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Recommended Citation

Robert Plaisant and Arthur E. Sutherland Jr., *New French Law of Nationality A Study of Demographic Policy and Comparative Legislation*, 33 Cornell L. Rev. 373 (1948)

Available at: <http://scholarship.law.cornell.edu/clr/vol33/iss3/8>

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THE NEW FRENCH LAW OF NATIONALITY*

A STUDY OF DEMOGRAPHIC** POLICY AND COMPARATIVE LEGISLATION

ROBERT PLAISANT, translated by ARTHUR E. SUTHERLAND, JR.†

France, by statute of October 19, 1945, reorganized and codified her legislation on nationality. A few days later a second statute, dated November 2, 1945, gave a new status to foreigners residing in French territory. There may be cause for surprise that in this period of complete social and economic reorganization legislators could give attention to this subject, and work out the text of a law of most creditable quality.

However, such a step by the legislature was quite timely and natural. The reform of legislation relating to nationality, and to the status of aliens, is the keystone of the economic and social policy of the nation. Ever since the end of the first world war, French theory has stressed the political character of the legal rules bearing on this subject. Events occurring between the two wars demonstrated the correctness of this position; today facts are confirming it in a startling manner. The law of nationality determines who are nationals of any given state, and governs, when need arises, the recruitment of new nationals from foreign sources. Legislation concerning the status of aliens is the means of attracting to the territory of a state those whom its government proposes later to assimilate. These two types of legislation govern immigration and national policy toward those whom circumstances lead to seek a new homeland. The truths revealed to France by a disastrous demographic situation and by two successive catastrophes, unprecedented in her history, had been discovered long before by those nations originally peopled by immigration alone. More clearly than the most detailed discussion, statistics demonstrate that France has become a country of immigration,—perhaps the world's principal country of immigration. Populated in 1914 by thirty-nine millions of inhabitants, giving an average density of seventy-six inhabitants per square kilometer (the lowest density of population among the great European powers, except Russia) France lost in the first world war a million and a half men killed. An equal number had their working strength more or less diminished as a result of wounds suffered for their country. Between 1919 and 1935, more than two million foreigners came in to replace this loss, the worst

*This also appears in (1946) *la Revue De Droit International Public* 49-66.

**"Demographic"—Relating to "the statistical study of populations." Webster's New Int. Dict. Unabr. (2nd ed.) (Tr. note).

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suffered by any of the belligerent powers. In 1939 France was populated by forty-one million inhabitants, giving a density approximately equal to that of 1914. The second world war caused her losses of a million and a half individuals, made up of combatants and civilian victims. This loss was aggravated by an increase in the death rate, a diminution of the birth rate, and by the repatriation of foreigners to their countries of origin.

A closer study of the general situation of the French people makes it apparent that her position is even more serious than these original premises indicate. The birth rate is insufficient, although it has shown a decided increase since the liberation of France. The age of the population is increasing. There is a lack of labor, particularly noticeable in the most important but most strenuous callings such as mining, agriculture, and forestry. Finally, there is a devastated economy to rebuild.

In this predicament France has two possible solutions. She may isolate her diminished population within a territory too large for it, awaiting a natural increase which is perhaps doubtful, and which will at best be very slow; or she may open wide her frontiers to the overpopulated nations and ask of them a surplus of folk which burdens them. In the face of these alternatives the choice is obvious. Were France to isolate herself from the rest of the world and put an obstacle in the way of so strong a current, her course would conform neither to French self-interest nor to her traditions. In fact, the demographic differential is so striking that to stop immigration would probably be difficult.

It may, however, be both painful and dangerous for a country such as ours to receive into its homeland not a reasonable number of foreigners as formerly, but a continuous tide of immigrants flowing toward France. There is talk of five million immigrants, who under the present circumstances could only come from Italy, Spain, and, eventually, Germany. The presence of such more or less compact masses of foreigners might weaken the moral unity of the country, and arouse resentment in those whose roots go deeper in the ancestral soil.

Certain other great states, notably Argentina, Brazil, the United States and Canada, were populated entirely by successive waves of immigration. It does not appear that, up to the time when their entry was restrained for reasons more economic than social, this steady influx of foreigners had occasioned the difficulty that France faces. These young American countries had great advantages that we lack in Europe: isolation by oceans, virgin territory to conquer, leisure for untroubled growth.

What, on the other hand, is the French situation? On three of her

frontiers she rubs shoulders with neighboring countries whose children may come to her. With each of these, Spain, Italy, and Germany, she has in the past had distrustful and all too often hostile relations; and she fears that this may continue. She feels, and with good reason, that mass migration to her from these states could all too easily furnish a formidable weapon for a hostile policy.

