Dual Nationality, the Myth of Election, and a Kinder, Gentler State Department

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I. INTRODUCTION

Nothing is harder to kill than a good myth. Beat on it with the hard facts, and it will hardly notice. Chop off its head, and it will grow another one by nightfall.¹

There is a widespread belief both in the United States and

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abroad that United States law permits dual nationality only to minors and requires them to elect one allegiance and to repudiate the other upon reaching majority. This belief is false. There is not now, nor has there ever been, any such restriction or requirement in force, either by statute or by binding judicial precedent. If certain dual citizens find themselves faced with a choice between citizenships, the requirement is that of the foreign country, not that of the United States.

In the pages that follow, I will first discuss present-day law as interpreted by the State Department. I will then attempt to explain some of the ways in which the myth of election originated and was propagated, not least through misinterpretations of law by both the judiciary and officials of the State Department. In the course of my discussion, I will review past and present laws on the gain and loss of nationality, especially the effects of the 1986 legal reforms and the new policy adopted by the State Department in 1990. I will show that it is now much harder for U.S. citizens, whether single or dual, to lose U.S. citizenship, and much easier to acquire other citizenships, even as adults. Finally, I will give some practical examples and advice to present and potential dual citizens on how to protect or acquire dual status.

II. THE STATE DEPARTMENT ON CURRENT LAW

I will not detail here the twenty years of misinformation that I have received from every level of official and nonofficial sources, including U.S. and Australian passport, consular, and legislative offices, and even, directly and indirectly, from the State Department in Washington. I will only note that the first account of the true state of the law that I was able to receive came from officers staffing the various national desks of the Overseas Citizens Services (OCS) of the State Department, who verified the statement of law that I gave in my opening paragraph: there is no constitutional, statutory, or judicial provision prohibiting a U.S. citizen from holding at the same time citizenship of another country, or requiring a dual national to relinquish either his U.S. or his foreign citizenship. On the day that I received this verification by the OCS, June 28, 1989, I was sent two versions of the State Department leaflet on Dual Nationality. The fuller version, which I include in Appendix I, is a splendidly simple and mainly accurate
explanation of the law as it stands today, with citations of relevant statutes and Supreme Court decisions.

The leaflet should answer most of the practical questions one might have about double citizenship and the use of passports. I have only one correction of fact to make, and one query of law. The correction concerns the statement, "[t]he current nationality laws of the United States do not specifically refer to dual nationality." As I will show below, there is still such a reference in section 1481(a)(4)(A) of the Immigration and Nationality Act of 1952 as amended in 1986. The legal query concerns the alleged requirement of U.S. citizens to use U.S. passports when entering or leaving the United States. The authors base this stipulation on section 1185(b) of the Immigration and Nationality Act of 1952, as amended in 1978, which makes it "unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport." Because the law does not address the question of dual citizens at this point, the supposition is that each citizen would have only one valid passport, namely, a U.S. passport, and that it was to be used. But since this section is a criminal statute and must therefore be narrowly construed, it is arguable that any valid passport would do. Suppose that my children's U.S. passports had expired when they last departed from the United States and that they were travelling on their valid Australian passports intending to renew their U.S. passports in Sydney. Could they not be said to have fulfilled the letter of the law? (Practically speaking, of course, the question would not normally come up, since the United States as a rule does not inspect passports of its departing citizens—except as delegated to airline ticket agents—and does not use exit stamps.)

III. THE VARIETIES OF ELECTION

I will draw more practical conclusions later, but now I wish to

noted a modification made after the departmental change of policy in April 1990. See infra App. I.

4. Infra notes 100-05, 147-51 and accompanying text.
6. 8 U.S.C.A. § 1185(b) (West Supp. 1991). In the original 1952 Act, this requirement was in force only during wartime or a proclaimed national emergency.
7. Id.
examine how the "folklaw" of election originated and came to be so deeply entrenched on all levels of domestic and foreign consciousness, in the federal judiciary, and in standard law texts. One of the first things I found when I began to research this question was the following seemingly authoritative statement: "Those individuals in the status of dual nationals have the duty to make an election of nationality within reasonable time established by Congress under the naturalization law, or accept the consequences of their passive attitude." How did such a mistaken notion come to be enshrined in this way? Part of the answer, I will try to show, results from confusion over meanings of the term "election."

Various notions of election existed in this country before enactment of the first expatriation statute in 1907. In an 1863 New York case, *Ludlam v. Ludlam,* there was reference to one's "right" to elect one citizenship and repudiate the other on reaching maturity. In a 1907 Vermont case, *State v. Jackson,* the court said that dual citizens on acquiring maturity had made the "necessary" election "whether [they] would conserve the citizenship of the United States or that of Canada." In 1939, in *Perkins v. Elg,* Chief Justice Hughes took note of the long-recognized principle of American policy that a person born in the United States of foreign parents who is taken abroad and acquires citizenship there must on reaching majority "elect to retain" U.S. citizenship and also "elect to return" to the United States to assume the duties of citizenship, or else suffer loss of U.S. citizenship.

