

THE CITIZENSHIP ACT OF 1934

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HISTORY OF THE ACT

ON MAY 24, 1934, occurred two notable events. President Franklin D. Roosevelt signed a new citizenship and naturalization act.¹ A previous bill had been recalled for changes to clear up certain obscurities and Congress had reconsidered the bill. The Senate by a unanimous vote consented to the convention adopted at the Pan American Conference at Montevideo on December 26, 1933, providing that there should be no distinction based on sex as regards nationality in the legislation or in the practice of the states.² The United States was the first country to ratify the treaty. President Roosevelt had previously on April 21, 1934 signed a bill reducing naturalization fees.³ The increase in fees five years previous, together with the depression, had greatly reduced the number of persons taking out naturalization papers. In the year ending June 30, 1933, the fewest aliens were admitted to citizenship of any year in the past sixteen years.⁴ The new act reduced the fee for receiving and filing a declaration of intention and issuing a duplicate thereof from \$5 to \$2.50. The fee for making, filing, and docketing a petition for citizenship, and issuing a certificate of citizenship if the issuance of such certificate is authorized by the court, and for the final hearing on the petition was reduced from \$10 to \$5. Attorney's fees were limited to \$25 except when extended legal service is required.

A bill known as the Dickstein bill had been previously defeated in the Immigration Committee of the House by a vote of 15 to 4 on April 25, 1933.⁵ At a hearing on March 28, 1933 it was argued in favor of the bill that women ought to be placed on an equality in all respects with men. In opposition it was argued that it would open our doors to too many citizens and increase dual nationality. Secretary of State Hull in a letter op-

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¹ H. R. Rep. No. 3673, 73d (2d Sess., 1934).

² New York Times, May 25, 1934, p. 2, col. 7. For the text of the convention see 28 Am. J. Int. L., Official Documents, Convention on the Nationality of Women, 61-62 (1934).

³ New York Times, Apr. 22, 1934, § 1, p. 33, col. 2. For text see 48 Stat. 597-598, April 19, 1934.

⁴ New York Times, Feb. 4, 1934, § 2, p. 1, col. 4.

⁵ New York Times, Apr. 26, 1933, p. 4, col. 4.

posed the bill, advocating instead a general revision of the laws governing citizenship in the United States and its insular possessions, expatriation, and protection of citizens abroad.⁶ He objected to piece-meal legislation as leading to confusion and difficulty in the application of the law.

On April 25, 1933, President Roosevelt issued an executive order designating the Secretary of State, the Attorney General, and the Secretary of Labor as a committee to review the nationality laws of the United States, to recommend revisions with special reference to the removal of certain discriminations, and to codify the law into one comprehensive nationality law for submission to Congress at its next session. This Committee and their assisting officials sought the views and suggestions of individuals and organizations known to be interested or believed to be capable of making useful contributions. These suggestions, which were asked for at a late date,⁷ were desired as soon as possible and not later than December 20, 1933.

The preliminary work of the Committee was assigned to four sub-committees. One sub-committee was to deal with the acquisition of nationality at birth, and a second with acquisition of nationality through naturalization. A third was to study loss of American nationality, and the fourth, nationality in outlying possessions of the United States. The subject of protection of citizens abroad was not included.

NATIONALITY AT BIRTH OF FOREIGN BORN CHILDREN

The first section of the Act provides that:

"Section 1993 of the Revised Statutes is amended to read as follows:

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

Under the former law children of American fathers were declared citizens if the fathers had resided in the United States.⁸ The provision with

⁶ *New York Times*, Mar. 29, 1933, p. 2, col. 1.

⁷ Letters were sent out November 24, 1933.

⁸ 10 Stat. 604 (1855) amending 2 Stat. 155 (1802) together with 34 Stat. 1229 (1907), 8 U.S.C.A. § 6 (1926).

respect to residence by the father in the United States was interpreted by the United States Supreme Court as meaning residence prior to the birth of the child.⁹ The new act removes any doubt by expressly providing that the parent must have "resided in the United States previous to the birth of such child."

But the outstanding change accomplished by section 1 is the provision that children of American mothers, as well as of American fathers, are to be citizens of the United States. The United States is not the first country in the world to allow the nationality of the wife to determine that of the children although it is one of the first large nations to do so.¹⁰ Under the old law only children of American fathers could be citizens at birth. Children of American mothers acquired no American nationality. Between 1907 and 1922 when American women marrying foreigners lost their American nationality there was some logic in this, though even then they might resume their American nationality upon the dissolution of the marriage. Prior to 1907, when they did not lose nationality unless they established residence in the country of their husband's nationality, there was less reason.¹¹ Since 1922, from which date American women have not lost their nationality by marriage, there has been even less reason for not giving American nationality to their children.¹² Many such women return to the United States upon the death of their husbands or upon separating. Up to 1922 an American woman marrying a foreigner who resumed her American citizenship upon the dissolution of her marriage might by such resumption give American nationality to her foreign born children. Such nationality was, however, derivative and not *jure sanguinis*. After 1922 there was no resumption since she did not lose her United States citizenship by marriage. The children were therefore foreigners as the old statute made only children of American fathers American citizens *jure sanguinis*. Such was the strange result of the 1922 statute designed to give equality to women. Hence the children would have to be separately naturalized. Under the new law her children are Americans *jure sanguinis*.

⁹ Weedin v. Chin Bow, 274 U.S. 657 (1927).

¹⁰ In 1933 thirteen countries allowed women to transmit nationality, among them Soviet Russia and Turkey. Crozier, The Changing Basis of Women's Nationality, 14; 8 B. U. L. Rev. 129, 152 (1934); cf. Proc. Amer. Soc. Int. Law 97 (1926).

