The recent repeal of the Chinese exclusion laws\(^1\) was an important landmark in the history of American immigration and nationality law, since it reversed a policy which had been inscribed on our statute books for over three decades. In his message to Congress urging adoption of the repealing legislation, President Roosevelt described the Chinese exclusion laws as an "historic mistake," and argued that the American people "must be big enough to acknowledge our mistakes of the past and to correct them."\(^2\) These sentiments were endorsed in both houses of Congress by overwhelming majorities.

It is gratifying to know that the obsolete exclusion laws, which were so offensive to our gallant Chinese allies, are now expunged, and that the Chinese people are now treated on a parity with other peoples in our immigration and nationality policy. They may be admitted as quota immigrants and may become naturalized as American citizens if they meet the qualifications prescribed by law. The specific grant of these rights by the newly enacted statute was supported by virtually unanimous popular sentiment.

The consummation of this legislation has settled some important issues, but it has suggested other serious problems which now demand consideration. Many of these problems bear directly upon our relations with nations allied with us in the current conflict, and the policies..."
we pursue may be significant with relation to the strategy of the war and the architecture of the peace.

It is of the highest importance, therefore, that we adjust our thinking to the needs of the present and the future. We must discard inherited concepts which have been robbed of meaning by the passage of time and which remain only as a source of irritation and embarrassment.

In the Congressional debates which preceded enactment of the legislation repealing the Chinese exclusion laws, it was urged in opposition that extension of naturalization privileges to the Chinese would be an unwarrantable discrimination against the Filipinos, the Hindus and other Asiatic groups whom our laws generally precluded from naturalization. Congress wisely determined that this objection was not a valid ground for repulsing the legitimate claims of the Chinese. But now that this legislation has been enacted, the same questions keep recurring with redoubled force. What about the Filipinos? Why do our laws exclude these valiant wards of our nation, with certain limited exceptions which will be noted later, from the privilege of American citizenship? And what about the natives of India, of Burma, and the Pacific islands? Why do we persist in denying them equal treatment under our nationality laws?

These are troublesome questions, to which no satisfactory answer has suggested itself. It should be profitable to conduct a complete re-examination of the origin, development, and present significance of our policy which restricts the racial groups eligible for naturalization. Such a study should reveal whether continuance of that policy is necessary or desirable.

I. HISTORICAL DEVELOPMENT

The first American nationality law, enacted by Congress on March 26, 1790, restricted eligibility for naturalization to "free white persons." Although there was no contemporaneous Congressional expression to clarify the legislative intent, it seems clear that the racial limitation was designed to exclude two categories:—(1) chattel slaves, both Negro and White, and (2) Indians. Both groups evidently were deemed unfit for participation in full political privileges.

The designation of "free white persons" as the sole group eligible for naturalization continued without change for eighty years. During

4. 1 STAT. 103 (1790).
that period an additional racial restriction was imposed by the Act of February 10, 1855, which provided for the acquisition of United States citizenship upon marriage to an American citizen by an alien woman "who might lawfully be naturalized." 

The emancipation of Negroes as a consequence of the Civil War resulted in relaxation of the naturalization restrictions directed against them, and the Act of July 14, 1870, directed that "the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent." Thereafter, the limitations restricting eligibility for naturalization to free white persons and persons of African nativity or descent were incorporated in the Revised Statutes of 1878 as Section 2169.

The naturalization of Chinese was specifically prohibited in the Chinese Exclusion Act of May 6, 1882.

The Nationality Act of 1940 stipulated that three racial groups would thereafter be eligible for naturalization:—(1) white persons, (2) persons of African nativity or descent, (3) descendants of races indigenous to the Western Hemisphere. The third category was new, and was added primarily to qualify American Indians for naturalization, although it also includes Eskimos and Aleutians.

In repealing the Chinese exclusion laws, by its enactment of December 17, 1943, Congress expressly added "Chinese persons or persons of Chinese descent" as a fourth racial group now eligible for naturalization.

The foregoing discussion has touched only the major features of statutory development. A number of important modifications will be discussed at a subsequent point. In addition, it should be noted that several auxiliary regulations depend on the definition of racial eligibil-

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7. The quoted language was held to impose a racial limitation in Kelly v. Owen, 7 Wall. 496, 19 L. Ed. 283 (U. S. 1868).
10. Sec. 303 of the Nationality Act of 1940, 54 STAT. 1140 (1940), 8 U. S. C. A. § 703 (1942). After enactment of the basic Naturalization Act of June 29, 1906, 34 STAT. 596 (1906), 8 U. S. C. A. § 106 (1942), there was some dispute as to whether the racial bar had been repealed by implication because of failure to include it in that statute. In Ozawa v. United States, 260 U. S. 178, 43 Sup. Ct. 65, 67 L. Ed. 199 (1922), the Supreme Court held that the racial restrictions of § 2169 of the Revised Statutes were still in effect. The continuity of the racial policy was also in doubt in 1873, when the original version of the Revised Statutes omitted any reference to free white persons, merely stipulating that Negroes were eligible for naturalization. However, this omission was remedied by the Act of Feb. 15, 1875, 18 STAT. 318 (1875), 8 U. S. C. A. § 359 (1942), and the racial restrictions were continued in the 1878 edition of the Revised Statutes.
11. Imm. & Nat. Service, Instruction 177 (Nov. 8, 1943).
ity prescribed in the naturalization statutes. Thus, persons who are racially ineligible for naturalization are, with certain limited exceptions, barred from entry into the United States\textsuperscript{13} are prohibited from obtaining legalization of unlawful entries under special registry procedure provided for those who have resided in the United States continuously since prior to July 1, 1924,\textsuperscript{14} and are excluded from applying for suspension of deportation under beneficial statutory provisions available to certain deportable aliens of good moral character whose deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien.\textsuperscript{15}

