1:52 JAPANESE-AMERICAN EVACUATION DUAL CITIZENSHIP 1942-43

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CIVIC AFFAIRS

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WHAT HAS GONE BEFORE

ROY MALCOLM

Professor of Political Science, The University of Southern California
Formerly President of American-Japan Society of Southern California

Now that the long-predicted conflict between the United States and Japan is a tragic fact, the Japanese problem on the Pacific Coast moves from the atmosphere of parlor discussion and theorizing into the cold world of realism. Since December 7, 1941, much material has been given to the reading public, in both popular magazines and the daily press, dealing with the Japanese population of the United States. It occurs to few writers, however, to give the background upon which the public could more clearly understand the legal status of the thousands of Japanese, including aliens and American-born citizens, now resident in the United States.

ROY MALCOLM

The Japanese problem on the Pacific Coast is a part of the larger problem of Oriental immigration into the United States. Suffice it to say here that this involves the long story of three waves of Oriental immigration that have beat upon our Western shores. The first to immigrate into the United States were the Chinese, followed by the Japanese, and lastly, the Filipinos. Since the passage of the first Chinese Exclusion Act in 1882, the general principles of which were re-enacted in the Geary Act of 1892, the Chinese Exclusion Act of 1902, and made perpetual in 1904, Chinese immigration with its attendant problems has dropped into the background.

However, with the stoppage of Chinese immigration into California, other cheap labor was found in the person of the Japanese laborer. Between 1901 and 1910 some 62,000 Japanese immigrated into the United States. Between 1910 and 1924, when the Immigration Law excluding Japanese was passed, other thousands came to our shores. The 1940 Federal census gives a total of 126,947 Japanese in continental United States, of whom 93,717, or over 73 per cent of the total, are found in California alone. The states of Washington and Oregon follow with 14,565 and 4,071, respectively. Out of the total number in California 60,148 are American born, while 33,569 are alien Japanese.

The ineligibility of these alien Japanese to become American citizens is only one phase of the larger question of citizenship by naturalization. In accordance with the provision of the Federal Constitution granting to Congress the power "to establish an uniform rule of naturalization," numerous laws dealing with the problem have been passed. The first law enacted was approved March 26, 1790. In the first section it is provided that "any alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for a term of two years may be admitted to become a citizen."

The term "free white person" was used in all of our naturalization laws down to 1870, when the law was changed to meet the conditions arising out of the Civil War and Reconstruction. The law of 1870 provides: "The naturalization laws are hereby extended to aliens of African nativity and to persons of African descent." By an oversight, apparently, the phrase "free white person" was omitted from the law; so in 1875 it was amended to read: "The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent." There has been no change in the law at this point down to the present time.

The Nationality Act of 1940, although effecting a number of changes in our naturalization laws, retains much of the old phraseology. The first part of Section 303, Chapter III, of this Act reads: "The right to become a naturalized citizen shall extend to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere."

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CIVIC AFFAIRS

Planned and published to aid in discussion of current governmental problems in civic affairs committees of community organizations and in high school classes.

Editorial Board

SARA HOLLENBACH, *Editor*

CECILIA R. IRVINE R. H. DOUGLASS

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NOTES FROM THE DEAN'S DESK

Miss Virginia Mitchell, attractive co-ed who is majoring in public administration, is the newly elected President of the School of Government for 1942-43. She was introduced to the student body by Stanley Spero, retiring President, at a luncheon meeting April 1.

VIRGINIA MITCHELL

Miss Mitchell is taking a general course in public administration and a minor in sociology. She expects to go into the field following her graduation under the accelerated plan next February. She intends to specialize later when she takes graduate study.

Although she is the first woman president of the School of Government, Miss Mitchell does not consider this remarkable. She believes that the American people are demanding more of all classes of government and therefore the future in this field, for both men and women, is one of great promise. She is convinced that the persons who are trained will definitely assume leadership in their fields. The result will be public administration on a higher level of efficiency and service to the general public, who are, in the final analysis, our government.

The School of Government student body closed its year of activities under the able leadership of Stanley Spero as President with a meeting April 1. Gordon Whitnall, planning expert and consultant, gave a most informative talk on "City Planning in Post-War Reconstruction," and led a discussion that followed.

Emil J. Sady, '38, recently represented the U. S. Office of Indian Affairs in organizational work for the Inter-American Indian Institute in Guatemala. He finds that public administration in the Latin-American countries involves social and ethnological problems that make a most engrossing study.

OPPORTUNITIES IN THE FEDERAL SERVICE

Prior to 1934 there was little opportunity for the trainee in public administration to enter the federal service. Original entry was rather difficult, but progress was often quite rapid thereafter. In 1934 the United States Civil Service Commission gave a test open to college graduates for Junior Civil Service Examiner. The test was taken by thousands of people, and the register was used widely for positions outside the civil service commission the duties of which were other than personnel in nature. The same type of test was repeated in 1936. In 1937 there was an examination for Social Science Analyst, through which department heads succeeded in recruiting a number of public administration specialists. However, the test which holds most significance from the standpoint of university training in public administration is the one given yearly since 1939 under the Junior Professional Assistant category, with the option of Junior Administrative Technician.* The educational requirements in 1940, in addition to the Bachelor of Arts degree, were as follows:

> . . . twenty-four semester hours in public administration, political science, or economics, or a combination of these subjects, provided that at least twelve hours must have been in any one or a combination of the following: principles of public administration; public personnel administration; organization, management, and supervision; public budgetary or fiscal administration; administrative or constitutional law; and courses in the application of public administration principles to functional activities such as public welfare administration, public health administration, and public utilities regulation.

The following quotation gives a general idea of the kind of work which these people do:

> A negligible few appointees are given supervisory assignments. Rather, they are put at plain clerking, at administrative analysis of an elementary nature, or at semi- or sub-professional work demanding a familiarity with the structure, management, and finance of government. Their duties are primarily as staff aides; they perform as personnel or budget assistants, as administrative clerks, or as junior analysts in administrative and planning studies. Among the federal agencies recently appointing such personnel are the War Department, the Social Security Board, the Department of Agriculture, and the Bureau of the Budget. A few Junior Administrative Technicians e.g., local institutional analysts in the Bureau of Agricultural Economics, field-assistant work with the Social Security Board, and state and local government finance in the Bureau of the Census.

