papers, referred to the
Committee on Immigration and Naturalization

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LETTER OF SUBMITTAL

The PRESIDENT,
The White House.

JUNE 1, 1938.

By your Executive order of April 25, 1933, you designated the undersigned a committee to review the nationality laws of the United States, to recommend revisions, and to codify the laws into one comprehensive nationality law for submission to the Congress.

Exec. Order

In pursuance of this order a committee of advisers, composed of six representatives of the Department of State, six of the Department of Labor, and one of the Department of Justice, was appointed to study the existing laws governing nationality, and to prepare a draft Code, embodying such changes and additions as might seem desirable, together with a report explaining the same. Because of the wide field covered by these laws, the complexity of the problems involved and certain obstacles which could not have been foreseen, the report was not completed until August 13, 1935.

rights

In view of the unusual importance of this subject, which is designed to determine the basic status of nationality itself, upon which so many rights and obligations depend, the draft Code mentioned above was thoroughly reviewed by officials of the three Departments, some of whom had taken no part in its preparation. As a result of this review and of conferences between these officials, various changes were made in the original draft.

consolidate

While the nationality laws of nearly all foreign states have in recent years been completely revised and codified, the laws of the United States on this subject are found scattered among a large number of statutes, and it is sometimes difficult to reconcile the provisions of different statutes. On the other hand, there are no statutory provisions fixing the nationality status of the inhabitants of certain of the outlying possessions of the United States, including American Samoa and Guam.

The nationality problem in the United States is especially complex and difficult for several reasons. In past years large numbers of persons of foreign origin have come to the United States, have had children born to them in this country, and have subsequently returned to reside in the foreign countries from which they came, or have moved on to other foreign countries, taking their American-born children with them. In some cases the parents while in the United States obtained naturalization as citizens thereof, and in such cases children born to them in foreign countries after such naturalization have acquired citizenship of the United States at birth, under the provision of the existing law (R. S. 1993). Children born in the United States to persons of the classes mentioned acquired at birth citizenship of the United States, and in many cases they also acquired at birth the nationality of the foreign states from which their parents came; thus becoming vested with dual nationality. Dual nationality has also attached at birth to children born in certain foreign countries, having in their law of nationality the territorial rule (*jus soli*) to parents who acquired American nationality at birth or through naturalization.

The draft Code submitted herewith is divided into five chapters, as follows: Chapter I, Definitions; Chapter II, Nationality at Birth; Chapter III, Nationality through Naturalization; Chapter IV, Loss of Nationality; and Chapter V, Miscellaneous.

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Since the citizenship status of persons born in the United States and the incorporated territories is determined by the fourteenth amendment to the Constitution, the proposed changes in the law governing acquisition of nationality at birth relate to birth in the unincorporated territories and birth in foreign countries to parents one or both of whom have American nationality. Cases of the latter kind are especially difficult of solution, in view of the necessity of avoiding discrimination between the sexes, and of the fact that, under the laws of many foreign countries, the nationality thereof is acquired through birth in their territories.

With regard to chapter III, it may be observed that naturalization constitutes a vital part of the nationality system of the United States, and the naturalization measures proposed by the committee of advisers constitute a considerable portion of the committee's proposals.

United States citizenship is a high privilege and ought not to be conferred lightly or upon a doubtful showing. The experience of the naturalization courts and administrative officers who have had to deal directly with the problems presented has demonstrated, however, the need for an accurate, comprehensive, and detailed Code by which naturalization is to be conferred and any abuse of the process remedied. No alien has the slightest right to naturalization unless all statutory requirements are complied with, and every certificate of citizenship must be treated as granted on condition that the Government may challenge it in regular proceedings for that purpose and demand its revocation unless issued in accordance with statutory requirements.

LETTER OF SUBMITTAL

uniform
The proposed Code, herewith, represents a studied effort to draft a measure which would conform to the constitutional requirement that the rule of naturalization be "uniform," and facilitate the naturalization of worthy candidates, while protecting the United States against adding to its body of citizens persons who would be a potential liability rather than an asset.

The provisions of Chapter IV, Loss of Nationality, are of special importance. Loss of nationality is in all cases to result from the existence of stated facts. In this relation mention may be made of the provision of section 501, in which diplomatic and consular officers are required to send to the Department of State reports concerning persons found by them to have committed acts resulting in loss of American nationality under the provisions of Chapter IV of the proposed act. It is important to note that such reports are intended merely for the information of the Department of State, the Department of Labor, and any other branches of the Government which may be interested.

Chapter V, Miscellaneous, in addition to the provision of section 501, mentioned above, contains a provision (sec. 502) for the issuance of certificates of nationality, for use in foreign states in cases of American nationals other than naturalized citizens.

The most important changes in the existing laws proposed in the annexed code are as follows:

(1) The provision of section 201 (g) requiring that, in order that a person born abroad may acquire citizenship of the United States at birth when only one of his parents is a citizen of the United States, the latter must have resided 10 years in the United States. The requirement of the existing law concerning residence in the United States as a condition to retention of citizenship has been modified for the benefit of children of persons representing the Government or American commercial or other interests;

(2) The provisions of chapter III concerning the facilitating of naturalization under special conditions, and in particular the following:

The provision of section 311 for the naturalization, without prior residence in the United States, of the alien spouse of a citizen of the United States residing abroad in the employment of this Government or of organizations of certain specified classes;

The provision of section 314 for the naturalization of a person under 18 years of age upon the petition of a citizen parent, and the similar provision of section 315 for the naturalization of an adopted child;

The provision of section 317 for facilitating the entry into the United States and naturalization, without the usual requirements concerning residence in the United States, of a person who was formerly a citizen of the United States but who became expatriated while residing in a foreign country through the naturalization of a parent therein;

(3) The provisions of chapter IV concerning loss of nationality, especially the following:

The provisions of section 402 concerning loss of nationality by a naturalized citizen as a result of the following acts:

(a) Residing for at least two years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, if he acquires through such residence the nationality of such foreign state by operation of the law thereof;

(b) Residing continuously for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in Section 404 hereof.

Special mention may also be made of the provision in section 337 of the Code for the revocation of naturalization in the case of a person who takes up a permanent residence in his native land or some other foreign country within 10 years (instead of 5 years, as provided in the existing law) after the date of his naturalization.

The problem of the child born abroad to parents of different nationalities was the subject of extended consideration by the committee and finally resulted in the draft of section 201 (g) referred to above which confers American citizenship at birth upon a person born abroad if one of his parents is an American citizen. Prior to the Citizenship Act of May 24, 1934, only the children of American fathers acquired citizenship at birth if they were born abroad. This, however, was changed by the 1934 act so that a woman retaining citizenship after marriage to an alien also transmitted citizenship to her children. In enacting this measure Congress apparently took into consideration the fact that persons born in foreign countries whose fathers were nationals of those countries would be likely to have stronger ties with the foreign country than with the United States, and consequently annexed as a condition for retaining citizenship a 5-year period of residence in this country between the ages of 13 and 18. This condition was equally applicable irrespective of whether the citizen parent was a father or a mother.

It has been recognized, however, that these residence requirements will impose great hardship in some cases. This is especially true where the head of the family is a salaried person residing abroad as a representative of the American Government or some American commercial or other organization. The committee has therefore

recommended that in cases of this character the conditions relating to residence during minority shall no longer be imposed. If the citizen parent does not represent the American Government or an American educational, scientific, philanthropic, religious, commercial, or financial organization, the foreign-born child, in order to retain American citizenship, is required under section 201 (g) to reside in the United States 5 years between his thirteenth and his twenty-first birthdays. The committee recommends strengthening the 1934 act in another respect, however, by restricting the right of transmitting citizenship in a case of this kind, through the requirement that the citizen parent should have resided at least 10 years in the United States prior to the birth of the child.

Mention is made above of section 317 of the Code. While probably the majority of former American nationals who have been naturalized in foreign states through the naturalization of their parents therein continue to reside in such foreign states, some of them return to the United States to reside, and it seems only reasonable to adopt special provisions to enable the latter to recover their American citizenship if they so desire.

None of the various provisions in the Code concerning loss of American nationality, such as those applicable to children born abroad to parents only one of whom has American nationality and persons who, after obtaining American nationality through naturalization, establish a residence abroad, is designed to be punitive or to interfere with freedom of action. They are merely intended to deprive persons of American nationality when such persons, by their own acts, or inaction, show that their real attachment is to the foreign country and not to the United States.

Important reasons for terminating American nationality in cases of persons who reside in foreign countries and have to all intents and purposes abandoned the United States lie in the fact that it will prevent them from transmitting American nationality to their foreign-born children having little or no connection with the United States, and embroiling this Government in controversies which they may have with the governments of the foreign countries in which they reside. The mere presumption of expatriation provided for in section 2 of the act of March 2, 1907, in cases of naturalized citizens residing for 2 years in the foreign states from which they came or 5 years in other foreign states, has proven inadequate. In general the right to protection should be coexistent with citizenship, and a law under which persons residing abroad are denied the protection of this Government, although they remain citizens of the United States and transmit citizenship to children born abroad, is deemed inconsistent and unreasonable. The admission of an alien to the privilege of American citizenship is subject to the condition that he intends to reside permanently in the United States and perform the duties of citizenship. When a naturalized citizen abandons his residence in the United States and takes up residence in the state of which he was formerly a national, definite termination of his American citizenship should follow.

Further explanations of the various provisions of the Code submitted herewith may be found in the comment on the various articles—appendix 1 herewith. In addition to the Code and appendix 1, we also submit herewith the following:

Provisions of the Code and corresponding provisions of the existing nationality laws, arranged in parallel columns (appendix 2), and constitutional, statutory, and treaty provisions relating to nationality (appendix 3).

Your committee, in the light of the experience of the interested departments in handling cases presented to them for action, is convinced that it is most desirable to have the nationality laws of the United States revised, and embodied in a single Code, the meaning of which may be readily understood. We feel that there is no branch of the law of more importance to the country, or requiring more careful attention, than that branch which governs nationality, determining, as it does, what classes of persons shall compose the national society itself.

The proposals contained in the accompanying draft Code are to be regarded merely as suggestions for the use of the appropriate committees of Congress. When the matter is to be considered by these committees, the undersigned will be glad to designate members of their respective departments whose duties involve the handling of citizenship cases to confer with the committees, if that is desired.

Respectfully,

CORDELL HULL,
Secretary of State.
HOMER CUMMINGS,
Attorney General.
FRANCES PERKINS,
Secretary of Labor.

Enclosures: Draft Nationality Code and appendices 1, 2, and 3, as above.

