majority in both houses of Congress and its approval by general public opinion will mark a renewed determination on the part of the United States to restore respect for international law by assuming the responsibilities of a good citizen in the community of nations.

QUINCY WRIGHT

THE NATIONALITY ACT OF 1940

The growth of the statutory law of the United States in relation to nationality has been slow and until 1940, has failed to respond to obvious needs of the nation. Real progress has, however, been made in the enactment of the Nationality Act of 1940, approved by the President on October 14 last.[1]

The Act, following a chapter embodying definitions, pertains chiefly to "Nationality at Birth," "Nationality through Naturalization" and "Loss of Nationality." Certain miscellaneous matters are also dealt with.

With respect to nationality at birth, the Act is assertive of the claim of the United States, on the theory of *jus soli*, to the nationality of persons born within its domain under circumstances when they are to be deemed also citizens of the United States,[2] and under circumstances when they are not to be deemed to possess that status. In the latter situation the claim is rather narrowly asserted. Thus, while the United States might well claim as a national at birth a person born within an outlying possession as defined in the statutory law, regardless of the nationality of either parent, it makes a modest and perhaps inadequate claim in regarding as a national (but not a citizen) of the United States at birth, "a person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States."[3]

[1] Public No. 853, 76th Cong., 3d Sess., Ch. 876; printed in the Supplement to this JOURNAL, p. 79.

See in this connection George S. Knight, Assistant to the Legal Adviser of the Dept. of State, "Nationality Act of 1940," American Foreign Service Journal, Nov., 1940, p. 605.

[2] Thus, according to Sec. 201 (a), "a person born in the United States and subject to the jurisdiction thereof" is declared to be a national and citizen of the United States. A like declaration is made with respect to "a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person." Sec. 201 (e). Likewise, with respect to "a child of unknown parentage found in the United States, until shown not to have been born in the United States." Sec. 201 (f).

[3] Sec. 204 (a).

Obviously the claim here asserted purports to be by right of blood as well as by right of place.

It will be recalled that in the Advisory Opinion given by the Permanent Court of International Justice on Sept. 15, 1923, on the question concerning the "Acquisition of Polish Nationality," the tribunal found occasion to declare: "The establishment of his parents in the territory on this basis creates between the child and his place of birth a moral link which justifies the grant to him of the nationality of this country; it strengthens and supplements the material bond already created by the fact of his birth." (Publications, Permanent Court of International Justice, Series B, No. 7, p. 18.)

It should be noted that the Act reveals no effort on the part of the United States to invoke the theory of the *jus soli* as a general ground for the assimilation of its own ships to its own territory, as a means of claiming as its nationals children born on such ships on the high seas.[4] Numerous foreign states have made such a claim.[5]

Applying the theory of the *jus sanguinis*, the Nationality Act of 1940 goes far beyond the Act of February 2, 1855,[6] and the Act of May 24, 1934.[7] A person is declared to be a national and citizen of the United States at birth, who is born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person.[8] Likewise, in such a category is a person born outside of the United States and its outlying possessions "of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease." [9]

Again, American nationality and citizenship are conferred upon a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States.[10]

Other provisions of the Act, applying the *jus sanguinis* confer American nationality, but not citizenship, upon a person born outside the United States and its outlying possessions of parents both of whom are nationals,

[4] See in this connection Lam Mow *v.* Nagle, 24 F. (2d) 316, affirming *In re* Lam Mow, 19 F. (2d) 951.

[5] See the statutory laws or decrees of Argentina, Great Britain and Northern Ireland, Guatemala, Honduras, Mexico, Salvador and Spain, in Flournoy and Hudson, Nationality Laws (1929), pp. 11, 62, 322, 334, 430, 519, and 530, respectively.

[6] Rev. Stat. § 1993. [7] 48 Stat. 797. [8] Sec. 201 (c).