It should be clear that election has quite different meanings in these three cases. Only in the first two cases does it mean that one chooses between two citizenships. In the first case, one has the right to choose, whereas in the second case, one allegedly has an obligation, to choose. In the third case, one simply reaffirms U.S. citizenship and decides whether to live in the U.S. or to continue living in the other country. Choosing the latter would, of course, effect a forfeit—rather than a renunciation—of U.S. citizenship.

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10. 26 N.Y. 356 (1863).
11. Id. at 371-72.
12. 65 A. 657 (Vt. 1907).
13. Id at 661-62. The court was mistaken in holding this view. See Richard W. Flournoy, Jr., *Dual Nationality and Election,* 30 Yale L.J. 693, 697-701 (1920-21).
15. Id. at 329, 331.
However, there is no implication at all that the reaffirmation of the American nationality and return to American soil entails loss of the other nationality or repudiation of allegiance to the foreign country. It would, of course, be up to the laws of the other country to determine what effect, if any, such acts would have on one’s citizenship in that country.

The policy to which Chief Justice Hughes referred in Perkins v. Elg had yet to be incorporated into law at the time that he was writing. The 1907 Expatriation Act\(^{16}\) required only that U.S. citizens who were born abroad and who remained abroad, in order to receive the protection of the U.S. government, were to record at the age of eighteen their intention to become U.S. residents and remain U.S. citizens.\(^{17}\) At twenty-one they were to take “the oath of allegiance.”\(^{18}\) However, as Judge Smith pointed out in Rueff v. Brownell,\(^{19}\) “[e]ven under this section the failure of a citizen to comply with its provisions will deprive him of his right to diplomatic protection but will not deprive him of his citizenship.”\(^{20}\)

IV. Expatriation, Depatriation, and the Laws of Duals

Let us now look at the various laws of expatriation passed in the United States as they have affected dual nationals. There have been attempts in recent years to emphasize the difference between voluntary expatriation (i.e., a person’s intentional renunciation or relinquishing of citizenship) and the deprivation of citizenship by government decree against the individual’s will. The term chosen for this latter concept is “denationalization,” meaning “making a national to be no longer a national.”\(^{21}\) But since denationalization in general speech nowadays refers to the restoring of a nationalized industry to private status, I suggest replacing that term with “depatriation,” on the analogy of deportation. The term depatriation would be most appropriately restricted to cases where loss of

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17. Id.
18. Id.
20. Id. at 305.
citizenship occurs automatically by operation of law, without any action taken on the part of the citizen, or as the result of the citizen's failure to take an action stipulated by law. It would be less appropriately applied to actions that a government has defined as "equivalent to expatriation," so that when one performs them voluntarily, loss of citizenship occurs, even though one does not intend this effect or even know about it. Thus, in the first Expatriation Act of 1907,\textsuperscript{22} it is stated in section 2 that "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."\textsuperscript{23} In this situation, which \textit{Perkins v. Elg}\textsuperscript{24} says was not meant to apply to minors,\textsuperscript{24} it makes some sense to speak of "voluntary expatriation" when one does such an act with the intention of relinquishing citizenship. One should, however, speak of "voluntary but undesired expatriation" when loss of citizenship is not wanted but is accepted as a necessary concomitant to what one does desire: citizenship in another country. It might even make sense to speak of "unwitting expatriation" here, since the 1907 Act does not allow for ignorance of the law as an excuse. But if we limit our understanding of expatriation as Hughes does in \textit{Elg}\textsuperscript{25} by stating, "\[e\]xpatriation is the voluntary renunciation or abandonment of nationality and allegiance,"\textsuperscript{26} then the use of the term "depatriation" would be more appropriate. 

In effect, the cited provision of the 1907 Act prohibits adults from becoming dual nationals by decreeing that those who take on another nationality expatriate themselves.\textsuperscript{26} The Act does not directly address the case of those who are already dual nationals.\textsuperscript{27} Section 2 does place restrictions on naturalized citizens residing abroad: "When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen."\textsuperscript{28} But, as pointed out by Judge Smith, in \textit{Rueff}, this is quite different from saying that the person has expa-

\begin{footnotesize}
\begin{enumerate}
\item Act of Mar. 2, 1907, ch. 2534, § 2, 34 Stat. 1228 (1907) (repealed 1940).
\item Id.
\item 307 U.S. at 342.
\item Id. at 334.
\item Act of Mar. 2, 1907, ch. 2534, § 2, 34 Stat. 1228 (1907) (repealed 1940).
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
triated himself. 29

