NATIONALITY LAWS OF THE UNITED STATES

MESSAGE
FROM
THE PRESIDENT OF THE UNITED STATES
TRANSMITTING

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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MESSAGE OF THE PRESIDENT

To the Congress of the United States of America:

I transmit herewith a report concerning the Revision and Codification of the Nationality Laws of the United States, submitted upon my request, by the Secretary of State, the Attorney General, and the Secretary of Labor. The report is accompanied by a draft code with three appendices containing explanatory matter, prepared by officials of the three interested departments who are engaged in the handling of cases relating to nationality.

The report indicates the desirability from the administrative standpoint of having the existing nationality laws now scattered among a large number of separate statutes embodied in a single, logically arranged and understandable code. Certain changes in substance are likewise recommended.

In the enclosed letter forwarding the report to me the Secretary of State calls attention to a single question on which there is a difference of opinion between the Departments of Justice and Labor on the one hand and the Department of State on the other hand. If the committees of Congress decide to consider this question, the views of the three departments may be presented directly to them.

I commend this matter to the Congress for the attentive consideration which its wide scope and great importance demand.

FRANKLIN D. ROOSEVELT.

Enclosures: (1) Report.
(2) Draft code and annexes.
(3) From the Secretary of State.

The White House,
June 13, 1938.
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.

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.

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.

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.

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.
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
LETTER OF SUBMITTAL

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 COMMENTS

(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., 534-556; Borchard, Diplomatic Protection, pp. 7-24; Cockburn, Nationality; see also McGovney, D. O., American Citizenship, 11 Columbia Law Review, 226; 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. 2396); 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. 654; 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. 882; 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:

America 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 aforementioned 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. 2508).

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. 351 et seq.).
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 whose sovereign domicile 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. 165).

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, 190-230; 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, 281–285, 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 acceptation 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. 339). 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 Naturalization” 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. 490. See also Passenger Cases, 7 How. 282, 429). 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, 169, and in the opinion of Justice Gray in U. S. v. Wong Kim Ark, 1898, 169 U. S. 649, 672, 702–703.
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, 148 U. S. 185; 3 Moore, Digest of International Law, 311-327; Van Dyne, Naturalization, 266-322; 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.

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, 955), and it extends the same advantages to Puerto Rico, where, considering the express provisions of the act of June 27, 1924, 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.

(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 subsection (a) of section 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 organised 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. 80).


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 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. 192-200.) 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., 196).

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 (Carolines, Marshall, and the Ladrones 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 25, 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-
NATIONALITY ACT OF 1939

Sec. 104. For the purposes of sections 201, 402, 403, 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, as 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 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 test 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, provides as follows:

The inhabitants of the ceded territory, according to their choice, retaining 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 retaining 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. 510), 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 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, 33 Op. Att'y Gen. 249, 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 *Elk 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. 888); the act of March 3, 1901 (31 Stat. 1447); the act of May 8, 1906 (34 Stat. pt. 1, 189), amending the act of February 8, 1887; the act of November 6, 1901 (41 Stat. 850), and the act of June 2, 1904 (43 Stat. 253, 8 U. S. Code, § 3).

The act of June 2, 1904 (supra) provides as follows:

All noncitizen Indians born within the territorial limits of 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, 1933, to the Department of State, Alaskan Indians, including Eskimos 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 Mosock*, 1904, 9 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 1996 of the Revised Statutes.

Section 1996 of the Revised Statutes, in its original form, based upon an act of February 10, 1885, 10 Stat. 604, reads as follows:
Sec. 301 (c) NATIONALITY ACT OF 1939

Sec. 301. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers or mothers 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 Mo. Digest, II, 443; 3 Mo. Digest, II, 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 sanguinis), 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, 1899, 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 heretofore 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 twentieth 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 *jure 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 *jure 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 in effect in the United States many years. 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, 289-299) but also frequently considered and construed by the courts, both Federal and State, without their constitutionality being questioned (*Ludlam v. Ludlam*, 1863, 96 N. Y. 356, 64 Am. Dec. 193; *Ware v. Wisconsin*, 1893, 50 Fed. 810, *Weedman v. Chin Bow*, 274 U. S. 637).

The constitutional authority for passing laws embodying the rule of *jure 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*, 1896, 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, 256; 19 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-
between 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 naturalization 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 outlying 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, Jose Lee Hing, and Cun Yuen, who were born in the Philippine Islands of Chinese parents August 30, 1906, March 8, 1906, 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 consent 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 worship of two outstanding books on citizenship, 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 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 1801 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 Jr., 26 Phil. 924; and United States v. Ong Tiaoan, 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 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 Balsac 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 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 solis 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 proviso 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 15 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. 8).

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. 1586; 1 Moore, International Law, p. 59-64). 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 Manu 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., 1849), 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. 38).

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. 560, U. S. C., title 48, 1330). The entry of aliens into the Canal Zone is governed by Executive Order No. 914 of September 25, 1923, 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 citizenship of the United States.


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 denrying 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, jus solis, 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 Revised 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 naturalisation 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. 689), 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 (41 Stat. 1234), concerning the nationality of the inhabitants of the Virgin Islands.

(e) 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 well be called 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 Samoa 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 1898. 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 advertting 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,
even in the States whose laws do not recognize subsequent legitimation (Proctor v. Proctor, 151 N. C. 129; Miller v. Miller, 91 N. Y. 315; Ross v. Ross, 139 Mass. 945; Story Conflict of Laws, sec. 92b). Since the recognition of the relationship of an illegitimate child to a father whose identity has been established in the manner provided by statute is no longer against public policy even where the right to inherit from its father is involved, that relationship should be recognized as existing from the date of the child's birth. The State Department has for many years held 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 1983. There appear to be no considerations of public policy which require a different decision (pp. 104-105).

The laws of 16 foreign states have adopted this rule (Albania, Austria, China, Costa Rica, Free City of Danzig, Egypt, Estonia, Ethiopia, Germany, Greece, Haiti, Hungary, Italy, Netherlands, Switzerland, Yugoslavia). In a few states (Belgian Congo, Bulgaria, France, Greater Lebanon, Syria, Japan, Monaco) the law provides that, in case of legitimation, recognition, or judicial declaration, the nationality of the parent whose relationship is first legally established prevails unless that of both is established by the same instrument or simultaneously, in which case the nationality of the father takes precedence (Flournoy and Hudson, Collection of Nationality Laws; Sandifer, D. V., "A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality," 29 Amer. Journal of International Law (1935), pp. 258, 259).

With regard to the provision contained in the second paragraph of this section, it may be said that the Department of State has, at least since 1912, uniformly held that an illegitimate child born abroad of an American mother acquires at birth the nationality of the mother, in the absence of legitimation or adjudication establishing the paternity of the child. This ruling is based upon section 1983 of the Revised Statutes, that section being construed to apply to an illegitimate child born abroad of an American mother, on the ground that the mother in such a case stands in the place of the father. While there appears to have been some doubt whether, under the common law of England, the mother's right to the custody of an illegitimate child was in all cases paramount to that of the father (Schouler, "Marriage, Divorce, Separation, and Domestic Relations," 6th ed., vol. 1, pp. 740-742), under American law the mother "has a right to the custody and control of such a child as against the putative father, and is bound to maintain it as its natural guardian" (Kent's Commentaries on American Law, 11th ed., vol. 2, p. 281). This rule seems to be in accord with the old Roman law and with the laws of Spain and France (Schouler, op. cit., vol. 1, p. 742). So, in Corpus Juris, it is said: "The mother, as guardian by nurture, has the right to the custody and control of her bastard child until it attains an age when it can, in contemplation of the law, make an election between father and mother" (7 C. J. 953-954).

It may be observed finally that the laws of some thirty foreign countries contain provisions for the nationality of illegitimate children, in the absence of acknowledgment or legitimation, and in all but Turkey such children follow the mother's nationality in the absence of any act legally establishing filiation (Flournoy and Hudson, op. cit.; Sandifer, D. V., op. cit., pp. 258, 259). Under Turkish law, illegitimate children born abroad of either a Turkish father or Turkish mother acquire Turkish nationality (Law of May 28, 1928, art. 2 (c); Flournoy and Hudson, op. cit., p. 570).
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, ascerts 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. Xeos (1917), 245 U. S. 234).

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 26 fiscal years from 1907 to 1934, inclusive, 3,935,987 petitions for naturalization were filed, of which 3,921,022 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 cancelation 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-
Subsection (a) of proposed section 301 presents no material change from the present law by which naturalization jurisdiction is granted to Federal district courts (including that of the District of Columbia), and the courts of record of the States and Territories, 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 (sec. 3, act of June 29, 1906, 34 Stat. 596, U. S. C. title 8, sec. 357; see sec. 4, act of March 2, 1917, 39 Stat. 965, U. S. C. title 8, sec. 358, and title 48, sec. 863). While the last sentence limits the naturalization jurisdiction of these courts to persons residing within the respective jurisdictions of such courts, exceptions are made where this provision would be inconsistent with the exemptions from some of the usual requirements which are accorded certain groups whose naturalization is hereinafter provided for. (See appendix I, proposed secs. 311, 316, 322, 323, and 324.)

Subsection (b) of section 301 is intended to obviate an anomalous situation which has arisen under the present Naturalization Act of 1906. Section 3 of that act provides—

That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts (sec. 3, act of June 29, 1906, 34 Stat. 596, U. S. C. title 8, sec. 357).

Some courts have held that where a State judicial district or circuit is composed of several counties an applicant for citizenship must file his petition for naturalization in the court of the county in which he resides, even though the court of another county of the same judicial district or circuit may be much more convenient of access. As this ruling appears to be highly technical and serves no valuable purpose, the proposed law has been modified in this respect.

