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This Month in Immigration History: March 1790

Any nation, especially a nation of immigrants such as the United States, must define its society and devise ways to confer [official membership](#) into it. For immigrants to the United States, that membership is obtained through naturalization. And the [14th Amendment](#) of the United States Constitution guarantees basic rights to all U.S. citizens both native-born and naturalized.

In 1789, the Constitution of the new United States placed the power to set rules for naturalization in the legislative branch of the federal government, and Congress first exercised that power by passing the Act of March 26, 1790. That initial legislation introduced requirements for naturalization, outlined procedural steps (charging the courts with carrying out this procedure), and stated U.S. law regarding derivative citizenship for the children of naturalized parents or of children born to U.S. citizens abroad. The details governing each of these principles evolved over the course of American history, yet the broad rules of naturalization remain remarkably true to the basic system established by Congress two centuries ago. Immigrants choosing to naturalize in March 2000 follow essentially the same path to U.S. citizenship taken by every naturalized American in our history.

Background

Defining membership through citizenship, and prescribing the rules for attaining it, have been integral parts of all societies almost since the beginning of time. In ancient Greece, as "personal chieftainship" of families, clans, and tribes eroded and was replaced by a thing called the state, citizenship had to be defined in terms other than birth and ethnicity. In Greece, two concepts were mixed together: 1) the notion of a *state having boundaries* within which decisions are made about the lives of its inhabitants, and 2) the notion of its *inhabitants participating in this enterprise as joint proprietors*. The fusion of these two elements, in a concept similar to "citizenship," enabled members "to have a share in the decisionmaking group" and to share in both public responsibilities and public privileges (see *The Oxford Classical Dictionary*, Third Edition, Oxford University Press, 1997, p. 334).

In ancient Rome, citizenship was also a concern. As the Roman Republic, and then the Roman Empire, expanded previous boundaries, the question of citizenship became important. For early Rome, citizenship was primarily by birth and residence in Rome or a nearby town. As Rome expanded, decisions had to be made on the status of inhabitants in those newly acquired territories.

Latin cities were given the status of *coloniae*, and citizenship was granted to all inhabitants. *Coloniae* could be cities near Rome or allies. As Rome spread out even farther, some areas were given the status of *municipium*; inhabitants had most of the rights of Romans – including the right to hold property, the need to pay taxes, the ability to participate fully in the social life of the state – but they could not vote. They were usually governed by magistrates who were Roman citizens.

Eventually, by the *Constitutio Antoniniana* of 212 AD, [Emperor Caracalla extended Roman citizenship](#) to all free inhabitants of the Empire. "This measure extended the notion of what was considered 'Roman' to cover a multitude of ethnically and locally divergent cultures" (from Averil Cameron, *The Later Roman Empire*, Harvard University Press, 1993, p. 9).

Similar questions of citizenship and membership faced the new American nation declaring its independence in 1776. People in the thirteen former colonies knew from experience that limiting certain privileges only to citizens, and then limiting naturalization only to a few immigrants, prevented the growth and development of these colonies in the New World. In the July 4, 1776, [Declaration of Independence](#), one of the charges leveled at King George III was that he obstructed immigration to and naturalization of foreigners in the new colonies. Specifically, the Declaration charged that:

..."HE has endeavoured to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands."

After independence, [Article IV of the Articles of Confederation](#) discussed naturalization among the several states, leaving each state to draft its own rules for state citizenship. The result was a patchwork of inconsistent or even contradictory laws and practices. When the Continental Congress drafted the Constitution to replace the Articles of Confederation, future President James Madison made the case for naturalization as a federal function. Madison discussed the defects of naturalization laws under the Articles of Confederation in [No. 42 of *The Federalist Papers*](#). Among Madison's "[third class of powers](#)" to be given to the federal government were "Those which provide for the harmony and proper intercourse among the States," ... among which was the power "... to establish a uniform rule of naturalization."

Thus Article 1, Section 8 of the [U.S. Constitution](#) gives Congress the power to "To establish a uniform Rule of Naturalization, . . ." The Act of March 26, 1790 proclaimed a uniform rule. The history of U.S. naturalization since that date has been the effort to realize uniformity in practice, procedure, and principle.

