Revoking Citizenship: The Role of the Courts in Expatriation Policies in the United States

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At a glance

Several decisions issued by the United States Supreme Court have shifted the benchmark for revoking American citizenship. The policy of expatriation was originally introduced in response to the ideology of exclusive national allegiance. Dual citizenship was perceived as an imminent threat to the continuation of this world order that supposes a one-on-one relationship between the individual and the state. In this setting, voluntary renunciation was encouraged and forced expatriation was recommended to regulate the inconsistencies that were produced through immigration or border shifts. Since the 1950s, the focus has been recast and the emphasis is now on the citizen’s own desire to be expatriated. That is, citizenship is revoked only after the state has shown that the citizen intended to relinquish this status of his own volition. I show that the United States did not restrict its expatriation policies because it came to accept multiple national allegiances. Only in the 1990s, did all three US government branches agree on the new interpretation of the law ‘that citizenship cannot be relinquished without taking account of the intent of the individual.’ Accommodating dual citizenship, which is tolerated in the United States, is not directly related to a specific ideology but is, in part, a practical response to changing domestic and international laws. The courts, rather than Congress or the administration, have played a crucial role in shaping the values, concepts and conceptions that define the politics of immigration and citizenship.

Introduction

Revoking citizenship and all the rights that come with it is usually associated with despotic and totalitarian regimes. The imagery of mass expulsion of once integral members of the community is associated with such events as civil war, ethnic cleansing, the Holocaust or other oppressive historical events. It is not surprising to hear that this practice was used in the past by South Africa’s apartheid regime, by Germany during both World Wars, by Stalinist Russia.

The revocation of citizenship in the United States

The myth of a tight fit between the perceived ethnic, religious, cultural or political borders of nationality and the territorial borders of the nation-state has always been challenged by population movement and conflicting citizenship laws. Expatriation can be seen as an attempt to regulate and enforce the national world order. This practice was mainly introduced to eliminate dual citizenship which poses a great difficulty for the national logic. That is, regardless of the particular type of citizenship, multiple allegiances threaten the comprehensiveness of the national ideal.

In early British common law tradition, legal and political status was associated with the notion of prescribed perpetual allegiance, rather than an idea of citizenship as consensual membership. Allegiances were conceived as natural vertical ties between individual subjects and the king, like parent to child, and these ties could not be dissolved even with the subject’s consent. Voluntary renunciation of British subject status was an inconceivable concept. The American concept of citizenship, on the other hand, reflects the continuous tradition of

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6 Citizenship scholars tend to recognise two main ways of losing one’s citizenship: denaturalisation and revocation (or expatriation). Denaturalisation only applies to immigrants, or those who have been naturalised as citizens. Revocation may apply to a natural born US citizen, or a naturalised citizen. Renunciation or relinquishment of citizenship is the voluntary act of requesting permission from the state to terminate the mutual formal relationship.
immigration both in its formation, and in its myths. Today, the United States shares with other countries the national ideal that accepts a transfer of national allegiance, and, indeed, its birth involved asserting the necessity of that transfer, but divided national loyalty was still suspect. Therefore, the United States enacted grounds for expatriation in order to regulate the exclusivity of nationality. To this end, from the end of the nineteenth century until the mid-twentieth century, the legislative branch initiated and passed many expatriation laws. The hegemonic perception of Congress was that citizenship can and should be taken away if the American citizen acquired another nationality or committed certain acts that represented a transfer of allegiance. 

For example, after the American Civil war, legislation was enacted to deprive deserters from the Army of their citizenship. In 1907, it was decided that American women who married foreigners would automatically lose their citizenship. This law was dubbed the Gigolo Act. Americans who resided abroad for more than five years would be liable to lose their citizenship. Americans who served in another country’s army or voted for its parliament could have their citizenship revoked. During the Second World War, many Japanese-Americans were stripped of their American citizenship and during the Cold War, Americans who were convicted of being Communists could lose their citizenship.

Under the accepted interpretation of Congress’s constitutional authority, the legislative branch maintains essentially plenary control over immigration policy choices. Immigration policy is principally a feature of politics and courts can ‘only marginally’ affect broad policy choices. This not only includes the ordinary power of Congress to legislate but also derives considerable autonomy from the Constitution itself. Thus, following decades of racially-based immigration policy, the 1965 Amendments launched a new era of immigration in the United States, instilling emerging non-racial norms into the immigration process. The social and political transformations of the 1960s served as the backdrop for Congress’s actions.