Subsections (c) and (d) contain no substantial change from the present law (secs. 3 and 4, act of June 29, 1906, 34 Stat. 596; U. S. C., title 8, secs. 408 and 379).

SUBSTANTIVE PROVISIONS

ELIGIBILITY FOR NATURALIZATION

Sec. 302.—The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of sex or because such person is married.

Proposed section 302 continues the declaration which appears in section 1 of the Cable Act of 1922, prohibiting the denial or abridgment of the right of a person to become naturalized because of sex or the fact that such person is married (sec. 1, act of September 22, 1922, 42 Stat. 1021–1022; U. S. C., title 8, sec. 387).

Sec. 303.—The right to become a naturalized citizen under the provisions of this chapter shall extend only to white persons and persons of African nativity and persons of African descent, except that this section shall not apply to descendants of races indigenous to the Western Hemisphere nor to native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 323, nor to former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 316.

Proposed section 303 continues in effect the legislative policy by which naturalization is limited generally to persons of the white race and to those of African nativity or descent. The provision concerning white persons appeared in the first naturalization statute of 1790 (act of March 29, 1790, 1 Stat. 103). It has been continued in the Revised Statutes of 1878 (sec. 2169). That concerning persons of the African race, also appearing in the Revised Statutes, was incorporated in the naturalization laws in 1870, following the Civil War (sec. 7, act of July 14, 1870, 18 Stat. 256).

Two of the three exceptions to the racial limitations in the proposed code are also contained in the present laws. One relates to native-born Filipinos who at present are eligible for naturalization after 3 years' honorable service in the United States Coast Guard, Navy, Marine Corps, or naval auxiliary service. This provision was included after consultation with representatives of the War and Navy Departments who indicated its desirability (7th subd., sec. 4, act of June 29, 1906, as amended by sec. 1, act of May 9, 1918, 40 Stat. 542; U. S. C., title 8, sec. 388).

The second applies to women who were citizens of the United States at birth and who lost citizenship by reason of marital status (sec. 3 (b), act of September 22, 1922, as amended by sec. 4 (a), act of March 3, 1931,
See. 304.—No person except as otherwise provided in this chapter shall hereafter be naturalized or admitted as a citizen of the United States upon his own petition who cannot speak the English language. This requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized.

Proposed section 304 continues the present requirement that the applicant for naturalization be able to speak the English language (sec. 8, act of June 29, 1906, 34 Stat. 599; U. S. C., title 8, sec. 363). Aliens physically unable to comply with this requirement are, at present, excused from it. Exceptions in the present law were also made in the cases of those aliens who had made their declarations of intention prior to the act of 1906, and to those who thereafter should declare their intention to become citizens and comply with the homestead laws of the United States.

Sec. 305.—No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of the official character of such officer or officers, shall be naturalized or be made a citizen of the United States.

Proposed section 305 continues in effect the present prohibition upon the naturalization of anarchists and other similar undesirable classes of aliens who are opposed to organized government (sec. 7, act of June 29, 1906, 34 Stat. 598-599; U. S. C. title 8, sec. 364).

Sec. 306.—A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military or naval forces of the United States, or who, having duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or went or shall go beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall, upon conviction thereof by a court martial, be ineligible to become a citizen of the United States; and such deserters shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizenship thereof.

Proposed section 306 continues the provisions of current law which bar from citizenship deserters and other evaders of military and naval service in time of war. The offense is a grave one. This penalty, because of its severity, is effective only after conviction by a court martial (sec. 1996, R. S. U. S.; and act of August 22, 1912, 37 Stat. 356, amending sec. 1998, R. S. U. S.; U. S. C. title 8, sec. 11). This subject is discussed, with citations of decisions of courts in the comment on section 401 (h).

Very careful consideration was given to this provision by representatives of the War and Navy Departments also, who felt it to be a necessary measure.

Sec. 307.—

(a) No person, except as hereinafter provided in this chapter, shall be admitted to citizenship unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this section has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Proposed section 307 (a) continues the present requirements as to continuous residence within the United States for at least 5 years immediately preceding the filing of a petition for naturalization, and such continuous residence also from the date of filing the petition until admission to citizenship (subd. 4, sec. 4, act of June 29, 1906, 34 Stat. 598, as amended by a part of sec. 6 (b), act of March 2, 1929, 45 Stat., 1513-1514; U. S. C. title 8, sec. 332).

The 5-year residence requirement has been a part of the naturalization statutes almost continuously from 1795. It is based upon the belief that a newcomer before being admitted to citizenship should remain in this country sufficiently long to establish his standing in the community, to learn the language, and to understand and appreciate the essential facts and meaning of its history and nature and principles of its Government.
No material reason has been advanced for a change in this respect, except as to a few special groups of persons where the conditions would not appear to require 5-year’s probation.

The present law requires the petitioner for naturalization to have resided in the county of residence at the time of filing the petition continuously for at least 6 months immediately preceding the filing of such petition. The precise location of county lines in such metropolitan areas as New York is frequently difficult if not impossible of ascertainment. At present an applicant who resides in Brooklyn for 5 months and then moves to Manhattan or the Bronx must wait until he has resided in the latter at least 6 months before he may petition for naturalization.

As the requirement of county rather than State residence is a more or less artificial one without adequate advantages to the Government to justify rigidity, it is proposed that a 6 months’ period of State residence be substituted for county residence. The present provision has caused much unnecessary misunderstanding, embarrassment, and expense to applicants. The Government is protected by the requirement that at least two citizen witnesses vouch for the applicant’s residence and character for the entire 6 months.

There have been continued the stipulations that during all of the period of necessary residence the applicant for naturalization must prove that he has been of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. These requirements also have been a fundamental part of our naturalization history since 1795 (subd. 3, sec. 1, act of January 29, 1795, 1 Stat. 414). There would appear to be no more important provisions of the naturalization statutes than these.

(b) Absence from the United States for a continuous period of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, except that in the case of an alien who has resided in the United States for at least one year, during which period he has made a declaration of intention to become a citizen of the United States, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Secretary of Labor, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof, no period of residence outside the United States shall break the continuity of residence if—

(1) Prior to the beginning of such period (whether such period begins before or after his departure from the United States) the alien has established to the satisfaction of the Secretary of Labor that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, and

(2) Such alien proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

Provision has been made in proposed subsection (b) to cover absences from the United States. At present if an individual returns to the country of his allegiance and remains there for a continuous period of more than 6 months and less than 1 year during the period for which continuous residence is required immediately preceding the filing of his petition for citizenship, the continuity of such residence is presumed to be broken. This is subject to the presumption being overcome by presentation of satisfactory evidence that the individual had a reasonable cause for not returning to the United States prior to the expiration of such 6 months. Absence from the United States for a continuous period of 1 year or more, during the period for which continuous residence immediately preceding the date of filing the petition for naturalization is required, legally breaks the continuity of such residence (sec. 6 (b), act of March 2, 1929, supra). Exceptions have been made, however, as to the effect of an absence or absences from the United States so as not to penalize aliens who have come to the United States, established a permanent residence for a period of at least 1 year during which a declaration of intention is made in good faith, and who are required by the
exigencies of their employment to leave the United States for indefinite periods because of employment by or contract with the Government of the United States or an American institution of research recognized as such by the Secretary of Labor, or because of employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof. As the absence from the United States of such persons is in the interests of this country and insistence upon the usual requirements for naturalization would make it impossible for such persons ever to become citizens, it is felt that the suggested change is desirable.

Until the enactment in 1929 of the provisions as to absence, judicial and administrative interpretations as to what constituted "continuous" residence within the United States were in hopeless confusion. The statutory determination of the effect of specified absences from the United States has resulted in considerable clarification of the law in that respect and has added a measure of certainty of definition. For these reasons the provisions just discussed as to absences have been incorporated as subsection (b) of section 307 of the proposed code.

There are many instances in which applicants file their petitions for naturalization but before final hearing depart from the United States for a considerable period. It would appear that such absences, where they continue for long periods, should have the same effect upon the continuity of the required residence within the United States as absences within the 5 years immediately preceding the filing of the petition. A provision to that effect also has been included in subsection (b).

(c) No period of residence outside the United States during the five years immediately preceding June 25, 1936, shall be held to have broken the continuity of residence required by the naturalization laws if the alien proves to the satisfaction of the Secretary of Labor and the court that during all such period of absence he has been under employment by, or contract with, the United States, or such American institution of research, or American firm or corporation, described in subsection (b) of this section, and has been carrying on the activities described in that subsection in their behalf.

The substance of the provisions concerning the effect of absences from the United States of alien declarants in the employ of the Government of the United States and other named agencies is now a part of the act of June 25, 1936 (49 Stat. 1925; U. S. C., sup. II, title 8, sec. 388).

Subsection (c) of section 307 carries into the present code that provision in section 2 of the act of June 25, 1936 (U. S. C., sup. II, title 8, sec. 382 (a)), which made it possible to waive absences of a year or longer from the United States on the part of alien declarants in the employ of the Government of the United States or of the other agencies named upon satisfactory proof of such employment.

(d) The following shall be regarded as residence within the United States within the meaning of this Chapter:

1. Honorable service on vessels owned directly by the Government of the United States, whether or not rendered at any time prior to the applicant's lawful entry into the United States.

For many years there has been a recognition of the necessity for making certain exemptions from the usual requirements as to proof of residence in the cases of individuals following pursuits which prevent the establishment and continuance of the usual residence. It has been thought inequitable to penalize such persons by insistence upon residential requirements which are impossible of fulfillment.

There has been included, therefore, under subsection (d) (1), a provision by which honorable service on vessels directly owned by the Government of the United States shall be considered as residence within the United States. The acceptance by the Government of such an individual and the approval of his service as honorable is felt to be equivalent to a waiver of the character of his entry into the United States, which, technically, may not have been regular. Such persons are under the constant observation of responsible officers of the Government and live under strict discipline.