REVISION AND CODIFICATION OF THE NATIONALITY LAWS OF THE UNITED STATES

PART 1

SECTIONS OF THE PROPOSED CODE WITH EXPLANATORY COMMENTS¹

[The part printed in bold-face type shows the sections of the proposed Code; the part printed in Roman shows the explanatory comments of each section]

CHAPTER I. DEFINITIONS

Sec. 101. For the purposes of this Act—

(a) The term “national” means a person owing permanent allegiance to a state.

This term has come into common use in recent years with reference to the individuals who together compose the people of a sovereign state, regardless of the character of the government thereof. Where the state is represented by a personal sovereign the term “subject” may also be used, and where the government of a state is democratic in form the term “citizen” may likewise be used, but the broader term “national” covers both. This term, with the corresponding term “nationality” has been in use in modern times not only in standard works on international law and nationality (3 Moore, Digest of International Law, 273-276; 1 Hyde, International Law, 610-611; Hall, International Law, 8th ed., pp. 275-276; 1 Oppenheim, International Law, 4th ed., 524-526; Borchard, Diplomatic Protection, pp. 7-24; Cockburn, Nationality; see also McGovney, D. O., American Citizenship, 11 Columbia Law Review, 231; Scott, J. B., Nationality; Jus Soli or Jus Sanguinis, 24 American Journal of International Law (1930), p. 58), but in treaties to which the United States is a party, including the treaty establishing friendly relations with Austria, signed at Vienna, August 24, 1921, Treaty Series No. 659 (Malloy, Treaties, Conventions, etc., vol. III, p. 2493); the treaty restoring friendly relations with Germany, signed at Berlin, August 25, 1921, Treaty Series No. 658 (Malloy, op. cit., p. 2596); the treaty establishing friendly relations with Hungary, signed at Budapest, August 29, 1921, Treaty Series No. 660 (Malloy, op. cit., vol. III, p. 2693); treaty between the United States and Bulgaria, signed at Sofia, November 23, 1923, Treaty Series No. 684; treaty between the United States and Czechoslovakia, signed at Prague, July 16, 1928, Treaty Series No. 804; treaty between the United States and Norway, signed at Oslo, November 1, 1930, Treaty Series No. 832; treaty between the United

States and Sweden, signed at Stockholm, January 31, 1933, Treaty Series No. 890.

With reference to the above, particular attention is called to the treaty restoring friendly relations with Germany, signed August 25, 1921, the preamble of which contains a quotation from the joint resolution of Congress, approved by the President July 2, 1921, declaring the state of war between the United States and Germany to be at an end, including the following clause in section 2 thereof:

SEC. 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the Treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any act or acts of Congress; or otherwise.

Article I of this treaty contains the following important provision:

ARTICLE I. Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations, or advantages specified in the aforesaid joint resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such treaty has not been ratified by the United States (Malloy, op. cit., p. 2598).

The treaties establishing friendly relations with Austria and Hungary, referred to above, contain provisions similar to those quoted above from the treaty with Germany. It may be added that the Treaty of Versailles, referred to in article I of the treaty restoring friendly relations between the United States and Germany, signed August 25, 1921, also uses the term “nationals” to indicate all persons owing permanent allegiance to the respective states (Malloy, op. cit., appendix, pp. 331 et seq.).

¹ Submitted with report of Committee of Advisers August 13, 1935; subsequently amended with reference to amended sections of the Code.

The nationals of a state owe permanent allegiance to the state or the personal sovereign thereof, as distinguished from the obligation of aliens temporarily residing or sojourning in the territory of the state, sometimes called "temporary allegiance," to obey the laws (*Carlisle v. United States*, 16 Wall. 147). The word "permanent" in this connection means continuous, or of a lasting nature, as distinguished from "temporary," but it does not connote an indissoluble relationship. Thus, the "permanent allegiance" owed to the United States by Philippine citizens may continue until terminated at the end of the 10-year period prescribed in the act of Congress of March 24, 1934. It was permanent allegiance which was referred to by Justice Iredell, in *Talbot v. Jansen*, 1795, 3 Dall. 133, 164, when he said:

By allegiance I mean the tie by which a citizen of the United States is bound as a member of the society.

(b) The term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

The term "national of the United States," as used in the proposed code, is applicable to any person who owes permanent allegiance to the United States, whether or not he is a "citizen of the United States," as that term is used in the Constitution and in various statutes. The corresponding term "nationality" refers to the status of any persons owing permanent allegiance to the United States and is broader in scope than the term "citizenship." All "citizens of the United States" are also "nationals of the United States," but there are nationals who are not citizens of the United States. Reference is made to the inhabitants of the various outlying possessions who owe permanent allegiance to the United States but have not the status of citizens of the United States (Coudert, F. R., Jr., *Our New Peoples, Citizens or Aliens*, 3 Columbia Law Review, 13, 17; Burdick, C. K., *The Law of the American Constitution*, ch. XI, 318-328). This includes citizens of the Philippine Islands, natives of the Panama Canal Zone, and inhabitants of American Samoa and Guam owing permanent allegiance to the United States.

This view was expressed by Judge Parker, umpire in the Mixed Claims Commission, United States and Germany in an opinion of October 31, 1924, in which he said:

The term "American national" means a person wheresoever domiciled owing permanent allegiance to the United States of America, and embraces not only citizens of the United States but Indians and members of other aboriginal tribes or native peoples of the United States and of its territories and possessions (Administrative Decision No. 5, p. 193).

From the standpoint of international law noncitizen nationals have the same status and are entitled to the

same protection abroad as nationals who are citizens of the United States, but their rights within the territory of the United States, under the Constitution and laws thereof, are not the same.

The nature of citizenship in the United States was discussed by Chief Justice Waite in rendering the opinion of the Supreme Court in *Minor v. Happersett*, 1874, 21 Wall. 162, 165. After referring to the provisions in the fourteenth amendment to the Constitution concerning citizens of the United States, he said:

* * * Before its adoption the Constitution of the United States did not in terms prescribe who should be citizens of the United States or of the several States, yet there were necessarily such citizens without such provision. There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.

For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words "subject," "inhabitant," and "citizen" have been used, and the choice between them is sometimes made to depend upon the form of the government. Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more.

The decision just mentioned was rendered before the expansion of the United States by the acquisition of its insular possessions. Since that time it has been necessary, as indicated above, to use a broader term than the word "citizen" to describe persons owing permanent allegiance to the United States, and the word "national" has thus come into use. (With regard to the status of the outlying possessions and their inhabitants, see 3 Moore, *Digest of International Law*, ch. X, Nationality, especially pp. 315-318; Van Dyne, *Citizenship of the United States*, 160-230; Maxson, *Citizenship*, 193-208; *Downes v. Bidwell*, 1900, 182 U. S. 244; *De Lima v. Bidwell*, 1900, 182 U. S. 1; *Gonzales v. Williams*, 1903, 192 U. S. 1; Coudert, F. R., Jr., op. cit.)

The use of the term "national" as meaning any person owing permanent allegiance to the United States does not, as will be seen, involve abandonment of the term "citizen of the United States" where the latter is applicable.

The terms "American citizen" and "American citizenship" have been in common use since the early days of the Republic, although they are not found in the Constitution of the United States. Originally, these terms

were used as the equivalent of the terms "citizen of the United States" and "citizenship of the United States," but since the acquisition of the various outlying possessions having inhabitants who owe permanent allegiance to the United States but are not "citizens of the United States," within the meaning of the Constitution, the terms "American citizen" and "American citizenship" have become ambiguous. When these terms are used, it is not always clear whether they are intended to relate solely to "citizens of the United States" or whether they are intended to relate to all persons having the nationality of the United States. This ambiguity and confusion is illustrated by various provisions of the Citizenship Act of March 2, 1907 (34 Stat. 1229). In sections 2, 3, and 4 of this act the terms "American citizen" and "American citizenship" seem to have reference to American nationals in general, that is, any persons owing permanent allegiance to the United States, but the term "American citizenship" in section 5 seems to relate to "citizenship of the United States" only.

It has been suggested that the term "citizen of the United States" or "American citizen" be applied to all persons who owe permanent allegiance to the United States, although certain classes of these citizens, that is, the inhabitants of certain outlying possessions, would not have the same rights under the Constitution as others, that is, those who are "citizens of the United States" within the meaning of the Constitution (McGovney, D. O., American Citizenship, 11 Columbia Law Review, 231-250, 326-347). It is believed, however, that such terminology would be likely to give rise to misunderstanding and confusion. All things considered, the terminology used in the attached code seems preferable.

(c) The term "naturalization" means the conferring of nationality of a state upon a person after birth.

This definition, while expressly limited to the use of the term "for the purposes of this act," relates to naturalization in foreign states as well as in the United States. Thus it is applicable to the provision of section 401 that an American national shall lose his American nationality by "obtaining naturalization in a foreign state."

"Naturalization," according to the usual acceptance of the term in the United States, undoubtedly means the grant of a new nationality to a natural person after birth. (Cooley, Principles of Constitutional Law, 88; *Osborne v. Bank*, 9 Wheat. 827; 9 Op. Att'y Gen. 359). The term is not ordinarily applied to the conferring of the nationality of a state, *jure sanguinis*, at birth, upon a child born abroad. It has sometimes been contended that the power conferred by section 8 of article I of the Constitution "to establish an uniform Rule of Naturali-

zation" included the power to provide for acquisition of nationality at birth by children born abroad to citizens of the United States, and this contention finds some support in the fact that the first naturalization act of the United States, which was passed by the first Congress, that is, the act of March 26, 1790, entitled "An act to establish an Uniform Rule of Naturalization" (1 Stat. 103), contained a provision that

the children of citizens of the United States that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens:

Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.

It is interesting to note, however, that the statute declares that such children shall be "considered as natural born citizens."

Whether the term "natural born citizen," as used in section 1 of article II of the Constitution, with reference to eligibility to the office of President of the United States, includes persons born abroad to citizens of the United States is still a subject of debate.

From the discussion in the Convention of the Constitutional provision in question it is apparent that the framers of the Constitution were principally concerned with the desirability of making it clear that the acquisition of citizenship of the United States should be governed by a single Federal law and not left to diverse laws of the various States of the Union, the provision in the Articles of Confederation having proved most unsatisfactory. The members seem to have had in mind, primarily at least, the matter of conferring citizenship after birth, through the process of naturalization, upon aliens who should have taken up their abode in the United States, since mention was made of the fact that in some of the States under the Confederation a long period of residence was required before citizenship was granted, while in others it was granted immediately or very shortly after arrival. A uniform rule seemed desirable. (The Papers of James Madison (1840), vol. III, pp. 1274, 1300; The Federalist, A New Edition (1818), No. XLII, pp. 267-268; Story on the Constitution, ch. XVI; Warren, The Making of the Constitution, p. 480. See also Passenger Cases, 7 How. 282, 482). It may be possible to hold, however, that the Convention, when using the expression "an uniform rule of naturalization" contemplated a broader use of the term "naturalization" than that which is now ordinarily applied, and that it intended to cover cases in which citizenship might be conferred by statute at birth upon children born to citizens of the United States in foreign lands. The latter view was expressed in the opinion of Chief Justice Waite in *Minor v. Happersett*, 1874, 88 U. S. 162, 168, and in the opinion of Justice Gray in *U. S. v. Wong Kim Ark*, 1898, 169 U. S. 649, 672, 702-703.