The transformation of expatriation policies

During the second half of the twentieth century, the perception of expatriation as a policy changed dramatically. This transformation can be attributed largely to initiatives of the judicial branch, beginning with the Warren Court. Since 1958, judges had started to question the legality of forced expatriation with respect to the constitution. While the initiation of expatriation laws was undertaken by Congress, the termination of this policy did not take place in the wake of a political shift, but a legal one. Over the years, the US Supreme Court overturned many of the previous grounds for the revocation of citizenship as unconstitutional. In compliance with the courts, Congress repealed the provisions that revoked citizenship for draft evasion, desertion, voting in a foreign country, the 1952 addition to the subversion principle, and residence abroad.

Scholars have been in disagreement about the role of the courts in immigration issues. Their writing can be divided into two categories. There is the literature about the extent to

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11 Kawar claims that empirical investigations into judicial engagement with immigration issues have grappled with two separate but related questions. The first question concerns the normative motivations for judicial enunciations of rights. The second, as discussed below, concerns the extent to which these rights-oriented judicial decisions are seen to have an impact on the wider politics of immigration. L Kawar, ‘Juridical Framings of Immigrants in the United States and France: Courts, Social Movements, and Symbolic Politics’ (2012) 46 International Migration Review 414.
which federal courts are willing to protect individual rights, and, in particular, whether they are willing to extend constitutional rights to noncitizens at all; and there are other scholarly writings on the effect of immigration court decisions on policy.

There are legal scholars who maintain that immigration policy is almost entirely decided by Congress. Indeed, the United States courts remain unwilling to question federal authority when border control is implicated. Neuman argues that Congress is considered to have ‘plenary’ power over immigration issues. Motomura reminds us that although the Court did not challenge the validity of the plenary power doctrine, there are ‘phantom constitutional norms’ that guide the interpretation of immigration status, and thus, undermine the plenary power doctrine. Cox argues that this doctrine is being eroded even further by the scepticism of modern immigration jurisprudence. Immigration scholars generally recognise that the Court is much more inclined to rule favourably (and recognise constitutional claims) in claims involving citizens, and much more likely to invoke the plenary power doctrine (and defer to Congress) in cases involving noncitizens. The practice of taking away citizenship, by definition, involves plaintiffs who are already citizens. Thus, this may explain why the Court has taken such an active role regarding expatriation. Nevertheless, the Supreme Court has not allowed Congress or the government to trump all constitutional protections and guarantees to immigrants.

Some scholars show that the courts are able to creatively interpret immigration law. In this vein, Legomsky argues that the courts are particularly important in the context of immigrant rights, as migrants’ rights do not necessarily enjoy appropriate representation in the democratic process. Reyes argues that judicial discretion could and should be applied in the deportation proceedings of long-time lawful permanent residents. Togman points out that court decisions curtailing administrative discretion have had the indirect effect of heightening the public and politicised nature of immigration policymaking. Joppke suggests that decisions on immigrant rights may propel political elites to reformulate their overall approach to immigrant communities. In contrast, Rosenberg claims that historically the Court has been ineffective in producing policy change with nationwide impact. Even landmark social reform cases (such as Brown v Board of Education and Roe v Wade) only occurred in the wake of congressional and executive branch actions. Nevertheless, although there are differences in

17 Through a review of cases from 1881 to 2002, Law discerns how the US Courts of Appeal (Third, Fifth and Ninth Circuits) have diverged from the Supreme Court in adjudicating immigration cases and concludes, therefore, that one should not speak of an undifferentiated institution called ‘the federal courts’ or ‘the courts.’ A O Law The Immigration Battle in American Courts (New York, Cambridge University Press 2010).
emphasis and interpretation which affect particular cases, it can be argued that the courts only marginally change the overall political philosophy of immigration regulations and policies.

While there is a debate on the relative roles of Congress and the courts regarding immigration law in general, until 1958 the issue of expatriation was dealt with almost entirely by Congress. Not only did the United States Supreme Court not intervene in this policy, it validated its constitutionality. For example, the Court’s decision in *Perez v Brownell*25 upheld the legality of s 401(e) of the Nationality Act of 1940. In *Perez v Brownell* it was established that Clemente Martinez Perez, a native-born American who remained outside the United States to avoid military service and voted in elections in Mexico could lose his citizenship.