It may also be helpful to recapitulate briefly the history of our nationality regulations relating to the people of the Philippine Islands. Under the Treaty of Paris, concluded December 10, 1898 and ratified April 11, 1899, the Philippine Islands were ceded to the United States and it was stipulated that the civil rights and political status of the Philippine people were to be regulated by Congress.\textsuperscript{16} In 1902 Congress declared that former Spanish subjects who were inhabitants of the Philippines, and who did not elect allegiance to Spain, were to be designated, together with their children, as citizens of the Philippine Islands.\textsuperscript{17} As such they became nationals, but not citizens, of the United States, who were entitled by reason of such status to the protection of the United States.\textsuperscript{18} In 1920 the Philippine Legislature, pursuant to Congressional authorization, enacted a statute for naturalization of citizens of the Philippine Islands.\textsuperscript{19} By the Act of March 24, 1934, Congress formulated a Constitution for the Philippine Islands, which was subsequently approved by the Philippine Legislature, providing that the Philippine Islands should become an independent nation July 4, 1946.\textsuperscript{20}

\textsuperscript{13} Sec. 13 (c), Act of May 26, 1924, 43 Stat. 161 (1924), 8 U. S. C. A. § 213 (c) (1942).
\textsuperscript{14} Sec. 328 (b), Nationality Act of 1940, 54 Stat. 1151 (1940), 8 U. S. C. A. § 728 (b) (1942).
\textsuperscript{16} 2 MALLOY, TREATIES (1910) 1690, 30 Stat. 1754 (1898).
\textsuperscript{17} Sec. 4, Act of July 1, 1902, 32 Stat. 692 (1902).
\textsuperscript{18} See Toyota v. United States, 268 U. S. 402, 45 Sup. Ct. 563, 69 L. Ed. 1016 (1925) ; 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW (1942) 140.
\textsuperscript{19} Act of March 26, 1920, 15 Pub. L. Phil. Islands 267.
The Philippine Islands have remained an American possession, but have never been formally incorporated into the Union.21 Unlike the inhabitants of some other possessions, Filipinos have never been granted collective naturalization by Congress as American citizens.22 Their present status under our naturalization laws will be elaborated in the ensuing discussion.

II. JUDICIAL INTERPRETATIONS

In restricting naturalization to "free white persons" the first Congress undoubtedly was satisfied that it had established a standard which would be easy to define. The population of the young republic comprised Negroes, Indians, and white persons. The first groups were ineligible for naturalization and the third was acceptable. Determination of who were white persons thus involved only a simple process of subtraction.

But the founding fathers did not envisage the vast army of immigrants who were destined to flock to our shores in the next one hundred and fifty years. They could hardly be expected to prophesy the great part which was to be played by those immigrants, drawn from all the distant countries of the earth, in the development of this nation. They had no conception of the diverse racial groups which eventually would merge in the richly varied pattern of our people. And they certainly did not suspect that they had inaugurated an exploration in the bottomless morass of racial origins.

There was no difficulty for some time, since at first the statutory formula of subtraction worked quite well. But embarrassments grew as immigration became more diversified. Those who were called upon to interpret the law gradually awakened to the truth that it often was impossible to determine whether a particular applicant belonged to the white race. They learned that ethnologists and anthropologists were in hopeless conflict in attempting to define the races of the world, since racial origins were shrouded in the mists of antiquity and racial groupings were complicated by vast and repeated migrations and by intermarriage.23 Many Asiatics contended, and sometimes successfully, that they were white persons within the meaning of the naturalization laws.24

22. See notes 54, 56, and 57 infra, for provisions granting collective naturalization to Hawaiians, Puerto Ricans, and Virgin Islanders.
23. Good discussions of the difficulties experienced by anthropologists and ethnologists in ascertaining racial origins and the irreconcilable conflicts between different scientists in fixing racial classifications may be found in 13 ENCYCLOPEDIA OF SOCIAL SCIENCES (1937) 26; United States v. Thind, 261 U. S. 204, 43 Sup. Ct. 338, 67 L. Ed. 616 (1923); and the Dictionary of Races and Peoples, 5 IMM. COMM. REP. (1911) 3.
The Supreme Court was not asked to pass upon the racial restriction until 1922, one hundred and thirty-two years after the law was originally enacted. Then it rendered three decisions, within the space of three years, which furnish the only direct pronouncements of the highest court in interpretation of the statute.