¹¹ Wallenburg v. Mo. Pac. Ry., 159 Fed. 217 (C.C.D. Neb. 1908); Hover, Citizenship of Women in the United States (1932); 26 Am. J. Int. L., 700, 704 (1932).

¹² It has not of course been claimed that giving the wife independent nationality results in her children born abroad taking her nationality. The old statute expressly referred to children of American fathers. But the logical next step in the way of legislation was to give the children of American mothers American nationality. Cf. Ernest J. Schuller, The Effect of Marriage on Nationality, Int. Law Association, Rep. of the 32d Conf. (1923) 9, 20.

Family unity is assisted by giving her nationality to her children. If the children of American fathers are to acquire American citizenship, equality of the sexes demands that the children of American mothers likewise should. The welfare of the children is promoted by linking them more closely with the mother. The new statute is in line with the following *voeu* adopted by the Hague Conference on the Codification of International Law in 1930:¹³

"The Conference recommends to states the study of the question whether it would not be possible

1. To introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into consideration the interests of the children."

But while American citizenship at birth may be acquired through the mother as well as the father a restriction as to foreign-born children is laid down which did not exist in the old act. If one of the parents is an alien the child must come to the United States and reside there at least five years continuously immediately previous to his eighteenth birthday and within six months after his twenty-first birthday must take an oath of allegiance to the United States of America. Under the old act, citizenship passed to the child of an American father whether the child ever came to the United States at all and without the taking of any oath of allegiance.¹⁴ Under the new act some affirmative action on the part of the child is required. Where both parents are United States citizens, however, no action on the part of the child is required. He is an American citizen by virtue of the fact that his parents are citizens and he continues to be one though he never comes to the United States nor takes an oath of allegiance. Where both parents are citizens one of them must have resided in the United States prior to the birth of the child, but apparently not both of them.

It is possibly open to argument that under the new act a child born abroad of an alien and one American parent acquires citizenship at birth, subject to loss upon the failure to come to the United States and to take an oath of allegiance.¹⁵ But the more reasonable meaning seems to be that such a child does not acquire citizenship at all until he shall have complied with these conditions. It is true that the section commences by saying

¹³ 24 Am. J. Int. L., Spec. Supp. 183 (1930).

¹⁴ But though no act was necessary to secure citizenship it was to secure protection. Under 34 Stat. 1229 (1907), 8 U.S.C.A. § 6 (1926), to receive protection the child was required upon reaching the age of eighteen years to record at an American consulate his intention to become a resident and remain a citizen of the United States, and to take an oath of allegiance upon attaining his majority.

¹⁵ Professor Edwin W. Borchard takes this view, and notes that the United States Attorney General has so construed this provision. Letter to writer, September, 1934.

that any child born abroad, whose father or mother is a citizen, is declared to be a citizen. Yet the very same sentence provides that "the rights of citizenship shall not descend" unless the citizen parent has resided in the United States prior to the birth of the child. The next sentence provides that "the right of citizenship shall not descend" unless the child comes to the United States. It is true that the Act of March 2, 1907, provides that foreign born children, American nationals at birth, who continue to reside outside the United States must, in order to receive the protection of the American government upon reaching the age of eighteen years, record at an American consulate their intention to become residents and remain citizens of the United States, and must also take an oath of allegiance upon attaining their majority. But receiving protection is a wholly different matter from continuing to be United States citizens. The 1907 act in express terms speaks of protection. The new law says nothing about protection but speaks of citizenship descending to children complying with the conditions of the statute. To speak of citizenship "descending" is to speak awkwardly,¹⁶ but seems to convey the idea of conferring citizenship.

The provision that the child must come to the United States and live here for five years before his eighteenth birthday will doubtless give rise to hardship and inconvenience in many cases. This is particularly true in cases in which the American parent is living abroad for the purpose of representing the government of the United States or other American interests. It may be extremely difficult to send the child to the United States at so young an age and for so long a period. Even the old law governing merely protection instead of citizenship simply required the recording at an American consulate of an intention to become a resident and to remain a citizen of the United States. The child did not have to come immediately to the United States. Even if he did none of those things he would still remain an American citizen.

This section also has the effect of producing additional cases of dual nationality and also cases of statelessness. There will be further cases of dual nationality since the children of American mothers as well as American fathers are made possible citizens. However, while there will be more cases as regards transmission through both parents, there will, on the other hand, be less cases of dual nationality because of the requirement that the children must come to the United States. Since many of them will never come they will never acquire American nationality.

Even if the act should result in more cases of dual nationality that is not necessarily a serious fault. It may be very advantageous to the child to

¹⁶ 41 Harv. L. Rev. 643, 646 (1928).

have several nationalities. It gives the mother equality of right as to her children. If it be true that another class of dual nationality cases is created, it should be borne in mind that such dual nationality already exists as to the children of American fathers. As an original matter, why accept dual nationality as to the fathers and deny it as to the mothers? Or why not let only the mother transmit nationality? The evils of dual nationality whether through father or mother or both have been much exaggerated. Too often critics object to it without assigning any reasons or very feeble ones therefor. Certainly the mere disturbance of the symmetry of the legal systems *per se* is not a sound objection. A really valid objection emerges in countries where personal rights and status are made to depend on nationality rather than domicile. It would seem that the nationality conferred on children of American mothers born abroad is an advantage and not a hindrance to them.