The present statutes grant exemptions from the usual requirements to persons who served on vessels of the United States Government (subd. 7, sec. 4, act of June 29, 1906, as amended by sec. 1, act of May 9, 1918, 40 Stat. 512; and sec. 6 (d) act of March 2, 1929, 45 Stat. 1514; U. S. C., title 8, sec. 388).

(2) Continuous service by a seaman on a vessel or vessels whose home port is in the United States and which are of American registry or American owned, if rendered subsequent to the applicant's lawful entry into the United States for permanent residence and immediately preceding the date of naturalization.

Merchant seamen are, by the very nature of their vocation, obliged to spend most of their time on the water. If their service aboard merchant ships of the United States were to be disregarded, it would never be possible for most of them to become citizens. The requirement is imposed under subsection (d) (2), however,
that such service must be subsequent to lawful entry into the United States for permanent residence and immediately preceding naturalization. These qualifications were thought to be necessary because such service is frequently rendered for very short periods and under many masters. The Immigration Law and Regulations upon the subject of seamen are difficult of administration and would seem to justify the above-described limitation (subd. 7, sec. 4, act of June 29, 1906, as amended by sec. 1, act of May 9, 1918, 40 Stat. 542; and sec. 6 (c) (d), act of March 2, 1929, 45 Stat. 1514; and sec. 8, act of May 25, 1932, 47 Stat. 165; U. S. C., title 8, secs. 384, 388).

(3) Residence in the Panama Canal Zone, either while in the service of the armed forces of the United States, or while otherwise in the employ of the United States or of the Panama Railroad Company: Provided, That the applicant shall have entered the United States lawfully for permanent residence prior to such residence in the Panama Canal Zone.

Proposed subsection (d) (3) would accept as residence in the United States for naturalization purposes time spent in the Panama Canal Zone in the service of the armed forces of the United States or otherwise in the employ of the United States or of the Panama Railroad Co.

Service of the nature described would seem to entitle those individuals rendering it to have such time count toward residence within the United States. Lawful entry into the United States prior thereto would be required.

Under the present naturalization law, residence in the Panama Canal Zone is regarded as residence in the United States only in a very limited class of cases, and is seemingly inconsistent with other provisions of current naturalization law. The narrow exception relates to alien declarants who have served in the United States Army, Navy, or the Philippine Constabulary, who have been honorably discharged therefrom, and have been accepted for either the military or the naval service of the United States on condition that they become citizens of the United States (subd. 7, sec. 4, act of June 29, 1906, as amended by sec. 1, act of May 9, 1918, 40 Stat. 542-543; U. S. C., title 8, sec. 389).

REQUIREMENTS AS TO PROOF

Sec. 308—

(a) As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of filing the petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character.

Proposed section 308 (a) contains the requirement concerning the verifying affidavits of at least two credible citizen witnesses. They must have personally known the petitioner at each place of residence in the State in which he resides at the time of filing the petition, during the entire period of at least 6 months immediately preceding the date of the petition. They must allege in their affidavits such knowledge, as well as that the petitioner is and during all such period has been a person of good moral character. The only difference between this provision and the present law is that while the present statute requires verification of so much of the 5 years as the applicant has spent in the county, the minimum of which is required to be 6 months, the proposed law requires verification of the residence in the State for only 6 months (subd. 4, sec. 4, act of June 29, 1906, as amended by sec. 6 (a), act of March 2, 1929, 45 Stat. 1518; U. S. C., title 8, sec. 379).

The reasons for the substitution of the requirement of 6 months' State residence for the same period of county residence now required have been discussed already in comment upon proposed section 307 (a).

(b) At the hearing on the petition residence in the State in which the petitioner resides at the time of filing the petition for at least six months immediately preceding the date of filing the petition and the other qualifications required by subsection (a) of section 307 during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by subsection (a) of this section to be included in the petition. At the hearing residence within the United States during the five-year period, but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such period at such places, shall be proved either by depositions taken in accordance with subsection (e) of section 326, or oral testimony, of at least two such witnesses for each place of residence.

Subsection 308 (b) contains the requirement as to oral testimony of at least two credible citizen witnesses over the entire period of residence of the petitioner in the State in which the petition is filed for at least 6 months immediately preceding the filing of the petition. The only difference between this and the present law is that the present law requires such proof of county residence instead of State residence.
Under the proposed subsection (b) proof at the hearing upon the petition of residence and the other qualifications during the 5-year period in the United States but outside the State, except for the 6 months immediately preceding the filing of the petition (which must have been within the State in which the petition is filed), or within the State but prior to the 6 months' residence, is to be proved either by depositions taken in accordance with section 308 (e), or by oral testimony of at least two such witnesses for each place of residence.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section the requirements of subsection (a) of section 307 as to the petitioner's residence, moral character, attachment to the principles of the Constitution of the United States, and disposition toward the good order and happiness of the United States may be established by any evidence satisfactory to the naturalization court in those cases under subsection (b) of section 307 in which the alien declarant has been absent from the United States because of his employment by or contract with the Government of the United States or an American institution of research, recognized as such by the Secretary of Labor, or employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof.

Subsection 308 (c) would make it possible for those declarant aliens in the employ of the Government and other named agencies who, under subsection (b) of section 307, may have their necessary absences from the United States approved by the Secretary of Labor and the courts to satisfy the requirements as to their good moral character, attachment to the Constitution of the United States, and favorable attitude toward the Government, by evidence satisfactory to the court. It manifestly would be impossible for applicants for naturalization under such conditions to furnish the usual proof of witnesses in a position to testify from personal knowledge that such applicants had resided continuously within the United States during the statutory period.

(d) The clerk of court shall, if the petitioner requests it at the time of filing the petition for naturalization, issue a subpoena for the witnesses named by such petitioner to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned upon notice to the Commissioner, in such manner and at such time as the Commissioner, with the approval of the Secretary, may by regulation prescribe. If it should appear after the petition has been filed that any of the verifying witnesses therefor are not competent, and it further appears that the petitioner has acted in good faith in producing such witnesses found to be incompetent, other witnesses may be substituted in accordance with such regulations.

Section 308 (d) continues the present provision by which the petitioner, by depositing with the clerk of court the necessary fees, arranges to have the clerk subpenea his witnesses in order to insure their presence at the hearing (sec. 5, act of June 29, 1906, as amended, as amended by sec. 1, act of March 3, 1931; 46 Stat. 1511; U. S. C. title 8, sec. 307; sec. 13, act of June 29, 1906, 34 Stat. 600; U. S. C. title 8, sec. 408).

The second sentence of subsection (d) relieves a situation which for many years has been a source of annoyance, delay, and expense to petitioners for naturalization without any corresponding benefit to the United States. It provides that in case the verifying witnesses to a petition are found not to be competent, other witnesses may be substituted in accordance with regulations of the Commissioner of Immigration and Naturalization, if the petitioner has acted in good faith in producing the original witnesses.

Under the opinion of the Circuit Court of Appeals for the Third Circuit in the case of United States v. Martorana, the court held that a petition verified by a witness who was found not to be a citizen, was void and was not subject to validation by the substitution of a competent witness for the noncitizen (171 Fed. 397 (1909)). This seemed to be a harsh rule but was followed in administrative practice. More recently the Tartaglione case has been decided (In re Tartaglione (1934), 8 F. Supp. 219). In this case the United States District Court for Rhode Island reviewed the Martorana decision, with which it disagreed, stating that it should be borne in mind that the practice of posting the names of witnesses for a 90-day period, as referred to in the Martorana decision, had since been discontinued by statute (sec. 5, act of June 29, 1906, as amended, as amended, by sec. 1, act of March 3, 1931, 46 Stat. 1511; U. S. C., title 8, sec. 308). The court held that the petitioner had complied with all requirements of the statute and granted his petition.

It is believed that this rule should be expressed in the statutes for the reason that in many cases an applicant and one of his witnesses will learn to the dismay of both that although a witness has believed himself to be a citizen for many years and has acted in good faith as such, he was slightly more than 21 years of age at the time of the naturalization of his father and therefore did not acquire citizenship through the parent. Or it will be disclosed on a careful verification by
a witness that the actual date upon which he first met
the petitioner was a short time less than that required
in order that he may be a competent witness.

MARRIED PERSONS

Sec. 309.—

(a) Any alien who, after September 21, 1922, and prior to 12 o'clock noon, eastern standard
time, May 24, 1934, has married a citizen of the
United States, or any alien who married prior to
12 o'clock noon, eastern standard time, May 24,
1934, a spouse who was naturalized during such
period and during the existence of the marital
relation may, if eligible to naturalization, be natu-
ralized upon full and complete compliance with
all requirements of the naturalization laws, with
the following exceptions:

(1) No declaration of intention shall be re-
quired;

(2) In lieu of the five-year period of residence
within the United States, and the six months' period of residence in the State where the peti-
tioner resided at the time of filing the petition,
the petitioner shall have resided continuously in
the United States, Hawaii, Alaska, or Puerto
Rico for at least one year immediately preced-
ing the filing of the petition.

(b) Any alien who, after 12 o'clock noon, east-
ern standard time, May 24, 1934, has married or
shall hereafter marry a citizen of the United
States, or any alien whose husband or wife was
naturalized after such date and during the exist-
ence of the marital relation or shall hereafter be
so naturalized may, if eligible to naturalization,
be naturalized upon full and complete compliance
with all requirements of the naturalization laws,
with the following exceptions:

(1) No declaration of intention shall be re-
quired;

(2) In lieu of the five-year period of residence
within the United States, and the six months' period of residence in the State where the peti-
tioner resided at the time of filing the petition,
the petitioner shall have resided continuously in
the United States, Hawaii, Alaska, or Puerto
Rico for at least three years immediately pre-
ceding the filing of the petition.