Deprived of necessary population by two devastating wars, France is a mature country whose resources, widely exploited, are limited and whose social groups are established. She must regulate in detail the labor of those whom she takes in, direct their activity and limit their liberty. Placed in a difficult geographical position and obliged to ward off those who surround her, she must act in haste and rebuild without delay, under the threat of becoming too tempting a prey to those who enjoy less enviable advantages. In brief, she must, under incomparably delicate and difficult circumstances, and in the face of threats to her security, complete in haste the task that other countries have accomplished in the leisurely atmosphere of peace and abundance. The novelty and complexity of her legislation results from these rather extraordinary conditions.

Wishing to speed the increase of her citizens by conferring her nationality on aliens, France must reconcile two opposing policies,—one, the admission into her territories of all who want to come; the other, a relatively severe selective process which takes into account not only nationality of origin and the national sentiments of newcomers, but also their occupational qualifications. It is necessary to recruit a large number of immigrants; it is necessary to screen judiciously. The contradiction is evident.

The American states have never found themselves in such a dilemma. At present they do not want any considerable immigration and they are thus free to seek quality. Formerly they wished to achieve a rapid peopling, but the fairly rugged conditions of immigration operated to produce a natural selection. Distance guaranteed against any political maneuver, and the immensity of the tasks at hand assured ample demand for all workers. Nationality laws of the American nations are, accordingly, conspicuous for their simplicity. These countries, without hesitation or reserve, grant their nationality to those who live on their territory. They naturalize rapidly. This liberalism has survived the age of great immigration because, admission into these states being limited from now on, the assimilation of those who come in can still be carried out as in the past.

French legislation has shown the same tendency, but her desire to confer nationality on foreigners who live within her borders has been limited by

fears, whose origins have just been told. Despite her wishes, she is thus obliged to adopt a somewhat more detailed and subtle set of rules for reasons of national security. Manifestly, she is obliged to strike a balance between the desires of potential citizens and a more or less arbitrary surveillance by the French authorities. A policy of assimilation tempered by very flexible measures of control,—this is the essential characteristic of the French legislation.

It is then quite exact to say that a country's legislation on nationality (with which there should be included for completeness legislation on the admission and the status of aliens) is a faithful reflection of its economic and social needs for immigration. The legal regulations on these questions implement an immigration policy whose history shows the important role that it plays in the public life of those states obliged to use it. In addition to national legislation, one should mention also treaties—so-called labor treaties arranged between France and the principal countries of emigration. These conventions define the conditions of transfer of immigrants and their status once established in France. Such treaties modify, in a manner sometimes rather marked, the status of aliens established by municipal legislation. But there is no instance, up to the present time, in which treaties have affected laws of nationality.

I propose to define the fundamental principles which govern the nationality statute of October 19, 1945, and to compare it with the legislation of the most important countries of immigration, among them Argentina, Brazil, Canada and the United States of America. I shall proceed in this study by taking up successively the two means that states have to confer their nationality. One is attribution and the acquisition of nationality by affiliation, by birth or by residence. The other is naturalization.

*Attribution and acquisition of nationality through filiation, birth
and residence*

Attributed nationality is, under the French legislation, nationality of origin; that possessed by the individual on the day of his birth. Acquired nationality is that which is conferred on him by law, (other than by naturalization), by reason of some event which occurs subsequent to his birth.

The attribution of nationality can be founded on two criteria generally known under the names of *jus sanguinis* and *jus soli*. The first depends on affiliation; it consists of giving to a child the nationality of his parents. The second is founded on the place of birth. *Jus sanguinis* is connected with ideas of a moral or intellectual character. As the child is brought up

by his parents, one may suppose that a devotion to their country has been imbedded in him. He has, presumably, been imbued with its concepts, with its culture and traditions, hence it is just that he receive its nationality. *Jus sanguinis* thus derives from democratic ideas and from principles of nationality.

Jus soli is older in legal history than *jus sanguinis*. It derives from feudal concepts in which a man was tied to the farm on which he was born. In modern law it is supported by more idealistic considerations than *jus sanguinis*,—considerations which induce giving to a person the nationality of a country in which he lives rather than that with which he may have sentimental ties. But national interests underlie these theoretical ideas. *Jus sanguinis* is desirable for countries of *emigration*. By this means they can preserve nationality from father to son among the descendants of their expatriate ressortissants. *Jus soli* is advantageous for countries of *immigration*, conferring their nationality on those who settle in their territory. Accordingly, it is logical for European countries of emigration such as Italy, Poland or Germany to cling to *jus sanguinis*, and American countries to adopt the *jus soli*. Between these two groups France, for reasons of tradition and self-interest, has combined both criteria.