The first case to come before the Supreme Court was *Ozawa v. United States.* This involved the application for naturalization of a Japanese, who contended he was a "white person" within the contemplation of the naturalization laws. This contention was rejected, and the Court explained that the words "white persons":

"import a racial and not an individual test. . . . Manifestly, the test afforded by the mere color of the skin of each individual is impracticable as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blonde to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation. "The effect of the conclusion that the words 'white person' mean a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship. Individual cases falling within this zone must be determined as they arise from time to time by what this Court has called, in another connection 'the gradual process of judicial inclusion and exclusion.'" 26

The Court's tentative conclusion that "white" generally denoted "Caucasian" was quickly tested a year later in the case of *United States v. Thind.* Here a Hindu, born in India and concededly of the Caucasian race, sought admission to American citizenship. The Court concluded that he was not a white person and denied his application. The Court said:

"The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken. . . . It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches

26. Id. at 197-8, 43 Sup. Ct. at 68-9, 67 L. Ed. at 208-9. See also Yamashita v. Hinkle, 260 U. S. 199, 43 Sup. Ct. 69, 67 L. Ed. 209 (1922), in which the Supreme Court declared that a certificate of naturalization previously granted to a Japanese was completely without effect.
of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today; and it is not impossible, if the common ancestor could be materialized in the flesh, we should discover that he was himself sufficiently differentiated from both of his descendants to preclude his racial classification with either. The question for determination is not, therefore, whether by the speculative processes of ethnological reasoning we may present a probability to the scientific mind that they have the same origin, but whether we can satisfy the common understanding that they are now the same or sufficiently the same to justify the interpreters of a statute—written in the words of common speech, for common understanding to unscientific men—in classifying them together in the statutory category as white persons.”

And further on:

“What, if any, people of primarily Asiatic stock come within the words of the section we do not deem it necessary now to decide. . . . That question, however, may well be left for final determination until the details have been more completely disclosed by the consideration of particular cases, as they from time to time arise. The words of the statute, it must be conceded, do not readily yield to exact interpretation, and it is probably better to leave them as they are than to risk undue extension or undue limitation of their meaning by any general paraphrase at this time.

“What we now hold is that the words ‘free white persons’ are words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word ‘Caucasian’ only as that word is popularly understood. As so understood and used, whatever may be the speculations of the ethnologist, it does not include the body of people to whom the appellee belongs.”

The third decision was Toyota v. United States, in which the question presented was whether a Japanese was entitled to be naturalized under special legislation facilitating the naturalization of persons who served in the armed forces of the United States during World War I. The statutory benefits were specifically applicable to Filipinos. The court held Japanese ineligible to apply for naturaliza-
tion under this statute, but in a very strong dictum declared that Filipinos who did not qualify under this special legislation were racially barred from naturalization, even though they were nationals of the United States.32 The court stated:

"As it has long been the national policy to maintain the distinction of color and race, radical change is not lightly to be deemed to have been intended. . . . As Filipinos are not aliens and owe allegiance to the United States, there are strong reasons for relaxing as to them the restrictions which do not exist in favor of aliens who are barred because of their color and race. And in view of the policy of Congress to limit the naturalization of aliens to white persons and to those of African nativity or descent the implied enlargement of § 2169 [of the Revised Statutes] should be taken at the minimum. The legislative history of the act indicates that the intention of Congress was not to enlarge § 2169, except in respect of Filipinos qualified by the specified service." 33

It is difficult to glean from these decisions a dependable formula to aid in determining who are white persons under the naturalization laws. We are informed that the actual color of a man's skin is not decisive, and that we must disregard the teachings of science in attempting to ascertain whether a particular applicant is white. The standard to be applied must conform to the understanding of the common man, based on what "the average man knows perfectly well." The Supreme Court wisely refused to define the changing concepts of the average man concerning the warmly disputed theories of race.

The chief uncertainty in applying the Supreme Court's formula has arisen with respect to the peoples inhabiting the western part of Asia situated near the Mediterranean, in and around the region known as Asia Minor. The swarthy skinned inhabitants of this area are invariably classified by scientists as members of the white race. Courts have not been consistent in determining whether this classification should be accepted for naturalization purposes. Thus, Syrians,34 Armenians,35 Persians,36 and Turks37 have been held eligible for

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32. Filipinos consistently have been held ineligible for naturalization in the absence of special statutory exemptions, since the Toyota case, supra. See De La Ysla v. United States, 77 F. (2d) 688 (C. C. A. 9th, 1935), cert. denied, 296 U. S. 575, 56 Sup. Ct. 130, 80 L. Ed. 406 (1935); De Cano v. Washington, 7 Wash. (2d) 613, 110 P. (2d) 627 (1941).
37. See 3 HACKWORTH, op. cit. supra note 18, at 47.
naturalization, while Arabians\footnote{38. In re Hassan, 48 F. Supp. 843 (E. D. Mich. 1942); United States v. Ali, 7 F. (2d) 728 (E. D. Mich. 1925), rearg. denied, 20 F. (2d) 998 (E. D. Mich. 1927).} and Afghans\footnote{39. In re Din, 27 F. (2d) 563 (N. D. Cal. 1928).} have been declared ineligible. It should be observed that the Board of Immigration Appeals and the Immigration and Naturalization Service both have declined to follow the court holdings that Arabians are ineligible. Both agencies insist that Arabians are members of the white race and thus are eligible for naturalization.\footnote{40. See The Eligibility of Arabs to Naturalization (1943) 1 Imm. & Nat. Service, MONTHLY REVIEW, No. 4, 12. This view was approved and adopted in Ex parte Mohriez, 54 F. Supp. 941 (D. Mass. 1944).}

An interesting application of the Supreme Court’s ruling in the
\textit{Third} case is found in \textit{Wadia v. United States},\footnote{41. 101 F. (2d) 7 (C. C. A. 2d, 1939).} which involved a Parsee, native of India, and member of a sect of Persians who had migrated to India twelve hundred years earlier. The court held that:

"Whatever may have been the case with a Parsee, if his stock had been directly derived from Persia, one whose ancestors have resided in India for 1,200 years cannot be regarded as of a race, the members of which are commonly thought of as ‘white persons’."\footnote{42. Id. at 9. See also United States v. Ali, 7 F. (2d) 728 (E. D. Mich. 1925), rearg. denied, 20 F. (2d) 998 (E. D. Mich. 1927), where a similar test was applied to a person born in India of Arabian ancestry.}