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Even if it is true that the term "naturalization" in section 8 of article I of the Constitution should be construed broadly, it does not follow that in the proposed new act the narrower meaning indicated by the definition under discussion cannot properly be used, especially as this meaning is now universally attributed to the word. Certainly in recent years, at least, persons who were born abroad of citizens of the United States and who acquired citizenship of the United States at birth, under the provision of section 1993 of the Revised Statutes, have never been termed "naturalized citizens." On the other hand, the Naturalization Act of June 29, 1906, is entitled "An act to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States" (34 Stat. 596).

Acquisition of nationality at birth is discussed further on with reference to chapter 2.

It may be noted that, according to the above definition, "naturalization" is not limited to the conferring of nationality upon a person as a result of his application, but includes the derivative naturalization of minors, through the naturalization of their parents, and acquisition of nationality through marriage. It also includes the collective acquisition of the nationality of a state by the inhabitants of territory annexed by a state, at least of those who had the nationality of the predecessor state. (As to collective naturalization, see *Boyd v. Thayer*, 1892, 143 U. S. 135; 3 Moore, Digest of International Law, 311-327; Van Dyne, Naturalization, 266-332; Research in International Law, Harvard Law School, 1929, Title, Nationality.)

(d) The term "United States" when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

limited to this act
It is especially important to bear in mind the fact that this definition is "for the purposes of this act" only. It does not purport to follow existing terminology, under which the term "United States" is applied narrowly to the continental United States and the incorporated Territories of Alaska and Hawaii, or broadly to include all territory over which the United States is sovereign. In bringing the Virgin Islands within the term "United States" for purposes of acquisition of nationality, and for such purposes treating them as if they were incorporated with the continental United States, this code follows the act of March 2, 1917 (39 Stat. 953, 965), and it extends the same advantages to Puerto Rico, where, considering the express provisions of the act of June 27, 1934, it seems clear that the common law rule of acquisition of nationality through the fact of birth within the territory

and jurisdiction of the United States (*jus soli*) does not apply. According to the act mentioned, persons born in Puerto Rico acquire citizenship of the United States at birth only in case they are "not citizens, subjects, or nationals of any foreign power." In the proposed new law this condition is eliminated, and birth in Puerto Rico will have the same effect as birth in the continental United States. *US*

(e) The term "outlying possessions" means all territory, other than as specified in subsection (d), over which the United States exercises rights of sovereignty.

The meaning of this definition, when read with subsection (d), seems clear.

(f) The term "parent" includes in the case of a posthumous child a deceased parent.

(g) The term "minor" means a person under twenty-one years of age.

These definitions seem to require no explanation.

Sec. 102. For the purposes of chapter III of this Act—

(a) The term "State" includes (except as used in subsec. (a) of sec. 301), Alaska, Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands of the United States.

(b) The term "naturalization court", unless otherwise particularly described, means a court authorized by subsection (a) of section 301 to exercise naturalization jurisdiction.

(c) The term "clerk of court" means a clerk of a naturalization court.

(d) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(e) The term "Secretary" means the Secretary of Labor.

(f) The term "Service" means the Immigration and Naturalization Service of the United States Department of Labor.

(g) The term "designated examiner" means an examiner or other officer of the Service designated under section 332 by the Commissioner.

(h) The term "child" includes a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; also a child adopted in the United States, provided such legitimation or adoption takes place before the child reaches the age of sixteen years and the child is in the legal custody of the legitimating or adopting parent or parents.

These definitions also seem to require no explanation.

Sec. 103. For the purposes of subsections (a) and (b) of section 402 of this Act—

The term "foreign state" includes outlying possessions of a foreign state, but does not include self-governing dominions or territory under mandate, which, for the purposes of these subsections, shall be regarded as separate states.

The above quoted statement is, strictly speaking, an explanation rather than a definition. Needless to say, any "state" is a "foreign state" from the standpoint of every other "state." It is hardly necessary to enter into an extended discussion of the term "state" as a concept of political science or of international law. Since international law is that branch of the law which pertains to the relations between the various "states," or international persons, ordinarily spoken of as "sovereign" or "independent," a discussion of the term "state" may be found in any standard work on international law. Fenwick says:

As understood in international law, a state is a permanently organized political society, occupying a fixed territory, and enjoying within the borders of that territory freedom from control by any other state, so that it is able to be a responsible agent before the world (International Law, p. 86).

(For discussions of this term see also Dickinson, *Law of Nations*, ch. II, pp. 76-185; Hall, *International Law*, 8th ed., pt. I, ch. I, pp. 17-49; Hershey, *International Law*, pt. I, ch. VI-VII, pp. 157-198; Hyde, *International Law*, vol. I, pp. 16-22; Oppenheim, *International Law*, ch. I, 4th ed., pp. 133-142.)

The discussions of the term "state" in the works referred to above and in other works on international law necessarily include discussions of "outlying possessions," that is, portions of a state geographically separated from the main body of the state but subject to the control of the central government and included with it in a single sovereign entity.

The words "self-governing dominions" relate in particular to those which compose the British Commonwealth of Nations. It is believed that at the present time there are no other countries which may be termed "self-governing dominions." (For discussions of the status of the self-governing dominions in the British Commonwealth of Nations see Hershey, *International Law*, ed. 1927, pp. 160-164; Hall, *International Law*, 8th ed., pp. 34-35; Oppenheim, *International Law*, 4th ed., vol. I, pp. 193-200.) It may be observed that, in addition to Great Britain and Northern Ireland, the following self-governing dominions of the British Commonwealth of Nations are now members of the League

of Nations: Australia, New Zealand, Canada, the Union of South Africa, and the Irish Free State (1 Oppenheim, op. cit., p. 196). Newfoundland, although not a separate member of the League of Nations, also has the status of a self-governing dominion (1 Oppenheim, op. cit., p. 198). India, although a member of the League of Nations, is not a self-governing dominion, but has a special position as defined by the Government of India Act, 1919 (1 Oppenheim, op. cit., 195).

It may be well to mention the peculiar status of Iceland with reference to Denmark. According to the Treaty of Amalienborg of November 30, 1918, "Denmark and Iceland shall be independent and sovereign states in association through one and the same king, and through the Covenant which is contained in this Treaty of Association. The names of both states shall be used in the title of the King" (Hall, op. cit., p. 26, note 2).

The words "territory under mandate" relate to certain "colonies and territories," referred to in article 22 of the Covenant of the League of Nations, "which, as a consequence of the late war, have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world." Article 22 provides that "the tutelage of such peoples should be entrusted to advanced nations," which "tutelage should be exercised by them as mandatories on behalf of the League." Provision is made for three classes of mandates, the precise character of which should "be explicitly defined in each case by the Council."

The existing mandates are as follows: Palestine and Trans-Jordan (Great Britain); Syria and Lebanon (France); French Cameroons (France); British Cameroons (Great Britain); Tanganyika (Great Britain); Ruanda-Urundi (Belgium); British Togo (Great Britain); French Togo (France); Southwest Africa (Union of South Africa); New Guinea (Australia); Western Samoa (New Zealand); South Sea Islands (Caroline, Marshall, and the Ladrões or Marians) (Japan); Nauru (British Empire). (*Annuaire de la Société des Nations*, 1931, pp. 491-493; Gerig, *The Open Door and the Mandates System*, p. 107.)

With reference to the nationality of inhabitants of mandated territories, attention is called to a resolution of the Council of the League of Nations, dated April 23, 1923, reading as follows:

The Council of the League of Nations.

Having considered the report of the Permanent Mandates Commission on the national status of the inhabitants of territories under B and C mandates,

In accordance with the principles laid down in article 22 of the Covenant:

Resolves as follows:

(1) The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the Manda-

tory Power and cannot be identified therewith by any process having general application.

(2) The native inhabitants of a mandated territory are not invested with the nationality of the Mandatory Power by reason of the protection extended to them.

(3) It is not inconsistent with (1) and (2) above that individual inhabitants of the mandated territory should voluntarily obtain naturalisation from the Mandatory Power in accordance with arrangements which it is open to such Power to make, with this object, under its own law.

(4) It is desirable that native inhabitants who receive the protection of the Mandatory Power should in each case be designated by some form of descriptive title which will specify their status under the mandate. (League of Nations Official Journal, 1923, p. 604; Hudson, Cases on International Law, p. 292.)

(The text of the Covenant of the League of Nations may be found not only in official publications, including Malloy, Treaties, Conventions, etc., vol. 3, p. 3336, but in various works relating to international law and organization, including Hudson, International Legislation, vol. I, p. 1, Fenwick, op. cit., pp. 585-594, and Eagleton, International Government, pp. 613-625. For the text of article 22, see also Hudson, Cases on International Law, p. 56, and Wright, Mandates under the League of Nations, pp. 591-592. For a full discussion of mandates see Wright, op. cit. For brief discussions see the following: Eagleton, op. cit., pp. 452-454; Fenwick, op. cit., pp. 103-104, Hershey, op. cit., pp. 187-191; Hall, op. cit., pp. 158-163; 1 Oppenheim, op. cit., pp. 201-215.)

Sec. 104. For the purposes of sections 201, 402, 404, and 405 of this Act—

The place of general abode shall be deemed the place of residence.

It is practically impossible to formulate a definition of "residence" which is generally applicable. As stated in Corpus Juris, volume 54, pages 705-706, "residence" is "an ambiguous, elastic, flexible, or relative term which, notwithstanding numerous definitions are to be found in the books, is difficult of precise definition, it has no fixed meaning applicable alike to all cases; but instead is used in different and various senses and has a great variety of meanings and significations, because its meaning is variously shaded according to the variant conditions of its application. Also, its meaning often depends upon the subject matter and the connection in which it is used, and the sense in which it should be used is controlled by reference to the object; hence it may be given a restricted or enlarged meaning, considering the connection in which it is used."

Definitions of "residence" frequently include the element of intent as to the future place of abode. However, in section 104 hereof no mention is made of intent and the actual "place of general abode" is the sole factor for determining residence. The words "place of general abode," which are taken from the second paragraph of section 2 of the Citizenship Act of March 2, 1907 (34 Stat. 1228), seem to speak for themselves. They relate to the principal dwelling place of a person.