Before the Revolution of 1789, under the influence of feudal ideas, France followed the *jus soli*. The Civil Code of 1804, democratic and national, adopted *jus sanguinis*. Then in the course of the Nineteenth Century, as the demographic situation of France became less favorable, *jus soli* quietly slipped in with the law of June 26, 1889. After the first world war, the law of August 10, 1927, gave a wide scope to *jus soli*, and the ordinance of October 19, 1945, applies the same principles. French legislation appeals concurrently to *jus sanguinis* and *jus soli* and its essential characteristic is the combination of these two means, in order to give France the largest possible number of citizens.

The French legislation gives an extremely wide scope to *jus sanguinis*. Thus every child, legitimate or otherwise, born of a French father, is French.¹ So every child, legitimate or otherwise, born of a French mother, is French,² save for an option to renounce in case the child was not born in France.³ This qualification is necessary to avoid imposing French nationality on a person born of a French mother and a foreign father, who has settled abroad and who has consequently only those fragile links with France

¹Ordonnance 18 Oct. 1945, Art. 17. (This statute may be found in "Recueil Général des Lois et des Arrêts," J. B. Sirey, 4^e Cahier Mensuel 1946, p. 201 *et seq.* Tr. note.)

²*Ibid.*, Art. 19.

³*Ibid.*, Art. 20.

which result from the nationality of his mother. It thus appears that the French legislation has modified the excesses of *jus sanguinis* by the supervening application of *jus soli*.

Not content with maintaining French nationality by *jus sanguinis*, for all those who hold to France by descent, the new legislation has arranged, through *jus soli*, to give this nationality to all who have fixed their roots in French soil. But here the special conditions of France compel more circumspection. *Jus soli*, in its simplest form, would give the nationality of a state to all who are born within its territory, but this elementary solution might give French nationality to individuals whose attachment to France was really too insubstantial. Therefore, birth in France, alone, without other supporting circumstances results only in exceptional cases in the attribution to the individual of French nationality. It confers French nationality on the newborn child of unknown parents, found in France.⁴ This is a policy measure destined to prevent statelessness. With this sole exception, birth in France confers French nationality only in the presence of some other factor of descent or the will of the interested person. So on the one hand a child, legitimate or otherwise, born in France of a father who was himself born in France is French.⁵ So too the child born in France of a mother herself born in France is French, but subject to renunciation.⁶

This option to renounce deserves comment. Our legislation establishes it for very clear security reasons, but at the same time its use is carefully limited. Renunciation is conditioned upon proof of a foreign nationality. Here again is an arrangement tending to diminish statelessness, which one must approve.⁷ The option is lost in some cases,⁸ particularly where it has been renounced by the person involved or by his parents, or (a somewhat petty provision) when he has submitted to induction into the army without raising the question of his alienage. Here the desire to increase the number of citizens prevails to some extent over the desire to save the rights of those who may wish to renounce.

When acquisition of French nationality is in question, birth in France must be supported by other elements. The individual born in France and residing in France from the time of his majority on (majority being de-

⁴*Ibid.*, Art. 21 and 22.

⁵*Ibid.*, Art. 23. The legislation takes into consideration, actually, not the father but the parent who first recognized the natural child, to whom "paternal" influence is ascribed. If the two parents simultaneously recognized the child, this "paternal" influence is attributed to the father.

⁶*Ibid.*, Art. 23.

⁷*Ibid.*, Art. 30 and 31.

⁸*Ibid.*, Art. 32.

terminated under French law) acquires French nationality, subject to renunciation; his attachments to France resulting from birth are thus supported by residence and a declaration of intent. But the legislature on the one hand limits the opportunities for acquisition, and on the other hand extends them. It limits them in that foreigners who have been the subject of an order of expulsion, and who are thus under suspicion, cannot become Frenchmen; and in that the government can, even in addition to the cases thus mentioned, oppose this acquisition for reasons defined by the statute in terms so general that they amount almost to an arbitrary power. The legislature, however, extends the chance of acquisition in that the right to renounce citizenship can be lost either by a formal renunciation or by the tacit renunciation implied in induction into the army without raising the objection of alienage. So, as pointed out, the opportunity of renunciation has been somewhat arbitrarily limited in order to keep the greatest possible number of citizens. Finally, it is noteworthy that a foreigner born in France and residing in France for five years can claim French nationality in person or by his legal representatives, without waiting for acquisition by cause of residence in France on the day of his majority. The right is refused to aliens who have been ordered deported; its exercise is subjected to government control.⁹