(c) The naturalization of any woman since 12
o'clock noon, eastern standard time, May 24,
1934, by any naturalization court of competent
jurisdiction, upon proof of marriage to a citizen
or the naturalization of her husband and proof
of but one year's residence in the United States
is hereby validated only so far as relates to the
period of residence required to be proved by such
person under the naturalization laws.

(d) The naturalization of any male person
after 12 o'clock noon, eastern standard time, May
24, 1934, by any naturalization court of compe-
tent jurisdiction, upon proof of marriage to a
citizen of the United States after September 21,
1922, and prior to 12 o'clock noon, eastern stand-
ard time, May 24, 1934, or of the naturalization
during such period of his wife, and upon proof
of three years' residence in the United States, is
hereby validated only so far as relates to the
period of residence required to be proved by such
person under the naturalization laws and the
omission by such person to make a declaration
of intention.

Section 309 would carry into the proposed code the
substance of section 4 of the act of May 24, 1934
(U. S. C, title 8, sec. 398), which amended section 2
of the act relative to the naturalization and citizen-
ship of married women, approved September 29, 1923
(49 Stat. 1023). The 1934 act, in permitting the alien
husband of a citizen wife to be naturalized without
having made a declaration of intention and after but
3 years' residence within this country, was intended
place the two sexes upon an equality and to relieve
them by reason of the citizenship of one member of
the family from the usual naturalization require-
ments. Prior to the 1934 amendment of the 1928 act,
the latter statute had provided for the naturalization
of the alien wife of a citizen husband without a decla-
ration of intention and after but 1 year's residence
in the United States.

Varied interpretations have been given to the 1934
amendment. The United States Circuit Court of Ap-
peals for the Seventh Circuit in the case of U. S. v.
Bradley (88 F. (2d) 489), followed by the United
States Circuit Court of Appeals for the Third Circuit
in the case of U. S. v. Bales (88 F. (2d) 48), held
that the alien man married to a citizen wife between
the 1922 and 1934 acts might be naturalized under the
1934 statute. Other courts, however, held that the alien
husband of the citizen wife acquired no exemptions
during the period from 1922 to 1934.

There has also been a divergence of judicial views
as to whether the alien wife who married a citizen be-	ween 1922 and 1934, or whose husband was naturalized
during that period, and who, during such period was
eligible to petition for naturalization without a decla-
ration of intention and after but 1 year's residence, might
still petition for naturalization and be admitted into
citizenship upon such terms. Some courts held that the
privilege of applying for naturalization under the 1928
exemptions continued after the enactment of the 1934
act. Other courts held to the contrary.

In restating in section 309 the substance of the 1934
amendment, the language is intended to clarify this
confused situation and to place the aliens of both sexes who are spouses of citizens upon an equality by extending the privilege of naturalization after 1 year's residence to alien husbands who had married citizen wives or whose wives were naturalized between 1929 and 1934.

It has been thought necessary to make provision in subsections (c) and (d) for the validation of naturalization judgments since the 1934 act became effective of alien men naturalized with the exemptions on the basis of marriages or the naturalization of their wives between the 1922 and 1934 acts, and in the cases of alien wives who have been naturalized since the 1934 act became effective of subsections (c) and 1934.

Sec. 310.—A person who upon the effective date of this section is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after the effective date of this section, if such person shall have resided in the United States in marital union with the United States citizen spouse for at least one year immediately preceding the filing of the petition for naturalization, may be naturalized after the effective date of this section upon compliance with all requirements of the naturalization laws with the following exceptions:

(a) No declaration of intention shall be required.
(b) The petitioner shall have resided continuously in the United States for at least two years immediately preceding the filing of the petition in lieu of the five-year period of residence within the United States and the six months' period of residence within the State where the naturalization court is held.

Proposed section 310 grants exemptions from some of the usual naturalization requirements to a person who upon the effective date of the proposed code is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after that date, provided such person shall have resided in the United States in a marital status with the citizen spouse for at least 1 year immediately preceding the filing of the petition for naturalization. Such an applicant would be relieved from making a declaration of intention, from the 6 months' State residence, and from the 5-year requirement of continuous United States residence for which 2 years immediately preceding the filing of the petition would be substituted.

The present law applicable to this group substitutes a 3-year period of residence in the United States, Hawaii, Alaska, or Puerto Rico for the 5-year period of United States residence, and the former 1-year period of State or Territorial residence (sec. 2, act of September 22, 1922, as amended, as amended by sec. 4, act of May 34, 1934, 48 Stat. 197; U.S.C., title 8, sec. 368).

As it is felt that marriage to a citizen spouse would, as a general rule, have greater influence in facilitating acquisition of our language, and an understanding knowledge and appreciation of our form and principles of Government, and a real attachment to the country than mere residence in the United States, the period of required residence has been reduced from 3 years to 2.

Sec. 311.—An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, and (3) regularly stationed abroad under orders of such Government, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required;
(b) No prior residence within the United States or proof thereof shall be required.

Proposed section 311 would facilitate the naturalization of spouses of certain citizens of the United States in the employ of the Government of the United States who are regularly stationed abroad. By reason of enforced absence from this country, the noncitizen spouse cannot hope to comply with the requirements of a declaration of intention and the necessary United States and local residence.

The proposed measure would relieve such an alien from making a declaration of intention and from establishing or proving any period of residence within the United States. It would be necessary for the applicant to come to the United States in order to file the petition for naturalization, and to declare before the naturalization court in good faith an intention to take up residence in the United States immediately upon the termination abroad of the Government employment of the citizen spouse.

This group of persons is not numerically large and it is felt that the relationship of the citizen spouse to the Government of the United States is such as to warrant the exemptions described.

CHILDREN

Sec. 312.—A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citi-
nation of the United States, shall, if such alien parent is naturalized, be deemed a citizen of the United States, when—

(a) Such naturalization takes place while such child is under the age of eighteen years; and

(b) Such child is residing in the United States at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

Proposed section 312 is a modification of present law concerning children born outside of the United States of one citizen and one alien parent. It provides for the automatic acquisition of United States citizenship by the child under the fulfillment of two conditions: (1) That the naturalization of the alien parent takes place while the child is under the age of 18 years, and (2) that the child is residing in the United States at the time of such naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years. If such permanent residence begins after such naturalization, citizenship is acquired at the beginning of such residence (sec. 1993, R. S. U. S., as amended by sec. 1, act of May 24, 1934, 48 Stat. 797; U. S. C., title 8, sec. 6).

Under present law a child born outside the United States of one citizen and one alien parent, the citizen parent having resided in the United States prior to the birth of the child, is held by the Attorney General of the United States to be a citizen of this country at birth, subject to losing such citizenship if later the child fails to reside in the United States for at least 5 years continuously immediately previous to its eighteenth birthday and unless, within 6 months after its twenty-first birthday, it takes an oath of allegiance to the United States (58 Op. Atty. Gen. — (1934)).

This provision in the present statute is unsatisfactory for a number of reasons. Its wording is vague and required an opinion of the Attorney General in order to define its meaning and scope. It creates a doubtful status because questions will probably arise as to the intervening citizenship of a child between the time of its birth and the point at which it fails to comply with the stipulated conditions as to residence within the United States and taking the oath of allegiance.

The present law is discriminatory in that it requires the child of one citizen and one alien parent to reside in the United States for 5 years continuously immediately preceding its eighteenth birthday (or from a date prior to its thirteenth birthday), and to take an oath of allegiance within 6 months after its twenty-first birthday, while the child of two alien parents, one of whom later becomes naturalized, does not have to begin to reside in the United States until just previous to its sixteenth birthday and is not required to take the oath of allegiance. Citizenship begins 5 years after permanent residence starts.

Legislation by which children have acquired citizenship of the United States through their parents has always fixed the age at 21 years, before which time the child must have taken up its residence in the United States. Under prior laws, citizenship was acquired automatically by children if they were residing permanently in the United States and were under 21 years of age at the time of the naturalization of the parent, or began to reside permanently in the United States after the naturalization of a parent and while under the age of 21 years (sec. 2172, U. S. R. S.; and sec. 5, act of March 2, 1907, 34 Stat. 1229; U. S. C., title 8, secs. 7 and 8). Under such automatic provisions children became naturalized without having to comply with the usual requirements. Citizenship status was determined automatically by the law itself.

Under the proposed provision, the same automatic process has been retained but the age limit has been reduced to 18 years. This is for the reason that the law has recognized an alien who is 18 years of age as sufficiently mature to make a declaration of intention, thus initiating independent steps toward becoming a naturalized citizen. This age is also recognized in many countries of the world as that at which an individual is sufficiently mature to be subject to military service. Should a child who would otherwise be eligible to citizenship of the United States under this proposed section fail to come to the United States before reaching the age of 18 years or should the alien parent fail to become naturalized within that time, the child would be able to initiate independent naturalization proceedings after reaching the age of 18 years by making his own declaration of intention to become a citizen.

Sec. 313.—A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(a) The naturalization of both parents; or

(b) The naturalization of the surviving parent if one of the parents is deceased; or

(c) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents; and if—

(d) Such naturalization takes place while such child is under the age of eighteen years; and

(e) Such child is residing in the United States at the time of the naturalization of the parent last naturalized under subsection (a) of this section, or the parent naturalized under subsection (b) or (c) of this section, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Proposed section 318 provides for the acquisition of citizenship of the United States by a child born out-
side of this country of alien parents, or of an alien parent and a citizen parent who has lost citizenship. The following alternative conditions are, among others, prescribed:

(1) The naturalization of both parents; or
(2) The naturalization of the surviving parent if one of the parents is deceased; or
(3) The naturalization of the parent having legal custody of the child where there has been a legal separation of the parents.