The first U.S. expatriation law, then, said nothing explicit about dual nationals, much less about imposing an election between nationalities. But in 1929 and 1930, as part of a proposal to eliminate all dual nationality in adults, the U.S. government did support something of the sort as a matter of international law. The Harvard Draft Convention on Nationality of 1929 30 proposed that dual or multiple nationals should retain only the nationality of the country where they habitually resided on attaining the age of twenty-three. 31 The U.S. proposal to the Hague Conference of 1930 added a more voluntary element: a dual national may renounce one of his or her nationalities. However, if this is not done before reaching the age of twenty-three, he or she shall "be conclusively presumed to have elected the nationality" 32 of the country of habitual residence "and to have renounced the nationality of the other State of which he [or she] was a national." 33

It has been asserted that the United States did not sign the Hague Convention because this proposal was rejected in favor of a policy allowing states alone to decide which nationality would be relinquished and which retained. 34 The United States, in other words, preferred voluntary expatriation over involuntary denationalization, 35 or, to use my term, depatriation. But it would be more precise to say that the U.S. proposal allowed for voluntary expatriation up to a certain age and then imposed depatriation. A few years after the relatively mature age of twenty-three was suggested for depatriation in the above proposal, the 1934 Citizenship Act provided for automatic depatriation at the age of thirteen for children born abroad whose U.S. citizenship comes from having one American parent, whether father or mother, unless they took up

29. 116 F. Supp. at 304-05; supra text accompanying note 20. See also Williams, supra note 21, at 48 (Loss of citizenship in this case could only be determined by a judicial decision. The result would be, properly speaking, "denaturalization.").
31. Id. art. 12, at 14.
33. Id.
34. See Convention on the Conflict of Nationality Laws, Apr. 12, 1930, art. 6, 179 L.N.T.S. 91, 101; McGarvey-Rosendahl, supra note 21, at 318.
35. McGarvey-Rosendahl, supra note 21, at 318.
residence in the United States. The operative age was changed in subsequent acts.

Other than the persons covered in the 1934 Citizenship Act, citizens living abroad were not affected by any law or loss of citizenship, although many were erroneously told by State Department and consular officials in the 1930s that they had lost their citizenship through foreign residence. Section 401(a) of the 1940 Act, however, stipulated that any U.S. citizen, whether by birth or naturalization, who was naturalized in another country before the age of twenty-one must return to the United States before reaching twenty-three or lose his U.S. citizenship. The Immigration and Nationality Act of 1952 extended the term to twenty-five years of age.

Let me bring up here an incident that first inspired me to wonder whether the requirement of election was a myth. When I was on sabbatical in Sydney in 1980, a dinner companion who practiced law in New South Wales informed me that when, not long ago, he had tried to get a U.S. visa on his recently renewed Australian passport, he was told by the U.S. Consulate that he was a U.S. citizen and should instead apply for a U.S. passport. He acknowledged that he was born in the United States; but, since he had been taken to Australia as an infant and had moreover sworn allegiance to the Queen on several occasions, he had assumed that he had lost any claim to U.S. citizenship. Not so, he was assured; and his having been called up to serve in the Australian armed forces during World War II would have had no effect on his U.S. citizenship, since it was compulsory rather than voluntary. He did

36. Act of May 24, 1934, ch. 344, § 1993, 48 Stat. 797 (1934) (repealed 1940). It was the first time that women could pass on citizenship.
37. The Nationality Act of 1940 changed the age to sixteen. Act of Oct. 14, 1940, § 201(g), 54 Stat. 1137, 1339 (1940). The 1952 Act put it at twenty-three. Act of June 27, 1952, § 301(b), 66 Stat. 235, 236 (1952) (repealed by Act of Oct. 10, 1978, Pub. L. No. 95-432, § 2(4), 92 Stat. 1046 (1978)(codified as amended at 8 U.S.C. § 1481(a) (1986))). Thus, a child born abroad before May 24, 1934, would be a citizen and not affected by this provision if the father was American; if only the mother was an American, he or she would not be a citizen at all. A child born after May 24, 1934 of an American father or mother would be slated to lose U.S. citizenship by operation of law in 1947 but would actually lose it in 1950; he or she would be "repatriated" (that is, undepatriated) in 1952, redepatriated in 1957, and finally re-repatriated in 1978.
40. Id. at 1169.
42. Id.
not argue the matter further—by bringing up, for instance, the matter of his having voted regularly in Australian elections. Since that time he has carried both Australian and U.S. passports, and, when renewing the one, he freely admits his possession of the other.