This sketchy picture of French legislation concerning the attribution of French nationality would be incomplete without some consideration of the effects of marriage on nationality. The statute of October 19, 1945, beside reenacting the previous provisions, makes additional provisions tending to increase the number of French women.¹⁰ The French woman who marries a foreigner keeps her nationality. The foreign woman who marries a Frenchman acquires the status of a French national, but she can keep her foreign status by declining French nationality, if her national law preserves her original nationality. The principle of the unity of nationality in the household is thus deliberately ignored. Modern ideas about the relations between spouses perhaps influenced the legislature, but demographic needs have certainly played a decisive part.

Far different and notably more simple are the laws in North and South America. Argentine legislation, in the first place, attributes Argentine nationality¹¹ to all those born on Argentine territory—a pure and simple application of *jus soli*. In the second place, the same is true of children born anywhere of Argentine citizens,—a very wide application of *jus sanguinis* because it seems that either the father or the mother can transmit

⁹*Ibid.*, Art. 57.

¹⁰*Ibid.*, Art. 37.

¹¹Argentine Constitution of 1860. Law No. 346 of October 8, 1889.

nationality to either legitimate or illegitimate children. Argentine legislation seems to show no fear of double nationality.

Finally, the Argentine law contains no provision concerning the effects of marriage; but the authorities give Argentine passports to the spouses of Argentines, although they cannot be considered as having Argentine nationality in the absence of formal legislative provision.

The Brazilian legislation¹² likewise gives effect both to *jus sanguinis* and *jus soli*, but adds certain special provisions concerning them. Every individual born in Brazilian territory is a Brazilian; furthermore, every foreigner residing in Brazil becomes a Brazilian if he possesses real property in the country and is married to a Brazilian woman, or has Brazilian children, provided he has not declined Brazilian nationality. It appears, therefore, that *jus soli* receives with this second provision an extraordinary extension, indicating an extremely strong wish to extend Brazilian citizenship. In the second place, every legitimate child born of a Brazilian father and every illegitimate child born of a Brazilian mother is a Brazilian. Here is an application of *jus sanguinis*, but a restricted application, because only one of the two parents confers Brazilian nationality, either the father or the mother, depending upon whether the child is legitimate or illegitimate. Brazilian law contains no provision concerning the effects of marriage on the nationality of the consorts.

A Canadian is a subject of the King of England, domiciled in Canada. The Canadian law on nationality is thus the applicable law of Great Britain. There exists only one special Canadian law concerning immigration and nationalization which will be considered later. According to the English law,¹³ every individual born in territory subject to the authority and the allegiance of his Britannic Majesty is a subject of the King of England. This is a pure and simple application of *jus soli* which conforms to the feudal conditions which remained alive in Great Britain up to a recent period. Likewise, every child born abroad of an English father is a British subject provided he is registered at the British Consulate in the year of his birth. This is a strictly limited application of *jus sanguinis* which has been introduced slowly and discreetly into English legislation.

Under the terms of the English law and with certain exceptions of minor importance, a married woman follows the nationality of her husband. This

¹²Brazilian Constitution of 1891, Art. 69; Legislative Decree No. 509 of June 7, 1899; Legislative Decree No. 904 of November 12, 1901.

¹³British Nationality and Status of Aliens Act, 4 & 5 Geo. V, c. 17 (1914), as amended by the Act of 1922, 12 & 13 Geo. V, c. 44; see also 8 & 9 Geo. V, c. 38, and the Act of 1943, 6 & 7 Geo. VI, c. 14.

provision conforms to the principle of the unity of nationality in the household and is thus contrary to the French rule.

A child born in the territory of the United States is a citizen of that Republic.¹⁴ A child born abroad of two American parents, of whom one has lived in the United States before the birth, and a child born abroad of one American parent who has lived in the United States is likewise an American citizen. American legislation thus gives restrained application to *jus sanguinis*, tempered by a condition of residence.

Our task is now to bring together the diverse legislation whose essentials have been sketched, and to draw general conclusions from the comparison. One first fact is evident. All the legislation has recourse both to *jus sanguinis* and *jus soli*, although both principles are applied in different ways. France continues to put in first rank *jus sanguinis*; the nations of North and South America and England prefer *jus soli*. *Jus soli* permits a simple answer to questions of nationality by deciding them on the basis of a material fact whose proof ordinarily presents no difficulty whatever. It is an effective remedy for statelessness. Finally, it is favorable to a country of immigration because it gives assurance that all the families of foreigners settled in a country of their adoption will have acquired its nationality by the time the second generation is reached. But, however simple and effective it is, *jus soli* does not answer all purposes. A child, naturally and properly, wishes to have the nationality of the country to which his parents and ancestors belong, even if he is born abroad. *Jus sanguinis* satisfies this tendency and we have pointed out that even England and the United States, despite their traditions, have had to adopt this principle in their legislation.