There is ample evidence that the registers for Junior Administrative Technicians for 1939 and after enjoyed considerable prestige and were widely used by the appointing officers of the departments. Indeed, some of the departments started their recruiting activities in 1941 even before candidates knew that they were on the register. There seems little question but that they have performd a needed and useful service with credit to themselves and

*Frederick M. Davenport, Lewis B. Sims, *et al.*, "Political Science and Federal Employment," *The American Political Science Review*, 35:304-10, April, 1941.

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DEFENSE TRAINING—HOW SHALL WE IMPROVE IT?

HOWARD GARDNER

Assistant Secretary, League of California Cities

Throughout this great country of ours hundreds of thousands of citizens in all walks of life have volunteered their services to state and local defense councils. As week after week slips by, more and more volunteers are being assimilated into the various protective services which constitute the citizens' defense corps. On the West Coast this assignment of volunteers as air-raid wardens, auxiliary police, auxiliary firemen, fire watchers, decontamination squads, rescue squads, nurses' aides, and demolition crews has of necessity been rapid. In many localities the apparent urgency of developing several of these protective services resulted in placing in responsible positions among the citizens of a community people who were not trained to assume this responsibility. Indeed, few of these enrollees have yet grasped the full significance of the responsibility placed upon them.

Similarly, the necessity for quick action in establishing various phases of the citizens' defense corps allowed no time for the average public official to comprehend the extent of the responsibility he was asking the volunteer defense worker to assume. However, there is developing among our public officials a knowldge of the fact that the delegation of certain authority to volunteers carries with it a responsibility on the part of the public officials to see that these people are properly equipped by training and experience to carry out the work assigned to them. The protection of our citizens during the time of an air raid or other act of war affecting large numbers of people is essential, and it will be the volunteer personnel who will have by far the largest number of contacts with the people of a given community. To do their work effectively, they must be well trained in what they are to do, and at the same time have some understanding of what will be expected of them during an emergency.

The great responsibility placed upon volunteer personnel clearly indicates that no effort should be spared in exposing them to the best training program possible. To date, by reason of the necessity for prompt action in giving the volunteers some idea of what they should do, the training of these people has been hurried and consequently inadequate. It is true that in many communities a considerable number of hours have been devoted to training volunteers, but in only a small number of instances has the training program been carefully planned and executed. There is a great need for integrating and expanding our concept of volunteer training. For example, there have been all too many instances where auxiliary firemen have been trained to do their job, but at the same time have not had their work related to the activities of the auxiliary policemen, the air-raid warden, and other of the volunteer services. Air-raid wardens have received competent technical instruction in the fighting of incendiary bombs, but they have been given little assistance in developing the qualities of leadership which are essential if air-raid wardens are properly to assume the responsibilities that must be theirs if they are to protect their areas. Auxiliary policemen have been instructed in their authority to make arrests and in the general conduct of themselves while on duty, but all too frequently the relationship of their activities to those of other volunteer groups has not been explored to any great extent.

It would probably be difficult to find a citizen who had not at some time read in his local newspaper an account of the various training schools being conducted by the Army, the Office of Civilian Defense, the state defense council, and local defense councils. Many schools of one type or another are being conducted. Those operated by federal and state agencies are devoted primarily to the training of instructors, who in turn are expected to return to their community and either instruct other instructors or actually teach volunteers. Although a large number of schools have been held, in many cases the people who have attended them have been selected on the basis of their technical knowledge or ability in a given field and not because of their ability as a teacher. The result of this type of selection has been that in many cities the technicians and public officials have attempted to convey to citizens information gathered at one of the defense schools. These persons are good public servants and they are making a sincere effort, but it has been demonstrated in numerous instances that they are not qualified to teach lay people the information accumulated by reason of the special schools they have attended.

It is believed that the inadequacy of our volunteer training programs has been due largely to the fact that trained educators have not been brought into the field as advisers and as instructors. There is a great reservoir of teaching experience in every community which could be most helpful in assisting the technically competent public official in developing an approach to volunteer training that in the long run would be much more effective. By reason of the very job they do from day to day our university professors and high school, grammar school, and vocational education personnel have much to contribute to a sound volunteer training program. In only a few communities do we find a close working relationship between our public school systems and local defense organizations. In the limited number of instances where professional educators have been brought into the picture, the type of training being done is generally better than in those areas where the work is being carried on without the benefit of consultation with school or university personnel. The cities of

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WHAT HAS GONE BEFORE

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By interpretation this law would still bar the Japanese from American citizenship. On the other hand, by extending the right to "descendants of races indigeneous to the Western Hemisphere," we open the doors to races and nationalities whose eligibility heretofore has been questioned in many cases by the courts. This involves a wide field which cannot be enlarged upon in this brief paper.

The question often has been raised: Did not Congress by extending the naturalization laws to aliens of African nativity and to persons of African descent thereby remove all race discrimination from our naturalization laws? In answer, it should be pointed out that there was no Asiatic problem in the United States at the time the first law was passed in 1790, and for seventy years thereafter, as reference to the Federal censuses from 1790 to 1860 will indicate. The classification used in these decades was "free whites," "slaves," "all other free, except Indians not taxed." In the census of 1860, however, there is a note on the classification of races which reads: "Another feature worthy of notice is the large number of Asiatics that have arrived in California, subjects of the Celestial Empire, attracted to the land of gold." Under this census 33,149 males and 17,784 female Asiatics (Chinese) are included in the white population. Under the census of 1870 we find the classification is "white, colored, Chinese and Indian," with a note indicating that the Japanese were included with the Chinese.

It is quite obvious, then, that down to 1860 or 1870 little thought was given to the question of just what aliens were included in the term "white persons"; but, as soon as the Asiatic problem became acute on the Pacific Coast, Congress was urged to pass a law not only restricting Asiatic immigration but also denying citizenship to Chinese. Section 14 of the Chinese Exclusion Act of 1882 provides: "That hereafter no state court or court of the United States shall admit Chinese to citizenship, and all laws in Conflict with this act are hereby repealed." Previous to the enactment of this law, however, a considerable number of Chinese were naturalized, the courts apparently considering them "white persons" under the law.