March 1790

The original U.S. naturalization law of [March 26, 1790](#) (1 Stat 103-104) provided the first rules to be followed by all of the United States in the granting of national citizenship. At that time and by that law naturalization was limited to aliens who were "free white persons" and thus left out indentured servants, slaves, and most women, all of whom were considered dependents and thus incapable of casting an independent vote. The 1790 Act also limited naturalization to persons of "good moral character." And the law required a set period of residence in the United States prior to naturalization, specifically two years in the country and one year in the state of residence when applying for citizenship. When those requirements were met, an immigrant could file a [Petition for Naturalization](#) with "any common law court of record" having jurisdiction over his residence asking to be naturalized. Once convinced of the applicant's good moral character, the court would administer an oath of allegiance to support the Constitution of the United States. The clerk of court was to make a record of these proceedings, and "thereupon such person shall be considered as a citizen of the United States."

It is from this structure of steps and requirements that U.S. naturalization evolved. While we still require new citizens to be persons of "good moral character," limitations based on gender or race eventually disappeared, while new requirements were introduced by subsequent legislation.

Fast Forward

In the ongoing effort to implement a uniform rule, Congress repeatedly amended and expanded on the rules of naturalized citizenship.

The naturalization provisions of the [Act of 1795](#) replaced those of the 1790 Act and made changes to the residency requirements while adding several important steps to the naturalization process. The period of required residence increased from two to five years in the United States and from one to two years in the state of residence. One change introduced by the 1795 Act was the [Declaration of Intention](#) requirement, or "first papers." This created a two-step naturalization process.

Immigrants intending to naturalize had to go to their local court and declare their intention at least three years prior to their formal application. In the declaration, the immigrant would also indicate his understanding that upon naturalization, he would take an oath not only of allegiance to the United States but also of renunciation of his former sovereign. In addition to the declaration of intention and [oath of renunciation](#) (scroll to last paragraph of document), the 1795 Act required all naturalized persons to be "attached to the principles of the Constitution of the United States" and be "well disposed to the good order and happiness of the same."

Three years later, one of the "Alien and Sedition Acts" temporarily raised the residency requirement. The [Naturalization Act of 1798](#) increased the required term of residence to fourteen years in the United States and prohibited the naturalization of alien subjects of nations with which the United States was at war (enemy aliens). It also required all aliens resident in and arriving in the United States to register with their local courts. Like the other alien and sedition acts, the 1798 naturalization law was implicitly repealed in 1802.

A new [Act of April 14, 1802](#) restored the residency rules from 1795 (five years in U.S., one in the state of residence) and largely reestablished the system as it existed prior to 1798. The 1802 Act also answered a question long associated with residency requirements: What evidence should the court demand that the applicant had resided in the U.S. or the state the required period of time? The new legislation declared the applicant's sworn testimony was not adequate. He would have to provide two witnesses who would testify, under oath, to his residence in the United States.

The general elements of the 1802 naturalization law remained the law of the land for more than a century. Congress made relatively few adjustments to the law during that time. Nevertheless, some of those changes promoted uniformity while others lessened the requirements for naturalization in certain cases, and still others denied naturalized U.S. citizenship to entire classes of persons.

The [Act of May 26, 1824](#) provided that an alien who came to the U.S. while under age 18 might, after reaching age 21 and after five years residence, be admitted as a citizen without having previously made a declaration of intention. Often termed "minor naturalizations" because they related to immigrants who arrived in the United States as minors, 1824 Act cases

were also called "one paper naturalizations" because no declaration of intention was required. The ease and speed of naturalization under the 1824 Act led to unfortunate abuses and frauds that continued until repeal in 1906.

Another exception to the two-step naturalization process was created for veterans who served honorably in the U.S. Army during wartime, allowing them to petition for naturalization without previously filing a declaration of intent. This class of "one paper naturalizations" was first introduced by an Act of July 17, 1862, and was extended to veterans of the Navy and Marine Corps on August 1, 1894. During World War I nearly 200,000 alien soldiers were naturalized under [provisions of the Act of May 9, 1918](#), and additional legislation governing the naturalization of members of our armed forces passed in 1919, 1926, 1940, and 1952.

After passage of an Act of February 10, 1855, immigrant women were able to acquire U.S. citizenship without naturalization. They became citizens upon marriage to a U.S. citizen husband, or upon their husband's naturalization. Like children, who since 1790 acquired citizenship upon the naturalization of a parent, women derived citizenship from their husbands. A 1907 law took this concept further by providing that all U.S.-born women who married aliens would lose their U.S. citizenship upon marriage. It was not until 1922 that women's citizenship was separated from that of their husbands. For more details, see the [history of women and naturalization](#) on the Website of the National Archives and Records Administration.