CHAPTER II. NATIONALITY AT BIRTH

Sec. 201. The following shall be nationals and citizens of the United States at birth:

(a) A person born in the United States, and subject to the jurisdiction thereof;

This subsection is to replace the provision of section 1992 of the Revised Statutes of 1878, taken from an act of April 9, 1866 (14 Stat. 27), and reading as follows:

All persons born in the United States and not subject to any foreign power excluding Indians not taxed, are declared to be citizens of the United States (8 U. S. Code, § 1).

Subsection (a), like the statute which it is to replace, is in effect a statement of the common-law rule, which has been in effect in the United States from the beginning of its existence as a sovereign state, having previously been in effect in the colonies. It accords with the provision in the fourteenth amendment to the Constitution of the United States that "all persons born * * * in the United States and subject to the jurisdiction thereof are citizens of the United States." The meaning of the latter was discussed by Mr. Justice Gray in *United States v. Wong Kim Ark* (1898), 169 U. S. 674, in which it was held that a person born in the United States of Chinese parents was born a citizen of the United States, within the meaning of the fourteenth amendment. According to this opinion, the words "subject to the jurisdiction thereof" had the effect of barring certain classes of persons, including children born in the United States to parents in the diplomatic service of foreign states and persons born in the United States to members of Indian tribes. This case related to a person born to parents who were domiciled in the United States, but, according to the reasoning of the court, which was in agreement with the decision of the Court of Chancery of New York in the year 1844 in *Lynch v. Clarke*, 1 Sandf., chapter 583, the same rule is also applicable to a child born in the United States of parents residing therein temporarily. In other words, it is the fact of birth within the territory and jurisdiction, and not the domicile of the parents, which determines the nationality of the child.

In considering this subsection it is important to note the statement in section 101, subsection (d) of chapter I that, "for the purposes of this act the term 'United States,' when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States." It will be observed that the Code in this provision assimilates to the continental United States, for purposes of

acquisition of nationality, not only the incorporated territories, Alaska and Hawaii, but also Puerto Rico and the Virgin Islands.

It may be well at this point to make special mention of the status of Alaska and Hawaii as incorporated territories of the United States, that is, part and parcel of the United States proper, so that all provisions of the Constitution, including the provisions of the fourteenth amendment concerning citizenship, are now applicable therein.

Article III of the treaty between the United States and Russia, proclaimed June 20, 1867 (2 Malloy, Treaties, Conventions, etc., p. 1521), ceding Alaska to the United States,¹ provides as follows:

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within 3 years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

It will be observed that this provision gives to the inhabitants of the ceded territory, other than the uncivilized native tribes, the privilege of reserving their Russian allegiance and returning to Russia within 3 years, otherwise they "shall be admitted to the enjoyment of all rights, advantages, and immunities of citizens of the United States." In the case of *Rasmussen v. United States* (197 U. S. 516), the Supreme Court of the United States held that, under the treaty, impliedly observed by Congress in certain statutes, beginning with the Internal Revenue Act of July 20, 1868, Alaska was incorporated into the United States, so that the Constitution of the United States became fully applicable. It seems to follow that the provision of article 14 of the amendments that "all persons born * * * in the United States, and subject to the jurisdiction thereof are citizens of the United States" is applicable to the cases of persons born of alien parents in Alaska since its annexation. It would seem that members of the uncivilized tribes in Alaska became American nationals, but not citizens of the United States, upon the annexation. (As to the status of such persons, see also comment on subsection (b) of section 201, *infra*, p. 8).

¹ For the history of the annexation of Alaska, see Farrar, V. J., *The Purchase of Alaska*.

The status of persons born in Hawaii may now be considered. By virtue of a joint resolution of Congress approved July 7, 1898 (30 Stat. L. 750), relating to the acceptance of the offered cession of the Hawaiian Islands and their incorporation into the Union, the sovereignty of the Hawaiian Islands was formally transferred to the United States on August 12, 1898. On April 30, 1900, Congress enacted a law (31 Stat. 141) relating to the political status of persons who were citizens of the Republic of Hawaii on August 12, 1898. Section 4 of the act just mentioned reads in part, as follows:

That all persons who were citizens of the Republic of Hawaii on August twelfth, Eighteen hundred Ninety-Eight are hereby declared to be citizens of the United States and citizens of the territory of Hawaii.

In section 5 of the act of April 30, 1900, it is provided that the Constitution of the United States shall have the same force and effect within the Territory of Hawaii as elsewhere in the United States.

In view of the provisions of law last mentioned it is clear that persons born or naturalized in the Territory of Hawaii after its effective date are citizens of the United States under the fourteenth amendment to the Constitution. Under section 104 of this act it went into effect 45 days after its approval.

The Department of State has held that a person born in the Hawaiian Islands of alien parents after the sovereignty of such Islands was transferred to the United States on August 12, 1898, and before the enactment of the act of April 30, 1900, declaring the Constitution of the United States to be in full effect in Hawaii, is a citizen of the United States. In an opinion of January 16, 1901, 23 Op. Att'y Gen. 345), Attorney General Griggs held that a person who had been born in Hawaii of Chinese parents before August 12, 1898, and who had acquired Hawaiian nationality at birth, under the Constitution of Hawaii, was a citizen of the United States.

(b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

The status, under the Constitution and laws of the United States, of members of Indian tribes in this country, prior to the passage of the several acts of Congress giving them citizenship of the United States, was discussed at length by Mr. Justice Gray, rendering the opinion of the Supreme Court of the United States on March 3, 1884, in *Ellis v. Wilkins* (112 U. S. 94), in which it was held that a person born in the United States to members of an Indian tribe had not acquired citizenship of the United States at birth, not having

been born "subject to the jurisdiction thereof," within the meaning of the fourteenth amendment, and had not acquired citizenship through the mere fact of separating himself from his tribe and taking up his abode with white persons in this country. Since that decision was rendered, members of Indian tribes in the United States have been made citizens thereof through special statutory provisions, including the act of Congress of February 8, 1887 (24 Stat. 388); the act of March 3, 1901 (31 Stat. 1447); the act of May 8, 1906 (34 Stat. pt. I, 182), amending the act of February 8, 1887; the act of November 6, 1919 (41 Stat. 350), and the act of June 2, 1924 (43 Stat. 253, 8 U. S. Code, § 3).

The act of June 2, 1924 (*supra*) provides as follows:

All noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

The provision just quoted does not purport to change the tribal relationship of Indians in the United States, and from its phraseology it is not clear that it is applicable to Indians born after its passage. According to an opinion of the Solicitor for the Interior Department, dated February 24, 1932, a copy of which accompanied a letter of August 27, 1932, to the Department of State, Alaskan Indians, including Eskimaus and Aleuts, were made citizens of the United States by this statutory provision. (For a discussion of the status of members of aboriginal tribes in Alaska, see also the opinion of Judge Wickersham, *In re Minook*, 1904, 2 Alaska Rep. 200.)

While the act of June 2, 1924 (*supra*), might appear from its phraseology to be limited in its application to "noncitizen Indians born within the territorial limits of the United States," who were living on the effective date of the act and who by it were made "citizens of the United States," it has been construed to mean that children subsequently born to Indians within the territorial limits of the United States, whether or not their parents are living in tribes, acquire at birth the status of "citizens of the United States." Subsection (b) of section 201 is intended to make it clear that such persons are born citizens of the United States.

(c) A person born outside the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

This provision is designed to replace the provision of section 1 of the act of Congress of May 24, 1934, which amended section 1993 of the Revised Statutes.

Section 1993 of the Revised Statutes, in its original form, based upon an act of February 10, 1855, 10 Stat. 604, reads as follows:

SEC. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

In an instruction of June 28, 1873, to Mr. Washburne, Minister to France (For. Rel. 1873, I, 256; 3 Moore, Digest of International Law 282) Secretary of State Fish expressed the view that "the Congress did not contemplate the conferring of the full rights of citizenship upon the subject of a foreign nation who had not come within our territory, so as to interfere with the just rights of such nation to the government and control of its own subject." However, it is evident that the power of the Government of the United States to extend diplomatic protection to persons born of American parents in countries, the nationality of which they also acquired at birth (*jure soli*), and continuing to reside in such foreign countries, was confused with the question of American nationality itself. Mr. Fish concluded by saying that "it does not necessarily follow from this that the children of American parents born abroad may not have the rights of inheritance, and of succession to estates, although they may not reside within or ever come within the jurisdiction of the United States," thus admitting that they acquire at birth citizenship of the United States, whether or not they may be granted full protection by this Government while they remain in the other countries of which they are nationals. (As to this point, see Van Dyne, Citizenship of the United States, pp. 45-46; Opinion of Attorney General Hoar, June 12, 1869, 13 Op. Att'y Gen. 89.) It may be added that section 6 of the act of Congress of March 2, 1907 (34 Stat. 1228), assumes that such children acquire at birth the legal status of citizens of the United States.

Section 1 of the act of May 24, 1934, reads as follows:

That section 1993 of the Revised Statutes is amended to read as follows:

"SEC. 1993. Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization."

The principal object in revising section 1993 of the Revised Statutes was to remove the discrimination

against women contained in it and to place American fathers and mothers upon an equal plane with regard to the transmission of citizenship to children born abroad. However, Congress seems to have realized that in extending the principle of *jus sanguinis* to cover cases of children born abroad to American women who had married aliens subsequent to the passage of the Cable Act of September 22, 1922 (42 Stat. 1021), or who should marry aliens after the effective date of the act in question, it would be necessary to insert limitations which do not appear in section 1993 of the Revised Statutes in its original form, that is, the requirements that the children must come to the United States and reside in this country continuously for 5 years before reaching the age of 18 and must within 6 months after attaining majority take the oath of allegiance to the United States.

The language of section 1 of the act of May 24, 1934, required construction. Taken literally, it might be construed to mean that the conditions just mentioned, relating to children born abroad to parents of whom one is a citizen and the other an alien, are conditions precedent to the acquisition of nationality. However, the Attorney General, in an opinion of July 21, 1934, held that these conditions are conditions subsequent and that the acquisition of citizenship of the United States does not depend upon the fulfillment of the conditions but is acquired at birth, subject to loss upon failure of the person concerned to fulfill the conditions. It will be observed that his conclusion was based principally upon the fact that under the preexisting law, section 1993 of the Revised Statutes, citizenship was conferred at birth upon children born abroad of American fathers. He appears to have felt that it was the intent of Congress in this respect to confer upon women the same privilege which had formerly been enjoyed by men rather than to deprive men of such privilege for the purpose of placing them on a par with women. However, as shown above, Congress found it necessary to add certain limitations in cases of children born abroad of one citizen and one alien parent, which did not appear in the old law.

