

NATURALIZATION AND CITIZENSHIP

Nature and Scope of Congress' Power

Naturalization has been defined by the Supreme Court as "the act of adopting a foreigner, and clothing him with the privileges of a native citizen."¹¹⁹² In the *Dred Scott* case,¹¹⁹³ the Court asserted that the power of Congress under this clause applies only to "persons born in a foreign country, under a foreign Government."¹¹⁹⁴ These dicta are much too narrow to describe the power that Congress has actually exercised on the subject. The competence of Congress in this field merges, in fact, with its indefinite, inherent powers in the field of foreign relations. "As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries."¹¹⁹⁵

Congress' power over naturalization is an exclusive power; no state has the independent power to constitute a foreign subject a citizen of the United States.¹¹⁹⁶ But power to naturalize aliens under federal standards may be, and was early, devolved by Congress upon state courts of record.¹¹⁹⁷ And though the states may not prescribe requirements for citizenship, they may confer rights, including political rights, to resident aliens. At one time, it was not uncommon for states to confer the right of suffrage upon resident aliens, especially upon those who had declared their intention to become citizens, and several states continued to do so until well into the twentieth century.¹¹⁹⁸

Citizenship by naturalization is a privilege to be given or withheld as Congress may determine: "It is not within the province of the courts to make bargains with those who seek naturalization. They must accept the grant and take the oath in accordance with the terms fixed by the law, or forego the privilege of citizenship.

¹¹⁹² *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 162 (1892).

¹¹⁹³ *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

¹¹⁹⁴ 60 U.S. at 417.

¹¹⁹⁵ *Mackenzie v. Hare*, 239 U.S. 299, 311 (1915).

¹¹⁹⁶ *Chirac v. Chirac*, 15 U.S. (2 Wheat.) 259, 269 (1817); *United States v. Wong Kim Ark*, 169 U.S. 649, 701 (1898).

¹¹⁹⁷ The first naturalization act, 1 Stat. 103 (1790), so provided. See 8 U.S.C. § 1421. In *Holmgren v. United States*, 217 U.S. 509 (1910), the Court held that Congress may provide for the punishment of false swearing in the proceedings in state courts.

¹¹⁹⁸ Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 MICH. L. REV. 1092 (1977). See *Spragins v. Houghton*, 3 Ill. 377 (1840); *Stewart v. Foster*, 2 Binn. (Pa.) 110 (1809). See also K. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES ch. 5 (1918).