Since March 1790, U.S. naturalization had been limited to "free white persons." During the late 19th century Congress altered this provision to include additional races and exclude others from citizenship. After the Civil War and the 14th Amendment to the Constitution, [the Nationality Act of 1870](#) expanded the "free white persons" limitation to include "persons of African nativity and African descent." Twelve years later [the Chinese Exclusion Act of May 6, 1882](#) specifically prohibited the naturalization of Chinese persons. INS Interpretations contain a [legislative history of racial exclusions](#) in U.S. nationality law.

These issues of race compounded difficulties the United States faced after acquiring territories and assuming jurisdiction over peoples living far beyond American shores. The annexation of Hawaii and acquisition of Puerto Rico, Guam, and the Philippines in 1898, American Samoa in 1900, Panama Canal Zone in 1903, and purchase of the Virgin Islands in 1916 all raised questions of whether inhabitants of these possessions should become citizens of the United States by treaty or law, and if not, whether naturalization should be available to them. The legislative history of this issue is covered in INS Interpretations 302 through 307, and a detailed discussion of that history is found in a [1935 INS training document](#).

While nationality law allowed some variation in naturalization requirements, by the turn of the 20th Century many Americans were concerned with variations in naturalization procedures and the increasing lack of uniformity. Each court charged a different fee and recorded naturalization on different forms. And it seemed each court had its own interpretation of what constituted "good moral character" or "attachment to the Constitution." Most disturbing was the prevalence of fraudulent naturalization under old laws that did not require either positive identification of the applicant nor proof that the applicant had been legally admitted as an immigrant to the United States. A Presidential commission investigated naturalization throughout the United States and reported their findings in 1905. In addition to documenting widespread fraud, the commission report recommended

passage of new legislation to govern future U.S. naturalizations.

Consequently, the [Naturalization Act of June 29, 1906](#) implemented most of the commission's recommendations. Because courts previously competed for naturalization business and naturalization fees, the new law set standard fees for all naturalization proceedings in all courts. Because incomplete naturalization records fostered fraud, the new law mandated standardized [Declaration](#) and Certificate forms be used by all courts and that copies of all naturalization records be forwarded to a supervisory Federal agency. The 1906 law created that agency by establishing the Bureau of Immigration and Naturalization (a predecessor of the current INS, which is now in the U.S. Department of Justice) in the U.S. Department of Commerce and Labor.

The 1906 Act also made knowledge of the English language a requirement for naturalization. Proficiency in English was considered essential to performing the duties of citizenship, the most important of which is to cast an informed vote. The commission report explained the requirement as follows:

Operating under the 1906 law, the Bureau of Immigration and Naturalization first focused on implementation of the law's provisions on forms and fees. Later, the Bureau was able to pay increasing attention to facilitating uniform court decisions in naturalization cases. In 1947, the [INS Monthly Review](#) reported on a program to reduce the diversity of decisions in cases where an applicant's naturalization depended on interpretation of phrases such as "good moral character" or "attachment to the Constitution." By collecting, studying, and following state and Federal court decisions in naturalization matters, the Bureau gained the ability to issue uniform recommendations and promote uniformity among the courts.

Congress re-codified U.S. naturalization, citizenship, and expatriation laws into the [Nationality Act of October 14, 1940](#) (effective January 13, 1941). Those provisions were again carried over into the new Immigration and Nationality Act of 1952, or INA, which, as amended, governs immigration and naturalization today. Congress continues to amend and adjust the rules relating to naturalization. Some of the most significant changes came in the [Immigration Act of 1990](#), which for the first time in two centuries granted exclusive jurisdiction to naturalize to the Attorney General. The 1990 Act also reduced state residency requirements to three months, added further exceptions to the English language requirement, and modified other requirements and exclusions.

Now, as in March 1790, U.S. nationality law seeks to promote uniformity in naturalization. Beyond mandating standard waiting times and forms, the law strives to establish a procedure that is uniformly fair to all those desiring the rights and responsibilities of United States citizenship.

Related Information

[Naturalization Oath of Allegiance](#)

[INS Reporter Article "Naturalizations Since 1907," Winter 1977-1978](#)

[Naturalization statistics](#) from FY 1999

[INS meets 1999 Naturalization Goals](#)

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