This last stated condition is one which has already received official recognition (37 Op. Atty. Gen. 90 (1928); In re Lasarue, 24 F. (2d) 243). Other conditions which must be fulfilled are that (1) the naturalization of the parent or parents must take place while the child is under the age of 18 years, and (2) such child must be residing in the United States at the time of the naturalization of the parent last naturalized, or of the surviving parent where one is deceased, or the parent having legal custody of the child in case of a legal separation, or the child begins thereafter to reside permanently in the United States while under the age of 18 years.

The foregoing provisions are a modification of the present law, designed to make it more definite, and changing the age limit from 21 to 18 years (sec. 2172, U. S. R. S.; U. S. C., title 8, sec. 7; and sec. 5, act of March 2, 1907, as amended; as amended by sec. 2, act of May 24, 1934, 48 Stat. 797; U. S. C., title 8, sec. 8).

As was stated in commenting upon proposed section 312, the present act of 1934 provides that the citizenship of a child born outside of the United States of alien parents shall not begin until 5 years after the minor child commences to reside permanently in the United States. The limitation of automatic naturalization to children under the age of 18 years as proposed by this section has been fixed for the reasons discussed under proposed section 312.

Sec. 314.—A child born outside of the United States, one of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen and is residing permanently in the United States with the citizen parent, on the petition of such citizen parent, without a declaration of intention, upon compliance with the applicable procedural provisions of the naturalization laws.

The situation occasionally arises in which one parent of a child born outside of the United States is a citizen or becomes a citizen of the United States, while the other parent during the continuance of the marital status does not for some reason become a citizen. It is felt that the foreign-born child of such a union should not be deprived of the opportunity of becoming a citizen if the citizen parent is favorable to its acquisition of such status. Proposed section 314, therefore, would permit the citizen parent to petition for the naturalization of such a child under the age of 18 years, if otherwise qualified, and residing in the United States with the citizen parent.

Because of the age of the child, a declaration of intention would appear to be unnecessary if the other procedural requirements are followed by the parent.

Sec. 315.—An adopted child may, if not otherwise disqualified from becoming a citizen, be naturalized before reaching the age of eighteen years upon the petition of the adoptive parent or parents if the child has resided continuously in the United States for at least two years immediately preceding the date of filing such petition, upon compliance with all the applicable procedural provisions of the naturalization laws, if the adoptive parent or parents are citizens of the United States, and the child was:

(a) Lawfully admitted to the United States for permanent residence; and
(b) Adopted in the United States before reaching the age of sixteen years; and
(c) Adopted and in the legal custody of the adoptive parent or parents for at least two years prior to the filing of the petition for the child's naturalization.

There is, according to an opinion of the Attorney General, dated June 17, 1935, no provision of present law by which an alien adopted child may be naturalized through the act of the adoptive parent. The adoption laws make it possible for foster parents to have the adopted child recognized in almost every other respect as though it were the own child of the foster parents. The fact of adoption is usually an indication of the degree of affection on the part of the adoptive parents justifying the recognition of the relationship of parent and child under the naturalization laws.

Precaution, however, must be taken to prevent adoption proceedings from being used for ulterior purposes in creating citizenship status. The child must, therefore, conform to the following conditions if it is to receive the benefits of this proposed section: The child must have resided continuously in the United States for at least 2 years immediately preceding the filing of the petition; must have been lawfully admitted to the United States for permanent residence; must have been adopted in the United States before reaching the age of 18 years; must have been adopted and in the legal custody of the adoptive parent or parents for at least 2 years prior to the filing of the petition; and the child must be under the age of 18 years.
FORMER CITIZENS OF THE UNITED STATES

Sec. 316.—

(a) A person who was born a citizen of the United States or who otherwise acquired citizenship of the United States, and who prior to September 22, 1922, lost United States citizenship by marriage to an alien or by the spouse’s loss of United States citizenship, and any person who lost United States citizenship on or after September 22, 1922, by marriage, to an alien ineligible to citizenship, may, if no other nationality was acquired by affirmative act other than such marriage, be naturalized upon compliance with all requirements of the naturalization laws with the following exceptions:

(1) No declaration of intention and no certificate of arrival shall be required, and no period of residence within the United States or within the State where the petition is filed shall be required.

(2) The petition need not set forth that it is the intention of the petitioner to reside permanently within the United States.

(3) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner.

(4) The petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner has appeared before such examiner for examination.

Such person shall have, from and after the naturalization, the same citizenship status as that which existed immediately prior to its loss.

Proposed section 316 (a) is substantially a continuance of that portion of the Cable Act of 1922, as amended, which provides for the expeditious reacquisition of previous citizenship status by certain former United States citizens. It is somewhat broader than the 1922 act, as amended, which would confine its application to alien women citizens who had lost their citizenship status by marriage to an alien or by the spouse’s loss of United States citizenship, and who prior to September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship.

(b) (1) From and after the effective date of this Act, a woman, who was a citizen of the United States at birth, and who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, and whose marital status with such alien has or shall have terminated, if no other nationality was acquired by affirmative act other than such marriage, shall, from and after the taking of the oath of allegiance prescribed by subsection (b) of section 334 of this chapter, be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place or after September 22, 1922.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the judge or clerk of a court having jurisdiction to naturalize aliens as citizens of the United States.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy or legation or consulate or naturalization court, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy or legation or consulate or naturalization court, shall be delivered to such woman at a cost not exceeding $1, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department of the United States.

Proposed section 316 (b) carries into the proposed code the substance of the act of June 25, 1916 (Public, No. 735; 40 Stat. 1917; U. S. C., title 8, sec. 9a) providing for the repatriation of certain former women citizens who had theretofore lost their citizenship by marriage to aliens. As enacted, it refers to "native-born" citizens only, leaving in doubt the status of women who were born into citizenship out...
of the limits and jurisdiction of the United States by reason of being the children of citizen fathers who had resided in the United States prior to the birth of the children. As proposed, the language, "a citizen of the United States at birth," would include both citizens under section 103 of the United States Revised Statutes and citizens born in the United States subject to its jurisdiction and, therefore, citizens under section 1 of the fourteenth amendment to the Constitution. This proposed subsection would also clarify the status of such a woman from the effective date of the proposed code until she has taken the oath of allegiance prescribed by the naturalization law. While the act of June 25, 1938, provides that thereafter a woman of the class to which the act relates shall be deemed to be a citizen of the United States, it adds the restriction that such woman shall not have or claim any rights; if she be a citizen of the United States, it adds the restriction that such woman shall have the same citizenship status as though they had not been expatriated. Proposed section 317, (a), (b), and (c), cover a large group of former citizens of the United States who, while minors, lost their citizenship through the expatriation abroad of the parent or parents. This situation was discussed at length by the Attorney General of the United States in the Tobissens Case (26 Op. Atty. Gen. 535 (1932)). See also, United States v. Reid (C. C. A., 9th Circuit, 1934), 73 F. (2d) 153. There is now no provision for their naturalization except by compliance with all the usual requirements including the filing of a declaration of intention at least 2 years prior to the petition for naturalization and 5 years' continuous residence immediately preceding the filing of the petition.

As many such former citizens were brought back to the United States during childhood and have lived most of their lives in this country the same restrictions upon naturalization would not appear to be either necessary or desirable.

It has been felt to be equitable and desirable that opportunity be accorded such persons to become naturalized without the usual formalities of residence and proof, provided they petition for naturalization before a naturalization court in the United States before reaching the age of 25 years and establish by evidence satisfactory to the court that they are then persons of good moral character, attached to the principles of the Constitution of the United States, well disposed to the good order and happiness of the United States and intend to reside permanently in this country. Such persons after naturalization would have the same citizenship status as though they had not been expatriated.

It is felt that persons that have thus lost their citizenship as minors through no action of their own and without volition on their part and who, through the act of a parent or parents have technically become aliens, should not be forced to conform to the requirements of the immigration laws if they have not acquired the nationality of a foreign country by any affirmative act other than the expatriation of the parent or parents, and that he intends to reside permanently in the United States shall be made by any means satisfactory to the naturalization court.

Sec. 317.—

(a) A former citizen of the United States expatriated through the expatriation of such person's parent or parents and who has not acquired the nationality of another country by any affirmative act other than the expatriation of his parent or parents may be naturalized upon filing a petition for naturalization before reaching the age of twenty-five years and upon compliance with all requirements of the naturalization laws with the following exceptions:

(1) No declaration of intention and no certificate of arrival and no period of residence within the United States or in a State shall be required;

(2) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner;

(3) If there is attached to the petition at the time of filing, a certificate from a naturalization examiner stating that the petitioner has appeared before him for examination, the petition may be heard at any time after filing; and

(4) Proof that the petitioner was at the time his petition was filed and at the time of the final hearing thereon a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and that he intends to reside permanently in the United States shall be made by any means satisfactory to the naturalization court.

(b) No former citizen of the United States, expatriated through the expatriation of such person's parent or parents, shall be obliged to comply with the requirements of the immigration laws, if he has not acquired the nationality of another country by any affirmative act other than the expatriation of his parent or parents, and if he has come or shall come to the United States before reaching the age of twenty-five years.

(c) After his naturalization such person shall have the same citizenship status as if he had not been expatriated.
Sec. 318.—

(a) A person who as a minor child lost citizenship of the United States through the cancelation of the parent's naturalization on grounds other than actual fraud or on the ground specified in the second paragraph of section 15 of the Act of June 29, 1906, as amended (34 Stat. 601; 40 Stat. 544, U. S. C., title 8, section 405), or who shall lose citizenship of the United States under subsection (c) of section 337 of this chapter, may, if such person resided in the United States at the time of such cancelation and if, within two years after such cancelation or within two years after the effective date of this section, such person files a petition for naturalization or such a petition is filed on such person's behalf by a parent or guardian if such person is under the age of eighteen years, be naturalized upon compliance with all requirements of the naturalization laws with the exception that no declaration of intention shall be required and the required five-year period of residence in the United States need not be continuous.