But had not my commensal forfeited his citizenship long ago, under the above-described section of the 1940 Act, which mandated his return to the United States by the age of twenty-three, and were not the officials of the consulate in error when they gave him a U.S. passport, since it was before the 1986 repeal? The answer would seem to be that he had not forfeited his citizenship under this provision, which applied only to U.S. citizens who acquired a second nationality by naturalization as minors; he was born in the United States of an Australian father who took him to Australia at the age of two months. But the consular officials were indeed mistaken in saying that he had never lost his citizenship, since the next section of the Immigration and Nationality Act, section 1482, did apply to him: dual nationals by birth who resided in their other country for any three years after reaching twenty-two would lose their U.S. citizenship unless they took an oath of allegiance to the United States before the end of the three years and took up U.S. residence. However, the officials seem to have been right, if for the wrong reasons, in issuing him a U.S. passport, because this provision had been repealed in 1978 as being of dubious constitutionality; and other provisions of section 1481 which might have affected him had similarly been repealed, as we shall see.

V. The 1952 Supreme Court: Kawakita and Mandoli

The Nationality Act of 1940 came under scrutiny in the case of Tomoya Kawakita v. United States in 1952. Kawakita was a dual national by birth, having been born in the United States of Japanese parents. In 1939, shortly before turning eighteen, he obtained a U.S. passport and went to Japan, where he registered as a U.S. citizen. In 1941, he renewed his U.S. passport, once more tak-

44. See Charles Gordon & E. Gitte Gordon, Immigration and Naturalization Law, § 20.9k, at 20-31 (Student ed., 1982).
45. Infra Part VII.
46. 343 U.S. 717 (1952).
ing the customary oath of allegiance to the United States. But when war was declared he registered as a Japanese citizen and obtained a Japanese passport, on which he traveled to China. After the war, he renewed his U.S. citizenship, and stated that he had not expatriated himself. Back in the United States, he was recognized by a former American prisoner of war, who accused him of mistreating American prisoners during the war when he served as an interpreter. He was convicted of treason in 1951 and condemned to death. He appealed his conviction on the grounds that he had in fact expatriated himself by his actions in Japan. His appeal was narrowly rejected, by a four-to-three vote.

Justice Douglas, writing for the majority (with Jackson, Reed, and Minton), stated of Kawakita: “He had a dual nationality, a status long recognized in the law.”

Douglas continued:

The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other. . . . [Dual citizenship] could not exist if the assertion of rights or the assumption of liabilities of one were deemed inconsistent with the maintenance of the other. For example, when one has a dual citizenship, it is not necessarily inconsistent with his citizenship in one nation to use a passport proclaiming his citizenship in the other.

Douglas referred to a statement of Assistant Secretary of State Carr in 1933 affirming that a dual national would not be divested of U.S. citizenship by use of a passport from the other nationality, but that it would be advisable to obtain a U.S. passport to be assured of U.S. protection.

The Supreme Court found that Kawakita’s various activities

47. Id. at 723 (citing Perkins v. Elg, 307 U.S. 325, 344-49 (1939)).
48. Id. at 723-25.
49. Id. at 725 (citing GREEN HAYWOOD HACKWORTH, 3 DIGEST OF INTERNATIONAL LAW 353-55 (1942)). Douglas’s language was quoted by Judge Smith in Rueff v. Brownell, 116 F. Supp. 298, 309 (1953), on another passport question. In this case, a Miss Torrance (later Mrs. Rueff), born in Germany in 1910 of U.S. citizens and later acquiring German citizenship as a minor upon the naturalization of her mother, had renewed her German passport in 1936. Judge Smith ruled that she would have been free to do so in any event, but in her case the German passport was the only one available to her, since the U.S. Consulate in 1933 had erroneously informed her that she had lost her U.S. citizenship. He acknowledged that under the 1940 Act, section 401(a), she was obliged to return to the United States by January 13, 1943, but he pointed out that her attempts to comply had been thwarted by the State Department “under a mistake of law.” 116 F. Supp. at 306.
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did not effect a renunciation of his U.S. citizenship. Vinson, Black, and Burton dissented, but, of course, the original sentence of death was upheld and rehearing was denied on October 13, 1952. This was just a month before a rehearing of the Rosenberg case was denied. Everybody knows that the Rosenbergs were executed for treason, but what happened to Kawakita? In December, 1952, the federal court refused to commute his death sentence, but a year later, on October 29, 1953, President Eisenhower did commute it to life imprisonment and a $10,000 fine, and Kawakita was sent to Alcatraz. After spending a total of sixteen and a half years in prison and being ineligible for parole until 1968, he was conditionally pardoned by President Kennedy on October 24, 1963 (just two weeks before Kennedy’s assassination). His fine was remitted and the life sentence was commuted “to expire at once on condition that the said Tomoya Kawakita be deported to Japan and that should he ever be found within the territorial limits of the United States that he be committed to serve the remainder of the aforesaid life sentence.” In other words, he was given a choice of continued imprisonment or exile. He had lost his U.S. citizenship under the 1940 Act, section 401(h), when convicted of treason, and he had also lost his Japanese nationality along the way. He flew to Tokyo as a stateless person and was immediately given Japanese citizenship. In 1978, still protesting his innocence, Kawakita sought to obtain a visa to come to the United States to visit the grave of his parents. At the same time, the Japanese foreign minister was preparing to ask President Carter to grant him full pardon. Kawakita’s attorney in Los Angeles was advised in 1979 that “before his client could process a formal petition seeking the removal of the condition, he would have to convince the Department of Justice that an exception should be made to the policy against the acceptance of clemency petitions from nonresidents.” One obvious reason, of course, would be that the terms of his com-