A popular opinion has prevailed for some time that under the law the Japanese, as well as the Chinese, have been excluded from citizenship by naturalization. On the contrary, there is no specific federal statute denying them this privilege. The refusal to grant alien Japanese papers of citizenship is based upon court interpretation of the term "white persons" as found in our laws. Thus in the case of Saito vs. United States, 1893, the Circuit Court of the United States for the District of Massachusetts laid down the theory that the Japanese do not come within the meaning of the term "white persons" as used in our naturalization laws. Shebato Saito, a native of Japan, applied for naturalization papers, but his application was denied by the court upon the following grounds:

> The Act relating to naturalization declares that the provisions of this title shall apply to aliens being free white persons, and aliens of African nativity, and persons of African descent. The Japanese, like the Chinese, belong to the Mongolian race and the question presented is whether they are included within the term "white persons." The court rules that the statute must be taken in its ordinary sense, and that the application of Shebato Saito must be denied upon the ground that he was of the Mongolian race and that the term "white person" excluded the Mongolian race, and therefore the application is denied.

The same ruling has been applied in the cases of other Far Eastern peoples, including the Burmese and natives of British India. The ruling in the Saito case was upheld in the Ozawa (a Japanese seeking American citizenship by naturalization) decision of the United States Supreme Court in 1922.

On the other hand, a number of Japanese, as formerly in the case of the Chinese, in past years have been admitted to American citizenship by the courts. A notable case was that of the distinguished international lawyer, author, and editor, Misuji Miyakawa, who died in the United States in 1916. Mr. Miyakawa was the chief counsel for the Japanese in the famous school controversy in California in 1906. Other Japanese were admitted to citizenship in California, Indiana, Florida, and New York. It has been estimated that some fifty to a hundred, or perhaps more, Japanese were naturalized before the Bureau of Immigration and Naturalization in 1911 issued orders directing that clerks of courts having jurisdiction were not to receive declarations of intention or file petitions for naturalization from aliens other than "white persons" and persons of African nativity or African descent. By implication this excluded the Japanese, and the courts since 1911 have refused them papers of citizenship, with the exception of a few that were naturalized by the courts on account of their service in the military and naval forces of the United States in the First World War.

However, all children born of Japanese parents residing in the United States permanently are American citizens by "the law of the soil." This fact presents some difficult anomalies. These sons and daughters, being American citizens, have all the civil and political rights and privileges which all other native-born citizens enjoy. According to the Federal census of 1940, there are 60,148 of these Japanese-Americans in California alone. Among the 33,569 alien Japanese resident in the state, thousands are the parents of these American citizens of Japanese blood but cannot themselves become citizens.

It is commonly understood that alien Japanese parents in California are urged by the home government to register their children with the local Japanese Consul. This

registration under Japanese law makes the child a citizen of Japan. Being a citizen of the United States by "the law of the soil," the child thus assumes a dual citizenship. It has been estimated that many more than 50 per cent of the Japanese born in California owe this dual allegiance. A statement of the exact number thus registered would necessitate a perusal of the records of Japanese consular offices in the state. Most of these records are now inaccessible. It is claimed that many have been removed or destroyed.

Here is presented, then, a unique situation in the history of citizenship in the United States. As long as the Japanese, both men and women, were allowed to immigrate freely into the United States, there were born in this country an increasing number of American citizens of Japanese blood, sons and daughters of parents who themselves were ineligible to citizenship by naturalization. Now that we are at war with Japan, the community is bound to ask what the relationship is between these American-born children and their alien parents. What is the attitude of Caucasian-Americans toward this large number of American citizens of Japanese blood? Are family ties and home teachings—thousands of these children have been trained in Japanese language schools in addition to the training received in American schools—stronger than allegiance to the American government and democratic principles? Do these alien parents consider themselves only as strangers in a strange land, with their root in the homeland? Was it a mistaken policy to allow to immigrate into the United States large numbers of aliens to whom we have denied the privilege of taking the first step in Americanization, namely, that of becoming naturalized citizens? In line with President Roosevelt's admonition to treat justly all aliens, it would appear that the government should give to American citizens of Japanese blood every opportunity to be loyal, and at the same time offer a similar opportunity to the alien Japanese, but in the present crisis nothing can be taken for granted. Let us remember that in every war there are disloyal elements, both among citizens and aliens, and in this war some disloyal elements are of Caucasian ancestry. We must deal firmly with all such, alien or citizen, regardless of ancestry.

In California today there are three groups of resident Japanese. In their own terminology, these groups are the Issei, or Japanese aliens, many of whom are parents; the Nisei, American-born children of Japanese parents; and the Sansei, children of the Nisei, or third-generation Japanese. The latter group is not large as yet, although it is estimated that at least 10 per cent of the 60,000 Nisei in California are at the marriageable age of twenty-one, or older. There will be no further immigration into the United States of the Japanese that belong to the excluded classes enumerated in the immigration laws, while only the future will determine the number of Nisei and the Sansei.

Opposition to the Japanese in California found concrete expression long before the Federal government took steps in 1924 to put a stop to Japanese immigration by definite law. In fact, the California legislature passed the Anti-Alien Land Law in 1913, which prohibited ownership of land to be used for agricultural purposes by those ineligible to citizenship and limited the leasing privilege to three years. Within a period of a little more than a year after the enactment of this law the First World War broke out in Europe. Japan threw in her lot on the side of the Allies, rejecting sympathy with the German cause, and performed a distinct service in policing the waters of the Pacific, thus giving protection to the Pacific Coast. This very helpful service to the Allied cause, together with her splendid exhibits at the Panama Pacific Exposition held in San Francisco in 1915, for a time, at least, led to a more kindly feeling even in California toward Japan.

This friendly feeling was short lived, however, largely because of Japan's military operations in Siberia in 1919, her repression of Korea, and her increasingly aggressive policy in China. It was felt also that the Gentlemen's Agreement of 1907 had been ineffective, and that the 1913 Anti-Alien Land Law had been circumvented by the Japanese through the purchase of land in the name of American-born children, the number of whom was increasing rapidly with the establishment of Japanese family life in California.