Under these provisions, a child born abroad to an American father and an alien mother or an American mother and an alien father, although such child acquires citizenship of the United States at birth, must, in order to retain such citizenship, come to the United States before reaching the age of 13 years in order to fulfill the first of the two conditions mentioned. This means that a child still of tender years must be separated from his parents or else that his parents, or one of them, must accompany the child to the United States and reside here with him. Thus the provision in question is not only complicated but the advantages which might seem to be conferred by it are materially curtailed by the conditions mentioned.

In a case in which the citizen parent is not residing abroad to represent American interests of any kind, and especially when he or she is residing in the country of which the alien spouse is a national, there would seem to be no very strong arguments for conferring citizenship of the United States at birth upon a foreign-born child. In a case in which the citizen parent is sent abroad and continues to reside abroad to represent the Government of the United States or commercial or other interests of the United States, he might reasonably consider it a hardship that his child born abroad under these circumstances should be regarded as an alien and required to comply with the immigration laws of the United States when he comes to this country, even though such hardship would be mitigated somewhat by the fact that a citizen parent who is married to an alien and who has a child born to him in a foreign country may, if he brings such child to the United States to reside, have such child naturalized upon making the petition provided for in section 314 of the Code.

The problem of acquisition of citizenship *jure sanguinis* has been a subject of considerable discussion in recent years. On the one hand it has been contended, as indicated above, that section 1993 should merely be expanded, so as to confer citizenship *jure sanguinis* upon children of American mothers equally with children of American fathers. On the other hand it has been contended that the principle of *jus sanguinis* should be removed completely from the law of the United States, so that citizenship would be acquired at birth only in cases of children born within the territory and jurisdiction of the United States. (In support of *jus soli* as an international rule for the determination of nationality, see Scott, J. B., *Nationality, Jus Soli or Jus Sanguinis*, 24 *American Journal of International Law* (1930), p. 58.) In this connection it has even been contended that any law purporting to confer citizenship at birth upon a child born outside of the United States would be unconstitutional. However, statutes embodying this principle have been in effect in the United States many years.² It may be recalled that the first statute on the subject, the act of March 26, 1790 (1 Stat. 103), was passed by the First Congress, and the lack during a period of some years of a statute having the effect of conferring citizenship upon children born abroad to American parents was due to an error in legislative drafting (Binney, H., *Alienigenae of the United States*; Van Dyne, *Citizenship of the United States*, p. 33). It has evidently been the will of the people of the United States that, with certain

limitations, children born abroad of American parents should acquire American nationality at birth, and there is nothing to indicate a change of opinion on this subject. On the contrary, the ever-increasing importance of facilitating, rather than hindering, commerce with foreign states furnishes a very practical argument in favor of retaining in the law of the United States the rule of citizenship by descent, with such limitations as may seem necessary or desirable. The constitutionality of a statute containing such a rule can hardly be questioned at this late day, considering the fact that such laws have been on the statute books of the United States for so many years, and not only applied in numberless cases by the executive branch of the Government (3 Moore, *International Law*, 282-289) but also frequently considered and construed by the courts, both Federal and State, without their constitutionality being questioned (*Ludlam v. Ludlam*, 1863, 26 N. Y. 356, 84 Am. Dec. 193; *Ware v. Wisner*, 1883, 50 Fed. 310, *Weedin v. Chin Bow*, 274 U. S. 657).

The constitutional authority for passing laws embodying the rule of *jus sanguinis* has been attributed in certain opinions of the Supreme Court to the power conferred upon Congress by section 8 of article I of the Constitution to "prescribe a uniform rule of naturalization" (*Minor v. Happersett*, 1874, 88 U. S. 162, 168; *United States v. Wong Kim Ark*, 1898, 169 U. S. 649, 672, 702-703), but whether the authority is properly attributable to this express provision or is to be implied from other provisions referring to "citizens of the United States," it does not seem likely that the constitutionality of such a law would now even be seriously raised in the courts. There would seem to be a presumption in favor of the constitutionality of laws which have had such a history (*Downes v. Bidwell*, 1900, 182 U. S. 244, 286; 12 *Corpus Juris*, p. 798, and cases cited. See also Willoughby on the Constitution, 2d ed., vol. I, pp. 49-51, and Black on Interpretation of the Laws, 2d ed., pp. 300-306). It may be added that Attorney General Cummings, in his opinion of July 21, 1934, construing section 1 of the act of May 24, 1934, did not raise or suggest any question as to its constitutionality. It is interesting to note that it was not until the year 1866 that Congress adopted a statutory rule for the acquisition of citizenship *jure soli* in cases of children born in the United States, reliance having been placed theretofore upon the common-law rule. It may be noted that this statute was passed 2 years before the adoption of the fourteenth article to the Amendments of the Constitution in which it was provided that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The committee, while fully intending that its proposal should carry out the principle of equality be-

² In *Ludlam v. Ludlam*, decided by the Court of Appeals of New York in 1863, 26 N. Y. 356, 84 Am. Dec. 193, it was held that the rule of nationality by descent (*jus sanguinis*) was a part of the common law, of which the first British statute on the subject, 25 Edw. III C. 2, was merely declaratory, and in support of this theory high British authorities were cited, but this view was questioned by Lord Cockburn in his book on Nationality (1869), ch. I. See also *Lynch v. Clarke* (1884, N. Y. Ch.), 1 Sandford 583.

tween men and women in the matter of nationality, does not recommend the adoption of either of the extreme proposals above-mentioned. In normal times, with increased facilities of transportation, the numbers of persons sojourning or residing temporarily in states of which they are not nationals is likely to increase. Even now there are large numbers of Americans who reside abroad, not merely for pleasure or because they have a preference for life in foreign countries, but because they are engaged in promoting American interests, commercial or other. In the great majority of these cases husband and wife are both citizens of the United States. In such cases it is altogether likely that the children will be taught to speak the English language from infancy and will be so brought up that they will be truly American in character. This is likely to be the case where both parents are citizens of the United States even though neither one resides abroad for the purpose of promoting American interests. It seems reasonable and expedient that citizenship should in all such cases be conferred upon the children at birth, without any condition except that one of the two citizen parents must have resided in the United States prior to the child's birth. The latter condition is similar to that which appeared in the old law, and it has never met with serious objection, since it is so patently reasonable. Its retention in subsection (c) hereof seems quite desirable, since it would not be a wise policy to extend citizenship indefinitely to generations of persons born and residing in foreign countries. The case of a child born abroad to parents of whom only one is a citizen of the United States, the other being an alien, presents greater difficulties and requires correspondingly stricter limitations. Cases of this kind are therefore covered by a separate provision (see subsection (g) hereof).

(d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

The meaning of this subsection is apparent. It seemed to the committee reasonable to confer the higher status, citizenship of the United States, and not mere nationality, without citizenship, of the United States, upon children born under conditions specified in this subsection.

It may be well to note that, under the above provision, a child who is born abroad of parents one of whom is a citizen of the United States but has not resided in the United States or in one of its outlying possessions and the other of whom is a national who has resided in the United States or in one of its out-

lying possessions, would not acquire citizenship of the United States at birth.

(e) A person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person;

It will be observed that this provision is not based solely upon either *jus soli* or *jus sanguinis*, but contains elements of both. While, as indicated above, it does not seem desirable to confer citizenship of the United States at birth upon a child born outside of the United States and its outlying possessions if only one parent is a citizen of the United States and the other is an alien, unless this is made subject to strict limitations, the case is materially different when the child is born in outlying territory of the United States. It seems reasonable in such cases to confer upon the child at birth the status of a "citizen of the United States" if the citizen parent has previously resided in the United States or one of its outlying possessions.

With reference to this provision and the provision of section 203 (a) hereof, it seems desirable to discuss the question of the effect under existing law of the fact of birth in the outlying unincorporated territories of the United States, that is, the question whether the common law rule, as confirmed by the fourteenth amendment to the Constitution with regard to the effect of birth within the United States proper, is applicable also to cases of birth in the unincorporated territories. This very important question was presented to the Department of State in a letter of December 22, 1911, from the War Department, transmitting passport applications of Louis Lee Hing, José Lee Hing, and Cun Yuen, who were born in the Philippine Islands of Chinese parents August 30, 1906, March 8, 1908, and September 30, 1909, respectively. It was necessary to determine whether these children had acquired the nationality of the United States through the fact of birth in the Philippine Islands, and were thus entitled to passports of this Government. Because of the unusual importance of the subject, the question was studied with particular care with reference to the decisions of the Supreme Court of the United States concerning the status of the outlying possessions. In a memorandum of February 9, 1912, submitting the question to the Solicitor for the Department of State, it was deemed pertinent to call special attention to the opinion of the Supreme Court in the case of *Downes v. Bidwell* (1900, 182 U. S., 244), in which it is held that Porto Rico was not an incorporated territory of the United States, and was not a part of the United States within that provision of the Constitution which declares that "all duties, imposts, and excises shall be uniform throughout the United States." Particular attention

was called to the following passages in the opinion of Mr. Justice Brown:

Upon the other hand, the fourteenth amendment, upon the subject of citizenship, declares only that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." Here there is a limitation to persons born or naturalized in the United States which is not extended to persons born in any place "subject to their jurisdiction" * * * (p. 251).

We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their status shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges, and immunities of citizens. If such be their status, the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions, and modes of life, shall become at once citizens of the United States. In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible * * * to the enjoyment of all the rights, advantages and immunities of citizens of the United States"; in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time (to be judged of by the Congress of the United States), to the enjoyment of all the rights of citizens of the United States"; in the case of Alaska, that the inhabitants who remained 3 years, "with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights," etc.; and in the case of Porto Rico and the Philippines, "that the civil rights and political status of the native inhabitants * * * shall be determined by Congress." In all these cases there is an implied denial of the right of the inhabitants to American citizenship until Congress by further action shall signify its assent thereto * * * (pp. 279-280).

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws, and customs of the people, and from differences of soil, climate, and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race or by scattered bodies of native Indians.

We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed "artificial" or "remedial" rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinion and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law, and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage, *Minor v. Happersett*, 21 Wall. 162, and to the particular methods of procedure pointed out in the Constitution,

which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals * * * (pp. 282-283).

We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker Act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff cannot recover back the duties exacted in this case (p. 287).

Attention was also called to the following passage in the opinion of Mr. Justice Day in *Dorr v. United States* (1903, 195 U. S. 143), in which it was held that the Philippine Islands had never been incorporated into the United States proper, so that a person accused of crime in the Philippine Islands would not have a right to demand a trial by jury under the provision of article III, section 2, of the Constitution:

If the treaty-making power could incorporate territory into the United States without Congressional action, it is apparent that the treaty with Spain, ceding the Philippines to the United States, carefully refrained from so doing; for it is expressly provided that (art. IX) "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." In this language it is clear that it was the intention of the framers of the treaty to reserve to Congress, so far as it could be constitutionally done, a free hand in dealing with these newly acquired possessions.