It is not proposed in this article to attempt an exploration into the interminable labyrinths of race.\footnote{43. See note 23 supra.} This generation has become educated in the uncertainties of ethnology through the fanciful pretensions of the Nazis. And the Supreme Court has rejected scientific guidance in its insistence that the racial restrictions must be interpreted according to the understanding of the average man. The confusion engendered by this doctrine is revealed by our inability to supply a definitive answer, beyond the realm of adjudicated cases, to the simple inquiry as to who are white persons within the statute.\footnote{44. See Ex parte Shahid, 205 Fed. 812 (E. D. S. C. 1913); In re Mudarri, 176 Fed. 465 (C. C. D. Mass. 1910); (1939) 23 MINN. L. REV. 813. Some courts have attempted to limit the definition of white persons to those who were recognized as white by legislators who enacted the original statute in 1790. This theory, based on concepts which were conditioned by limited experience, has not been followed. See Gold, \textit{The Racial Prerequisite in the Naturalization Law} (1935) 15 B. U. L. REV. 462, 472.}

Before departing from consideration of the adjudicated cases it is essential to invite attention to two additional considerations. First, despite a contrary dictum of Mr. Justice Cardozo in \textit{Morrison v. California},\footnote{45. 201 U. S. 82, 54 Sup. Ct. 287, 78 L. Ed. 663 (1934).} it is well settled that a person of mixed blood will qualify for
naturalization if his blood is preponderantly that of a race which is eligible for naturalization. Secondly, many of the courts which have concluded that the racial exclusions barred the naturalization of particular petitioners have commented on the eminent qualifications of the persons before them and have deplored their inability to admit such individual applicants to American citizenship.

III. Congressional Relaxations of the Racial Ban

The incorporation of racial restrictions in our naturalization laws involved an attempt to limit the racial currents which might be admitted into the stream of American citizenship. More than one hundred and fifty years have passed since Congress sought to restrict eligibility for naturalization to “free white persons,” and there have been vast modifications in the original Congressional formula. Many racial strains are now merged in the citizenry of our nation, and it is significant that Congress itself has sanctioned each alteration of the pattern it originally formulated.

1. The most important modification is expressed in the Fourteenth Amendment to the Constitution of the United States, which affirmed the principle of jus soli as part of American jurisprudence. As interpreted by the Supreme Court’s great decision in the Wong Kim Ark case, the Fourteenth Amendment confers United States citizenship upon every person born in the United States, and subject to the jurisdiction thereof, irrespective of his race and without regard to whether his parents are eligible to be naturalized. All children born in the United States to ineligible parents automatically are invested with American citizenship at birth. Consequently, the racial exclusion from American citizenship does not extend beyond the first generation. It


seems difficult to justify the preclusion of parents from enjoyment of citizenship benefits which are available to their children.\footnote{51}

2. No racial limitation has been imposed restricting acquisition of American citizenship at birth by a child born abroad to an American citizen parent, and such a child acquires United States citizenship at birth, irrespective of his race, upon meeting the conditions which are universally applicable.\footnote{52}

3. Similarly, no racial restriction has been prescribed in connection with derivation of United States citizenship by an alien child through the naturalization of his parent.\footnote{53}

4. At different times, Congress has awarded collective naturalization to various groups, regardless of their race. This has occurred most frequently with relation to the inhabitants of territorial possessions, such as Hawaii,\footnote{54} Puerto Rico,\footnote{55} and the Virgin Islands.\footnote{56} It is indisputable that the collective naturalization of Hawaiians bestowed American citizenship upon considerable numbers of persons who would have been racially ineligible for naturalization under normal procedures.

5. The limits of the prescribed racial exclusions from naturalization have been contracted steadily by Congressional action in removing particular races or classes from the quarantined area. These alterations have been motivated generally by a desire to promote amicable relations with various nations, or to confer special benefits on certain groups who have rendered meritorious service, or who are deemed worthy of exceptional treatment. Such relaxations have included (a) elimination of Negroes from the proscribed category;\footnote{57} (b) extension of naturalization benefits to races indigenous to the Western Hemisphere,\footnote{58} which include Indians, Eskimos, and Aleu-
tians; (c) removal of the ban against naturalization of the Chinese, previously the only race against whom a specific prohibition had been erected; (d) permission to naturalize certain Filipinos who had served honorably in the armed forces of the United States; (e) provision for expeditious naturalization, without any restrictions as to race, of all noncitizens who serve honorably in the armed forces of the United States during World War II.

What remains then of the original decree that only “free white persons” could aspire to win the precious prize of American citizenship? That declaration excluded four of the five great races of the world, but the foregoing discussion has indicated quite decisively that we have since accepted substantial accretions of American citizens from every one of those races. Our naturalization statutes still exclude most members of the brown and yellow races, but this bar does not preclude acquisition of American citizenship by descendants of such races, beyond the first generation of residents. Among the excluded peoples we find the Filipinos, the Hindus, and other inhabitants of Central and Eastern Asia, although the Chinese have now been made eligible. Races indigenous to the Pacific Islands, including natives of all American insular possessions in the Pacific except Hawaii, are also excluded.