Proposed section 318 (a) concerns the children of persons whose naturalization has been revoked because of illegality. The children of such persons, had the naturalization been valid, would have become citizens as minors residing permanently within the United States. Inasmuch as they are usually the innocent victims of the parent's illegal naturalization, and as the parents themselves as a rule have not wilfully evaded the requirements of the naturalization law where the cancelation is based upon illegality and not actual fraud, the children would seem to be entitled to some relaxation from the usual requirements for naturalization.

The Attorney General has held that, under the law now in effect, the wife and child who, if the naturalization of the husband and father had been valid, would have been citizens of the United States, did not become citizens where the naturalization was fraudulently obtained and later canceled. The Attorney General held that such result followed even though the cancelation of the naturalization grew out of the presumption of fraud raised because the naturalized person took up permanent residence abroad within 5 years after his naturalization (36 Op. Atty. Gen. 446 (1881)). The Circuit Court of Appeals for the Third Circuit took the same view as to the alleged citizenship of the wife of the naturalized person where the naturalization was canceled because of actual fraud (Rosenberg v. United States (1929), 60 F. (2d) 475).

This subsection provides that a person included within its scope might be naturalized upon compliance with all the requirements of the naturalization laws other than making a declaration of intention and showing that the required 5-year period of residence within the United States was continuous.

However, in order to be qualified, an applicant under this proposed subsection must have resided in the United States at the time of the cancelation of the parent's naturalization, and the petition for naturalization must be filed within 2 years after the cancelation or within 2 years after the effective date of this section. If the child is under the age of 18 years the petition may be filed in its behalf by a parent or guardian. The specified exemptions would not be available in any case where the parent's naturalization was canceled on the ground of actual fraud. While the case referred to by the Attorney General involved presumptive and not actual fraud, it would seem unduly harsh to apply the rule to such cases where the status of children is involved. Therefore, the proposed subsection has been made applicable to cases of children where the naturalization of the parent has been canceled because of taking up permanent residence abroad within 5 years after naturalization.

(b) Citizenship acquired under this section shall begin as of the date of the person's naturalization, except that in those cases where the person has resided continuously in the United States from the date of the cancelation of the parent's naturalization to the date of the person's naturalization under this section, the citizenship of such person shall relate back to the date of the parent's naturalization which has been canceled or to the date of such person's arrival in the United States for permanent residence if such date was subsequent to the date of naturalization of said parent.

Proposed section 318 (b) provides that citizenship under this section shall begin as of the date of the subsequent naturalization. An exception is made where the person has resided continuously in the United States from the date of the cancelation of the parent's naturalization to the date of the person's naturalization under this section. Here citizenship would relate back to the date of the parent's naturalization which has been canceled, or to the date of the person's arrival in the United States for permanent residence if the latter was subsequent to the parent's naturalization.

PERSONS MISINFORMED OF CITIZENSHIP STATUS

Sec. 319.—A person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July 1, 1920, and was on that date otherwise qualified to become a citizen of the United States, except that such person had not made a declaration of intention required by law and who during or prior to that time, because of misinformation regarding
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 compli-
ning with the other requirements of the nat-
uralization laws.

 Proposed section 319 continues in force the present 
provision by which certain persons, who have been mis-
informee 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 uninterrupted
ly within the United States during the period of 5 years 
next preceding July 1, 1920, is required (subd. 10, sec.
4 of 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 perma-
nent 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 pro-
visions of this section, residence within the United 
States within the meaning of this chapter shall in-
clude residence within any of the outlying posses-
sions of the United States.

 Proposed section 320 continues the present provision 
of the Naturalization Act of 1906, making the natural-
ization 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 posses-
sions not a part of the United States would be regarded
as residence within the United States (sec. 30, act of 
300). 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 pe-
rsons and persons of African nativity or descent (Toy-
a v. United States (1923), 288 U. S. 409).

PUERTO RICANS

Sec. 321.—A person born in Puerto Rico of alien par-
ents, 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 privi-
lege 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. 3; sec. 5 (a),
act of March 2, 1917, as added by sec. 2, act of March 4,
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 here-
tofoire 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 coun-
try 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 obliga-
tion taken for the purpose of entering such service,
may be naturalized by taking before any natural-
ization 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 en-
 trance 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-
tions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

Probably the most complex, vague, and baffling provisions of the naturalization laws are those which provide for the naturalization of persons by reason of service in the various branches of the military and naval forces of the United States. They were not clear as to their scope prior to the World War, but the legislation hastily enacted during the time the United States was at war proved then and since to be even more difficult of interpretation and construction. So many separate classes were created and so many variations were made as to the proof to be furnished by each class that the precise requirements have not as yet been fully determined (sec. 216e, R. S. U. S., as amended by sec. 2, act of May 9, 1918, 40 Stat. 547; U. S. C., title 8, sec. 395; sec. 4, act of June 29, 1906, as amended by the act of May 9, 1918, 40 Stat. 543-546; as amended by sec. 6 (d), act of March 2, 1929, 45 Stat. 1514, and sec. 2, act of May 25, 1933, 47 Stat. 165; U. S. C., title 8, secs. 388 to 394, inc.; (U. S. C., title 8, sec. 388)).


The most recent legislation relating to World War veterans is that represented by two acts approved the same day, June 24, 1935, cited above. One provides for the naturalization of certain alien veterans of the World War who served in the armed forces of the United States, and who prior to the act of 1935 (Public, No. 162), were ineligible to citizenship because not free white persons or of African nativity or descent. This legislation also provides for the validation of naturalization judgments in the cases of such racially ineligible veterans as well as the certificates of naturalization issued thereon.

The other act of June 24, 1935 (Public, No. 160), extends the act of 1932 for the naturalization of alien veterans of United States forces to include petitions for naturalization which may be filed prior to May 25, 1937, with some of the liberal exemptions from the usual requirements which were offered during the World War. This measure contains an unusual provision in that its benefits are extended to include certain aliens who were lawfully admitted to the United States for permanent residence, who departed therefrom between August 1914 and the entrance of the United States into the World War, and who served honorably in the military or naval forces of any of the countries allied with the United States during the World War. This measure is, as indicated, temporary legislation and will continue for a period slightly less than 2 years.

Prior to the enactment of these two most recent laws, extended discussions were had with representatives of the War and Navy Departments concerning the desirability of a simplified procedure which, as permanent legislation, would apply equally to persons serving honorably in either the United States Army, Navy, Marine Corps, or Coast Guard. As a result there has been drafted proposed section 323, which is quoted in this report. It has been approved in substance by the representatives of those departments as a substitute for the many miscellaneous and widely varying provisions now in force.

Proposed section 323 (a) relieves from the requirements of 5 years' continuous residence in the United States immediately preceding the filing of a petition for naturalization and 6 months' residence in the State in which the petition is filed, persons who have served honorably in such armed forces for a period or periods aggregating 3 years. In order that the exemptions may be directly related to the service rendered, the requirement is made that the petition for naturalization must be filed while the petitioner is still in the service or within 6 months after its termination.

(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this chapter except that—

(1) No declaration of intention shall be required;
(2) No certificate of arrival shall be required;
(3) No residence within the jurisdiction of the court shall be required;
(4) Such petitioner may be naturalized immediately if the petitioner be then actually in any of the services prescribed in subsection (a) of this section, and if, before filing the petition for naturalization, such petitioner and at least two verifying witnesses to the petition, who shall be citizens of the United States and who shall identify petitioner as the person who rendered the service upon which the petition is based, have appeared before and been examined by a representative of the Service.
Proposed section 323 (b) contains the exemptions which include waiver of the declaration of intention, certificate of arrival, residence within the jurisdiction of the court, and any delay in naturalization if the petitioner be actually in the service and prior to filing the petition for naturalization the petitioner and his verifying witnesses who identify him as the person rendering the service have appeared in person before and have been examined by a representative of the Immigration and Naturalization Service.

(c) In case such petitioner's service was not continuous, petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any periods within five years immediately preceding the date of filing said petition between the periods of petitioner's service in the United States Army, Navy, Marine Corps, or Coast Guard, shall be verified in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon by witnesses, citizens of the United States, in the same manner as required by section 309. Such verification and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

Under proposed section 323 (c) the conditions are stated under which an applicant who files his petition while still in the service or within 6 months after its termination, but whose service was not continuous, is required to establish his good moral character and other qualifications between the periods of his service. This subsection also requires similar verification of the petition and proof by witnesses of the applicant's qualifications during the period between the date of discharge and the filing of the petition, if the petition is not filed while he is in the service.

(d) The petitioner shall comply with the requirements of section 308 as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

While the liberal exemptions to service men set forth in proposed subsection (b) of this section, are applicable only to an individual who files a petition while in the service or within 6 months after discharge, proposed section 323 (d) provides that if the petitioner has been out of the service for more than 6 months, such service shall be considered as residence within the United States or the State.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of affidavits and testimony or depositions of witnesses.

Proposed section 323 (e) recognizes the great difficulty if not impossibility of proving one's individual qualifications for citizenship during the periods he has been serving in United States forces. Such witnesses as are most closely associated with him are his fellow service men and they are usually not available when a petition for naturalization is about to be filed.

Persons following the pursuits described in this section are under the most close observation and strict discipline and the records of their conduct while in service are believed to be equal to if not superior to the usual testimony of friendly witnesses.