One of the chief results of this renewed opposition was the Initiative Measure adopted by the voters of California on November 2, 1920, which provided for guardianship by the public administrator, or some other person chosen by the court, of the agricultural property of children of parents ineligible to citizenship, and denying this guardianship right to the natural parent. It also provided for such guardianship over a minor owning stock in a corporation whose charter entitled it to own land. Furthermore, the measure abrogated the right of leasing to alien Japanese which was granted under the Anti-Alien Land Law of 1913.

It should be noted here that in a case that came before the Supreme Court of California in 1922 involving the Initiative Law of 1920, referred to in the preceding paragraph, the Court ruled as follows:

> The Initiative Alien Property Act of 1920, forbidding the appointment of any alien not eligible to citizenship as guardian of a minor with respect to property of the minor of a character which such alien can not acquire himself, that is to say, with respect to agricultural land belonging to such minor, clearly discriminates against citizens of Japan residing in the State and is violative of Article XIV, section 1 of the Constitution of the United States.

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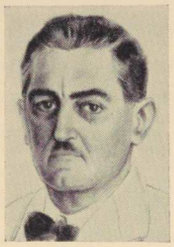
LATIN-AMERICAN COUNTRIES AND CIVIL SERVICE

DR. OCTAVIO MÉNDEZ PEREIRA

Founder and former President of the University of Panama, ex-Secretary of Education; now Visiting Professor in the Department of Spanish, The University of Southern California

In Latin-American countries in general there is no civil service included in the administration. This is due in great part to resistance by politicians who always have considered public employment the "spoils of war" of the parties that win the elections or overthrow the government by a coup d'etat. With each new president there is a partial or total change in the administration, in which all the opposition ceases to function under the new regime. Many Hispanic-American constitutions decree that all employments which are not filled by popular election are to be taken care of by free nomination and dismissal by the President of the Republic.



DR. MÉNDEZ

Is this situation good or bad? Does this lack of a civil service which would assure the permanency of nonpolitical employees in their positions injure the administration to any great extent?

These questions cannot be answered simply. The problem has different aspects which must first be considered carefully. It is undeniable, of course, that the civil service assures the efficiency and the stability of public employment, its training for the various positions is more thorough, and tradition is maintained in the offices. But, on the other hand, it can in the long run produce routine, maintain an attitude of indifference injurious to politics, and exaggerate the defects of the bureaucratic system. It has been said that bureaucracy is sometimes "a great structure of agencies and departments, in which veritable armies of ambitious, privileged and powerful office holders establish themselves profitably."

Service by turn in public positions seems to be a natural consequence of democracy. This enables everyone to aspire to an official position, prepares a greater number of people for such a position, and makes for more interest among the citizenry in regard to the government and its functions. In countries such as those of Latin America, where industries are few and where the majority of citizens who have graduated from the secondary schools receive their livelihood from official positions, alternacy is one of the things for which the politicians struggle most. Perhaps for this reason, political struggles there are much more impassioned and interest in matters pertaining to the government is much more general.

The difficulties of a constant change of employees in countries where there is no civil service at times make exceptions to the rule of alternacy. These persons are the experts in each branch of service. In general, a well-prepared individual who specializes in some particular branch is respected by the government and continues in his position when the regime changes, presupposing of course that he has not been very active or hostile in politics. Such persons are the indirect teachers of public administration. They set the novices to rights and maintain efficiency in the office.

One should note in this connection that there are many Latin-American universities now offering courses of training in administration, government in its different branches, in social service and security, et cetera.

It is a well-known fact, for example, that the Latin-American university students take a more active part in politics and are more directly concerned in revoluntionary and social movements than are North American students. A contributing factor may be the fact that the Latin American devotes but little time to play and is more precocious in his development; but more significant are the greater citizen participation and changing about in government positions. Clearly, this situation creates a floating parasitic class of constant aspirants to public positions, and as many intriguers at the same time, a class which is a detriment to private initiative in independent labor in industry, commerce, agriculture, or the arts and crafts.

The bureaucratic automaton, a perfect piece of administrative machinery, is an unknown type in Latin America. There are, it is true, many useless employees in the offices, placed there through political influence only; yet there exists a latent struggle for positions that makes those who aspire to them try to prepare themselves better in order to obtain such positions. There are no examinations for the filling of vacancies, but in many cases there is a selection on the basis of competency in which the arbitrator is public opinion.

This question is worthy of investigation. We have put down here merely some observations which the subject suggested. A comparative study might well be made of countries that do have and those that do not have civil service, in order to determine its advantages and disadvantages in different situations.

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This decision has been, no doubt, a factor in the charges brought against alien Japanese parents that they have circumvented the Initiative Measure of 1920 by purchasing agricultural land in the name of minor children who are American citizens.

With over 60,000 American-born children of alien Japanese in California today, it is quite apparent what a difficult problem is posed for the American government, particularly in those areas where large acreage, much of which is located in vital defense zones, is owned by these Nisei. A survey for Los Angeles County shows that there were 1,172 Japanese operating 26,000 acres of truck gardens. Of the operators, 619 are American-born Japanese and 553 are aliens. The county's total vegetable area is 40,000 acres. The provisions of the laws of 1913 and 1920 would not apply to those American-born Japanese twenty-one years of age or over. But, in any case, the Federal government as a war measure can take steps to deal with these American-born Japanese in defense areas, even though a majority of them are considered loyal citizens. Steps have already been taken to evict from all defense areas alien Japanese, Germans, and Italians. In case of necessity, similar measures can be applied to American citizens of Japanese blood. The situation is made more difficult by the fact that government authorities at the present time do not have full information on the number of dual citizens among this large group.

This dual citizenship may be a factor in the decision of the Federal government, under the general supervision of the army, to undertake the considerable task of removing the large Japanese population, both American citizens and aliens, from the coastal regions into the interior. This action as a war measure has called forth no little criticism from civic groups such as the American Civil Liberties Union. Much is said about the civil liberties of these American-born citizens of Japanese blood. Do they not have all the rights and privileges which any other native-born citizen has? Yes, but we are at war with a treacherous enemy whose tentacles stretch across the world, and who has not overlooked the fertile soil found among thousands of his subjects in the United States.

It is obvious that American citizens of Japanese blood do not have more rights under the American Constitution than any other group of citizens. Those among them who are loyal to our democracy and its ideals will count as their contribution to our country the sacrifices they may be called upon to make. The others who still owe allegiance across the Pacific have to be restrained from activities directed against our war efforts. In the American tradition, we must deal with them decently and justly but, at the same time, sternly. Thousands of our American boys have already made the supreme sacrifice, and other thousands will follow in their steps. They are losing their all; we who remain must make those sacrifices count. We must be alert to the fact that the present crisis calls for speedy, oftentimes drastic, action.