52. Quoted from the clemency warrant (on file with author).
muted sentence prohibited not only residence but any return whatsoever. No further appeal or action in his case is on record. As will be noted below, the constitutionality of the provision under which Kawakita lost his U.S. citizenship is dubious.67

On November 24, 1952, in Mandoli v. Acheson,68 the Supreme Court decided another dual-nationality case, on a five-to-four vote. Justice Jackson, speaking for himself and Justices Frankfurter, Minton, Black, and Burton,69 addressed this question: Does a dual citizen by birth lose his U.S. citizenship by long-continued foreign residence after turning twenty-one? Jackson responded in the negative on the ground that only the 1907 Act was operative in the case, and that Act imposed no such obligation on a U.S. citizen by birth to return to this country on coming of age. Jackson went on to observe that even the 1940 Act did not require such a return of a dual citizen in Mandoli's situation. He was correct. It only imposed return on U.S. citizens (whether by birth or naturalization) who acquired another nationality by naturalization as minors. No provision affecting dual nationals by birth was added until 1952.60

Jackson's general conclusion about the 1940 Act that "Congress . . . refused to require a citizen by nativity to elect between dual citizenships upon reaching a majority,"61 is true enough as it stands, but it contains an implicit fallacy. Namely, Congress did require dual citizens who acquired their foreign nationality by naturalization to elect between their two citizenships. We have seen that this was not the case. As was rightly noted by the State Department in 1935, when responding to the consul at Calgary, "[t]here is no law of this country whereunder a person having dual nationality may divest himself of one nationality solely through a process of election."62 A fortiori, there is no law whereunder a dual national is obligated to divest himself of one nationality by election. This was as true after 1940 and after 1952 as it was in 1935, for the residence requirements of the 1940 and 1952 laws did not require election between citizenships. A choice in the sense of reaffirmation of one's foreign citizenship did not of itself entail loss of U.S. citizenship, nor did reaffirmation of U.S. citizenship entail

57. Infra text accompanying notes 98-100.
58. 344 U.S. 133 (1952).
61. 344 U.S. at 138.
62. HACKWORTH, supra note 49, at 357.
loss or renunciation of the foreign citizenship. To repeat what I established above, the only requirement of the 1940 law directed at dual citizens was that dual citizens by naturalization who were living abroad had to return to the United States within two years after attaining majority. The 1952 law extended the time to four years, and also added a rule that dual citizens by birth could not live abroad for more than a three-year stretch at any time after reaching twenty-two.\(^{63}\)

Justice Douglas dissented in the Mandoli case, but he did not contest the majority's answer to the question before it. Rather, he asserted that petitioner Mandoli had lost his citizenship for another reason, namely, for having sworn allegiance to the King of Italy and serving in the Italian army in 1931, when he was twenty-three or twenty-four years of age.\(^{64}\) It might seem strange that the dissent would allow this consideration to be decisive, since it was not explicitly before the Court; but since the argument was in the record at a lower level, the justices were within bounds to consider it.\(^{65}\) However, the court of appeals in Mandoli, in using similar reasoning, was out of bounds according to Jackson.\(^{66}\) The appellate court had taken Perkins v. Elg as determining a point that was not before it. As Jackson says: "That case did not present and the [appellate court] could not properly have decided any question as to consequences of a failure to elect American citizenship, for Miss Elg properly did so elect and decisively evidenced it by resuming residence here."\(^{67}\)

VI. LOWER-COURT REACTIONS TO MANDOLI IN 1953

The Mandoli ruling had very interesting repercussions in lower court decisions, resulting in contradictory principles and conclusions. I will first take up the case of Gaudio v. Dulles,\(^{68}\) to which I have already referred.\(^{69}\) It was heard by Judge Kirkland in the U.S. District Court for the District of Columbia and decided on