Proposed subsection (e), therefore, provides that the character and attitude toward the Government of the United States during the periods of service shall be proved by duly authenticated copies of records of the branches of the Government service under which they are employed, and for the recognition of such records as sufficient without the affidavits and testimony or depositions of witnesses.

Sec. 324—

(a) A person who has served honorably or with good conduct for an aggregate period of at least three years (1) on board of any vessel of the United States Government other than in the United States Navy, Marine Corps, or Coast Guard, or (2) on board vessels of more than twenty tons burden, whether or not documented under the laws of the United States, and whether public or private, which are not foreign vessels, and whose home port is in the United States, may be naturalized without complying with the requirements as to five years' residence within the United States and six months' residence in the State, if such person files a petition for naturalization while still in the service on a reenlistment, reappointment, or reshipment, or within six months after an honorable discharge or separation therefrom.

Proposed section 324, subsection (a), provides for the naturalization of persons serving honorably or with
good conduct for an aggregate period of at least 3 years aboard two classes of vessels: (1) Vessels of the United States Government other than in the United States Navy, Marine Corps, or Coast Guard, and (2) nongovernmental of more than 20 tons which are not foreign vessels. Because persons following such employment are in much the same position as members of the United States Army, Navy, Marine Corps, and Coast Guard, similar exemptions have been provided in case a petition for naturalization is filed while the individual is still in the service on a reenlistment, reappointment, or reshipment, or within 6 months after an honorable discharge or separation.

At present the war-time legislation of 1918 covers these groups of persons, the provisions being incorporated in the highly technical act of 1918 described in connection with proposed section 323 (a). An added qualification would require the nongovernmental vessels to have their home port in the United States. This is regarded as desirable because otherwise small vessels which are stationed in foreign waters and never come to the United States might be included even though the surroundings of the seamen employed upon them would be foreign to this country and its institutions. (See comment on sec. 308 (c) (2), above.)

(b) The provisions of subsections (b), (c), (d), and (e) of section 325 shall apply to petitions for naturalization filed under this section, except that service with good conduct on vessels described in subsection (a) (2) of this section may be proved by certificates from the masters of such vessels.

For the same reasons which have been described in proposed section 323, subsection (b) of proposed section 324 makes applicable to the latter the provisions of subsections (b), (c), (d), and (e) of proposed section 323, relating, respectively, to the exemptions from the regular naturalization requirements, proof of the applicant's qualifications while out of the service, credit for service as residence within the United States or a State, and proof of service by duly authenticated records of the executive departments under which the applicant has served, or certificates from masters of nongovernmental vessels.

ALIEN ENEMIES

Sec. 325. —

(a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall not be admitted to become a citizen of the United States unless such alien's declaration of intention was made not less than two years prior to the existence of the state of war, or such alien was at that time entitled to become a citizen of the United States without making a declaration of intention, or unless the petition for naturalization shall then be pending and the petitioner is otherwise entitled to admission, notwithstanding such petitioner shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject.

(b) An alien embraced within this section shall not have such alien's petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner to be represented at the hearing, and the Commissioner's objection to such final hearing shall cause the petition to be continued from time to time for so long as the Commissioner may require.

(c) Nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

(d) The President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thenceupon such alien shall have the privilege of applying for naturalization.

Proposed section 325 is a continuance of provisions now in force by which under certain rigid restrictions alien enemies may become naturalized in time of war. The present legislation was a part of that enacted during and because of the World War. It was found that there were thousands of persons in the United States who had lived here for many years, whose loyalty to the United States was unquestioned, and who were subjected to heavy disabilities because technically they were alien enemies.

Ample notice to the Government is required and upon the objection of the Commissioner of Immigration and Naturalization a continuance may be had in order to permit necessary inquiry as to the loyalty of the individual concerned.

This proposed section was discussed with representatives of the War and Navy Departments who are favorable to its inclusion. It appears to be desirable to regard it as permanent legislation which would be available immediately should a state of war develop.

PROCEDURAL AND ADMINISTRATIVE PROVISIONS

EXECUTIVE FUNCTIONS

Sec. 326. —

(a) The Commissioner, or, in his absence, a Deputy Commissioner, shall have charge of the administration of the naturalization laws, under the immediate direction of the Secretary of
Labor, to whom the Commissioner shall report directly upon all naturalization matters annually and as otherwise required.

Proposed section 386 (a) retains the present provisions by which the Commissioner, or in his absence, a Deputy Commissioner, is charged with the administration, under the immediate direction of the Secretary of Labor, of the naturalization laws (sec. 1, act of June 29, 1906, 34 Stat. 596; U. S. C., title 8, secs. 351, 352; and sec. 3, act of March 4, 1913, 37 Stat. 737; U. S. C., title 8, sec. 353).

(b) The Commissioner, with the approval of the Secretary, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

The first part of this proposed subsection is a continuance of the present statutory authority by which the Commissioner, with the approval of the Secretary of Labor, makes the necessary rules and regulations for carrying the naturalization law into effect (sec. 28, act of June 29, 1906; as amended by sec. 8, act of March 2, 1929, 45 Stat. 1515; U. S. C., title 8, sec. 356).

This subsection would recognize the practice which has been in operation since the basic Naturalization Act of 1906, providing for Federal administrative supervision of naturalization. The primary purpose in authorizing an administrative agency was to insure that an inquiry would be made in every naturalization case as to the eligibility and fitness of the applicant for citizenship. The courts then and now have no means by which such an inquiry can be made and must rely upon the administrative officers to carry out this important function.

The necessity for the examination into the merits of naturalization applications having been recognized by Congress through the provisions made annually since 1906 to carry on this work, it is important that there be legislative recognition of the fact that it is a necessary safeguard in the granting of citizenship.

While the Constitution requires a "uniform" rule of naturalization, the fact that more than 2,000 Federal and State courts have naturalization jurisdiction, and the lack of any statutory provision by which the Immigration and Naturalization Service might prescribe the scope and nature of the examination to be accorded petitioners for naturalization, have resulted in much inconsistency, confusion, and contrariety of opinion and decision in this field. There have been wide differences of opinion among the many courts as to the nature and extent of the examination which applicants for naturalization should be given, and such differences even among the various naturalization judges in a single court. There has also been at times a lack of agreement as between the judges and naturalization examiners. As it is hopeless to expect that the judges of the more than 2,000 courts, all of coordinate jurisdiction, would, acting independently, be able to arrive at a type of examination which would be uniform throughout the United States, it is suggested that the Commissioner of Immigration and Naturalization be authorized to prescribe the scope and nature of such examination. This would not only place the authority where it must in any event be normally exercised but would have the great merit of providing for a uniform test throughout the United States and in all of the naturalization courts.

It is felt, however, that there should be definite assurance that such examination would be confined to the essential elements necessary to be considered in determining the fitness for citizenship of any applicant. The proposed measure, therefore, specifies that such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and the other qualifications to become a naturalized citizen as required by law. The administrative examination would not, of course, prevent further interrogation of petitioner and witnesses by the court. (See comment in sec. 382.)

While the statutory authority which is now given naturalization examiners to conduct preliminary hearings, take testimony, and make recommendations to the court for the admission or denial of petitions filed in the United States district courts, is a move in the direction of a more uniform naturalization law, a test which would be the same in every court throughout the United States would give a tremendous impetus in approaching the required uniformity of procedure.

The confidence the judiciary repose in the members of the Naturalization Service is indicated by the acceptance by the judges of United States district courts of the recommendations of the naturalization examiners based upon their hearings before the courts, in 99 percent of all cases submitted. These cover approximately 800,000 cases since 1926, when Congress authorized this procedure.

(c) The Commissioner is authorized to promote instruction and training in citizenship re-
Proposed subsection (c), which has been a part of the naturalization statutes since 1916, is a recognition of the need for the Federal Government to cooperate with both national and local agencies, particularly the public schools, in the preparation of naturalization applicants for better citizenship (subd. 9, sec. 4, act of June 29, 1906, as amended by sec. 4, act of May 9, 1918, 40 Stat. 544; U. S. C., title 8, sec. 887).

The public-school system is recognized as a helpful instrumentality through which the prospective citizen may receive the education which will give assurance of his intelligent participation in local, State, and National affairs when he has proved himself worthy of citizenship of the United States. By sending the names of candidates for naturalization to public-school agencies, they are enabled to contact the aliens and secure their interest in preparing themselves for citizenship by attendance upon English and citizenship classes.

The citizenship textbook has been prepared by educators and is distributed to candidates for citizenship receiving instruction under public-school supervision. Funds are provided in the appropriation for printing and binding of the Department of Labor for the cost of the citizenship textbook.

The same law which authorizes the textbook provides the necessary forms which may be so provided shall be used and the precaution to be taken in using safety paper for certificates of naturalization and of citizenship (subd. 7, sec. 408; and sec. 28, act of June 29, 1906, as amended by sec. 8, act of March 2, 1929, 45 Stat. 1514; U. S. C., title 8, sec. 385).

Proposed subsection (d) contains the present provisions by which the Commissioner of Immigration and Naturalization determines the necessary forms which are to be used and the precaution to be taken in using safety paper for certificates of naturalization and of citizenship (sec. 3, act of June 29, 1906, 34 Stat. 596; U. S. C., title 8, sec. 408; and sec. 28, act of June 29, 1906, as amended by sec. 8, act of March 2, 1929, 45 Stat. 1515; U. S. C., title 8, sec. 385).

(e) Members of the Service may be designated by the Commissioner or a Deputy Commissioner to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Commissioner or a Deputy Commissioner may, in his discretion, authorize such depositions to be taken before a postmaster without charge, or before a notary public or other person authorized to administer oaths for general purposes.