SOCIAL SCIENCE ASSOCIATION SPRING MEETING

The annual Spring Meeting of the Southern California Social Science Association will be held on the campus of Whittier High School on Saturday, April 18, 1942.

The program will be:

Topic for the day: "Teaching the Social Sciences in a World at War."

Time: 9:30-10:00 a.m.—Registration.

10:00-12:00 a.m.—Section meetings.

12:30- 2:00 p.m.—Luncheon session.

Section meetings:

I. Social Studies and War.

II. Teaching Geography Today.

III. New Auditory Aid Methods in the Social Studies.

IV. (Luncheon) A speaker from the Institute of Pacific Relations on the current situation in the Pacific theater of war.

The exhibits of new books, magazines, and new teaching materials will be worthy of attention.

Every person interested is invited to attend. There is *no registration fee.* Reservations for the luncheon should be placed with the Association Secretary, Miss Mary G. Jensen, Inglewood High School, Inglewood, California.

OPPORTUNITIES IN THE FEDERAL SERVICE

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with satisfaction to their superiors. It may be that the apparent success of this endeavor was due partially to the extraordinary expansion of governmental activities during the years of military defense developments which began in 1940. However, the fact that a great many of the appointees went into normal civilian activities for which appropriations were being reduced because of defense demands would indicate that they were satisfying some permanent need.

—*John M. Pfiffner.*

DEFENSE TRAINING—HOW SHALL WE IMPROVE IT?

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Burbank and San Diego, California, are utilizing professional educators in their programs, with commendable results.

What is needed most in our volunteer training program is to develop a series of basic curricula which can be made available to all volunteers. The Office of Civilian Defense in its publications states very definitely that all the protective services should receive a basic course of instruction in first aid, fire defense, and gas defense, and should also receive a general survey course. The recommendation that all services receive this training indicates that great emphasis should be placed in developing these courses in such a way that they would be of interest and value to all of the services. When all volunteers have completed the basic courses, then, and only then, should they proceed to take a course of instruction designed primarily for the specific service in which they have enrolled. As it is now, our volunteers in any given service are not systematically given a training course in fundamentals that will enable them to understand better the relationship of the job they are doing to the one that their fellow volunteer in another service has to do. A general primary course of training would make each of our volunteers better able to do not only his job but the ones that he may be unexpectedly called upon to do in the event of an emergency.

Because so much piecemeal training has been accomplished in California, it may appear that it is now too late to revise our basic thinking and procedures regarding this aspect of civilian defense. Nothing could be further from the truth. Training of the volunteer forces will be a continuous process. Regardless of how far we may have gone in a given city, it would seem desirable to revise our training plans and procedures so as to put them on a sound basis. We should develop our reliance upon professional educators for direction in preparing our lessons, and at the same time consult with them frequently as to problems involving teaching techniques which if left unsolved may result in a slackening of interest in training among the volunteers. Finally, there is a large part of the training job to be done that might very well be turned over to trained teachers.

The duties and responsibilities of volunteers will be increased. Because of this fact, training of volunteers will not become less important as time goes on. The morale and efficiency of our protective services will depend upon the training program to which they are subjected.

CIVIC AFFAIRS
THE UNIVERSITY OF SOUTHERN CALIFORNIA
LOS ANGELES

Pearl C. Kellogg
Fowler Union High School
Fowler, Calif.

WAR RELOCATION AUTHORITY
Office of the Solicitor
WASHINGTON

March 26, 1943

OPINION No. 55

TO: The Director

SUBJECT: Dual Citizenship

I. WHAT IS DUAL CITIZENSHIP?

II. HOW CAN DUAL CITIZENSHIP BE TERMINATED?

a. By expatriation from the United States.
b. By expatriation from Japan.

I. What is Dual Citizenship?

There seems to be a popular impression that "dual citizenship" of Nisei is a "Japanese doctrine". This is far from the truth. In fact dual citizenship may arise whenever different countries apply different tests of citizenship. There is no overriding principle of international law to determine what are the governing tests of citizenship. It is commonly understood, however, that citizenship at birth is to be determined either by the law of the parents' nationality (jus sanguinis) or the law of the soil where the birth takes place (jus soli). The law of the Anglo-American countries, sometimes called the "common law theory", starts from the premise that citizenship is to be determined primarily by the law of the place of birth and this theory is followed, generally speaking, throughout the Western Hemisphere as well as in the British Empire. It has had a few scattered adherents elsewhere most important of which, prior to conquest by the enemy were, Czechoslovakia and the Netherlands Colonies. The second theory sometimes called the "civil law theory" is followed throughout the rest of the world.

By the law of no state is it impossible for children born abroad of its nationals to inherit and retain the nationality of the parents, if proper action is taken to acquire or to preserve it. In other words, the common law theory never insists upon the unqualified application of the jus soli. Thus it is possible for children born of American parents in Japan to retain their American citizenship.

Some of the civil law countries, however, adhere to the theory of jus sanguinis with comparative rigidity. Thus Germany now claims the loyalty of all persons of German descent throughout the world and she has constantly maintained a legal theory upon which such a claim can be based.

Such being the situation, it is obvious that some persons may be claimed as citizens by two States and thus have dual citizenship, while others may be claimed as citizens by no state and thus be stateless.

The category of stateless persons is well recognized in the literature of comparative law and of international law, 1/ but a much more common category is that of persons having "dual nationality". This arises when the land of birth follows the jus soli and the country of the parent's nationality follows the jus sanguinis. In accordance with the rule most common in Europe, Africa and Asia, Japanese law starts from the principle of jus sanguinis in accordance with which the Nisei would be Japanese. 2/ Our law is well settled, however, to the effect that they are American citizens. 3/ It is thus that the concept of dual citizenship is applicable. Fortunately, both countries have passed statutes providing for loss of nationality, so the area of conflict of laws with the result of dual citizenship is much diminished.