According to the records of alien registration maintained by the Immigration and Naturalization Service, the number of persons in the United States from each of the excluded countries, as of June 30, 1943, was:

59. Imm. & Nat. Service, Instruction 177 (Nov. 8, 1943). The collective naturalization of American Indians born in the United States was previously effected by the Act of June 2, 1924, 43 Stat. 253 (1924), 8 U. S. C. A. § 3 (1942), although a number of earlier statutes had granted citizenship to various categories of American Indians.


63. Reference was previously made to the confused state of the sciences of ethnology and anthropology. See notes 23 and 43 supra. This confusion is most pronounced in classifying the number of world races, the classifications ranging from 3 to 34 races. See 13 Encyclopedia of Social Sciences (1937) 26. This article has adopted the popularly accepted enumerations of races, based on the classification made by the German scientist, Blumenbach, in 1775, which divides the world’s great races into five divisions: white, black, red, yellow, and brown.

64. 3 Hackworth, op. cit. supra note 18, at 46. Board of Imm. App., file 56110/239 (Apr. 24, 1943).

65. The above tabulation lists only national groups considered ineligible for naturalization by the Immigration and Naturalization Service. To complete the picture the following additional listings are made for nationals of countries which might also be proscribed by some authorities: Arabia, 580; Iran, 1,640; Iraq, 514.
Asia:

<table>
<thead>
<tr>
<th>Country</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>191</td>
</tr>
<tr>
<td>India</td>
<td>4,124</td>
</tr>
<tr>
<td>Japan</td>
<td>90,928 (including 37,538 in Hawaii)</td>
</tr>
<tr>
<td>Korea</td>
<td>3,521</td>
</tr>
<tr>
<td>Malay States and Straits Settlements</td>
<td>274</td>
</tr>
<tr>
<td>Thailand</td>
<td>178</td>
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</tbody>
</table>

Pacific Islands:

<table>
<thead>
<tr>
<th>Country</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Pacific Islands</td>
<td>247</td>
</tr>
<tr>
<td>French Pacific Islands</td>
<td>116</td>
</tr>
<tr>
<td>Guam</td>
<td>286</td>
</tr>
<tr>
<td>Java</td>
<td>283</td>
</tr>
<tr>
<td>Netherlands Indies</td>
<td>180</td>
</tr>
<tr>
<td>Philippines</td>
<td>84,056</td>
</tr>
<tr>
<td>Samoa</td>
<td>170</td>
</tr>
<tr>
<td>Sumatra</td>
<td>111</td>
</tr>
</tbody>
</table>

Several observations should be made in connection with these tabulations. First, they are classified by country of origin rather than race. Since natives of those countries may include white persons and others now eligible to naturalization, it is probable that the totals of ineligibles are somewhat less than those enumerated in the foregoing table. Secondly, there is no way of determining how many of those listed in the foregoing table would be eligible for naturalization if the racial bans were rescinded, since the table includes persons here unlawfully and those who were admitted only for a temporary period or purpose. The latter categories would not be eligible for naturalization unless they were able to correct their immigration status through registry proceedings (if residents here since prior to July 1, 1924), suspension of deportation (if their deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien), or through departure from the United States and reentry as immigrants. It is evident, therefore, that the number of those who would become citizens...
eligible for naturalization if the racial restrictions were repealed would be far less than the totals presented in the table. Thirdly, the only large groups of ineligibles listed in the tables are Filipinos and Japanese. Other ineligible racial groups in this country comprise a negligible proportion of our population.

IV. RACIAL RESTRICTIONS IN OTHER COUNTRIES

Examination of the naturalization statutes of other lands (as set forth in the latest available compilation of nationality laws)\(^69\) reveals a surprisingly unanimous absence of any racial limitations upon eligibility for naturalization. The laws of thirty-five nations,\(^70\) including the major countries on every continent, were scrutinized, and not one of these statutes restricted the racial groups who might obtain naturalization.\(^71\) Two significant statutory provisions discovered in this research should be mentioned. First, the British Dominion of New Zealand not only prescribes no racial exclusion in its naturalization law, but in addition it makes specific provisions facilitating naturalization of natives of that portion of the Samoan Islands which belongs to New Zealand, including exemption of Samoans from the normal requirement of ability to speak English.\(^72\) However, under the laws of the United States, natives of adjacent American Samoa are racially barred from applying for naturalization as citizens of the United States, although they are American nationals and entitled to the protection of the United States. Second, the naturalization law of British India likewise contains no racial exclusion, but the stipulation is made that naturalization may not be granted to a subject "of any state of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization."\(^73\) Manifestly, this clause is motivated by the exclusion of Hindus from naturalization in this country.

It should be noted that the compilation of nationality laws upon which the foregoing statements were predicated was published in 1929.

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69. FLOURNOY & HUDSON, NATIONALITY LAWS (1929).
70. Argentine Republic, Belgium, Bolivia, Brazil, Great Britain, Dominion of Canada, Commonwealth of Australia, Dominion of New Zealand, Union of South Africa, British India, Chile, China, Cuba, Finland, France, Germany (Statute of July 22, 1913), Greece, Hungary, Italy, Japan, Jugoslavia, Mexico, Netherlands, Norway, Paraguay, Peru, Poland, Rumania, Russia, Spain, Sweden, Switzerland, Turkey, Uruguay, and Venezuela.
71. It should be noted, parenthetically, that the naturalization statutes of the Philippine Islands limit eligibility for naturalization to persons "who under the laws of the United States may become citizens of said country if residing therein." Sec. 1, Act of March 26, 1920, 15 Pub. L. Phil. Islands 267. FLOURNOY & HUDSON, op. cit. supra note 69, at 618. This racial limitation was inserted pursuant to the express direction of the Congress of the United States. Sec. 2, Act of Aug. 29, 1916, 39 Stat. 546 (1916), 8 U. S. C. A. § 1002 (1942).
72. FLOURNOY & HUDSON, op. cit. supra note 69, at 106.
73. Id. at 131.
Citizenship laws do not change often, and the findings recited above may be accepted as substantially correct today with one highly significant exception. The intervening years have resulted in profound changes in Germany, one of the nations included in the survey of 1929 statutes. The Nazi gang which now governs Germany has fostered the myth that there is a superior race of Aryans, and has proclaimed discriminations against those who did not belong to this so-called Aryan race. Outstanding among such discriminations were the infamous Nuremberg laws of September 15, 1935, which included provisions limiting German citizenship to those who were of the Aryan race. Similar restrictions were subsequently adopted by several nations which were satellites of the Nazis.