A second observation: the concepts of *jus sanguinis* and *jus soli* are abstractions susceptible of many modifications in their practical application. These modifications are motivated by the immediate political interests of the states in question. *Jus sanguinis*, as France understands it, is an efficacious instrument, permitting the transmission of French nationality to the children of French men and women under conditions which sometimes appear to make the acquisition of citizenship decidedly risky, for they multiply cases of double nationality and may cause trouble by giving French nationality to persons who do not want it. These fears are so well founded that the French legislature, as a sort of compensation for the extraordinary extension given to *jus sanguinis*, has had to provide for and regulate minutely, the instances of loss of nationality on demand of the interested person, over and above all ideas of forfeiture and of punishment. On the contrary,

¹⁴Nationality Act of 1940, 54 STAT. 1137, 8 U: S. C. §§ 501 *et seq.*

jus sanguinis as understood by the United States and England, has the effect of giving the children the nationality of the head of the family, in conformity with the principle of unity of nationality in the household. Likewise, *jus soli* may be applied in a modified way, giving nationality to assimilated persons or those who wish assimilation, as is the case in France. It may be applied in a most simple manner, as a police measure, conferring the nationality of the country of birth as a matter of course. Such is the ordinary practice. It may also be extended in an extraordinary way, as it is in Brazil, beyond considerations of the place of birth, to confer the nationality of the state on all those who settled upon its territory and have there acquired family ties and have found new interests from which a presumption of permanent settlement can arise.

A third observation: although nationality, an instrument of national policy, is granted by the sovereign will of the state, the state is obliged to give some freedom of choice to the individual. Lest it multiply cases of double nationality and arouse grave difficulties which can react against it unfavorably, it must show itself the more liberal and must extend wider options, in direct proportion to the vigor of its policy of assimilation. France has followed this principle by authorizing the rejection of French allegiance on demand. Similarly, England permits the renunciation of British nationality, attributed by birth in English territories, by a simple declaration made on arrival at majority.

These observations being made, one is obliged to ask whether the rules concerning nationality really constitute a symmetrical arrangement based on principles of jurisprudence, or merely a set of administrative regulations based on considerations of pure expediency. It appears that governments choose with complete freedom among the various means that are available to them to reach whatever result they seek to achieve, and that the jurisprudential element is reduced to a mere technical formula. Rules change from country to country, according to the needs they have to satisfy—simple and few in the states where no serious conflict arises, they become complex and numerous in those states which, like France, must choose between contradictory necessities. One is truly struck by the brevity of American and English texts when they are compared with the French statute of October 19, 1945. France is here, as in other fields, a land of transition and of compromise. The difficulty of her task has given her jurists an opportunity to show their skill.

The arrangements concerning attribution and acquisition of French nationality permit France to hold through *jus sanguinis* those who are attached

to her by blood and to assimilate by *jus soli* those who come to her by birth and by residence. However, the work of assimilating new nationals which she must accomplish calls for an institution which produces results still more direct and immediate. Naturalization supplies this want.

Naturalization

"Attribution" or "acquisition" of a nationality comes to the interested person as a matter of right, provided he fulfills the conditions established by law. Naturalization, at least according to the French concept, is conferred by the sovereign state on the alien who has sought it. Naturalization has the advantage of giving to any person a new nationality, independent of his descent or of the place of his birth. Attribution or acquisition of nationality does not, by virtue of the *jus soli*, give a new nationality to emigrants who establish themselves in a new land. The birth of a younger generation must be awaited. Naturalization permits an immediate grant of the status of national to foreigners who move to the territory of a state. It thus provides an extremely effective means of assimilation, which a country of immigration must necessarily utilize.

The concept of naturalization in French law has been progressively adapted to changes in her demographic situation. Naturalization existed in the time of the monarchy and was continued by the Civil Code. But, as statistics show, it was then an exceptional procedure. It had as its object the regularization of the legal situation of the foreigner who had moved to France and was already completely assimilated. The legislature, in 1927, opened naturalization more widely than had previously been the practice, but apparently the new use that could be made of it was not yet fully understood. The second world war, and the recurrence of a need for large-scale immigration were prerequisites for the establishment of the new concept. In a country that needs immigrants, naturalization is not the mere recognition of an assimilation which has already taken place; it is a means of achieving that assimilation.