1/ Statelessness can result, for example, when parents are naturalized, when the law of their origin then unconditionally expatriates the children and when the state of naturalization does not accept the children as nationals upon the naturalization of the parents without more. See Sandifer "A Comparative Study of Laws Relating to Nationality at Birth", 29 Am. J. of Int. L. 248, 269-70 (1935). The Japanese law expressly provides for a child born in Japan of parents having "no nationality" by stating that the child shall be regarded as Japanese. Law No. 66 of March 1899, Article 4.

2/ A child is regarded as a Japanese if its father is at the time of its birth a Japanese. Law No. 66 of March 1899, Article 1.

3/ United States v. Wong Kim Ark, 169 U. S. 649 (1897), recently followed in Regan v. King, F. (2d) (C.C.A. 9, 1943).

No problem of dual citizenship can arise with reference to the Issei, because they are Japanese by Japanese law 4/ and our nationality law (with some qualifications not relevant here) provides that the "right to become a naturalized citizen...shall extend only to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere." 5/

II. How Can Dual Citizenship be Terminated?

a. By expatriation from the United States

The potential dual citizenship of the Nisei can be terminated or avoided by the extinguishment of citizenship of either country pursuant to appropriate provision of the positive law of that country. In an earlier opinion (Op. Sol. No. 41, Dec. 15, 1942), I have summarized the ways in which American citizenship can be lost. Reference may be had to that opinion, if any case arises of supposed expatriation from this country of any Nisei. In most instances the possibility of such expatriation is practically excluded for the duration of the present war by the provision that no national can expatriate himself or be expatriated while within the United States or any of its outlying possessions, unless he is convicted by a court martial of deserting the military or naval services in time of war, of treason, of bearing arms against the United States or of attempting to overthrow the United States by force. 6/

b. By expatriation from Japan

Owing to language difficulties, only secondary authorities are available to us concerning the Japanese law. These, however, are believed to be reliable. 7/

4/ See footnote 2, supra.

5/ 8 U. S. Sec. 703; Act of Feb. 18, 1875 (18 Stat. 318), as amended by Act of May 9, 1918 (40 Stat. 547) and Act of October 14, 1940 (54 Stat. 1140).

6/ 8 U. S. C. Sec. 801, 803, Op. Sol No. 41, pp. 3-4.

7/ See "A Collection of NATIONALITY LAWS of Various Countries as Contained in Constitutions, Statutes and Treaties." Edited by Richard W. Flournoy, Jr., Assistant Solicitor, Dept. of State, and Manley O. Hudson, Bemis Prof. of Int. L., Harv. L. School; Sandifer "A Comparative Study of Laws Relating to Nationality at Birth and Loss of Nationality, 29 Am. J. of Int. L. 248 (1935).

The limitations upon dual citizenship of Nisei appear to come chiefly from Japanese legislation dating from 1924. Section 2 of Article 20 of Law No. 66 of March 1899, as revised by Law No. 27 of 1916 and by Law No. 19 of July 1924, effective from December 1, 1924, provides:

> "A Japanese who, by reason of having been born in a foreign country designated by Imperial ordinance, has acquired the nationality of that country, and who does not, as laid down by order, express his intention of retaining Japanese nationality, loses his Japanese nationality retroactively from his birth."

Imperial Ordinance No. 262 of November 15, 1924, designated, among others, the United States as coming within the meaning of this paragraph.

Regulations (Ordinance No. 26) of November 17, 1924, Article 2 provides:

> "Those desiring to preserve their nationality in accordance with the provisions of clause 1 of Article 20 (2) of the Nationality Law, and being those who are required to submit a report at birth by clause 1 or clause 2 of Article 72 of the Census Domicile Law, 8/ shall file a report to that effect, together with a report at birth, within the period set forth in Article 69 of the Census Domicile Law." 9/

The period set forth in Article 69 of the Census Domicile Law, for the registration by the parent of the birth of a child, is 14 days. 10/

One paragraph in Law No. 66 of March 1899 as amended appears on its face to assert control over the Nisei. Article 24 states that,

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8/ Providing for birth registration..

9/ Text from enclosure with Dispatch No. 17, December 1, 1924, from the American Ambassador to Japan to the Secretary of State.

10/ Statement of Ambassador Grew before the Subcommittee on Military Affairs, U. S. Senate, 78th Cong., 1st Sess., Jan. 28, 1943, see W. R. Centers, Hearings on S. 444.

notwithstanding the provision of Article 20 and several other articles "a male of full 17 years of age or upward does not lose Japanese nationality, unless he has completed active service in the Army or Navy, or unless he is under no obligation to serve." Ambassador Grew states that "while this provision is expressly applicable to Article 20, the Department has been informed that it is not applicable to Article 20 (2), which is regarded as a separate article."

We have checked this point with Mr. Flournoy, Assistant Solicitor of the Department of State, and, by reason of his above-mentioned compilation of nationality laws and other work in that field, an authority upon the subject of nationality. Mr. Flournoy follows the formula of Ambassador Grew's statement. He further advises that Article 24 was in the original law of 1899, while what appears as Section 2 of Article 20 in English was introduced by amendment in 1924. It is sometimes designated as Article "20 bis" to emphasize its separate character. 11/

This creates an ambiguity which can be resolved by interpretation to the effect that the intent and effect of the latter amendment was to supersede and control the provisions of Article 24. The aggressive nature of the Japanese Government in recent years, however, may lead it to reverse any interpretation tending to limit its demands with reference to sources of manpower. According to present advice, however, the Japanese do not claim as citizens Nisei born since 1924 and not registered with the suitable Japanese diplomatic representative within 14 days of birth. Older Nisei or Nisei who have been so registered since 1924 are covered by the provisions of the second and third paragraphs of Section 2 of Article 20, which provide:

> "Persons who have retained Japanese nationality in accordance with the provisions of the preceding paragraph, or Japanese subjects who, by reason of having been born in a designated foreign country before its designation in accordance with the provisions of the preceding paragraph, have acquired the nationality of that country, may, when they are in possession of the nationality of the country concerned and in possession of a domicile in that country, renounce Japanese nationality if they desire to do so.
>
> "Persons who shall have renounced their nationality in accordance with the provisions of the preceding paragraph lose Japanese nationality."

11/ Brit. Parlm. Papers Misc. #2 (1927) Cmd. 2852, p. 39.