It is believed that the new statute will not create many international disputes because of dual nationality. Diplomatic controversies arising from conflicting claims respecting the nationality of children during their minority have been relatively infrequent.²⁷ In such cases the United States has respected the claims of the foreign state so long as the child continued to reside within its territory whether the claim was by right of birth under the *jus sanguinis* or the *jus soli*.

There is also danger, small no doubt, of statelessness. Children not coming to the United States will not acquire United States nationality. On the other hand, if the state in which they are born does not apply the *jus soli* they will not have the citizenship of that state. The modern trend, however, is to claim all persons born within the country so that cases of statelessness would be so rare as to give but small concern. Cases of state-

²⁷ Hyde, *The Nationality Convention Adopted by the League of Nations Committee of Experts for the Progressive Codification of International Law*, 20 *Am. J. Int. L.* 726, 727, note 3 (1926). On the other hand the view is taken by Flournoy that additional confusion will result. Flournoy, *Nationality Conventions, Protocols, and Recommendations Adopted by the First Conference on the Codification of International Law*, 24 *Am. J. Int. L.* 467, 477 (1930). He suggests as an alternative solution that the child have the nationality of the mother only, if born in the country of her nationality, and the nationality of the father only, if born in the country of his nationality, and that as to children born in third countries, the nationality should be determined by agreement between the parents. See also Flournoy, *The Proposed Pan American Convention for Preventing Dual Nationality*, *Proc. Amer. Soc. Int. Law* 69, 71 (1925). The *Research in International Law*, Harvard Law School, *Draft Convention on Nationality*, art. 12, 23 *Am. J. Int. L., Spec. Supp.* 41 (1929) provides: "A person who has at birth the nationality of two or more states shall, upon his attaining the age of twenty-three years, retain the nationality only of that one of the states in the territory of which he then has his habitual residence; if at that time his habitual residence is in the territory of a state of which he is not a national, such person shall retain the nationality only of that one of those states of which he is a national within the territory of which he last had his habitual residence."²²

lessness of this kind would be eliminated by a provision that such children would acquire and retain American citizenship if the law of the place of their birth failed to give local citizenship.

It is quite possible that the child may become a United States citizen at birth even though one parent is ineligible to United States citizenship.¹⁸ The statute does not say that both parents must be eligible to United States citizenship. The child of an American mother and a Japanese father might thus become a United States citizen. In fact the Senate rejected a clause that if one parent is of a race ineligible for citizenship the child cannot be accounted a United States citizen.¹⁹ This clause was regarded as an insult to the Japanese and Chinese.

Since derivative citizenship in the United States was not acquired by a minor foreign born child through its adoptive parents, whether the father or mother,²⁰ there was no need for establishing equality of the sexes as to such children.

But the new law would seem to change the rule as to illegitimate children. Under the old practice a child born abroad of an unmarried American mother acquired American citizenship,²¹ though strictly this seemed in conflict with the statutory rule of descent through the father.²² If, however, the child's father was an alien and its birth was subsequently legitimated under the laws of his country, the child lost its claim to American citizenship. Under the new law it would seem that both illegitimate and legitimated children of American mothers might acquire United States citizenship as well as children born in wedlock.

The statute indicates that the United States still favors the *jus sanguinis* as a basis of American nationality at birth as well as the *jus soli*.²³ In one sense it is an expansion of the *jus sanguinis* since the children of American mothers are made citizens. But the other important provision of the

¹⁸ See the citation of opinions and cases by Hover, Derivative Citizenship in the United States, 28 Am. J. Int. L. 255 (1934).

¹⁹ New York Times, Apr. 28, 1934, p. 3, col. 2.

²⁰ Powers v. Harten, 183 Iowa 764, 167 N.W. 693 (1918); State Dept. Memo., Oct. 28, 1928.

²¹ State Dept., Memo., Oct. 27, 1932.

²² On the other hand, illegitimate children of American fathers did not acquire American nationality unless there was a subsequent legitimation. Guyer v. Smith, 22 Md. 239, 85 Amer. Dec. 650 (1864); Moore, Dig. III 287; note 41 Harv. L. Rev. 643, 646 (1928).

²³ The *jus sanguinis* either alone or with the *jus soli* is applied in all the countries of the world. Mr. Jones Brown Scott is almost alone in advocating the *jus soli*. Scott, Nationality: Jus Soli or Jus Sanguinis, 24 Am. J. Int. L. 58 (1930). That it would be futile to attempt to get all states to adopt a uniform rule is the view of Flournoy, Nationality Convention, Protocols, and Recommendations Adopted by the First Conference on the Codification of International Law, 24 Am. J. Int. L. 467, 470, 477 (1930). The *jus sanguinis*, as well as the

act in effect does much to deflate the principle. Where one parent is an alien the child must come to the United States and reside there continuously immediately previous to his eighteenth birthday and must within six months after his twenty-first birthday take an oath of allegiance. The severity of this requirement means that many foreign born children will not obtain American citizenship.²⁴

NATURALIZATION OF CHILDREN THROUGH THE PARENTS

Section 2 provides that:

"Section 5 of the Act entitled 'An Act in reference to the expatriation of citizens and their protection abroad,' approved March 2, 1907, as amended, is amended to read as follows:

'Sec. 5. That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the father or the mother: *Provided*, That such naturalization or resumption shall take place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin five years after the time such minor child begins to reside permanently in the United States.'