No doubt the moral unity of a country may be endangered by multiplying indefinitely the number of new citizens who are still strangers in their adopted country. But this is not a statement of the whole problem. When a country finds immigration essential to re-build its living strength, it would do well to confer its nationality rapidly on the foreigners who make new homes on its soil rather than to leave them in their alien status, perhaps against their will, until the passage of a necessarily long time permits the laws concerning attribution and acquisition to take effect. By giving nationality

to the immigrant, the country of immigration weans away the foreigner from his country of origin and attaches him to his new country. By making him a citizen, it suppresses the sentiment of distrust and inferiority that the immigrant feels too often. It is necessary, furthermore, in order to produce this desirable consequence, that the person naturalized be not subjected to disabilities of too serious a nature which make his situation unreasonably inferior to that of citizens of birth. Such has been, and such still appears to be, the policy of naturalization in the American countries. Such is the policy which is required in France.

Whatever the demographic needs of France may be and whatever the intentions of her government, the statute of October 19, 1945, does not materially modify the rules previously applicable to naturalization. It appears, on the contrary, that the legislation multiplies the conditions imposed upon its achievement. The contradiction is, however, more apparent than real. Naturalization is granted in the discretion of the Chief of State. It was his duty to be strict before the new statute; it will be his duty to be indulgent after its enactment. The problem is much less a legislative than an administrative one. Naturalization presupposes an application made by the candidate, an examination of this application by the appropriate officials, and the decision of the Chief of State. The number of annual naturalizations depends on the capacity for work of the officials involved. The solution of the problem depends, in fact, on the organization of the bureaus concerned. The substantive law is almost secondary; the procedure is of capital importance. It does not seem that the naturalization service possesses the personnel and the equipment necessary to step up the few thousands of naturalizations per year, which has hitherto been the rate, to some tens of thousands. We shall make a hasty analysis of the provisions of the statute of October 19, 1945, in the light of these observations.

Under the French legislation,¹⁵ naturalization is granted by a decree rendered by the Chief of State after a police investigation. This detail is important; the procedure is a logical consequence of the concept that naturalization is an extraordinary favor, granted by the sovereign to foreigners who fulfill the exacting requirements of assimilation. However, there results a complete centralization of naturalization procedure which can only be completed by the administrator in charge, who operates directly under the Chief of State. This centralization may prevent certain undesirable naturalizations which might occur if indulgent local authorities were in charge. On the other hand, a system which piles up all the naturalization files on one desk may unreasonably slow up the necessary decisions.

¹⁵Ordonnance 19 Oct. 1945, Art. 60-71.

Having thus prescribed the procedure for naturalization, the statute of October 19, 1945, states its substantive provisions, which contain many refinements.

The first requirement is the most important because it governs all the others. It is physical presence in France, and can be broken down into two elements: first, residence in France at the moment of the signature of the decree of naturalization; second, continuous residence in French territory during five years preceding the day when the application is made. The first provision, which was not in the law of August 10, 1927, seems somewhat arbitrary, because if the text be interpreted literally, naturalization would have to be refused to a man who, having been a resident for five years before the day of the request, is absent and, consequently, is not a resident of France on the day of the signature of the decree. No doubt, as a practical matter, this rule, the enforcement of which appears difficult, would be neglected. The second residential requirement appears stricter than it was under the old law. The preliminary wait must be of five years, where it used to be only three. However, under the statute, there are numerous instances in which the condition of residence is reduced to two years or even completely eliminated.

Another condition is the requirement of certain moral, intellectual and physical qualities. The moral qualification requires that the candidate be of upright life and morals, and that he have not been sentenced to a prison term of more than a year, foreign sentences included. In the way of intellectual qualifications, the candidate to be assimilated in the French community must demonstrate a sufficient knowledge of its language. By way of physical qualifications, the candidate must be of sound mind and show no infirmity which could make him a charge or danger to society. Perhaps on this point the new statute deserves some criticism. The former legislation contained no provision of this sort. It was the government's duty to evaluate the merits of the newcomer. The legislature manifests its will to exact a rigorous selection from among the foreigners who seek naturalization. This renders the law more rigid, at the very moment when the French policy of immigration should open more widely the doors of naturalization.