[9] Sec. 201 (g), where it is declared that "the preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation." [10] Sec. 201 (d).

but not citizens of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person.[11]

In what pertains to the acquisition of nationality through naturalization, the Act of 1940, in substantive provisions pertaining to eligibility for naturalization, announces that the right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of sex or because such person is married.[12] Moreover, the right to become a naturalized citizen is said to extend only to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere.[13] The absence of the word "free" as a qualification or limitation of "white persons" is in contrast to the earlier statutory law.[14]

The Act lays down certain definite restrictions which reveal how the moral or political attitude of the individual may serve to render him ineligible for naturalization.[15] It may be noted that an alien enemy is not regarded as necessarily ineligible for naturalization as a citizen of the United States; the Act lays down precise conditions under which his admission to citizenship is possible.[16]

Without adverting to all of the several conditions of naturalization laid down in the Nationality Act, attention may be called to the fact that no declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's lawful entry for permanent residence shall have been established and a certificate showing the date, place and manner of arrival in the United States shall have been issued.[17] In one section of the Act the time for filing the requisite declaration of intention is declared to be not less than two nor more than seven years at least prior to the applicant's petition for naturalization, and after the applicant has reached the age of eighteen years.[18] In another section, however, it is said that the applicant for naturalization shall, "not less than two nor more than ten years" after his declaration of intention, file his sworn petition for naturalization.[19] The inconsistency is inexplicable.

[11] Sec. 204 (b).

[12] Sec. 302.

[13] Sec. 303, where there is added the important proviso that "nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 324, nor of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 317."

[14] See Rev. Stat. § 2169, amended Feb. 18, 1875, 18 Stat. 318.

[15] Sec. 305. See also Sec. 306 in relation to the effect of some objectionable forms of conduct in time of war. See also Sec. 304 in regard to the effect of inability to speak the English language.

[16] Sec. 326.

[17] Sec. 329 (b). Compare the requirement of the earlier statutory law as revealed in Maney *v.* United States, 278 U. S. 17, and in United States *v.* Ness, 245 U. S. 319.

[18] Sec. 331.

[19] Sec. 332 (a). See in this connection communication of L. Larry Leonard, Esq., of March 4, 1941, published in the New York Times, March 11, 1941, p. 22.

In reference to the requirement calling for five years' residence in the United States, save under specified exceptional situations, as a condition to naturalization, the Act of 1940 makes wise and definite provision indicating how the requisite continuity of residence may be broken.[20]

The progressive legislation of the United States with respect to the treatment of married women as initiated in the Cable Act of September 22, 1922, and developed in the Act of May 24, 1934, made highly desirable the enactment of fresh and comprehensive provisions regarding the naturalization of married persons of both sexes. The Nationality Act of 1940, appropriately filled the gap.[21] Again, the American naturalization of an alien child, as a consequence of the naturalization of a parent was made the subject of careful provision.[22]

Provision for the revocation of naturalization acquired through fraudulent means is amply made.[23]

The United States has long encountered difficulty, partly attributable to the inadequacy or ineptness of the statutory law, in determining administratively or otherwise whether particular acts on the part of an individual served to produce loss of American nationality. The Act of 1940 has cleared the air through the definitive character of certain of its provisions. Thus, loss of that nationality is made the immediate consequence of the obtaining by an adult person of naturalization in a foreign state, upon his own application.[24] In the case of an American child of a parent having legal custody of his person, the Act declares that:

> Nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: *Provided further*, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of his act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen.[25]

It is added that failure on the part of such person so to return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship. These provisions are not at variance with the theory proclaimed by the Supreme Court of the United States in the case of Perkins *v.* Elg.[26]

[20] Sec. 307. [21] Secs. 310–312.

[22] Secs. 313–315. See also Sec. 316 concerning conditions prescribed for the naturalization of an adopted child. [23] Sec. 338.

[24] Sec. 401 (a). [25] *Id.* See also Sec. 407. [26] 307 U. S. 325.