This section makes two changes in the old law.²⁵ The new law provides for citizenship of a child born outside of the United States of alien parents by the naturalization of or resumption of American citizenship by either the father or the mother. The old law provides for such citizenship by virtue of the act of "the parent." While on a literal construction the parent might be the mother as well as the father, by interpretation it was not, except when the female parent was a *femme sole* or when she remarried.²⁶ The "parent" could be only the father. Prior to 1922 married women took the nationality of the husband. A married woman could not apply for naturalization apart from her husband. His naturalization resulted in her naturalization with no act on her part. The naturalization of the children followed upon his naturalization as soon as the child began to reside permanently in the United States. Since 1922, however, the

jus soli, is approved of as a basis of nationality in The Research in International Law, Harvard Law School, Draft Convention on Nationality. Art. 3, 23 Am. J. Int. L., Spec. Supp. 27 (1929). Domicile is advocated by Wigmore in Domicile, Double Allegiance, and World Citizenship, 21 Ill. L. Rev. 761 (1927).

²⁴ This requirement is much stricter than that laid down in Research in International Law, Harvard Law School, Draft Convention on Nationality, Art. 4, 23 Am. J. Int. L., Spec. Supp. 30 (1929): "A state may not confer its nationality at birth (*jure sanguinis*) upon a person born in the territory of another state beyond the second generation of persons born and continuously maintaining an habitual residence therein, if such person has the nationality of such other state."

²⁵ 34 Stat. 1229 (1907), 8 U.S.C.A. § 8 (1926).

²⁶ Hover, Derivative Citizenship in the United States, 28 Am. J. Int. L. 255, 263 (1934).

naturalization of the husband does not result in the naturalization of the wife. The wife must herself take steps to become naturalized. The wife can now proceed to become naturalized before or after the husband and irrespective of whether the husband ever becomes naturalized. If she is to have equal rights with her husband in the control of the children she should have the power to confer nationality upon the children as well as the husband. Up to the present act if the wife became naturalized and the husband stayed an alien, no citizenship passed to the children according to the Departments of Labor and of Justice. The only court decision on the subject so held.²⁷

It is true that such naturalization may result in increased possibilities of dual nationality. If the husband retains his nationality it is likely that by the law of his country the children will also continue to be nationals of the country of emigration. Such possibility is considerably counteracted, however, by the requirement of five years' residence by the child. During such five years the child would keep the nationality of its father.

The second main change in this section is the requirement that the child shall not gain citizenship until it has resided at least five years in the United States.²⁸ The rather awkward proviso of the statute is that "the citizenship of such minor child shall begin five years after the time such minor child begins to reside permanently in the United States." Under the old law citizenship was to commence as soon as the child began to reside permanently in the United States. Thus a child living with its father at the time of his naturalization might become a United States citizen at once. As under the old law, children do not have to be present in the United States at the time of their parents' naturalization.

The necessity of five years' residence may cause hardship in some cases. Possibly a very young child might be better off if it were naturalized as soon as the parent was. Everything else being equal the children and the parents ought to have the same nationality. However, if the child comes to the United States with the parents, it will gain nationality as soon as the

²⁷ *In re Citizenship Status of Minor Children Where Mother Alone Becomes Citizen through Naturalization*, 25 F. (2d) 210 (D.C. N.J. 1928). Under the old law in case of divorce if the father still lived and remained an alien, the mother might give nationality to minor children by her naturalization if she had the legal custody of the children in the United States and the father lived abroad. *In re Lazarus*, 24 F. (2d) 243 (D.C. Ga. 1928). The State Department required simply separation and legal custody of the child by the mother. Memo., State Dept., Feb. 10, 1933.

²⁸ This is in harmony with Article 14 of the Draft Convention on Nationality of the Research in International Law, Harvard Law School, 23 Am. J. Int. L., Spec. Supp. 51 (1929): "Except as otherwise provided in this convention, a state may not naturalize an alien who has his habitual residence within the territory of another state."

parents, since a minimum of five years is required to become a United States citizen. Only children who came after their parents came would get their citizenship later. Since such children came later they would be less familiar with American institutions. From one point of view the requirement of five years' residence is the giving of a right to children which they did not have before. That is to say, they no longer become United States citizens without having some voice in the matter. A complete right of election is not, however, given, since five years' residence makes the child a citizen without his taking an oath of allegiance or any other formal step.²⁹ Women once became American nationals without any voice in the matter when their husbands were naturalized or on their marriage to American husbands. Possibly the analogous step of giving some voice in the matter should be adopted as to children.³⁰ Yet the relation of dependence in the case of children is so much clearer than in the case of wives that caution is necessary in carrying over any analogy. It may well be that the right of the children not to gain American nationality is a wholly empty right. The real purpose of the proviso, however, was doubtless to protect the United States against persons with little or no preparation to become citizens.

RENUNCIATION OF AMERICAN CITIZENSHIP ON
MARRIAGE TO FOREIGNER

Section 3 provides:

"A citizen of the United States may upon marriage to a foreigner make a formal renunciation of his or her United States citizenship before a court having jurisdiction over naturalization of aliens, but no citizen may make such renunciation in time of war, and if war shall be declared within one year after such renunciation then such renunciation shall be void."

This section makes two changes in the old law.³¹ Under the old law an American woman marrying a foreigner could formally renounce her citizenship upon marriage but an American man marrying a foreign woman

²⁹ That a child naturalized during minority through the naturalization of the parent should be allowed upon attaining majority to renounce such naturalization before an appropriate tribunal before reaching the age of twenty-two is advocated by Hazard, *International Problems in Respect to Nationality by Naturalization and of Married Women*, Proc. Amer. Soc. Int. Law 67, 73 (1926). Richard W. Flourmoy, Jr. would give the child a right of election, but would treat continued domicile in the United States after reaching majority as an election to be an American citizen and an American citizen only. Proc. Amer. Soc. Int. Law 102 (1926).