In this paper, I show that, at least in its official position on expatriation, the Supreme Court has not just interpreted the law in opposition to the traditional national viewpoint or indirectly altered the discourse on immigration issues but has brought about the complete transformation of official policy toward dual citizens. As Spiro put it, ‘[d]ual citizenship was once thought an offence against nature; a stain on a person’s character, an immoral status akin to bigamy,’ but now ‘perhaps more dramatically than any other area of citizenship, that is all changed’.26 I argue that this change was predominantly effected by the courts.

It is important to remember that the procedure of taking away American citizenship was originally intimately connected to various punitive considerations – specifically, a punishment for transferring one’s national loyalty.27 In contrast to the language of the law and the assumptions of some of its current interpreters (judges, congressmen, lawyers and academic scholars), revocation of citizenship in the United States was usually initiated and practiced as a punitive measure. Therefore, the language of the law had to be reclassified in order for the revocation of citizenship to be understood as non-punitive. This reclassification of expatriation law in the United States only began to emerge in 1958 in a Supreme Court opinion.

On the appeal in *Trop v Dulles*28 (delivered on the same day as *Perez v Brownell*), a five-to-four decision of the Supreme Court of the United States ruled that revocation of American citizenship as a punishment was unconstitutional in terms of the Eighth Amendment’s prohibition on inflicting ‘cruel and unusual punishment’ on American citizens. The current judicial approach is that expatriation must be limited to a voluntary act of the individual:

‘It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development … This punishment is offensive to the cardinal principles for which the constitution stands. It subjects the individual to a fate of ever-increasing fear and distress… Citizenship is not a license that expires upon misbehavior. The duties of citizenship are numerous, and the discharge of many of these obligations is essential to the security and wellbeing of the Nation… But citizenship is not lost every time a duty of citizenship is shirked. And the deprivation of citizenship is not a weapon that the government may use to express its displeasure at a citizen’s conduct, however reprehensible that conduct may be. As long as a person does not voluntarily renounce or abandon his citizenship…, I believe his fundamental right of citizenship is secure.’


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Chief Justice Earl Warren maintained that citizenship should not be rescinded by Congress as a punishment. Weil argues that in this new interpretation of expatriation law ‘the Supreme Court provoked a silent revolution in the relationship between the American people and their government’. This novel interpretation of the power of the United States Congress to strip away citizenship corresponds to the ‘agenda of rights’ promoted by the Warren Court. That is, the commitment of the justices in the 1960s and 1970s was to a tolerant society where people’s identities could flourish. During the sixteen years (1953–1969) of Earl Warren’s incumbency as Chief Justice, the Court regularly handed down opinions that transformed American constitutional doctrine and American society. Although the most famous decision was Brown v Board of Education (1954) in which the United States Supreme Court declared that racial segregation in public schools was unconstitutional, the Warren Court made many other transformational rulings. For example, it ensured political equality in the form of ‘one person, one vote’ by ruling that state congressional districts of unequal size were unconstitutional; it established the requirement of what has come to be known as the Miranda warning in which police must inform arrested persons that they need not answer questions and that they may have an attorney present during questioning, and it recognised the constitutional right to privacy striking down a Connecticut statute that prohibited the dissemination of birth control information.

Even today, this line of reasoning, of distancing expatriation from other punitive measures, is the predominant approach. Title 8, chapter 12, subchapter III, part III of the US Code, which codified the Immigration and Nationality Act, details the current laws regarding loss of nationality and expatriation. The heading of the various grounds for expatriation clearly states that the loss of citizenship must be the outcome of a voluntary action rather than a penalty for insubordination: ‘A person who is a national of the United States whether by birth or naturalisation, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality.’

However, the big legal breakthrough came almost twenty years later in Afroyim v Rusk (1967) and later on in Vance v Terrazas (1980), in which the Court not only maintained that expatriation should not be punitive, but held that Congress lacked the power of involuntary expatriation and that the most the US government could do was to formally recognise an individual’s voluntary renunciation of his/her American citizenship.