The commission of numerous miscellaneous acts is declared to be productive of the loss of American nationality. Among them may be noted the taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; the entering, or serving in the armed forces of a foreign state without express authorization by the laws of the United States, if the individual concerned "has or acquires the nationality of such foreign State"; the accepting, or performing the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; the voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; the making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; the deserting the military or naval service of the United States in time of war, provided the individual is convicted thereof by court martial; and the committing of any act of treason against, or the attempting by force to overthrow, or the bearing of arms against the United States, provided the individual is convicted thereof by a court martial or by a court of competent jurisdiction.[27]

An unfortunate aspect of the Act of March 2, 1907, was the fact that specified residence abroad on the part of a naturalized American citizen merely produced a presumption of the cessation of American citizenship, which might be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State might prescribe.[28] The Nationality Act of 1940 registers a real improvement by causing the naturalized American national to lose his American nationality as an immediate consequence of residing for at least two years in the territory of a foreign state of which he was formerly a national or in which the place of his birth was situated, "if he acquires through such residence the nationality of such foreign State by operation of the law thereof";[29] or by residing continuously for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in Section 406 of the Act.[30] A like result is produced by residing continuously for five years in any other foreign state, except as provided in Section 406 of the Act.[31] The Act then proceeds to prescribe definite conditions under which residence abroad of the naturalized national shall not be productive of loss of nationality. These are

[27] Sec. 401 (b), (c), (d), (e), (f), (g) and (h). In connection with Sec. 401 (c) and (d), see Sec. 402. According to Sec. 403 (b), "no national under eighteen years of age can expatriate himself under subsections (b) to (g) of section 401."

[28] § 2, 34 Stat. 1228. This caused the Department of State to embark upon the task of making, as the years went on, a constantly broadening series of progressive regulations seemingly demanded by the exigencies of fresh situations.

[29] Sec. 404 (a). [30] Sec. 404 (b). [31] Sec. 404 (c).

numerous and adequate, and offer definite and authoritative guidance to the political and judicial departments of the government.[32]

The Act announces that loss of nationality under the provisions thereof "shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Act."[33] This statement renders significant the fact that the Act does not declare that mere protracted residence abroad of an American national born within the domain of the United States (and who has not become naturalized by a foreign state) is productive of loss of American nationality in consequence of such residence.[34] It may be added that nothing in the Act is to be applied in contravention of the provisions of any treaty or convention to which the United States was a party upon the date of the approval of the Act.[35]

In the foregoing sketch the effort is made merely to focus attention upon some of the salient features of the Act. They are perhaps self-explanatory and, after careful examination, will reveal a legislative achievement which is successful in indicating with precision how American nationality may be acquired or lost by man, woman or child.

CHARLES CHENEY HYDE

"LET THE CONSULS TAKE HEED THAT THE REPUBLIC SUFFER NO HARM"

On March 5, 1941, Secretary of State Hull sent the following note to the Italian Ambassador:

> The Secretary of State presents his compliments to His Excellency the Royal Italian Ambassador and has the honor to refer to his oral communication of February 12, 1941, with respect to the Italian Government's request that the consulates now established at Palermo and Naples should be moved to a place as far north as Rome or farther north, and to a place which was not on the sea coast.
>
> Instructions to these offices of the American Government have been issued in accordance with this request and the supervisory consulate general of the United States in Italy is being established in Rome.
>
> The Secretary of State avails himself of this opportunity to make request of the Italian Ambassador that all officials of his Government

[32] Secs. 405 and 406. It is significantly declared in Sec. 407: "A person having American nationality, who is a minor and is residing in a foreign State with or under the legal custody of a parent who loses American nationality under section 404 of this Act, shall at the same time lose his American nationality if such minor has or acquires the nationality of such foreign State: *Provided,* That, in such case, American nationality shall not be lost as the result of loss of American nationality by the parent unless and until the child attains the age of twenty-three years without having acquired permanent residence in the United States."

[33] Sec. 408.

[34] This is true despite the provisions of Sec. 402 which cause a presumption of expatriation in consequence of residence abroad to be operative in two special situations where specified acts are also committed by the individual concerned, as mentioned in Sec. 401 (c) and 401 (d).

[35] Sec. 410.