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63. 8 U.S.C. § 1481(a)(1) (repealed 1986); supra text accompanying notes 40-42; see also 8 U.S.C. § 1482 (repealed 1978); supra text accompanying notes 43.
64. 344 U.S. at 137-38.
66. 344 U.S. at 138-39.
67. 344 U.S. at 138.
68. 110 F. Supp. 706 (D.C. Cir. 1953).
69. Supra note 9.
February 19, 1953. It presents the very unusual picture of a lower federal court accusing the United States Supreme Court of making an error. Kirkland says:

The Supreme Court erred in its legal premise [in Mandoli]; the State Department's proposal [in 1940] was accepted by Congress with only one modification: instead of an immediate election on reaching majority, the native-born dual national was to have two years, after the date of reaching majority, within which to make his choice of allegiance.\(^7\)

In fact, however, the Supreme Court made no mistake of law in its decision. Rather, it is Kirkland who is mistaken, and his errors are multiple. First, he assumes that the 1940 Act applies to all dual nationals, whereas it only refers to U.S. citizens by birth or naturalization who acquire another nationality by naturalization. The Act excludes those who acquire both nationalities by birth.

Second, Kirkland wrongly assumes that the 1940 Act required the electing of one allegiance and the rejecting of the other;\(^7\) it only required a choice of residence. If one were to choose the right residence, namely, the United States, then, as far as the United States was concerned, there was no need to choose between allegiances.

Third, Kirkland compounds his second error by not limiting the alleged requirement of election to those living abroad; he extends it in effect even to dual nationals living in the United States. This is the purport of his bald statement, quoted above, which has been singled out in the United States Code Annotated.\(^7\) I will repeat it here, so that it can be read in context: "Those individuals in the status of dual nationals have the duty to make an election within the reasonable time established by Congress, or accept the consequences of their passive attitude."\(^7\)

Judge Kirkland commits a fourth error in making the following statement, which has also been excerpted in the annotated code:\(^7\) "It was, and still is, the intention [of Congress] that the plague of 'dual nationality' be eliminated to every degree possi-

70. 110 F. Supp. at 711.
71. As noted above, Jackson in the Mandoli decision seems also to have labored under this false assumption, but he did not state it explicitly. See supra text accompanying note 61.
72. Supra note 9 and accompanying text.
73. 110 F. Supp. at 710.
ble." He adduces as proof of this conclusion, with regard to the 1940 Act, the statements of three members of Congress. However, these congressmen are specifically referring to "this dual citizenship," meaning that possessed by Americans living permanently in their other country (and, presumably, those who acquired their second nationality not by birth but by naturalization). Kirkland professed to prove that Congress still had the same intention in 1953 by pointing to the recent passage of the Nationality Act of 1952 and citing a preliminary report stating that "[t]he problem of dual nationality is one of the most difficult in the nationality law." But this statement says nothing about an intention to eliminate dual nationality whenever possible. As for the Nationality Act itself, we have seen that it does not attempt to stamp out dual nationality, but only to restrict the foreign residence of dual nationals.

Kirkland's fifth error flows from his first: he assumes that the plaintiff in his case, a woman named Gaudio, was in the same situation as Mandoli of Mandoli. But in fact, even if Mandoli had been subject to the 1940 Act, he would not have been affected by it; for he had acquired both of his nationalities by birth, whereas the Act only affected persons like Gaudio, who was a U.S. citizen by birth but an Italian national by naturalization.

Admittedly, Kirkland is correct in recognizing that Gaudio fell under the 1940 Act. After being born in the United States in 1916, she was taken to Italy by her parents and naturalized as an Italian. She obtained a U.S. passport in 1937, before her twenty-first birthday, but was unable to return because of illness. The 1940 Act imposed an obligation upon dual nationals like her to return to the United States by January 13, 1943. Judge Kirkland is dismissive of the excuse that the war prevented such a return, and contemptuous of the excuse that she had trouble making her way to the U.S. consulate at Naples before June of 1947. He attributes her latter-

75. 110 F. Supp. at 709.
76. Id. at 708-09 n.2 (citing Statements of Rep. Poage (Texas), Rep. Mason (Ill.), and Rep. Dickstein, Chairman (N.Y.) in Hearings on H.R. 6127 Superseded by H.R. 9980 Before the Committee on Immigration and Naturalization, 76th Cong., 1st Sess. 320 (1951) [hereinafter Hearings]).
77. See Hearings, supra note 76, at 320.
78. 110 F. Supp. at 709 (quoting from H.R. REP. No. 1365, 82nd Cong., 2nd Sess., at 87 (1952)).
79. 344 U.S. at 133.
80. 110 F. Supp. at 710.
day wish to return to the United States solely to a desire to take advantage of American old-age benefits, like many others "who have not contributed one iota of assistance to the well being of the country." Nevertheless, he adjudges her a U.S. citizen because of Mandoli, and also because of the Acheson v. Maenza case, which, he says, "specifically adopted the Supreme Court's language pertaining to prolonged foreign residence by a dual national and held such residence 'does not in itself deprive an American citizen of his citizenship rights.'"