The authors of the statute, one fears, have missed the true problem. Is it better to maintain on French soil a mass of immigrants of foreign nationality; or is it better to give them French nationality on demand, in order to contribute to their detachment from their country of origin and to tie them irrevocably to their country of adoption? If one admits that this latter solution is the better, there appear few good reasons for limiting natural-

izations. Selection should occur, not at the moment when the request for naturalization is filed, but at the time of recruiting abroad and of entrance into France. Let France show herself as strict as may be in the choice of those to whom she opens her frontiers. That is her right, is in her interest, and is her duty. But if she limits naturalization by strict and generally arbitrary rules, she risks the creation of a psychosis unfavorable to naturalization and may give the newcomer the annoying impression that he is turned over to appraisal by administrative whim. In short, one of two things will happen. Either the department in charge of the matter will apply the law strictly and the number of persons naturalized will be unduly restrained, or else the administration will be indulgent and the text of the statute will be interpreted in so loose a manner that it will too often become a dead letter. To pass a law, but not to enforce it, is always a regrettable course. One is tempted to think that the principles previously enforced would be sufficient to maintain governmental evaluation and to permit the government sufficient sorting. The new statutory provisions can only be useless or harmful. To be specific, there seems to be a tendency to neglect the idea that naturalization should itself be an agency of assimilation in the French nation, not merely the recognition of assimilation already completed by other means. This neglect will occur, if the administration of the statute requires a fairly complete absorption into the community as a condition precedent to naturalization,—unless, of course, the administration takes “absorption” to mean a mere summary knowledge of the French language.

A rapid glance at the naturalization laws of other immigration countries confirms the correctness of these ideas. The legislation of great immigration countries is conspicuously more liberal than the French statute of October 19, 1945.

Under the Argentine statute,¹⁶ the candidate for naturalization must make a declaration before the Federal judge of the district. He must demonstrate a continuous residence of two years in the territory of the Republic. However, this condition of residence is excused in the fairly numerous cases where the applicant has qualifications showing sufficiently close ties to Argentina.

Under Brazilian law,¹⁷ the applicant must apply to the Federal Government and only the President of the Republic is authorized to pass on an application of this type. The applicant must demonstrate two years' residence in Brazil,

¹⁶Argentine Law No. 346 of October 8, 1889.

¹⁷Brazilian Legislative Decree No. 904 of November 12, 1901.

but this condition is excused in a certain number of cases. The applicant must also prove by an official document that his moral character and his conduct are good.

The Canadian statute¹⁸ appears much more detailed than the two last described. Naturalization can be granted only by the authorized Secretary of State. The candidate must prove five years' residence in a territory under the authority of his Britannic Majesty, including one year in Canada, during the eight years which preceded the request. A single exception to this rule is allowed in favor of a woman who was a British subject, who was married to a foreigner, who lost her English nationality thereby, and who, thereafter, became a widow or obtained a divorce. The applicant must also demonstrate that he is of a good life and morals and possesses a reasonable knowledge of French or English language, that he intends to continue to reside in a territory subject to the authority of his Britannic Majesty or to remain in the service of the Crown. The Canadian legislation provides, in addition, at considerable length, for revocation of naturalization, particularly in the event of a sentence to a term of more than twelve months in prison or a fine of \$500, or in case the applicant was not of good life and morals on the day of naturalization, or in case the person naturalized makes his ordinary residence at least seven years outside the territories subject to the authority of his Britannic Majesty.

Naturalization in the United States is under the jurisdiction of the Federal Government.¹⁹ The procedure of naturalization has two stages. The candidate must, in the first place, make a declaration of intention before the clerk of an appropriate court, authorized by the naturalization law, in which he affirms his intention to become an American citizen and renounces all foreign allegiance. This declaration must include certain specifications, such as an affirmation that the applicant is not opposed to the established government; that he is not a polygamist; that he renounces all foreign allegiance; that he intends to reside permanently in the United States; that American citizenship has not been refused him. His application must be accompanied by a declaration, made under oath by two American citizens, showing that the applicant has resided for five years in the United States, to their knowledge, that he is of good moral character and that he is qualified in all ways to become a citizen of the United States. After the passage of a minimum of two and a maximum of seven years, the applicant must apply to a competent court of justice. This application is first the subject of an administrative

¹⁸Regulations under the Naturalization Act, Ch. 138, REV. STAT. of Canada (1927).

¹⁹Nationality Act of 1940, *supra*, Ch. III, 8 U. S. C. §§ 701-747. -

investigation and then of a judicial and adversary proceeding before the court in question. The candidate must then make oath to respect the Constitution of the United States, renounce all foreign allegiance and defend the American Constitution and laws. The status of citizen is then conferred on him by the court, which assures itself that the fundamental conditions required by the law of naturalization are present, and receives, in proof of this, the declaration under oath of the candidate and that of the two witnesses who are citizens of the United States.