³⁰ In the converse situation of an American child taken abroad during her minority by her father who became a naturalized Canadian citizen, it was recently held that the child did not lose its American citizenship. In *re Reid*, 6 F. Supp. 800 (D.C.D.Ore. 1934). But see *contra Ostby v. Salmon*, 177 Minn. 289, 225 N.W. 158 (1929).

³¹ 46 Stat. 1511 (1931), 8 U.S.C.A. § 397 (Supp. 1933).

could not.³² The new law gives an American man marrying a foreign woman the same privilege. This is one instance where men are given equality with women. It has been suggested that neither spouse should have the privilege of renunciation, particularly not the wife, since it may result in coercion by the other spouse.³³

The second change is that no such renunciation may be made in time of war and that a renunciation made one year before war is declared is void. Express consent to expatriation by marriage is thus given. But that there is no unlimited right of expatriation in the view of Congress is thus written into the statute.³⁴ Perhaps the difficulties arising out of renunciation by American women during time of war would not be great. In fact, women marrying in time of war would perhaps be less prone to renounce their citizenship than those marrying in time of peace, except those few who would assist the enemy. But since the statute confers the right of renunciation on men as well as women it is not unlikely that many men might seek to avoid military service by renouncing their American nationality if they could do so in time of war.

The spouse renouncing his American citizenship may do so without abandoning his or her residence in the United States. Thus an American woman marrying a foreigner might never leave the United States yet still lose her citizenship. It would seem desirable to add to the prerequisites for expatriation that the person give up his residence in this country. The formal renunciation might be made here but it could be treated as ineffectual until the spouse gave up his or her American residence.³⁵

NATURALIZATION OF ALIENS MARRYING AMERICANS

Section 4 of the Act provides:

"Section 2 of the Act entitled 'An Act relative to the naturalization and citizenship of married woman', approved September 22, 1922, is amended to read as follows:

³² This criticism is made by Vallat, *The Nationality of Married Women*, 12 *Can. Bar Rev.* 283 (1934).

³³ Crozier, *The Changing Basis of Women's Nationality*, 14 *B. U. L. Rev.* 129, 136 (1934).

³⁴ See Borchard, *Decadence of the American Doctrine of Voluntary Expatriation*, 25 *Am. J. Int. L.*, 312 (1931).

³⁵ It has been suggested even that nationality of both spouses be made to depend upon the matrimonial domicile. Charles Cheney Hyde, *Aspects of Marriage between Persons of Differing Nationalities*, 24 *Am. J. Int. L.* 742 (1930). Art. 19 of the Draft Convention on Nationality of the Research in International Law of the Harvard Law School, 23 *Am. J. Int. L.*, Spec. Supp. 16 (1929) provides: "A woman who marries an alien shall in the absence of a contrary election on her part, retain the nationality which she possessed before marriage, unless she becomes a national of the state of which her husband is a national and establishes and maintains a residence of a permanent character in the territory of that state."

‘Sec. 2. That an alien who marries a citizen of the United States, after the passage of this Act, as here amended, or an alien whose husband or wife is naturalized after the passage of this Act, as here amended, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, he or she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

‘(a) No declaration of intention shall be required.

‘(b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, he or she shall have resided continuously in the United States, Hawaii, Alaska, or Porto Rico for at least three years immediately preceding the filing of the petition’”

This section makes two material changes in the previous law.³⁶ Formerly marriage to an American citizen made possible a simpler and shorter method of naturalization for foreign women only. A foreign man marrying an American woman had to take the same steps to become naturalized as did any other foreigner. Under the new law foreign men are put on an equal basis with foreign women who marry United States citizens. Both are permitted a simpler and shorter method of naturalization than other foreigners. This seems wholly desirable. It seems wise to encourage family unity when this can be done without forcing nationality on either spouse and where both husband and wife are treated exactly alike. As a woman herself has said: “Most of the previous speakers have assumed that international marriages of this kind take place by a wife going to her husband’s country and taking his nationality, but I think probably a very great number of international marriages are the other way about, and it might be considered, if we should not recommend—as is done, for instance in Belgium, France, and some other countries—that special facilities should be given to men who marry the women of the countries in which they settle.”³⁷

The second change is the requirement of three years’ residence instead of one. It is thus made more difficult for a foreign woman marrying an American to become an American citizen. The changed requirement amounts to a compromise between the old requirement of at least five years for aliens with alien wives and one year for alien women married to American husbands. This change is in the direction of greater care in the selection of American citizens. A person here for only one year, particularly an alien man, could scarcely be said to have any real knowledge of American ideals and customs. On the other hand a lesser period is helpful

³⁶ 42 Stat. 1022 (1922), 8 U.S.C.A. § 368 (1926).

³⁷ Macmillan, *Int. Law Assoc. Report of the 33d Conf., 1924*, p. 39. The same view was taken by Dr. Ludwick Ehrlick of Poland. *Ibid.*, p. 45. See also, Macmillan, *Nationality of Married Women: Present Tendencies*, 7 *Jour. of Comparative Legis. and Int. Law*, 3d series, Part IV, 142, 153 (1925).

in the maintenance of the unity of the family without at the same time taking away the free choice of either spouse.

At the same time the increased time required for alien women to gain American nationality will result in longer cases of statelessness.³⁸ Under the old law if, by the foreign law, a woman lost her citizenship upon marriage to a foreigner, her marriage to an American would result in statelessness for her for one year if she took steps to become naturalized, and permanent statelessness if she did not. Under the new law she will be stateless for three years even when she takes steps to become naturalized.