In so saying and acting, however, Judge Kirkland commits a sixth error. He is mistaken in his characterization of the Maenza case, in that circuit Judge Clark did not formally adopt the quoted opinion as his decision; rather, he reported approvingly what he took to be the sense of the Mandoli case. Clark says that the Supreme Court "again emphasized that even extremely prolonged foreign residence by a dual national, followed by foreign military service, does not in itself deprive an American citizen of his citizenship rights." But this was not the basis on which he judged that Maenza had retained his citizenship. Furthermore, Judge Clark's characterization of Mandoli is very far off base. Mandoli made no such general declaration; it only found that one specific dual national, namely, Mandoli, who was not subject to the 1940 or 1952 laws, did not lose his U.S. citizenship after prolonged foreign residence.

The irony of all this is that, if Judge Kirkland had probed further, he could have had his heart's desire and turned Ms. Gaudio away from the vineyard in which she had not labored, since no judicial precedent forbade it.

Shortly after the Gaudio decision, in Takehara v. Dulles the U.S. Government conceded what it took to be the Mandoli interpretation of the 1940 Act: "that it is not legally required that a citizen by nativity elect between dual citizenship upon or after reaching majority." That is, the Government agreed that appel-

81. Id.
82. 202 F.2d 453 (D.C. Cir. 1953).
83. 110 F. Supp. at 711.
84. 202 F.2d at 458.
85. 344 U.S. at 133.
86. 205 F.2d 560 (9th Cir. 1953).
87. Id. at 562. As I have noted, this is true enough, since neither the 1940 law nor any other United States law has ever required any kind of dual citizen to elect between citizenships at maturity or at any other time.
lant Takehara was not required to choose between his U.S. and Japanese citizenships. It argued, however, that he was free to make such an election, and it alleged that he did in fact do so, choosing Japanese citizenship over U.S., by voting in Japan. 88 Judges Healy and Pope, forming the majority of the Court, denied the argument, saying that to effect expatriation the voting would have to be voluntary, and in this case it was not. 89 Judge Bone dissented, holding that the 1940 law says nothing about the voter's intent. 90

Analysis of the Government's argument in Takehara reveals a very important wrinkle in the myth of election. The Government drew on the prohibition against voting in a foreign election, which was one of the provisions of the 1940 Act that did not deal specifically with dual citizens but rather pertained to the expatriation of all U.S. citizens, whether single or dual. 91 Under this provision, if I were to vote in a foreign country, I would lose my U.S. citizenship. If I were originally a dual or multiple citizen, then I would have one or more citizenships left over when I committed the expatriating act. If I were only a U.S. citizen, then I would be completely stateless upon performing the expatriating act. Now, it would seem rather silly to say in this latter case that I would have made an election between being a U.S. citizen and being a citizen of no country. But it makes no more sense to say in the former case that I had made an election between nationalities. If I rob a bank and go to jail as a consequence, I can hardly be said to have elected jail over remaining free, even though I may have foreseen this result and therefore deliberately jeopardized my freedom.

The moral, in my view, is that we should not use the term "election" in expatriation cases. A more general moral is that, because of the confusion that the word has caused, we should never speak of election in any of the contexts that we have been discussing. Rather, we should say what we mean in other words. Thus, if we are talking about choosing one nationality and repudiating another, we should use "choice between nationalities." If it is a question of whether to take up residence in the United States or to remain abroad, we should speak of a "decision to leave or to stay." If we are talking about the voluntary renunciation of citizenship,

88. Id. at 562.
89. Id. at 560-62.
90. Id. at 562-66.
91. It was these provisions that Kawakita was appealing to in contending that he had lost his citizenship. Supra notes 46-57 and accompanying text.
we should use "expatriation" or "self-expatriation." If we are speaking of losing citizenship or being deprived of citizenship, we should use "expatriation," "depatriation," "denaturalization," or whatever other term is most appropriate.

VII. REPEALS AND AMENDMENTS

As mentioned previously, 8 U.S.C. section 1401(b) (dealing with citizens born abroad of one American parent) and section 1482 (dealing with dual nationals living abroad after the age of twenty-two) were repealed in 1978. Section 1481(a)(1) (on naturalized duals abroad) was repealed in 1986. This left only one section of Title 8 specifically pertaining to dual citizens: 1481(a)(4)(A), which I will discuss below. Since there is presently almost no legislative recognition of the status of dual citizens, it is even more important now than before that we maintain a proper understanding of the principles set forth in the Kawakita case. This, especially when contemplating the effects of the 1986 amendments to section 1481 on expatriation.