Beys Afroyim was born in 1893 in Ryki, Poland as Ephraim Bernstein. He immigrated to the United States when he was nineteen and became a naturalised citizen in 1926. As a painter and sculptor in New York City, he was director and teacher at the Afroyim Experimental Art School from 1927 to 1946. Beys Afroyim’s activities within the Communist Party of America led him and his wife, Soshana Afroyim, to leave the USA and spend some months in Cuba. In Havana, Soshana, an artist of the Modernist school, had her first exhibition in 1948 in the Circulo de Bellas Artes. During the McCarthy era, it became unsafe for them to remain in the United States and they left for Europe and eventually arrived in Israel in 1950.

Being Jewish, Afroyim was automatically granted Israeli citizenship under the Law of Return. He voluntarily voted in the Israeli election in 1951. In 1960, Afroyim tried to renew his US passport, but the State Department denied his application. The State Department argued that according to s 401(e) of the Nationality Act of 1940, a United States citizen loses his/her citizenship if he/she votes in a political election in a foreign state. Afroyim sued Dean Rusk in his official capacity as Secretary of State and head of the State Department, which is responsible both for issuing passports and for dealing with loss of citizenship. The petitioner argued that this section violated both the Due Process Clause of the Fifth Amendment and his constitutional right of citizenship as provided by the Fourteenth Amendment which states that ‘all persons born or naturalised in the United States… are citizens of the United States’ and thus their citizenship could not be shifted, cancelled or diluted. In other words, Afroyim claimed that Congress does not have the right to revoke citizenship, but that citizenship could be lost only if the citizen voluntarily renounced it.

In the end, the Court ruled, in a five-to-four decision, that Afroyim’s citizenship could not be revoked without his consent. Noting the special bond between Americans and their government, a bond that protects every citizen against all manner of infringement of his or her rights, the Court held that only citizens themselves may voluntarily relinquish their citizenship. This sacred principle applies equally to native-born and naturalised citizens. As such, s 401(e) violated both the Fifth and Fourteenth Amendments and was declared unconstitutional.

According to Aleinikoff, Martin and Motomura, the ruling in Afroyim v Rusk was called into question several years later in Rogers v Bellei. This became possible because two justices had retired and the balance of the Court had shifted. Aldo Mario Bellei was born in Italy in 1939 to an Italian father and an American mother. At birth, he acquired both Italian and American citizenship. In the 1960s, he was notified that he had lost his US citizenship under a provision of the Immigration and Nationality Act (1952) that stated that a foreign-born American would lose his citizenship unless he moved to the United States and lived there for at least five years between the ages of 14 and 28. Bellei argued that, according to Afroyim, Congress lacked the power to deprive him of citizenship. The majority ruled for the government, upholding the validity of the residency rule. Nevertheless, in 1978, Congress chose to repeal (but not retroactively) all conditions regarding children born abroad to American parents, including the above-mentioned post-acquisition residence requirement. Currently only the parents who want to transfer their American citizenship to their children have residence requirements. This restriction was introduced in order to avoid the indefinite perpetuation of the jus sanguinis principle which would grant citizenship to co-ethnics who may have lost touch with their American roots.

According to s 349(a)(2) of the Immigration and Nationality Act (1952) an American citizen will lose his citizenship by ‘taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.’ Laurence J. Terrazas, a native-born American, was also the son of a Mexican citizen. In the fall of 1970, at the age of 22, while in Monterrey, Mexico, he applied for a certificate of Mexican nationality. Part of the process required him to take an oath of submission to the Mexican Republic. Consequently,
the US Department of State issued a certificate revoking his American nationality, claiming that Terrazas had voluntarily relinquished his US citizenship.

In 1980, the Supreme Court held in *Vance v Terrazas* that the United States had not only to prove the expatriating act (in this case, taking an oath to a foreign state), but also to demonstrate an intent on the appellee’s part to renounce his United States citizenship. However the Supreme Court did not offer guidance for determining which of the various formulations of intent would satisfy the newly recognised intent requirement.41

An interesting case that exemplifies this provision is the stripping of Rabbi Meir Kahane’s American citizenship for assuming a seat in the Israeli parliament in 1984. Contrary to the common understanding which had guided expatriation policy since the nineteenth century,42 the courts in the United States agreed that actions speak louder than words. The State Department based its action on s 349(a)(4)(A) of the Immigration and Nationality Act (INA), which maintains that an American will lose his/her American nationality for ‘accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state … if he has or acquires the nationality of such foreign state.’ Rabbi Kahane appealed to the State Department’s Board of Appellate Review. On 1 May 1986, the Board in *In re Kahane* affirmed the administrative determination of loss of citizenship.