The legislation upon the subject shows that not only has Congress hitherto refrained from incorporating the Philippines into the United States but in the act of 1902, providing for temporary civil government, 32 Stat. 691, there is express provision that section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands. This is the section giving force and effect to the Constitution and laws of the United States, not locally inapplicable, within all the organized territories, and every territory thereafter organized, as elsewhere within the United States.

In the submission of the above question to the Solicitor, it was observed that, while the statements in the opinions just mentioned might be regarded as dicta, insofar as they related to citizenship, they were entitled to more weight than ordinary dicta, because of the fact that the conclusion of the court that Puerto Rico and the Philippines had not been incorporated into the United States was based largely upon the fact that the great body of the inhabitants of these islands had not been admitted to citizenship of the United States.

In a memorandum of April 3, 1912, prepared by Mr. Frederick Van Dyne, Assistant Solicitor and author of two outstanding books on citizenship, and approved by the Solicitor, Mr. J. R. Clark, it was held that the children in question were neither citizens of the United States nor citizens of the Philippine Islands owing allegiance to the United States and therefore could not be furnished with passports of this Government. This opinion reads as follows:

First, as the Philippine Islands have not been incorporated in the United States, and the provisions of the Constitution

and laws of the United States in regard to citizenship have not been extended to the Philippines, the applicants are not citizens of the United States, and passports cannot be issued to them as citizens.

Second, the applicants are not citizens of the Philippine Islands within the meaning of the act of July 1, 1902, and, of course, are not entitled to passports or to the protection of the United States, as such.

Section 4 of the act of 1902 has been amended by the act of March 23, 1912, by the addition of a proviso which authorizes the Philippine Legislature "to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions (sec. 4, act of July 1, 1902), the natives of other insular possessions of the United States, and such other persons residing in the Philippine Islands who could become citizens of the United States under the laws of the United States if residing therein."

It is true that the Supreme Court of the Philippine Islands seems to have held in two cases (*Haw v. Collector of Customs*, 1934, No. 40895, Official Gazette, vol. 32, No. 68, p. 1310, and *Go Julian v. Government of the Philippine Islands*, 45 Phil. 289) that birth in the Philippine Islands since the date of their annexation to the United States conferred Philippine citizenship. The reasoning of the decisions, however, is hard to follow, especially in view of the fact that the Court seems to have relied largely upon certain previous decisions (*United States v. Go Siaco*, 12 Phil. 490; *Munoz v. Collector of Customs*, 20 Phil. 495; *United States v. Lim Bim*, 36 Phil. 924; and *United States v. Ong Tiansse*, 29 Phil. 332), all of which related to persons who were born in the Philippine Islands before their annexation. It is obvious that the cases last mentioned could have no bearing upon the problem. Moreover, certain passages in the decisions concerning the two cases mentioned of persons born in the Islands subsequent to their annexation by the United States contained statements indicating a confusion of American law with the Spanish law concerning nationality which was in effect prior to the transfer of the sovereignty of the Islands. Particular reference is made to the statement of Mr. Justice Villamor in *Go Julian v. Government of the Philippine Islands* (*supra*, p. 291) that "the petitioner by reason of having been born in the Philippines had at least a latent right to Philippine citizenship." Apparently he had in mind the provisions of articles 17-19 of the Spanish civil code, which was in effect in the Philippines while the Islands were under Spanish dominion. Those provisions could hardly govern the citizenship of persons subsequently born in the Islands.

Attention may also be called to the following passage in the opinion of Chief Justice Taft in *Balzac v. Porto Rico* (1921, 258 U. S. 298, 306), in which it was held that the provision in the sixth amendment to the Constitution concerning trial by jury was not applicable to Porto Rico:

Had Congress intended to take the important step of changing the treaty status of Porto Rico by incorporating it into the

Union, it is reasonable to suppose that it would have done so by the plain declaration and would not have left it to mere inference. Before the question became acute at the close of the Spanish War the distinction between acquisition and incorporation was not regarded as important, or at least it was not fully understood and had not aroused great controversy. Before that the purpose of Congress might well be a matter of mere inference from various legislative acts; but in these latter days incorporation is not to be assumed without express declaration or an implication so strong as to exclude any other view.

It may be added that in its legislation Congress seems to have assumed that nationality of the United States was not acquired through the mere fact of birth in the outlying, unincorporated territories, although nationality, with or without citizenship of the United States, may be conferred in such cases by special legislation. Thus, in an act of June 27, 1934 (48 U. S. Stat. at L., pt. 1, p. 1245), Congress amended the act of March 2, 1917, "An act to provide a civil Government for Puerto Rico, and for other purposes," by adding a provision reading in part as follows:

Sec. 5b. All persons born in Puerto Rico on or after April 11, 1899 (whether before or after the effective date of this act), and not citizens, subjects, or nationals of any foreign power, are hereby declared to be citizens of the United States.

It will be observed that the above provision does not include persons born in Puerto Rico, subsequent to its annexation, of alien parents, if such persons acquired at birth the nationality of their parents under the laws of the countries of which their parents are nationals.

(f) A child of unknown parentage found in the United States, until shown not to have been born in the United States;

According to this provision a foundling who is first discovered in the United States is, in effect, presumed to have been born therein. But, if proof is produced that such a child was born outside the United States, his title to citizenship of the United States *jure soli* is lost. Provisions similar to this are found in the nationality laws of various foreign states (Flournoy and Hudson, Nationality Laws, Analytical Index, p. 740). Such provisions seem humane and reasonable, and little argument in their support appears necessary.

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has had ten years' residence in the United States or one of its outlying possessions, the other being an alien: Provided, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years, and must within six months after his twenty-first birthday take an oath of allegiance to the United States: Provided further, That, if the child has

not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally to represent the Government of the United States or a bona fide American educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation.

This subsection is based upon section 1993 of the Revised Statutes, as amended by section 1 of the act of May 24, 1934 (48 Stat. pt. 1, 797). However, it embodies a modification of the provision last mentioned to make it better adapted to existing situations. On the one hand, it does not seem reasonable to confer citizenship at birth upon a foreign-born child having only one citizen parent unless the latter has resided in the United States before the child's birth at least 10 years. A foreign-born child whose citizen parent has not resided in this country as much as 10 years altogether is likely to be more alien than American in character. On the other hand, it seems desirable that the requirements in the first proviso to the effect that the foreign-born child, in order to retain citizenship, must reside in the United States 5 years between the ages of 13 and 21 years and take an oath of allegiance to the United States within 6 months after his twenty-first birthday should not be applied to one whose citizen parent resides abroad to represent the Government of the United States, an American organization belonging to one of the categories specified in the second proviso, or an international agency of an official character in which the United States participates. In general, citizens of the United States residing abroad for the purposes just mentioned not only promote the interests of this country but are likely to retain their American sympathies and character. Therefore, such persons are likely, as a rule, to bring up their children as Americans, to see that they speak the English language, and to have them imbued with American ideals. The probabilities, however, would seem to be otherwise where the citizen parent who is married to an alien resides abroad for reasons having no connection with the promotion of American interests.

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934.

This subsection does not require extensive comment. As 13 years have not yet elapsed since the passage of the act of May 24, 1934, the requirements contained therein for retention of citizenship have not yet gone into effect, and they will not become effective until May 24, 1947. Such provisions are to be supplanted by the corresponding provisions in subsection (g).

Sec. 202. All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this Act in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States.

This section is designed to do what is believed to have been intended by those who sponsored the bill which became the existing law concerning nationality in Puerto Rico, that is, the act of Congress of June 27, 1934. The latter does not apply the *jus soli* to persons born in Puerto Rico, since it expressly excepts children born in the island of parents who are citizens or subjects of a foreign state. The proposed new provision will remedy this. In other words, this section will in effect apply the rule of *jus soli* to Puerto Rico as of the date of its annexation to the United States, treating Puerto Rico for such purpose as an incorporated territory of the United States. It places Puerto Rico on a par with the Virgin Islands with regard to the effect of birth therein since its annexation to the United States.

Sec. 203. Unless otherwise provided in section 201, the following shall be nationals, but not citizens, of the United States at birth:

(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;

It should be borne in mind that the proposed code is prospective and is not intended as declaratory of the status of persons born before its effective date. It may be well at this point, however, to consider briefly the existing laws relating to nationality in the outlying possessions, and in this connection attention is called to the annexed collection of the treaties to which the United States is a party and statutes of the United States governing nationality of the United States at the present time (appendix No. 3).

As to the Philippine Islands, Puerto Rico, and the Virgin Islands, it will be observed that there are treaty

and statutory provisions governing the nationality of certain inhabitants thereof.

As to Guam, the nationality of its inhabitants is subject to the provision of article IX of the treaty of December 10, 1898, between the United States and Spain, but Congress has not yet defined "the civil rights and political status of the native inhabitants" of Guam as it did in the cases of the inhabitants of the Philippine Islands and Puerto Rico.

There are neither treaty nor statutory provisions governing the nationality of the inhabitants of American Samoa; that is, "the Island of Tutuila and all other islands of the Samoan group east of longitude 171° west of Greenwich"; although in article II of the treaty signed December 2, 1899, between the United States, Germany, and Great Britain, the latter powers renounced in favor of the United States all their rights over these islands (2 Malloy, *Treaties, Conventions, etc.*, p. 1596; 1 Moore, *International Law*, p. 52-54). Mention may also be made of the joint resolution of Congress, approved February 20, 1929 (45 Stat. 1253), accepting, ratifying, and confirming the agreement of "certain chiefs of the islands of Tutuila and Manua and certain other islands of the Samoan group," which are described, "to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over these islands of the Samoan group by their acts dated April 10, 1900, and July 16, 1904."

The "joint resolution extending the sovereignty of the United States over Swain's Island and making the island a part of American Samoa," dated March 4, 1895, is further proof that the Samoan Islands referred to are completely under the sovereignty of the United States.

Again, there are neither treaty nor statutory provisions defining the status of the inhabitants of the Panama Canal Zone. The convention between the United States and Panama signed November 18, 1903, by which "the Republic of Panama grants to the United States in perpetuity" its rights in the Canal Zone (2 Malloy, *op. cit.*, 1349), does not define the nationality status of inhabitants thereof. However, the treaty provision just mentioned is deemed to have transferred the sovereignty over the Canal Zone to the United States. In *Wilson v. Shaw* (204 U. S. 24), Mr. Justice Brewer said:

It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to the Nation, because of the omission of some of the technical terms used in conveyances of real estate (p. 33).