The Nazi Nuremberg laws appear to be the only modern instance where a nation, other than the United States, has imposed a racial disqualification restricting eligibility for naturalization to members of designated racial groups.

V. SHOULD THE RACIAL BAR BE RECONSIDERED?

Most persistent of the questions which are being raised concerning American racial policy is the status of our Filipino wards. We have proclaimed to the people of the Philippine Commonwealth our unselfish interest in their welfare. We have taught them our language and customs. We have trained them in the difficult science of self-government, and have promised them the boon of independence.

And our solicitude was abundantly rewarded in the dark days which followed the Pearl Harbor attack. Although confronted by the overwhelming might of the Japanese invaders, the Philippine people did not falter in their time of great trial. Shoulder to shoulder they fought with us as partners on the desperate battlefields of Bataan and Corregidor. In that fiercely contested struggle 80,000 Filipino soldiers were lost, including 20,000 who died in defense of their homeland. Their gallantry and unflinching devotion have earned the profound admiration of every American. President Roosevelt has eloquently expressed this feeling of comradeship in the following language:

"The story of the fighting on Bataan and Corregidor, and, indeed, everywhere in the Philippines, will be remembered so long as men continue to respect bravery and devotion and determination.

74. See discussion of Nuremberg Laws in Garner, Recent German Nationality Legislation (1936) 30 Am. J. Int. L. 96.
75. Id. at 98.
76. See speech of President Roosevelt, N. Y. Times, Nov. 16, 1942, p. 1, col. 3.
77. Estimate made by the late President Quezon of Philippines, N. Y. Times, Nov. 15, 1942, p. 37, col. 1.
When the Filipino people resisted the Japanese invaders with their very lives, they gave final proof that here was a nation fit to be respected as the equal to any on earth, not in size, but in the stout heart and national dignity which are the true measures of a people. . . . I call upon you, the heroic people of the Philippines, to stand firm in your faith against the false promises of the Japanese, just as your fighting men and our fighting men stood firm together against their barbaric attacks. . . . The United States and the Filipinos have learned the principles of honest cooperation, of mutual respect, in peace and in war.\textsuperscript{78}

The American people are deeply conscious of their immense debt to the people of the Philippines. We have resolved that we shall never forget the valor which bought us the time we sorely needed in the early days of the war. At a time when enemy invasion was overrunning the Philippine Islands, we pledged that we should return soon to aid our heroic Filipino allies in casting off the yoke of the Japanese conqueror and in redeeming their freedom and establishing and protecting their independence.\textsuperscript{79} We have now redeemed that pledge.

In the face of these considerations, it is difficult to perceive any justification for the continuance of a policy which denies to Filipinos, with the exceptions previously noted, participation in the high privilege of American citizenship. Certainly no one would suggest that the Filipinos are an inferior or unworthy race, for such a contention would negate the known facts and would conflict with our consistent national protestations and conduct with respect to these people. And it could not tenably be asserted that the Filipinos do not assimilate, since we have encouraged them to assimilate among us and have reaped the benefits of their activities on our behalf. The magnificent resistance in the Philippine Islands was but one facet of their innumerable donations to us. Many Filipinos have served and are serving creditably in our armed forces and merchant marine. Others have participated in diverse occupations and callings, and they have made substantial contributions to the richness of our national life. Those among them who desire to become citizens of the United States should be permitted to apply for naturalization at least on a basis of full equality with other peoples.

The legitimate claims of the Philippine people to just and equal treatment should be recognized forthwith by demolishing the walls which bar their access to American citizenship. But will correction of that grievous wrong be enough? We have been accustomed to whittling at the racial restrictions in our naturalization laws from time

\textsuperscript{78} N. Y. Times, Aug. 13, 1943, p. 1, col. 2.
\textsuperscript{79} Statement by President Roosevelt, N. Y. Times, Dec. 29, 1941, p. 1, col. 6.
to time, slicing off pieces which have been found most undesirable. Whole races and racial groups have lopped off the body of our racial exclusions at different times and for various reasons. Should we be satisfied with another slice now and wait for another occasion to attack the jagged residue? Perhaps it is wiser to dispose of the whole troublesome problem now, once and for all time.

It is indisputable that we traditionally have sought to encourage the admission of aliens into the fellowship of American citizenship. That policy has returned rich dividends in a strong and unified America. How can we reconcile the continuance of the racial barriers against a small group of aliens among us? And how can we square that phenomenon with our advocacy of the principles of equality upon which our nation was founded—equality of opportunity, equality before the law, and equal treatment for all men so far as consistent with the public interest?