Aleinikoff tried to determine whether stripping Rabbi Meir Kahane of his American citizenship for assuming a seat in the Israeli parliament was constitutional or not.43 Aleinikoff argued that the current denationalisation measures adopted by the US administration could not be supported by the constitutional system (at least by implication, as the Constitution does not directly address the question of revocation of citizenship). The rulings in both *Afroyim* and *Terrazas* established the intent-to-relinquish test for the denationalisation of citizens by the government. However, none of the constitution’s four possible implicit conceptions of citizenship (as delineated by Aleinikoff) can independently provide justification for the present doctrine. ‘The rights perspective gets us to the doctrine, but it is internally incoherent. Consent takes us no place. Contract and communitarian theory cannot rule out state power to terminate citizenship against the will of the individual.’ 45 Aleinikoff was aware of the irony in the conclusion of his theoretical investigation, namely, that the constitution of United States should have provided protection for Meir Kahane from being denationalised; this was precisely the same harm that Kahane advocated inflicting upon Arabs living in Israel.

But in 1987, the United States District Court in Brooklyn decided to restore the American citizenship of Kahane as the Government had failed to prove that he had intended to relinquish his citizenship. At the same time, the Israeli parliament (Knesset) passed a law that prohibited Knesset members from holding foreign citizenship. Kahane thereupon renounced his American citizenship in order to take a seat in the Knesset. In 1988, the Knesset disqualified Kahane’s

42 It is commonly accepted that actions have greater validity than words. Such understandings were expressed in the Bible and continue to be influential today. For example, John wrote, ‘But whoever has the world’s goods, and beholds his brother in need and closes his heart against him, how does the love of God abide in him? Little children, let us not love with word or with tongue, but in deed and truth’ (1 John 3:17, 18). A secular perspective emerges in John Locke’s statement that ‘I have always thought the actions of men the best interpreters of their thoughts’ or in that of Benjamin Franklin who argued that ‘Well done is better than well said.’
44 Aleinikoff uses the term ‘denationalisation’ to refer to the government’s act of terminating citizenship, and ‘expatriation’ is used to refer to an individual’s voluntary relinquishment of citizenship.
45 ibid (n 43) 1499.
party (Kadi) from being elected to the parliament on the grounds that it was racist. At that point, Kahanetook steps to regain his American citizenship – this time, the court was not willing to reinstate his citizenship. Unlike his previous demand to nullify his expatriation, this time his formal renunciation was treated as conclusive evidence of the necessary voluntary assent on the part of Kahane to giving up his American citizenship.

The reaction of Congress

In most cases, the legislative branch has only taken action in response to developments in the courts and has not initiated changes in US expatriation policy. Congress repealed many of the provisions for the loss of citizenship as they were declared unconstitutional by the courts rather than because it underwent an ideological change.

In 1978, Congress introduced HR 13349 to repeal certain sections of Title III of the Immigration and Nationality Act (1952) which addressed the reasons for the loss of American citizenship. Most of the repealed sections had already been declared unconstitutional. Section 349(a)(5), providing for loss of citizenship for voting in a foreign election, was declared unconstitutional in Afroyim v Rusk (1967). Section 349(a)(8), providing for loss of citizenship for desertion in time of war, was declared unconstitutional in Trop v Dulles (1958). Section 352, providing for the loss of citizenship by a naturalised citizen through residence abroad, was declared unconstitutional in Schneider v Rusk (1964).

The deliberations in the House of Representatives (19 September 1978) and Senate (26 September 1978) were very brief. In the House, only three representatives desired to speak and all supported HR 13349 that repealed some of the expatriation measures. In addition to the fact that those provisions were deemed unconstitutional by the Supreme Court, it was argued that this bill would eliminate some of the hardships and inconvenience caused by the above mentioned expatriation laws for Americans who live abroad. The Senate passed HR 13449 immediately with no amendments. However, a few days later, Senator Edward Kennedy (D-MA), who was not able to be present at the original debate, went on record to express his support for the bill. He also expressed his desire, and that of several public figures, to reform the nationality laws even further (by means of his proposed law S. 2314) and to eliminate all legal discrimination with regard to the transfer of citizenship to American children of mixed parentage born overseas.

The Department of State, the Justice Department and the Congressional Budget Office supported the enactment of this legislation. Similar to many other congressional measures, the amendment was effective as of the date of enactment but had no retroactive application. Citizens who had lost their citizenship in the past because of this provision did not regain their status. On 10 October 1978, President Carter signed this amendment into law as Public Law 95–432.