Statelessness of foreign women would be avoided if the law were to provide that a foreign woman marrying an American citizen at once gain American nationality if by her own law she loses her old nationality upon marriage.³⁹ Perhaps the United States should issue passports to alien wives of American citizens.⁴⁰ This would not be undue discrimination in favor of women since the laws of the various countries providing for loss of nationality upon marriage are confined to women. Such a provision would be particularly desirable in the cases of aliens marrying Americans residing abroad for the purpose of representing the government of the United States or American interests of some kind. American foreign service officers of career usually begin their service abroad when they are quite young and not infrequently marry aliens. To require that such wives reside three years in the United States may seem harsh. Perhaps all that should be required should be the taking of an oath before a governmental agent abroad.⁴¹ The adoption by the United States and by other nations of the Hague Convention of April 12, 1930, would do away with statelessness of married women.⁴² It provides:⁴³

³⁸ Statelessness is not, however, something inherently connected with sex equality and independent nationality of married women. When other states adopt the same principle there is then no problem of statelessness. In fact if the other nations adopted the principle as they increasingly are doing, and the United States departs from it, there will be as much conflict as ever, since an American woman marrying a foreigner would lose her American nationality without gaining foreign nationality. On the general problem see Seckler-Hudson, *Statelessness; with Special Reference to the United States* (1934).

³⁹ Schuster, *The Effect of Marriage on Nationality*, *Int. Law Assn. Report of the 32d Conf.* 9, 23 (1923).

⁴⁰ Reeves, *Nationality of Married Women*, 17 *Am. J. Int. L.* 97 (1923).

⁴¹ Hill, *Citizenship of Married Women*, 18 *Am. J. Int. L.* 720, 730 (1924); Miller, *Recent Developments in the Law Concerning Nationality of Married Women*, 1 *Geo. Wash. L. Rev.* 330, 350 (1933).

⁴² This convention has been much criticized by proponents of sex equality to women in every respect. It is, however, recommended as a worthwhile improvement over the present rules by Hudson, *The Hague Convention of 1930 and the Nationality of Women*, 27 *Am. J. Int. L.* 117 (1933).

⁴³ *Convention on Certain Sections Relating to the Conflict of Nationality Laws*, 24 *Am. Jour. Int. Law, Spec. Supp.* 192, 193, 194 (1930).

"Article 8. If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

"Article 9. If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality."

REMOVAL OF CERTAIN DISCRIMINATIONS

Section 5 of the Act provides:

"The following Acts and parts of Acts, respectively, are repealed: The Act entitled 'An Act providing for the naturalization of the wife and minor children of insane aliens, making homestead entries under the land laws of the United States,' approved February 24, 1911; subdivision 'Sixth' of section 4 of the Act 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,' approved June 29, 1906; and section 8 of the Act entitled 'An Act relative to the naturalization and citizenship of married women,' approved September 22, 1922, as said section was added by the Act approved July 3, 1930, entitled 'An Act to amend an Act entitled "An Act relative to naturalization and citizenship of married women," approved September 22, 1922.'

"The repeal herein made of Acts and parts of Acts shall not affect any right or privilege or terminate any citizenship acquired under such Acts and parts of Acts before such repeal."

Section 5 thus abolishes three old discriminations in favor of certain classes of women or women and children. Two of these discriminations had to do with naturalization and one with immigration. None of them involved matters of great importance. The repeal of the discriminations was wise, however, since it promoted the uniform administration of the naturalization and immigration laws.

The first discrimination abolished was that allowing the wife and minor children of an alien who had declared his intention to become an American citizen but had become insane before actual naturalization, to become naturalized by complying with the other provisions of the naturalization laws without making any declaration of intention, provided that the wife made a homestead entry under the land laws of the United States after the husband became insane.⁴⁴ Today of course few aliens make homestead entries and the number of wives of insane aliens making such entries could not be large. Furthermore since 1922 the naturalization of the husband has not carried with it the naturalization of the wife. Under section 4 of the new act, the minor children must have resided within the United States at least five years before they can become citizens. The old statute merely saved the wife and children a two years' waiting period since the

⁴⁴ 36 Stat. 929 (1911), 8 U.S.C.A. § 371 (1926).

declaration of intention was required to be made at least two years prior to admission to citizenship.

The second discrimination repealed was very much like the first one. Under the part of the act repealed when any alien who had declared his intention to become a citizen died before he was actually naturalized his wife and minor children could by complying with the other naturalization provisions be naturalized without making any declaration of intention.⁴⁵ Under the decision of the United States Supreme Court in *United States v. Manzi*,⁴⁶ the widow, in order to obtain the benefit of the deceased husband's declaration of intention, had to file her petition for naturalization not less than two nor more than seven years after the date of such declaration of intention. Since after 1922 naturalization of the wife has not followed from that of the husband there has seemed no good reason to give any special privileges to his widow. If she wished to be naturalized she might have made her declaration of intention when he did or even before. If she neglected to make such declaration of intention there is no good reason why she should be able to make any use of his declaration of intention upon his death. The minor children do not stand in need of any protection either, since under section 2 of the new act they are naturalized upon the naturalization of the mother as well as the father.

The third discriminatory law repealed dealt both with a phase of naturalization and one of immigration. It facilitated the naturalization of a certain class of married women by providing for their admission into the United States. It allowed the admission into the United States of a certain class of married women, namely, women eligible by race to citizenship who had married citizens of the United States prior to July 3, 1930, when such husbands were native-born citizens and members of the military or naval forces of the United States during the world war and were honorably discharged.⁴⁷ To be more accurate, it provided that these women should "not be excluded from admission into the United States under section 3 of the immigration act of 1917" unless they were excluded under the provisions of that section relating to—

"(a) Persons afflicted with a loathsome or dangerous contagious disease, except tuberculosis in any form;

"(b) Polygamy;

"(c) Prostitutes, procurers, or other like immoral persons;

"(d) Persons convicted of crime: *Provided*, That no such wife shall be excluded because of offenses committed during legal infancy, while a minor under the age of twen-

⁴⁵ 34 Stat. 598 (1906), 8 U.S.C.A. § 375 (1926).