Attorney General Biddle has expressed this thought admirably in the following language:

"We are of almost every extraction conceivable, black, white and yellow, and so we are tied together not by any mystical philosophy of blood or common ethnic traits, but solely and simply by an idea—the idea of democracy, of individual freedom, of liberty under law, of a justice before which all of us stand equal. . . . What has rendered peculiarly acute any mistreatment of racial minorities . . . is our reiterated insistence on democratic equality of opportunity, irrespective of race, and the total nature of this war compared to the last." 80

It is true that aliens who are denied the grant of citizenship remain entitled to the protections of the Constitution,81 but such protections still leave a wide domain of unequal treatment. The unnaturalized alien generally can enjoy no political privileges,82 is not entitled to an American passport or diplomatic protection while traveling abroad,83 may lawfully be denied employment in public work,84 may

80. Excerpts from a speech entitled "Democracy and Racial Minorities," (1943) 1 Imm. & Nat. Service, Monthly Review, No. 6, 8. See also similar sentiments expressed in a speech by Earl G. Harrison, former Commissioner of Immigration and Naturalization, "Your Government and Our Foreign-Born," (1943) 1 id. at 7. Reference should also be made to Resolution No. 17, adopted by the First Inter-American Demographic Congress (in which the United States participated) held in Mexico City from October 12th to 20th, 1943, which recommended rejection of "all policy and all action of racial discrimination."


82. Id. at 479.

83. Hackworth, op. cit. supra note 18, at 559.

not obtain a license to practice many trades and professions, and is subject to many other serious disabilities. During the current war we have also witnessed a widespread exclusion of aliens from numerous employments, particularly those involving certain Government contracts.

Are we justified in retaining these discriminations against the small minorities in this country whose aspirations to full participation in our society must be frustrated because they still are stigmatized as racially ineligible for naturalization? There would be obvious advantages to our Government if they were admitted to citizenship, since they would then be liable unqualifiedly for compulsory military service and the Government would be relieved from possible monetary responsibility for unjust treatment to such aliens in this country. More fundamental would be the elimination of a small group of aliens who are denied full membership in the nation, and whose resulting dissidence might be a source of potential danger.

There is still another extremely important consideration. We are involved in a global war which is engaging all our energies. Until now we have been compelled to allocate the major portion of our forces to the European theater of conflict. But the time will soon come when we shall have to apply ourselves entirely to the task of driving the Japanese invaders back to their islands. We shall need all possible help in that gigantic undertaking, and the assistance we receive from the inhabitants of Asia and the Pacific islands will mean savings in lives, in time, and in money. We shall also need their aid in policing the liberated territories and in erecting a bulwark against future Japanese aggressions.

We have proclaimed to the enslaved people of Asia and the Pacific islands that we shall return to lift the siege of Japanese oppression. But the Japanese propagandists have sought to instill into the minds of their fellow Asiatics the idea that continuance of Nipponese dominion is far preferable to the subjection and degradation which will result from triumph by the white man. That propaganda must be combated by concrete action on our part. We shall win appreciable assistance in the forthcoming reckoning with Japan from the conquered peoples of the Orient only if they are convinced of the sincerity of our purposes.

85. 3 HACKWORTH, op. cit. supra note 18, at 618.
86. Comprehensive reviews of such disabilities may be found in 3 HACKWORTH, op. cit. supra note 18, at 612 et seq.; McGovney, loc. cit. supra note 24, at 225.
87. See Gordon, Status of Enemy Nationals in the United States (1942) 2 LAWYERS GUILD REV. No. 6, 9, 17.
88. For a complete discussion of Government responsibility for wrongs to aliens, see 5 HACKWORTH, op. cit. supra note 18, at 471. See also 3 id. at 598 for limitations on compulsion of military service by aliens.
President Osmena, of the Philippine Commonwealth, has expressed this thought in the following trenchant language:

"The dependent peoples must be made to feel that this is not a war to preserve the status quo, which, indeed, cannot be done. They must be made to realize that they have something to gain by a United Nations victory after the war—that such victory will result in their liberation, and not in a mere change of masters or in a retention of the old one. . . . The myth of racial superiority and the policy of exploitation must be definitely abandoned." 89

How easy it would be to demonstrate our sincerity and to gain the good will of tens of millions of Asiatics by the simple expedient of expunging the last remains of our racial exclusions in naturalization proceedings. Only two reasons might be suggested to justify retention of the racial bars:—that the proscribed races are inferior and that they do not assimilate. We ourselves have refuted both of these possible arguments by our actions in limiting the racial bars to the first generation and in removing the racial restrictions for whole peoples. With respect to Asiatics, the recent action of Congress in permitting the naturalization of persons of Chinese race demonstrates forcefully the absence of merit in the supposition that naturalization benefits must be denied to Asiatics because they cannot assimilate. The contention that all Orientals are inferior need hardly be considered, for few among us would publish or even harbor such an untenable assumption under current world conditions. Actually our policy of blanket disqualification makes no allowance for individual merit. The most cultured and desirable members of the proscribed races may not be admitted to citizenship, but any member of the eligible groups may apply, even though he may be inferior in every respect.

It seems high time for the American nation to abandon the last remains of a policy which has outlived its usefulness. It is high time that we proclaimed to the world that a man's eligibility to become a naturalized citizen of the United States is dependent on his character, his loyalty, and his ability to meet the prescribed requirements, rather than upon the race to which he belongs and the color of the skin with which he found himself endowed through the accident of birth. It is time, too, that we ended the incongruous situation whereby certain men are foreclosed from making a voluntary choice to become citizens of this country, which they could obtain only upon fulfillment of stringent conditions, although American citizenship is automatically conferred, without regard to volition, upon their children born in the United States.