Attention is also called to the opinion of Attorney General Bonaparte of September 7, 1907 (26 Op. Atty. Gen., 376), holding that one Henrique S. Ruata, a native of the Canal Zone, who was a citizen of Panama and a resident of the Canal Zone at the time of its

transfer to the United States, thereafter owed allegiance to the United States. The Attorney General based this opinion upon the rule of international law concerning the transfer of the nationality of inhabitants of territory ceded by one sovereign state to another, and cited as authority Hall's *International Law*, fourth edition, page 594. His opinion concluded as follows:

In my opinion, therefore, the United States has acquired the right to the allegiance of Mr. Ruata, and he has acquired the corresponding right to be protected by them and to the means of obtaining their protection, including passports (p. 378).

It may be added that the Panama Canal Zone is treated as an "organized territory of the United States insofar as the interstate rendition of criminals is concerned (act of August 24, 1912, ch. 390, § 12, 37 Stat. 569, U. S. C., title 48, 1330). The entry of aliens into the Canal Zone is governed by Executive Order No. 4314 of September 25, 1925, issued under authority of section 10, act of August 21, 1916 (39 Stat. 529).

In determining the status of the inhabitants of outlying possessions of the United States in cases in which it is not defined by treaty or statutory provisions, the Department of State has been obliged to resort to the rule of international law referred to in the opinion of Attorney General Bonaparte just mentioned. Moreover, the Department has assumed that children born in such outlying possessions to parents who became American nationals through the annexation, themselves acquired at birth American nationality, but not citizenship of the United States.

With reference to the collective naturalization of the inhabitants of annexed territory who previously had the nationality of the predecessor state, see *American Insurance Company v. Canter*, 1828, 1 Pet. 511, 542; *Shanks v. Dupont*, 1830, 3 Pet. 242; *McIlwaine v. Cowe's Lessee*, 1808, 4 Cr. 209; *Minor v. Happersett*, 1874, 21 Wall. 162; *Boyd v. Thayer*, 1892, 143 U. S. 135; *Mason v. Mexico*, 3 Moore, *International Arbitrations*, pp. 2542-2543; Halleck, *International Law*, 1st ed., p. 816; Wheaton, *International Law*, Dana's Note No. 169; Westlake, *International Law*, I, p. 71; Fauchille, *Traité de Droit International Public*, I, p. 856; 3 Moore, *Digest of International Law*, pp. 311-327; Van Dyne, *Naturalization*, pp. 266-332; Opinion of Attorney General Griggs, January 16, 1901, 23 Op. Atty. Gen. 345. See also *Research in International Law*, Harvard Law School, 1929, *Codification of International Law, Nationality*, pp. 60-69.

The Department of State has held in a number of cases of persons desiring recognition as American nationals that a person born in the Canal Zone of alien parents subsequent to the treaty with Panama, did not acquire the status of an American national.

It has therefore been the practice of the Department of State to issue passports to persons who were citizens of the Republic of Panama and residents of the Canal Zone on the date of the treaty between the United States and that Republic, but not to issue passports to persons born in the Zone of alien parents subsequent to the date of the treaty. Thus, the Department of State, in connection with the case of one Adeline Eugenie Sewell (instruction of March 17, 1927, to consul at Kingston, Jamaica) expressed the opinion that a person who was born in the Canal Zone of British parents January 29, 1911, that is, after the date of the treaty, was not entitled to a passport as an American national. The Department, without denying that the United States is sovereign in the Canal Zone, did not regard the provision of the fourteenth article of the amendments to the Constitution as applicable to the cases of persons born in the Zone of alien parents after its acquisition by the United States.

While, as indicated above, the principle of *jus soli* does not obtain in the outlying possessions of the United States, and while it does not seem expedient to change the law in such a way as to make it applicable therein, it does seem desirable to adopt the provision found in subsection (a) quoted above. In most of the cases to which this provision would be applicable, the parent who is a national of the United States would also be a native of the outlying possession in which the child is born, and the family would have a residence of a permanent character therein. Some cases might possibly arise in which the parent who is a national, but not a citizen, of the United States would not be a native of the particular possession in which the child was born. However, such cases would be probably quite rare, and there seems to be no practical reason why the provision of subsection (a) should not be applicable to them.

It may be well to note that, under the above provision, a child who is born abroad of parents one of whom is a citizen of the United States but has not resided in the United States or in one of its outlying possessions and the other of whom is a national who has resided in the United States or in one of its outlying possessions, would not acquire citizenship of the United States at birth.

With reference to the above discussion, it is important to note that the Department of State has heretofore held that children born in the outlying possessions of the United States whose fathers were citizens of the United States and had previously resided in the continental United States or one of the incorporated territories thereof, acquired citizenship of the United States at birth, *jure sanguinis*, under the provision of section 1993 of the Revised Statutes. In reaching this conclusion the Department of State bore in mind the fact that, when the phraseology of section 1993 of the Re-

vised Statutes was adopted the various unincorporated outlying possessions had not been acquired, and the words "born out of the limits and jurisdiction of the United States" applied to children born anywhere outside of the United States proper. In other words, the provision of section 1993 of the Revised Statutes was regarded as supplementary to the common-law rule, confirmed by the fourteenth amendment to the Constitution, under which citizenship of the United States was acquired through the fact of birth in the United States itself, and subject to its jurisdiction. It was believed that the words "and jurisdiction" in section 1993 of the Revised Statutes related only to jurisdiction exercised by the United States within the continental United States and the incorporated territories. According to the opinion of Mr. Justice Gray in *United States v. Wong Kim Ark* (*supra*), the words in the fourteenth amendment to the Constitution, "and subject to the jurisdiction thereof," were meant to except "children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes" (p. 693).

The view expressed above as to the scope and relationship of the provisions of the fourteenth amendment to the Constitution and section 1993 of the Revised Statutes, and the application of the latter to persons born in the unincorporated territories of American fathers finds support in the following passage in the opinion of Mr. Justice Gray in *United States v. Wong Kim Ark* (*supra*):

The words "in the United States, and subject to the jurisdiction thereof," in the first sentence of the fourteenth amendment of the Constitution, must be presumed to have been understood and intended by the Congress which proposed the amendment, and by the legislatures which adopted it, in the same sense in which the like words have been used by Chief Justice Marshall in the well known case of *The Exchange*; and as the equivalent of the words "within the limits and under the jurisdiction of the United States," and the converse of the words, "out of the limits and jurisdiction of the United States," as habitually used in the naturalization acts. This presumption is confirmed by the use of the word "jurisdiction" in the last clause of the same section of the fourteenth amendment, which forbids any State to "deny to any person within its jurisdiction the equal protection of the laws" (p. 687).

(b) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person;

This subsection seems to require little explanation. It is intended to supply a deficiency which, as indicated above, exists in the laws now in effect. It may

be observed that section 4 of the act of July 1, 1902 (32 Stat. 692), which provided that "all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th of April 1899, and then resided in said islands" should "be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States," except such as should have elected to retain their former nationality, also included "their children born subsequent thereto." The statute does not provide that, in order to acquire nationality of the United States, such children must be born in the Philippine Islands or other territory belonging to the United States. Perhaps it is applicable to children born in foreign countries to parents who acquired nationality of the United States under the statute. Whether the words "their children born subsequent thereto" are applicable to the second generation of children born abroad, that is, to grandchildren of those inhabitants of the Philippine Islands who were collectively naturalized under the provision of the act of July 1, 1902, is not clear. Construed literally, the statute does not seem to cover them. The same may be said of the similar words in section 7 of the act of April 12, 1900 (31 Stat. 79), concerning the nationality of Puerto Ricans and section 1 of the act of February 25, 1927 (44 Stat. 1234), concerning the nationality of the inhabitants of the Virgin Islands.

(c) A child of unknown parentage found in an outlying possession of the United States, until shown not to have been born in such outlying possession.

The meaning of this provision concerning the nationality of foundlings first discovered in outlying possessions of the United States seems clear enough, and its reasonableness will hardly be questioned. Its object is to prevent unfortunate persons of the class mentioned from being stateless.

With reference to all of the above provisions of section 203, it may be well to call attention to the fact that, while they define the nationality status of the persons to whom they relate, with reference to the United States, they do not purport to define the precise status of such persons with reference to particular outlying possessions. They merely provide that the persons to whom they relate have the status of nationals of the United States. For example, under subsection (a), a person born in Guam of parents either of whom was a Spanish subject residing in Guam on April 11, 1899, or of parents one of whom is a citizen of the Philippine Islands owing allegiance to the United States would acquire at birth the status of a national (but not citizen) of the United States. Again, under subsection (b), a person born in a European country of parents both of whom are natives of American Samoa of the indigenous stock and one of whom has resided in the United States or in Samoa or

some other outlying possession would be born a national of the United States. The code does not define his precise relationship to Samoa, that is, whether he should be regarded as a "citizen of American Samoa owing allegiance to the United States" or a "Samoa national of the United States" or a "national of the United States of Samoan parentage" or whether he should have some other special designation. If it seems necessary or desirable to specify in this code the citizenship status of nationals with reference to particular outlying possessions, this might be made a subject of a separate section, but it will probably be preferable to leave this matter for special legislation relating to the several territories, conditions in which differ widely. In such legislation it is necessary to take into account special considerations, political, social, economic, etc., peculiar to each territory.

Sec. 204. The provisions of section 201, subsections (c), (d), (e), and (g), and section 203, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

For many years the Department of State has, in practice, applied the rule stated in the first paragraph of this section, holding that a child born out of wedlock which, by the laws of its father's domicile, has been legitimated, is a citizen of the United States within the meaning of Revised Statutes, section 1993. The Attorney General sustained this construction of the Statute in an opinion of April 7, 1920 (32 Op. Atty. Gen. 162). In this opinion it is pointed out that, while at common law an illegitimate child was *nullius filius*, this rule means merely that for some purposes the law, from considerations of public policy, refuses to recognize any relationship between the child and its parents, the common law recognizing the blood relationship when public policy required it. After adverting to the fact that the rights of illegitimate children have been greatly enlarged by statute in this country, and observing that, "in practically every State, it is provided that such a child may inherit from its mother and in many it may inherit from its father, where it has been legitimated through the marriage of its parents or acknowledgment by its father as his own," the opinion concludes:

When, by the law of the State where the father of an illegitimate child, at the time of his marriage with its mother, or his acknowledgment of the child as his own, is domiciled, the child is legitimated, it will be regarded as legitimate everywhere,

CHAPTER III. NATIONALITY THROUGH NATURALIZATION

PRELIMINARY OBSERVATIONS

As its title indicates, chapter III of the proposed code deals with nationality through naturalization. The authority to prescribe laws upon this subject is contained in article I, section 8, clause 4, of the Constitution of the United States, which provides that "The Congress shall have power—

"To establish a uniform rule of naturalization, * * *." The fourteenth amendment to the Constitution contains as a part of section 1 the following definitions of United States and State citizenship:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

The ideal sought by the framers of the Constitution was a naturalization law which would operate uniformly throughout the United States. This goal has never been achieved, although a great improvement in this respect resulted when Congress in 1906 for the first time placed the administration of the naturalization laws under the supervision of the Federal Government. It is believed that the proposed code more nearly approximates the required uniformity.