⁴⁶ 276 U.S. 463 (1928).

⁴⁷ 46 Stat. 849 (1930), 8 U.S.C.A. § 137a (Supp. 1933).

ty-one years, and for which the sentences imposed were less than three months, and which were committed more than five years previous to the date of the passage of this amendment;

“(e) Persons previously deported;

“(f) Contract laborers.”

This meant that among others the following undesirable classes of women might be admitted: idiots, imbeciles, feeble-minded persons, epileptics, insane women, women of constitutional psychopathic inferiority, women with chronic alcoholism, women afflicted with tuberculosis, anarchists and women unable to read.⁴⁸ Obviously the admission of such women was injurious to the interests of this country. While veterans were perhaps entitled to some special treatment the old law went beyond reason.

CONCLUSIONS

The legal position of married women in the United States has constantly improved ever since 1922. In 1922 it was laid down that American women marrying foreigners should not lose their American citizenship by marriage, except in cases of marriage to aliens racially ineligible to citizenship.⁴⁹ Foreign born women were not to gain American citizenship by marriage to American men. This latter provision put women on an equal basis with men though in actual fact it probably resulted in more harm than good to the women aside from the fact that they were given a voice in the matter. Although men married to American citizens under the new 1934 act are given the same shortened period as women in which they can become citizens, men really have a superior position since they have the contacts of their jobs, or their unions, or their lodges.⁵⁰ From the point of view of the United States the position of an American woman marrying a foreigner is quite different from that of a foreign woman marrying a citizen of the United States. This is shown among other ways by the fact that from 1855 to 1922 an alien woman marrying an American citizen became an American citizen,⁵¹ while an American woman marrying a foreigner lost her American nationality by statute only after 1907.⁵²

Prior to 1922 when the alien wife became naturalized through the naturalization of the alien husband, the name of the wife was designated in the uniform naturalization certificate issued to naturalization courts by

⁴⁸ 39 Stat. 875 (1917), U.S. Comp. Stat. 1918, § 4289 f.

⁴⁹ 42 Stat. 1022 (1922), 8 U.S.C.A. § 9 (1926).

⁵⁰ Breckinridge, *Marriage and the Civil Rights of Women* (1931), 159.

⁵¹ 10 Stat. 604 (1855), 8 U.S.C.A. § 6 (1926).

⁵² 34 Stat. 1228 (1907), 8 U.S.C.A. § 9 (1926).

the Department of Labor. No other evidence of the wife's derived nationality was then issued. But under the provisions of the Act of March 2, 1929, such derived citizenship may be evidenced by separate certificates of derivative citizenship, issued by the Commissioner of Naturalization.⁵³ Of course there is no such thing as derivative citizenship by the wife except as to marriages before 1922.

Section 1 of the Act of July 3, 1930, repealed another discrimination against women.⁵⁴ Between September 22, 1922, and the Act of 1930, although American women marrying aliens did not lose their citizenship by virtue of marriage, they were subject to the same presumptions regarding expatriation as naturalized citizens. That is to say, there was a presumption of expatriation upon two years' residence in the country of the husband's nationality, or by two years' residence in any other foreign country.⁵⁵ The residence of married women in a foreign country now subjects women only to the same loss of nationality that arises in the case of all native born citizens under the Act of March 2, 1907, which in effect limits expatriation to an express oath of allegiance to a foreign country, or to foreign naturalization.⁵⁶

The Act of March 3, 1931, was another step towards equality since it repealed the provision of the 1922 act making marriage to an alien racially ineligible terminate her citizenship, recoverable upon dissolution of the relation.⁵⁷ American men who married women ineligible to citizenship had never lost their citizenship thereby. One writer has said that upon the passage of these acts of 1930 and 1931 "for the first time in American history, native-born women, of whatever race, attained parity with native-born male citizens in regard to their citizenship status."⁵⁸ It seems clear that these new rights like other rights which have been conferred on women will never be surrendered. But that the laws will remain unchanged is far from certain since, as has been said, "there seem to be no laws which are more fluid and subject to change than nationality laws."⁵⁹

The new law, it is to be noted, does nothing to promote race equality as respects naturalization. Nationality at birth *jure soli* is not affected since of course persons of any race born here are American citizens under the

⁵³ 45 Stat. 1515 (1929), 8 U.S.C.A. § 399 (1926).

⁵⁴ 66 Stat. 854 (1930), 8 U.S.C.A. § 9 (1926); see 35 Op. Atty. Gen. 351 (1927).

⁵⁵ 42 Stat. 1022 (1922), 8 U.S.C.A. § 9 (1926).

⁵⁶ 34 Stat. 1228 (1907), 8 U.S.C.A. § 17 (1926).

⁵⁷ 46 Stat. 1511 (1931), 8 U.S.C.A. § 370 (1926), Cum. Supp., 1933.

⁵⁸ Hover, *Citizenship of Women in the United States*, 26 Am. J. Int. L. 700, 712 (1932).

⁵⁹ The Harvard Research in International Law, Harvard Law School, 23 Am. J. Int. L., Spec. Supp. 22 (1929).