Proposed subsection (e) continues the present statutory authority by which the Commissioner or a Deputy Commissioner may designate members of the Immigration and Naturalization Service to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws (subd. 7, sec. 4, act of June 29, 1906, as amended by sec. 1, act of May 9, 1918, 40 Stat. 544; U. S. C., title 8, sec. 385; and subd. 4, sec. 4, act of June 29, 1906, as amended by sec. 6 (b), act of March 2, 1929, 45 Stat. 1514; U. S. C., title 8, sec. 385).

This authority enables the members of the Service so designated to function more efficiently and to expedite the handling of naturalization cases. The authority to administer oaths results in much greater care being exercised by applicants in making statements concerning their qualifications. The provision for members of the Service to take depositions also results in much greater care in the preparation of naturalization proof in addition to relieving applicants of much unnecessary expense and loss of time in the preparation of their cases.

It occasionally happens that depositions are required to be taken in isolated communities such as in Alaska or other sparsely settled territory. In order to avoid unnecessary delay which may arise from the infrequency of visits to such localities by immigration and naturalization officials, provision is made in the proposed code for depositions to be taken before a postmaster without charge, or before a notary public or
(f) A certificate of naturalization or of citizenship issued by the Commissioner or a Deputy Commissioner under the authority of this chapter shall have the same effect in all courts, tribunals, and public offices of the United States, at home and abroad, of the District of Columbia, and of each State, Territory, and insular possession of the United States, as a certificate of naturalization or of citizenship issued by a court having naturalization jurisdiction.

Proposed subsection (f) carries into effect the provisions of the present law by which certificates of citizenship granted under statutory authority by the Commissioner of Immigration and Naturalization are given as amended by sec. 9, act of March 2, 1929, 45 Stat. 166; U. S. C., title 8, sec. 399b (d).

Proposed subsection (g) is substantially the same as the present provision of the act of 1906 by which certifications and certified copies of all papers, documents, certificates, and records required or authorized to be issued, used, filed, recorded, or kept under any and all provisions of this chapter shall be admitted in evidence equally with the originals in any and all cases and proceedings under this Act and in all cases and proceedings in which the originals thereof might be admissible as evidence.

Proposed subsection (g) is substantially the same as the present provision of the act of 1906 by which certifications and certified copies of all papers, documents, certificates, and records relating to naturalization are made admissible in evidence equally with the originals in any and all cases and proceedings under this chapter shall be admitted in evidence equally with the originals in any and all cases and proceedings under this Act and in all cases and proceedings in which the originals thereof might be admissible as evidence.

Proposed subsection (g) is substantially the same as the present provision of the act of 1906 by which certifications and certified copies of all papers, documents, certificates, and records relating to naturalization are made admissible in evidence equally with the originals in any and all cases and proceedings under this chapter shall be admitted in evidence equally with the originals in any and all cases and proceedings under this Act and in all cases and proceedings in which the originals thereof might be admissible as evidence.

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It has been possible for this studio to furnish the necessary photographs at a nominal price. This plan has worked so successfully and beneficially in New York City that it is believed that the authority should be extended to other centers where the same desirable results may reasonably be anticipated.

REGISTRY OF ALIENS

Sec. 327.--

(a) The Commissioner shall cause to be made, for use in complying with the requirements of this chapter, a registry of each person arriving in the United States after the effective date of this chapter, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the date and place of birth, nationality, the last residence, the intended place of residence in the United States, the date and place of arrival of said person, and the name of vessel or other means of transportation, upon which said person arrived.

Proposed section 327 (a) continues the present requirement by which the Immigration and Naturalization Service makes a record at the port of arrival of each alien arriving in the United States in sufficient detail so that the record may later be used as the basis of naturalization proceedings (sec. 1, act of June 29, 1906, 34 Stat. 596; U. S. C., title 8, sec. 106).

(b) Registry of aliens at ports of entry required by subsection (a) of this section may be made as to any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence, if such alien shall make a satisfactory showing to the Commissioner, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, that such alien—

1. Entered the United States prior to July 1, 1924;
2. Has resided in the United States continuously since such entry;
3. Is a person of good moral character; and
4. Is not subject to deportation.

Proposed subsection (b) retains the present statutory provision by which aliens who have resided in the United States for many years but in whose cases no record of admission for permanent residence can be found, are registered by the Immigration and Naturalization Service upon the satisfactory showing that the alien entered the United States prior to June 3, 1921, has resided in the United States continuously.
since, as a person not ineligible to citizenship, is of good moral character, and is not subject to deportation (sec. 1, act of March 2, 1929, 45 Stat. 1519-1513; U. S. C., title 8, sec. 106a, amending sec. 1, act of June 29, 1906, 34 Stat. 596; U. S. C., title 8, sec. 106).

The only change in the present draft is that of the date from which continuous residence must be shown. This date has been advanced from June 3, 1921 to July 1, 1924, the date the present Immigration Act of 1924 became effective. This would include a number of aliens of good moral character, who have resided in the United States for more than 10 years, and are not subject to deportation, but who cannot proceed toward naturalization because of the lack of a sufficient record of arrival. It is not in the best interests of the United States that there should be any considerable number of aliens here who have resided in this country for many years and who are otherwise eligible for naturalization and anxious to become citizens, but who are prevented from doing so because of the absence of a record of arrival upon which to base a petition for naturalization.

(c) For the purposes of the immigration laws and naturalization laws an alien, in respect of whom a record of registry has been made as authorized by this section, shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of such alien’s entry.

The proposed provision in subsection (c) would recognize for naturalization purposes a record of registry as sufficient to support the issuance of a certificate of arrival in naturalization cases. This is in accord with the present statute (sec. 3, act of March 2, 1929, 45 Stat. 1513; U. S. C., title 8, sec. 106c).

CERTIFICATE OF ARRIVAL

Sec. 328.—

(a) The certificate of arrival required by this chapter may be issued upon application to the Commissioner in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, upon the making of a record of registry as authorized by section 327 of this chapter.

Proposed section 328 (a) is a continuation of the present authorization to the Commissioner of Immigration and Naturalization to issue certificates of arrival of aliens from the immigration records for use as a basis for petition for naturalization (sec. 1, act of June 29, 1906, 34 Stat. 596; U. S. C., title 8, sec. 106; sec. 2, act of March 2, 1929, 45 Stat. 1513; U. S. C., title 8, sec. 106a).

(b) No declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's lawful entry for permanent residence shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner or a Deputy Commissioner to cause to be issued such certificate.

The present naturalization law requires that an alien’s lawful entry for permanent residence must be established and a certificate of his arrival issued before he may make a declaration of intention, provided his entry was after June 29, 1906. The present law includes a vague and ambiguous phrase to the effect that if the declaration is made it will not be regarded as valid until the lawful entry for permanent residence has been established and the certificate of arrival issued (sec. 4, act of March 2, 1929, 45 Stat. 1513; U. S. C., title 8, sec. 377b, as amended by sec. 6, act of May 25, 1932, 47 Stat. 156; U. S. C., title 8, sec. 377b).

The inclusion of this phrase “if made, be valid,” leads to a number of possible interpretations of the law. It may mean either that a declaration made before the provision became effective may be validated after that date by the issuance of the certificate of arrival showing lawful entry for permanent residence; or it may mean that the declaration of intention made after the act became effective might thereafter be validated by the necessary showing of lawful entry for permanent residence and the issuance of a certificate of arrival. In either event it complicates the situation by leaving in doubt the effect such validation may have upon the declaration of intention. The Naturalization Act of 1906 requires a declaration of intention to be at least 2 years old at the time a petition for naturalization is filed. When a declaration of intention is validated does it mean that its life begins anew upon the date of validation and that it may not be used until 2 years have elapsed thereafter? Or does the validation merely make the declaration legally effective subject to the limitation of time as to filing based upon the original date of the declaration?

The foregoing are situations which, it is believed, should be avoided and the phrase, “or, if made, be valid,” has been omitted from subsection (b) of section 328.

PHOTOGRAPHS

Sec. 329.—

(a) Two photographs of the applicant shall be signed by and furnished by each applicant for a declaration of intention and by each petitioner for naturalization or citizenship. One of such photographs shall be affixed by the clerk of the court to the triplicate declaration of intention
issued to the declarant and one to the duplicate declaration of intention required to be forwarded to the Service; and one of such photographs shall be affixed to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Two photographs of the applicant shall be furnished by each applicant for—

(1) A record of registry;
(2) A certificate of derivative citizenship;
(3) A certificate of naturalization;
(4) A special certificate;
(5) A declaration of intention or a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed; and
(6) A new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had such citizen’s name changed by order of a court of competent jurisdiction or by marriage.

One such photograph shall be affixed to each such declaration or certificate issued by the Commissioner and one shall be affixed to the copy of such declaration or certificate retained by the Service.

The photographs required by statute since 1929 to be affixed to certain naturalization documents for aid in identification have been found to be of great practical value (sec. 36, act of June 29, 1906, as amended, as added to by sec. 9, act of March 2, 1929, 45 Stat. 1516; U. S. C., title 8, sec. 377c).

Proposed subsections (a) and (b) of section 339, therefore, include this provision.

DECLARATION OF INTENTION
Sec. 330.—An applicant for naturalization shall make, under oath before, and only in the office of, the clerk of court or such clerk’s authorized deputy, regardless of the place of residence in the United States of the applicant, two years at least prior to the applicant’s petition for naturalization, and after the applicant has reached the age of eighteen years, a signed declaration of intention to become a citizen of the United States, which declaration shall be set forth in writing, in triplicate, and shall contain the following averments by such applicant:

DECLARATION OF INTENTION
(1) My full, true, and correct name is ________________________________
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(full, true name, without abbreviation, and any other name which has been used, must appear here)
(2) I now reside at ________________________________
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(city or town) (county) (state)
(3) My present occupation is ________________________________
----------
(4) My age is ________________________________