From the first statute upon the subject of naturalization, that of March 26, 1790 (1 Stat. 103), it has been technically a judicial process in form, although since 1906 it actually has been largely administrative in fact. The courts have never had machinery with which to make inquiry concerning the eligibility or qualifications of applicants for naturalization. Since 1906 this important function has been performed by naturalization officers. The Immigration and Naturalization Service, Department of Labor, ascertains the facts and assists the courts in determining the applicable law in the naturalization cases presented.

Both the courts and the administrative authorities dealing with naturalization have been prevented from achieving the most satisfactory results through the piecemeal development through the years of naturalization and citizenship laws. As a result the present mass of naturalization statutes lacks clarity, consistency, and systematic order.

The foregoing defects have been borne in mind in the preparation by the advisory committee of this chapter. An effort has been made to provide a workable law by bringing together in orderly form those provisions which seem to be desirable and necessary. This has been done with a view to facilitating the naturalization of worthy persons who appear to fall

within their scope, while at the same time protecting the United States from receiving into its citizenship persons who for any one of a number of reasons may be undesirable additions to its membership.

In order to present the subject matter of this chapter of the proposed code systematically and logically, it has been arranged in the order of the following subheads which are fairly explanatory of their general scope:

- (1) General provisions.
- (2) Substantive provisions.
- (3) Procedural and administrative provisions.
- (4) Fiscal provisions.
- (5) Compilation of naturalization statistics.
- (6) Penal provisions.
- (7) Saving clauses.

(1) GENERAL PROVISIONS

The first division, under title (1) General provisions, is descriptive of the naturalization courts and the extent of their jurisdiction to naturalize.

(2) SUBSTANTIVE PROVISIONS

Under the second subdivision, (2) Substantive provisions, the general groups of persons who are eligible to naturalization, as well as the groups who are excluded from that privilege, are described. The nature and extent of the proof required in the usual case as to residence and personal qualifications for naturalization are then detailed.

In addition a number of sections relate to various groups who, because of special reasons, are afforded certain exemptions from the usual naturalization requirements. These include persons married to citizens of the United States, children, former citizens of the United States, persons who have erroneously exercised citizenship rights, nationals who are not citizens, Puerto Ricans, and persons serving in the armed forces or on vessels of the United States. This material is followed by that relating to alien enemies.

(3) PROCEDURAL AND ADMINISTRATIVE PROVISIONS

Because of the inherent nature of the naturalization process, the next subdivision, (3) Procedural and administrative provisions, recites with necessary particularity of detail the manner in which naturalization is to be conferred. It will be recalled that the Supreme Court of the United States, in discussing the necessity for the relatively rigid requirements of the present basic Naturalization Act of 1906, which placed the

administration of the naturalization laws under Federal supervision, said:

Experience and investigation had taught that the widespread frauds in naturalization, which led to the passage of the act of June 29, 1906, were in large measure, due to the great diversities in local practice, the carelessness of those charged with duties in this connection, and the prevalence of perjured testimony in cases of this character. A "uniform rule of naturalization" embodied in a simple and comprehensive code under Federal supervision was believed to be the only effective remedy for then existing abuses. And, in view of the large number of courts to which naturalization of aliens was entrusted and the multitude of applicants, uniformity and strict enforcement of the law could not be attained unless the code prescribed also the exact character of proof to be adduced (*U. S. v. Ness* (1917), 245 U. S. 324).

The Supreme Court called attention to the estimate of approximately 100,000 aliens who had been naturalized annually for several years preceding 1906. As indicating that the volume has not decreased since that year, the records of the Immigration and Naturalization Service show that during the 28 fiscal years from 1907 to 1934, inclusive, 3,935,987 petitions for naturalization were filed, of which 3,521,022 were granted by the courts, an average of over 125,000 annually.

Subdivision (3) of this chapter contains provisions placing responsibility for the administration of the naturalization laws, including necessary administrative details, followed by statements as to the requirements for the registry of aliens, the certificate of arrival, the declaration of intention, the petition for naturalization, and the hearing thereon, including the oath of renunciation and allegiance, the certificate of naturalization, identifying photographs, functions and duties of clerks of courts, judicial revocation of naturalization because of fraud or illegality, the issuance of certificates of derivative citizenship and copies of documents and records, and the cancellation of naturalization papers procured illegally or fraudulently from the Commissioner or a Deputy Commissioner of the Immigration and Naturalization Service.

(4) FISCAL PROVISIONS

There are included under (4) Fiscal provisions, the various requirements of the proposed code in relation to the amounts of and accounting for fees in the various proceedings described. There also appear related provisions concerning the transmittal of naturalization papers as "official business," and authorization for the citizenship textbook for applicants for naturalization.

(5) COMPILATION OF NATURALIZATION STATISTICS

As subtitle (5) Compilation of naturalization statistics indicates, it deals with the compilation of statistical data in relation to the foreign born in the United States.

(6) PENAL PROVISIONS

Because the status of citizenship is so important and carries with it so many rights and privileges which may not be exercised by the unnaturalized, there have been for a great many years attempts, sometimes upon a large scale, to become naturalized without compliance with the statutory requirements. In subdivision (6), Penal provisions, therefore, appropriate penalties have been prescribed for various violations of the laws in relation to naturalization and citizenship.

As already stated, the prevalence of naturalization frauds resulted in Congress placing the administration of naturalization in the executive branch of the Federal Government. A striking account of the stupendous character of these frauds and of the wide area over which they were spread is contained in extracts from the report dated June 14, 1905, of C. V. A. Van Deusen, special examiner of the Department of Justice which form appendix E of the Report to the President of the Commission on Naturalization, appointed by Executive Order of March 1, 1905 (Document No. 46, House of Representatives, 59th Cong., 1st sess., Washington, Government Printing Office, 1905, pp. 79-92).

(7) SAVING CLAUSES

There are included under (7) Saving clauses, provisions for maintaining the status quo as to pending proceedings.

COMMENT UPON THE NATURALIZATION PROVISIONS OF THE PROPOSED CODE

There follow hereafter, section by section, in serial order, quoted provisions of the proposed Chapter III, Nationality Through Naturalization, with comment stating briefly the relationship between the proposals and present law, and the reasons for the suggested modifications.

GENERAL PROVISIONS

JURISDICTION TO NATURALIZE

Sec. 301.—

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing, or which may hereafter be established by Congress in any State, District Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and for Puerto Rico; and the District Court of the Virgin Islands of the United States; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein speci-

the citizenship status of such person, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention, and upon satisfactory proof to the court that petitioner has so acted may be admitted as a citizen of the United States upon complying with the other requirements of the naturalization laws.

Proposed section 319 continues in force the present provision by which certain persons, who have been misinformed that they were citizens and who have acted in good faith as citizens, may be naturalized without making a declaration of intention. In addition to the other and usual requirements residence uninterruptedly within the United States during the period of 5 years next preceding July 1, 1920, is required (subd. 10, sec. 4 act of June 29, 1906, as amended, as amended by sec. 10, act of May 25, 1932, 47 Stat. 166-167; U. S. C., title 8, sec. 377).

NATIONALS BUT NOT CITIZENS OF THE UNITED STATES

Sec. 320.—A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified may, if he becomes a resident of any State, be naturalized upon compliance with the requirements of this chapter, except that in petitions for naturalization filed under the provisions of this section, residence within the United States within the meaning of this chapter shall include residence within any of the outlying possessions of the United States.

Proposed section 320 continues the present provision of the Naturalization Act of 1906, making the naturalization law of the United States applicable to persons not citizens who owe permanent allegiance to the United States, and who become residents of the United States. Residence within any of the outlying possessions not a part of the United States would be regarded as residence within the United States (sec. 30, act of June 29, 1906, 34 Stat. 606-607; U. S. C. title 8, sec. 360). The Supreme Court of the United States has stated that this provision of present law is limited to persons of the color and race made eligible by section 2169, United States Revised Statutes, that is, white persons and persons of African nativity or descent (*Toyota v. United States* (1925), 268 U. S. 402).

PUERTO RICANS

Sec. 321.—A person born in Puerto Rico of alien parents, referred to in the last paragraph of section 5, Act of March 2, 1917 (U. S. C., title 8, sec. 5),

and in section 5a, of the said act, as amended by section 2 of the Act of March 4, 1927 (U. S. C., title 8, sec. 5a), who did not exercise the privilege granted of becoming a citizen of the United States, may make the declaration provided in said paragraph at any time, and from and after the making of such declaration shall be a citizen of the United States.

Proposed section 321 refers to a limited group of persons born in Puerto Rico of alien parents who under previous statutes have, from time to time, been given a specified period within which to declare their allegiance to the United States (sec. 5, act of March 2, 1917, 39 Stat. 953; U. S. C., title 8, sec. 5; sec. 5 (a), act of March 2, 1917, as added by sec. 2, act of March 4, 1927, 44 Stat. (pt. 2) 1418-1419; U. S. C., title 8, sec. 5a; and sec. 5 (b), act of March 2, 1917, as amended, as added by sec. 5 (b), act of June 27, 1934, 48 Stat. 1245).

It is believed to be desirable to permit this legislation to continue but without limitation of time, which heretofore has resulted in the enactment of the provision periodically.

PERSONS SERVING IN ARMED FORCES OR ON VESSELS

Sec. 322.—A person who, while a citizen of the United States and during the World War in Europe, entered the military or naval service of any country at war with a country with which the United States was then at war, who has lost citizenship of the United States by reason of any oath or obligation taken for the purpose of entering such service, may be naturalized by taking before any naturalization court specified in subsection (a) of section 301 the oaths prescribed by section 334.

Proposed section 322 continues a part of the act of 1918 having for its purpose the prompt repatriation of former United States citizens who, previous to the entrance of the United States into the World War, lost citizenship through entering the armed forces of the allied countries. That adequate evidence of former United States citizenship and identity may be shown, appearance before a naturalization court in the United States is required. The present law permits the oath before a United States consul also (subd. 12, sec. 4, act of June 29, 1906, as amended by sec. 1, act of May 9, 1918, 40 Stat. 545-546; U. S. C., title 8, sec. 18).

Sec. 323.—

(a) A person including a native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from such service, was separated under honorable condi-