With reference to such cases the Japanese regulations (Ordinance No. 26) of November 17, 1924, provide:

"Article 3. Those desiring to divest themselves of Japanese nationality in accordance with the provisions of Article 20 (2) of the Nationality Law, shall file a report with the Minister of the Interior through the Japanese Embassy or Legation of the country in which they reside.

"The report referred to in the previous paragraph shall be made in the case of those less than fifteen years of age, by their legal representative. In the case of those not of age and more than fifteen years of age, or of legal incompetents, the report shall be filed only with the consent of their legal representatives.

"Whenever the report mentioned in the preceding paragraphs is to be made by a stepfather, stepmother, or guardian, or whenever the consent of such persons is required, the consent of the family council shall also be obtained.

"Article 4. The report mentioned in the preceding article shall be accompanied by the following documents:

(1) Certified copy of census domicile.
(2) A certificate of birth issued or authenticated by an official of the country of birth.
(3) Whenever the consent of third parties is required by paragraphs 2 or 3 of the preceding article, their consent in written form.

"Article 5. Those desiring to divest themselves of Japanese nationality in accordance with the provisions of clause 1 of Article 20 (2) of the Nationality Law shall in accordance with the provisions of Articles 3 and 4, seek to obtain the permission of the Minister of the Interior."

Thus, many children of Japanese parents born in this country, before December 1, 1924, as well as many who were born later and registered with the proper Japanese diplomatic representative, are doubtless in a status of dual citizenship. According to the law of the United States they are citizens of the United States by virtue of place of birth. According to the law of Japan they are Japanese citizens by virtue of blood and descent. Unless they have left this country and

taken one or more of the steps set forth in Solicitor's Opinion No. 41 as necessary to expatriate themselves from the United States, they remain American citizens. Unless they have expatriated themselves from Japan by filing the prescribed report with the Japanese Embassy, they remain Japanese citizens. Presumably reports filed with the Spanish Embassy for the purpose of such expatriation are transmitted to Japan, but it is, in the last analysis, a question of Japanese law whether such reports are given the desired effect. The only method of determining the present law or policy of Japan in this regard, is inquiry through the Swiss or Spanish Legations. In the absence of cases urgently requiring a solution on the basis of this information, it seems undesirable to call attention to this matter by invoking the cumbrous machinery in question.

It should be observed in conclusion that, while many Nisei probably possess dual citizenship, the effect of the Japanese legislation of 1924, if left undisturbed, is to diminish greatly the extent of dual citizenship as time elapses. In other words, the Japanese policy as evidenced in the legislation of 1924 has not been an aggressive adherence to the principles of citizenship by descent, but, on the contrary, has represented an apparent attempt to conform to conditions in this country by requiring prompt action on the part of parents wishing to preserve the Japanese citizenship of the Nisei.

Philip A. Glick
Solicitor

Philip Glick

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MEMORANDUM ON DUAL NATIONALITY

by
Professor Max Radin, A.B., LL.B. Ph. D, John H. Boalt Professor of Law, School of Jurisprudence, University of California
June 3, 1943

Properly speaking, there is no such thing as dual nationality. The idea of nationality has come down to us from the medieval English law and is derived from the notion of the bond of allegiance which connected a prince and his subjects. There are two famous cases in the Supreme Court in which this question is discussed. One is the Wong Kim Ark case, 169 U.S. 649, and the other is the case of Lynch v. Clark (1844) 1 Sanford 583. An older discussion which is often referred to is Blackstone's Commentaries I, chapter X. The matter has been examined in great detail in the volume on Research in International Law published in 1929 by the Harvard Law School and also constituting volume 23 (special supplement) of the American Journal of International Law. The important points are Articles 1 to 17 (pp. 21 to 58) which give the fullest examination of the different views held at various times by various authorities.

When I say that there really is no such thing as dual nationality, I mean the following. It is quite possible for a person under the laws of two separate states to claim the nationality of either or of both, when he is in a third state. Suppose for example, a man had a right both to Austrian and to Argentinian nationality, as happened frequently enough. If he was in Brazil he might demand of the Brazilian government the right to be regarded either as an Austrian or as an Argentinian. In a few countries he might claim both nationalities. But if he was in Austria he would be regarded exclusively as an Austrian and in the Argentine exclusively as an Argentinian.

A good deal of the difficulty is created by the conflict of two theories of international law, one of which is called ius sanguinis, and the other is called the ius soli. The countries that maintain the ius sanguinis hold that citizenship is a matter of blood and inheritance. Those that maintain the ius soli hold that it is a matter of place of birth. Some countries use, to a limited degree, both theories. The following list of countries in 1929 used only the ius sanguinis:

1. Austria, China, Danzig, Esthonia, Finland, Germany, Hungary, Japan, Latvia, Lithuania, Monaco, Netherlands, Poland, Rumania, Russia, Serbs, Croats, and Slovenes, Switzerland.

2. Siam and Venezuela use both systems.

The following countries use chiefly ius sanguinis but have some provisions based on ius soli:

3. Afghanistan, Albania, Belgium, Belgian Congo, Bulgaria, Cuba, Denmark, Dominican Republic, Egypt, France, Greece, Haiti, Iceland, Iraq, Italy, Luxemburg, Mexico, Norway, Persia, Portugal, Salvador, Spain, Sweden, Syria and Lebanon, Turkey.

The following countries use chiefly the ius soli but have some provisions based on ius sanguinis. It will be noted that among them are Great Britain and the United States:

4. Argentinia, Bolivia, Brazil, Chile, Great Britain, Australia, British

India, Irish Free State, Canada, Hong Kong, Newfoundland, New Zealand, Palestine, Chile, Colombia, Costa Rica, Czechoslovakia, Ecuador, Guatemala, Honduras, Liberia, Nicaragua, Panama, Paraguay, Peru, United States of America, Uruguay.

The countries that have insisted on the ius sanguinis have not done so, as is always insisted in the case of Japan, because of any superstitious devotion to an Emperor-cult, or because they have raised the notion of patriotism to the rank of a religious dogma. The reason has been almost wholly economic. Those countries were in the main emigration countries, that is countries that had economic difficulties in maintaining a rapidly rising population with the result that there was a large emigration. These countries were very anxious to retain enough control of their emigrant citizens to be able to count on a certain increase in revenue by taxation and to facilitate repatriation by refusing to admit loss of citizenship. Countries that stress the ius soli were immigration countries. The qualified acceptance by the United States of the ius sanguinis doctrine on behalf of their citizens born abroad was motivated by the increase of our commercial connections abroad and our large group of citizens that travelled for pleasure in foreign countries.