If one compares the French legislation with the legislation of the principal American countries, it thus appears that the latter permit naturalization under conditions of form and of substance which are clearly less rigorous. In Brazil and Canada naturalization is granted by the decision of the central authorities. In Argentina and the United States, countries in which immigration has been more important than in the two preceding countries, naturalization is accomplished by a simple declaration, verified in a formal fashion, made by the alien before the local judicial authorities. In none of these countries is naturalization subjected to a very distrustful police control, at least in the way that this is carried out in France. Perhaps the very special and delicate circumstances under which immigration is effected in France make a stricter surveillance necessary. One should not take it, however, that complete centralization, and the decision of a chief of state, should be sacramental requirements without which naturalization is inconceivable. There seems to be in France an exaggeration of the sovereign character of naturalization; a greater importance might well be attributed to the will of the interested applicant. Such conclusions are indicated by an examination of the fundamental conditions required for naturalization. The condition of a period of residence is indispensable, but five years seems to be a maximum. The conditions of morality and of assimilation appear much less strict in America than in France, under the terms of the new statute. The comparison points up once again the probably exaggerated character of the new French legislation.

The study of American legislation calls forth a final remark. These states have maintained a very liberal type of naturalization law, while substantially restricting the admission of aliens to their territory by severe immigration laws. It appears, therefore, as has already been said, that rigorous naturalization laws are unwise. In a country of immigration every foreigner who has made a new home must be considered as a definitive acquisition, who should be assimilated as rapidly as possible. A severe control should be imposed on the selection of immigrants when they leave the country of

emigration with the intention of entering the country of residence; such a control should not be imposed on the acquisition of nationality through naturalization. One sees again that in this matter the letter of the statute has only a comparative value and that the practice of administration is the important thing. Immigration and nationality are political questions; that is why the texts count for so little, and why official action counts for so much.

Conclusion

A detailed commentary on the statute of October 19, 1945, would call for a discussion of the very diverse questions with which this nationality code deals, but it would go beyond the scope planned for this article. However, two particularly interesting innovations in the new statute should be mentioned. In the first place, the arrangements concerning proof of nationality: a certificate of nationality, delivered by the naturalizing judge, is entitled to faith and credit until the contrary is proved. Thus the French legislature has introduced into our country an arrangement long since followed abroad. Secondly, there are very particular rules concerning the authority of adversary judgments, rendered on the subject of nationality. While judicial decisions are ordinarily controlled by the rules of *res adjudicata*, and are binding only on parties and those claiming under them, it is shocking that decisions concerning nationality should fall within this rule. It is difficult to imagine a man who has one nationality with respect to certain persons and another nationality with respect to others. The new legislation establishes rules of procedure which are peculiar to naturalization proceedings and which result in the binding character of naturalization judgments with respect to everyone, except where injustice may be caused by it. This is an innovation for which no precedent has been found.

The technical worth of the statute having thus been considered, there remains for determination the place which it holds in the general theory of nationality. This statute reenacts and confirms the principles which govern the legislation prior to the statute of August 10, 1927. It combines *jus sanguinis* and *jus soli* in the original but complex manner which characterizes French law. If the new text indicates any evolution, the tendency it shows is an extension of the power of control by the government every time an alien acquires French nationality by *jus soli* or by marriage. The legislature, on the one hand, maintains the function of the Chief of State and the centralization of procedure; on the other hand, the conditions imposed on obtaining naturalization are multiplied. One sees in these two points a

restrictive tendency which seems somewhat paradoxical in a period when immigration may be expected to become more intense than ever. In practice, of course, administrative concessions may weaken these legal restrictions. At any rate, there are evident here the two contradictory necessities of the French naturalization policy,—on the one hand, the desire to favor the absorption of immigrants, and on the other hand, the fear for national security, aroused by the absorption of dangerous elements. How much simpler appear the naturalization laws in those states of immigration which have no need to resolve this painful dilemma. There the *jus soli* triumphs and naturalization is granted with the greatest of freedom. It is then in strict accordance with reality to say that naturalization laws are essentially political. Evident in their provisions are not only economic, demographic and social needs of the states which enact them, but in addition, the life-or-death difficulties with which their respective diplomacies struggle.

In this area France is painfully drawn in two directions. On the one hand, she feels the necessity of opening her doors wide to immigrants to re-build her population. On the other hand, this tide of foreigners threatens to imperil her moral unity, her traditional culture and perhaps even her frontiers. To cope with so difficult a situation, she will need all the ability of her public officials and all the energy of her people.