In 1980, the Supreme Court held in Vance v Terrazas that the United States had not only to prove the expatriating act, but also to demonstrate intent on the appellant’s part to renounce his/her United States citizenship. Only in 1986 did Congress change the wording in the Immigration and Nationality Act (1952) to conform to this ruling. Public Law 99–653

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47 Given that he wanted to be an Israeli parliamentarian his renunciation wasn’t altogether undertaken of his own free will. Perhaps the fact that he wanted to be a law maker in another country was a particularly sharp and public challenge to the notion of unitary loyalty.
made it explicit that in order to result in a loss of citizenship, any expatriating action needed to be performed voluntarily and with the intention of giving up United States citizenship. In addition, some provisions regarding the loss of citizenship were clarified. For instance, previously a person had been liable to lose his US citizenship through foreign military service (unless the said service was approved in advance by US officials). In the new provision, not only was it required that this service should be performed with the intention to relinquish US ties, but the person would have had to serve as an officer and/or in a foreign army that was engaged in hostilities against the United States. In the past, residence abroad of a naturalised citizen within five years following naturalisation would have resulted in the loss of citizenship (as it was argued that his oath to reside permanently in the United States was made in bad faith). Subsequently, the five-year period was reduced to one year. This requirement was completely repealed in 1994 when President Clinton signed Public Law 103–416.

Just as in the amendment of 1978, Congress did not express a fundamental acceptance of multiple loyalties as the reason for repealing the expatriation policies. Besides following the various court rulings, the main justification expressed was the need to promote a more efficient operation of consular officers with respect to their immigration related duties. In fact, this legislation was unofficially termed ‘The consular efficiency bill.’ During the fiscal year 1985, officers at more than 140 US consular posts around the world issued more than six million visas and rejected applications for approximately one million more. The purpose of HR 4823 and HR 4444 was ‘to improve the efficiency of the Immigration and Naturalization Service (INS) by streamlining certain Immigration Service procedures, clarifying various provisions in current law, strengthening the enforcement capabilities of the Service.’

The purpose of this legislation was to provide additional means of cutting back unnecessary procedures and to maximise the effective use of INS resources.

Congress debated the amendment of the immigration and nationality laws, both on the floor and in the ‘Subcommittee on Immigration, Refugees and International Law’. The committee even held a hearing on 22 July 1986 in which representatives, staff and concerned citizens could voice their opinions regarding HR 4823 and HR 4444. Only two comments were made regarding the change in expatriation policy. The first was made in the testimony of Joan Clark, the Assistant Secretary of State for consular affairs. She argued that ‘[t]his proposal brings the language of the Act into accord with its interpretation and application by the Supreme Court’. In addition, ‘[t]his would simplify explanations of the law by the Department in response to inquiries from the public, etc.’ Arnold Leibowitz, on behalf of American Citizens Abroad, made similar remarks. In both cases, the justification for the new proposal that negated the possibility of forced expatriation was only legal and pragmatic. The floor debates on the bills were brief. While the Senate changed Bill 4444 in regard to the judicial process for adoption, it was agreed that these bills were uncontroversial and were passed without delay.

However, Congress did make an improvement which was not instigated by a court ruling. Section 301(b) of Title III of the Immigration and Nationality Act (1952) maintained that persons who are children born outside the geographical limits of the United States to American citizen may retain their American citizenship only if they are physically and

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48 A report by Mr Mazzoli of the Committee on the Judiciary on the Immigration and Nationality Amendments of 1986, p 23.
continuously present in the United States for two years between the ages of 14 and 28. This was the only remaining residence requirement in order to retain US citizenship. In Rogers v Bellei, the Court upheld the constitutionality of s 301(b). The Court argued that the narrow class of persons who are United States citizens by virtue of birth abroad, were not ‘born of naturalized parents in the United States’ and thus do not have the same status as other citizens who are protected under the Fourteenth Amendment. The concern was that there would be generations of American citizens residing outside the United States who have little or no connection to the United States. Since s 301(a)(7) provides that United States citizenship may be transmitted only by American citizens who have resided for 10 years (5 of which were after the age of 14) in the United States, the Committee on the Judiciary, which proposed this amendment, saw the residence requirement as an inequality which should be removed.