From the above it will be seen that if it is declared that Japanese-Americans born here cannot receive the privileges of American citizenship, because the Japanese government still regards them as Japanese subjects, the same would have to be applied to the countries in lists one and three, and particularly to the children of Italian and German ancestry born in this country. Nor can the fact that a Japanese, German, French or Italian chooses to register his infant child with the governments of those countries, when that child would under our law be a citizen of the United States, bind the child itself. It would be proper, to be sure, to make a law which requires a person who has a right to two different nationalities, to choose between them when he becomes of age. We have no such law. On the contrary our statutes particularly state that, except as a punishment for treason or a military offense amounting to treason, no person who has American citizenship by birth can lose it, while in the United States. He can of course renounce his citizenship by naturalization elsewhere.

If the foregoing rules were not applied it would be possible for a foreign government by changing its law to deprive an American citizen of his citizenship. Suppose, for example, we take the case of Germany. Germany formerly acknowledged the right of expatriation. It did not claim that a citizen born in the United States of German parentage was a German. Later it adopted the ius sanguinis. The effect of that would be--if we followed the reasoning put forth against the Japanese--that all the American citizens of German parentage would lose their civil rights because Germany suddenly chose to claim them as German citizens.

The fundamental weakness of the case against the Japanese is that it fails to realize that the United States has always refused to recognize similar claims in the case of nationals of other countries. To apply it to the Japanese alone would be obviously discriminatory.

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MEMORANDUM ON DUAL NATIONALITIES.

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DUAL CITIZENSHIP AMONG THE JAPANESE

Much has been made throughout the Nation and especially among Californians of the fact that Americans of Japanese ancestry possess dual citizenship and that because of this divided loyalty, we cannot place much dependence and faith in such citizens. Once more the American people have acted on emotion and prejudice rather than on the facts in the case. Such facts do not warrant the assumptions we have made nor the actions we have taken on the basis of our misunderstanding of the problem of dual citizenship.

since 1924

It is commonly assumed that American-born persons of Japanese parentage are born Japanese nationals and are automatically dual citizens. This is not true and has not been ~~for 20 years~~. To obtain Japanese citizenship for them, ~~their~~ parents are required to register them at a Japaese consulate within 14 days of birth. Have Japanese parents taken advantage of the Japanese law to the extent that most people think? Representative Ford has told the people of the Nation that 99.9 percent of the American-born Japanese possess dual citizenship. This is absolutely not true according to a number of surveys of dual citizenship.

Professor Edward K. Strong of Stanford University and his associates carried out research on this problem in 1930 and found that 40 percent of those 7 years old and older in California had American citizenship only. Since these were persons born before 1924 when the present law came into force, they could only have reached that status by definite renunciation of their citizenship. Of those 1 to 6 years of age in 1930, Strong found that two-thirds were American citizens only, that is, their parents had not taken the trouble to register them at the Japanese consulate within the required two weeks period. This is true despite the fact that their parents were denied American citizenship and that by such failure to act they were erecting a barrier of nationality between themselves and their children. Here is evidence of a pro-American bias and lack of bitterness on the part of those to whom citizenship was denied which should be better appreciated.

Another popular fallacy about the Japanese Americans is that dual citizenship is exclusively a Japanese phenomena. This is far from the truth. As a matter of fact 24 countries today have dual citizenship. Bulgaria, Finland, France, Greece, Hungary, Norway, Poland, Sweden and Yugo-Slavia are among them. These countries have made equally important contributions to the flow of immigration to this country and not much concern has been given to dual citizenship status.

As the years have gone by, the number of Americans of Japanese ancestry possessing dual citizenship has decreased so that we can safely say that those 10 years old or younger who possess such citizenship are very small indeed. Most of the children now being born are of the third generation. Since many of their parents do not possess dual citizenship, these children could never secure such citizenship even if they desired it. The best estimate is that not more than 20 percent of Americans of Japanese ancestry are today dual citizens. The problem has been reduced 80 percent in two decades and will probably be wiped out in another generation.

DUAL CITIZENSHIP

When the status of Japanese Americans is considered, questions about dual citizenship are frequently raised. Here are a few facts from an article by a writer in the Institute of Pacific Relations' "Far Eastern Survey" of November 16, 1942.

The United States does not recognize the doctrine of dual citizenship. Neither do most other nations. The 14th Amendment to the American Constitution provides that "all persons born...in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." The Supreme Court has never departed from this position.

There are two doctrines of nationality which conflict: one which holds that a child born abroad takes the citizenship of its parents, and the other which holds that a child born on its soil takes the citizenship of the country of its birth without regard to the nationality of its parents.

Traditionally, Japan has held the first doctrine and the United States the second (except insofar as our own nationals abroad were involved.)

Prior to 1924, it was extremely difficult for American-born Japanese to expatriate themselves from Japan's claim of citizenship on them. Because of this unsatisfactory situation Japanese-American groups on the Pacific Coast and in Hawaii memorialized the Japanese Government to change the law. Apparently in response to this request the Japanese Government passed a law effective December 1, 1924, providing that any Japanese born thereafter in certain stipulated nations, wherein he shall thereby have acquired citizenship, shall lose Japanese nationality from birth unless he declares intention to retain it. This meant that any Japanese born in the United States since December 1, 1924 was free of any claim of dual citizenship by Japan and possessed only American citizenship (unless registered by the parents); and those born prior to December 1, 1924 were enabled by the same law to cancel their alleged dual citizenship (alleged because the United States has never recognized such a claim.)

It has been estimated that about a third of the Japanese children born in California were registered as citizens of Japan. It almost all cases, apparently, the children themselves knew nothing about it. The suggestion has been frequently made that a procedure should be established to enable American-born Japanese to file a simple petition in a federal court renouncing all claim to dual citizenship.

Many nations hold the nationality doctrine that a child born abroad retains the citizenship of his father. An important task which should be undertaken subsequent to the end of the war, apparently, will be the working out of an international agreement regarding a world nationality code.