Fourteenth Amendment. Nationality at birth *jure sanguinis* is altered so that the children of American mothers born abroad now become United States citizens. Hence the foreign born children of a Chinese or Japanese woman born in the United States would now be American. This is by way of sex equality, however, not racial equality since previously the children of no American woman, whatever her race, were American by virtue of her nationality. Even under the present law if the native born American woman of Japanese or Chinese descent were to have children born abroad by a husband racially ineligible to become a United States citizen it is not clear that they would have American nationality or be entitled to enter the United States.

With respect to naturalization the new statute does not change the old rule under which only "white persons" or "persons of African descent" might be naturalized.⁶⁰ Hence persons of other nationality might not gain American nationality. The United States Supreme Court in an unfortunate dictum has recently indicated that this may bar persons "if the strain of colored blood in them is a half or a quarter, or, not improbably, even less."⁶¹ Since but few immigrants of any race are now admitted, and the number of racially ineligible persons here is small, it would seem the politic thing for the United States to alter its immigration laws so as to put all states on a quota basis and then permit all those who come in to be naturalized. It is desirable that permanent inhabitants of a state be citizens. Incapacity to gain citizenship results in ill-feeling in those who cannot gain it and on the part of their countries. This is all the more true where the prohibition is extended to persons having blood of less even than half of the excluded race. Naturalization ought to be open to all aliens permanently residing in the United States, who are legally in the United States, and legally entitled to remain there, and who are able to satisfy all the requirements of personal fitness.

The admission of the various races to American citizenship is a matter of policy on which there is much division of opinion. So the admission of pacifists and conscientious objectors involves matters of emotion.⁶² Perhaps there would be the least objection to admitting women, who would not of course take an active part in war anyhow, though this would run counter to the doctrine of sex equality. The admission of men unwilling to bear

⁶⁰ 16 Stat. 256 (1870), 8 U.S.C.A. § 359 (1926).

⁶¹ *Morrison v. People of California*, 54 Sup. Ct. 281, 283 (1934), criticized by McGovney, *Naturalization of the Mixed Blood—A Dictum*, 22 Cal. L. Rev. 377 (1934).

⁶² See Wigmore and others, *United States v. Macintosh—A symposium*, 26 Ill. L. Rev. 375-396 (1930); Gettys, *The Law of Citizenship in the United States* (1934), 178.

arms in case of war but otherwise eligible and desirous of supporting American institutions, if conceded to be desirable, is perhaps too impossible of realization to be deserving of much consideration. The present armed state of the world is not a happy augury of any such reform.

The new statute can scarcely be said to represent a comprehensive codification of the existing law as to nationality concerning the four topics studied by the committee of cabinet members appointed by the President in April 1933.⁶³ It removes several minor discriminations. It does not go beyond the scope of the topics suggested, in fact does not cover them fully. There is no evidence of any intention to copy the best features of the British practice. The first two topics, those of acquisition of nationality at birth and through naturalization are covered to some extent. The act does not attempt to deal with nationality at birth *jure soli*, which of course is prescribed by the Fourteenth Amendment. It might have provided for an easy mode of expatriation for the children of foreign consuls born in this country and possibly for the children of transient aliens born here. The act confines itself to dealing with nationality at birth *jure sanguinis*. Here it represents a double reform. Sex equality is attained by allowing American mothers to transmit citizenship to children born abroad. This is well within the rules of public international law if it be conceded that there are certain limitations as to who may be made citizens by a country.⁶⁴ Dual nationality is avoided by giving American citizenship only to children who reside in the United States and take an oath of allegiance. However, no such requirement is laid down where both parents are Americans, the only limitation in the latter case being that one of the parents must have resided in the United States prior to the birth.

The provisions of the new act dealing with naturalization cannot be said to represent a codification of the rules governing naturalization. They do, however, make two important changes. They allow children to be naturalized through the mother as well as the father. They also make naturalization of children more difficult by requiring them to reside at least five years in the United States, thus discouraging dual nationality. It is not thought necessary to go so far as expressly to give children an easy method of renouncing their American citizenship though of course under the Act of March 2, 1907, they might be deemed expatriated by taking "an oath of

⁶³ For an able critique of the old law see Gettys, *supra* note 62.

⁶⁴ Perhaps it may be said to be a rule of international law that citizenship can be predicated only on birth within the territory, blood relation, marriage, ownership of property, and residence. The United States could not, for instance, declare all persons living in Western Europe or all believers in democracy American citizens.

allegiance to any foreign state."⁶⁵ Nor is any provision made as to the effect of subsequent loss of nationality of the parent on that of the minor child.

The third proposed subject, that of loss of American nationality, is only incidentally dealt with in the new act. An American citizen whether man or woman marrying a foreigner is given the right to renounce his American citizenship except in time of war. Under the old law this right was confined to American women. No other phase of the subject is dealt with. Nor is the subject of protection of American citizens abroad covered.

Neither is the subject of nationality in outlying possessions of the United States dealt with in the new statute.⁶⁶ This is a subject which requires careful study of each possession and its present and likely future relation to the United States. To be solved are such problems as whether children of foreigners born in the possessions are to be treated as American nationals and whether children of American nationals of the possessions born abroad are to be so treated. Congress, in legislating only concerning continental United States, was probably pressed for time and felt unprepared to deal with the possessions. In this it acted not so much differently from the United States Supreme Court which, though authorized to lay down rules of procedure after verdict in criminal cases in the outlying possessions, confined itself to continental United States.

⁶⁵ 34 Stat. 1228 (1907), 8 U.S.C.A. § 17 (1926).

⁶⁶ For an excellent discussion see McGovney, *Our Non-Citizen Nationals, Who Are They?*, 22 Calif. L. Rev. 593 (1934).