In the same manner, s 350 of the Immigration and Nationality Act (1952) was repealed. This section required that persons who, at birth, acquired dual citizenships and who sought the benefits of their foreign nationality as well as resided in that foreign state after the age of 22, take an oath of allegiance to the United States. Otherwise, these persons would be expatriated. Congress held that this section was rarely used, not useful, difficult to administer and had caused considerable confusion within the Departments of State and Justice and thus should be removed from the books.

**Conclusion**

From 1958 on, the United States Supreme Court issued several rulings that revolutionised the exclusive character of citizenship. Citizenship may be revoked only after the state shows there has been a voluntary intent to relinquish this status. In most cases, Congress followed in their footsteps and repealed the sections of the law that obliged forcible revocation of citizenship, unless that was the explicit intent of the citizen. From a legal perspective the issue was ultimately decided: the United States Congress does not have the power to denationalise Americans.

Following the Supreme Court rulings and the legislative changes, the State Department appointed the Board of Appellate Review to oversee the department’s expatriation decisions. The goal was to detect whether the Department of State had satisfied the burden of proof that the appellant’s expatriation act was performed with the intent to relinquish United States citizenship.

During the twentieth century, the United States Supreme Court ruled against many of the grounds for forced expatriation. Consequently, Congress repealed many of the sections of the law regarding the revocation of citizenship. This process culminated at the end of the century. In April 1990, all the diplomatic and consular outposts were informed of a new standard whereby citizens who obtained naturalisation in a foreign state, made a declaration of allegiance to a foreign state, or accepted a non-policy position in a foreign state, were permitted to retain their American citizenship. Secretary of State James Baker explicitly asserted in a telegram in 1990–04 that: ‘This action should not be seen as an endorsement of dual nationality.

In the telegram, it was argued that: ‘Changes in interpretation of citizenship law have made [loss of citizenship] cases progressively more difficult to manage…’ In the past, we have


51 H A Kelly, ‘Dual Nationality, the Myth of Election, and a Kinder, Gentler State Department’ (1991) 23 The University of Miami Inter-American Law Review.
responded to this challenge with more officer time, closer supervision and extra training. At this point, however, we must look to substantial changes in the process if we are to provide equitable, timely and defensible decisions.\textsuperscript{52} Although, in the telegram, it was acknowledged that there were new legal interpretations of expatriation, it did not explain this change as explicit acceptance of multiple national allegiances. This shift does not represent a philosophical transformation but a practical acknowledgement of this status.

Since the end of the twentieth century, ‘US citizens who naturalize in a foreign country; take a routine oath of allegiance; or accept non-policy-level employment with a foreign government need not submit evidence of intent to retain US nationality. In these three classes of cases, intent to retain US citizenship will be presumed.’\textsuperscript{53} Although naturalisation in a foreign country; taking a routine oath of allegiance; or accepting non-policy level employment with a foreign government are still considered expatriating acts, American citizenship is protected unless those acts are accompanied by the citizen’s expressed intention of relinquishing United States citizenship.

Many studies show that there is a growing acceptance of dual citizenship around the world. Martin argues that the current conditions of globalisation, peace, complex identities, an effective human rights regime, and expanding democratisation, all make dual citizenship more likely and more acceptable.\textsuperscript{54} Blatter, Erdmann and Schwanke present the combined empirical data gathered by the United States Office of Personnel Management, Stanley Renshon, Tanja Brondsted Sejersen, Alford M. Boll, Patrick Weil, Isabelle Chopin, Marc Moje Howard, Michael Jones-Correia and Jeffrey Staton, Robert Jackson and Damaris Canache.\textsuperscript{55} All of these studies show that acceptance of dual citizenship has been rising steadily since the Second World War. Moreover, the trend is towards an expansive and non-exclusive notion of citizenship.

Spiro (2008) argues that the acceptance of dual citizenship is another stage, and may be the most dramatic one, in the diminishing of American national identity in the face of globalisation. The United States tolerates dual citizenship and it is improbable that this trend will change in the future.\textsuperscript{56}

I do not dispute such standpoints that portray the growing acceptance of dual citizenship, but I do argue that in the United States this change did not emerge in reaction to a cultural


transformation. It was the courts, and especially the United States Supreme Court that began to question the idea of exclusive national allegiance and subsequently forced Congress to change its official standpoint regarding dual citizenship.

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