89. Osmena, The United States and the Philippines (1943) 228 ANNALS 25, 28.
There are some who will concede the validity of the arguments which have been presented, but who will balk at the inclusion of persons of Japanese origin in the ranks of those who might become eligible for naturalization. This is a matter to be weighed by Congress when it comes to consider legislation to repeal the racial ban on naturalization. Possibly Congress will decide to abolish all racial restrictions, relying upon previously established safeguards against the naturalization of enemy nationals whose loyalty is questionable to prevent the admission to citizenship of those persons of Japanese origin who are unworthy. Possibly Congress will determine, on the other hand, that the racial restrictions should be amended so as to retain only a bar against the naturalization of persons of Japanese descent. A third possible legislative pattern might repeal all racial restrictions, postponing the admissibility of the Japanese until after the war's end.

One further consideration should be mentioned. This article has not advocated modification of the policy of restricted immigration which is now part of our national tradition. But immigration policy must be consistent with the practice which prevails in naturalization. In eliminating or contracting the categories which are ineligible for naturalization, Congress will undoubtedly desire to obviate any undue dislocation of the quota system. This contingency undoubtedly will be met with a device similar to that employed for the Chinese, whereby an annual quota of 105 was set up for immigrants of the Chinese race. A comparable provision would eliminate any possibility that removal of the prohibitions against naturalization of some races would result in an appreciable increase in immigration.

VI. CONCLUSION

In an ideal state, every law would reflect the current needs of the people. Obsolete laws would invariably be discarded. But the attainment of that ideal must await a more enlightened day. Laws have an unfortunate propensity to linger long after they have outlived their usefulness. Society's rapid progress outstrips its laws, but the old statutes are tolerated until the exposure of injustice illustrates their


91. At the present time (February 15, 1944) there are five bills in Congress containing proposed legislation seeking modifications of the racial restrictions on naturalization. Three of these (H. R. 542, Rep. Randolph; H. R. 768, Rep. Sheppard; H. R. 776, Rep. McGehee) seek removal of racial restrictions against Filipinos. The other two (H. R. 173, Rep. Celler; S. 236, Sen. Langer) would permit the naturalization of natives of India. Four of these bills are pending before the House Committee on Immigration and Naturalization and the fifth before the Senate Committee on Immigration.

emptiness. Then an awakened public conscience eventually compels elimination of the anachronism.

So it has been with the racial limitations in our naturalization laws. They have always been there, and we have assumed that this was an essential element in our jurisprudence. We have applied those exclusions reluctantly, recognizing the injustice visited upon individual applicants, but assuming that these few must suffer although the basic policy was sound.

In time of war many things can be seen quite clearly. Under the stress of a great common adventure, we are able to shed some of our misconceptions and to recognize some of our mistakes. Thus it has transpired that an increasing public sentiment has challenged the validity of racial exclusions in our naturalization laws. Many have begun to suspect that the racial restrictions are actuated by no current need or interest of our people, and that they are simply a meaningless survival of laws from which all utility long since has fled.

There are some among us who will contend that this policy should not be changed during time of war. Others may urge that the law must not be disturbed because it has been retained on our statute books almost a century and a half. Still others will resurrect the old spectre of nonassimilation, and will shelter in their minds the submerged implication of inferiority.

All these fallacies must be engaged and vanquished. Most potent of the weapons in this controversy is the two-edged sword of justice and self-interest. An eminent authority on international law has characterized the racial nationality laws of the Nazis as "without precedent in the legislation of modern civilized states," and "out of accord with modern conceptions," which excluded from the privilege of naturalization only "the intellectually and morally unfit classes in the population." 93 That comment overlooked the circumstance that a similar criticism might have been leveled against our own naturalization law. It is startling to find ourselves arrayed with our enemies in enforcing a racial test for citizenship. We have vowed that we shall crush the Nazis, and that we shall expose their monstrous misdeeds and falsifications. Certainly we do not want to be associated in any way with the pernicious and discredited Nazi dogma of racial superiority.

An eminent American has pointed out that:

"True democracy knows no geographical frontiers or continental barriers. It is as applicable to Asia as it is to Europe or America." 94

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That is sound American doctrine, which gives voice to the principles we have always sought to uphold. It conforms also with the pattern of the future world civilization which we have envisaged, "which recognizes no limitations of religion, of creed or of race."  

It is patent that our innate impulses of generosity and fair dealing must inevitably motivate us to eliminate the anomaly of racial exclusion in our naturalization laws and to eradicate any injustice which may have been caused. But we have even a greater stake in this problem. Marching shoulder to shoulder with us on the far-flung fields of battle in this war are our gallant allies, and behind the battle lines are uncounted millions of men and women, of every color and race, whose aid we urgently need in ending the war and winning the peace. As our partners in war and our potential friends in peace, they have a right to demand from us justice and equality of treatment.

Let us, by all means, end the unjustifiable discriminations in our naturalization laws against our Filipino allies. But, in revising this "historic mistake," let us be "big enough to acknowledge" that our entire policy of racial exclusion in the naturalization laws is wrong. Let us demonstrate decisively to the embattled people of the world, by the simple expedient of correcting this larger mistake, our militant leadership in advancing the principles of freedom and fair dealing for which this war is being waged.

95. Speech by President Roosevelt on the seventh anniversary of the founding of the Philippine Commonwealth, N. Y. Times, Nov. 16, 1942, p. 9, col. 3.