Actions that can cause a person to lose his U.S. citizenship are now listed in section 1481(a) as follows:

1. "Obtaining naturalization in a foreign state . . . after having attained the age of 18 years."
2. "Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state . . . after having attained the age of 18 years."
3. Serving in the armed forces of a foreign state: (A) hostile to the United States, or (B) as an officer.
4. (A) "Accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof after attaining the age of 18 years, if he has or acquires the nationality of such foreign state," or (B) if such service requires an oath or declaration of allegiance.
5. Formally renouncing U.S. nationality while in a foreign state.
6. Formally renouncing U.S. nationality while in the United States when the United States is in a state of war.
7. Being convicted of treason, sedition, insurrection, or conspir-

92. Supra notes 41-42 and accompanying text.
93. Infra text accompanying notes 100-03.
acy to overthrow the U.S. government.\textsuperscript{95}

Three activities formerly in this list but now absent include: (1) draft evasion by foreign residence (repealed in 1976); (2) being convicted of desertion from the armed forces during war (repealed in 1978); and (3) voting in a foreign election (also repealed in 1978). The last-named provision, on voting, was upheld as constitutional by a five-to-four vote in 1958 in \textit{Perez v. Brownell},\textsuperscript{96} and then declared unconstitutional by a five-to-four vote in 1967 in \textit{Afroyim v. Rusk}.\textsuperscript{97} The seventh remaining provision, which in effect makes loss of citizenship a punishment for treason or sedition, has an unconstitutional look about it, but it has not yet been tested.\textsuperscript{98} Tomoya Kawakita was deprived of his American citizenship under the 1940 version of this provision.\textsuperscript{99} Note that subsection 4(A) recognizes the possibility of being a dual national before the age of eighteen and also of acquiring dual nationality after the age of eighteen, by virtue of the language, "if he has or acquires the nationality of such foreign state."\textsuperscript{100}

Finally, the seven surviving activities named as constituting or triggering expatriation were completely transformed in the 1986 legislation by the insertion of an extraordinarily important qualification: loss of citizenship can occur only "by voluntarily performing any of the following acts with the intention of relinquishing U.S. nationality."\textsuperscript{101} This amendment was required by previous Supreme Court decisions, especially the above-noted \textit{Afroyim}\textsuperscript{102} and \textit{Vance v. Terrazas}.\textsuperscript{103} In the latter case, the Court held unanimously that the U.S. Government must prove intent to surrender U.S. citizenship before loss of citizenship can be established and enforced.\textsuperscript{104} The addition of the proviso to the law gives added protection to dual nationals who are simply exercising their rights as citizens of another country; and it also opened the way to allowing an adult U.S. citizen to acquire another nationality without losing

\textsuperscript{96} 356 U.S. 44 (1958).
\textsuperscript{97} 387 U.S. 253 (1967).
\textsuperscript{102} 387 U.S. 253 (1967); \textit{supra} note 97 and accompanying text.
\textsuperscript{103} 444 U.S. 252 (1980).
\textsuperscript{104} \textit{Id}. 
U.S. citizenship, as is foreseen in subsection 4(A).

VIII. EXERCISING AND ADDING EXTRA NATIONALITIES, 1980-90

In the period after Terrazas (1980), and especially after the 1986 amendments, if one wished to exercise the rights and privileges of a spare nationality, or to add a new nationality, one should have been prepared to prove, if challenged by the U.S. government that one did not intend to relinquish U.S. nationality. On the face of it, this would seem an easy task, since the burden of proof rests with the government, which would have to show that there is some advantage to a given person in losing U.S. citizenship and that the person acted under that motivation. It was hard to imagine why most persons would want to lose U.S. citizenship simply by functioning as a citizen of another country, or by becoming a citizen of another country, when there was in fact no U.S. law prohibiting such actions. However, both the government and the judiciary at various levels had a track record of dislike for dual nationals. It was therefore deemed only prudent, in advance of taking the contemplated actions, to prepare proof that there was no intention of relinquishing U.S. citizenship, and that, on the contrary, there was every intention of retaining it. If one wished to acquire another nationality, for instance, one should explain to as many potential court witnesses as possible, both viva voce and currente calamo, that one had no desire to lose American nationality and no conceivable motive for doing so. Such a state of mind and intention would be easiest to prove when the oath of allegiance to the foreign nation contained no repudiation of any other national connection, as in the oaths of the Australian and New Zealand citizenship acts. Here is the Australian form: "I, A.B., swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfill my duties as an Australian citizen." But whereas the New Zealand oath has retained its form (changing, of course, to Queen Elizabeth the Second), the Australians in 1973 added the phrase, "renounc-

106. Id. § 20.8b(4); see also infra App. I, para. [9].
ing all other allegiance.”

A few months after the Terrazas decision, the State Department issued a memorandum that contained a list of documents such as wills, bequests, tax payments, and insurance policies, which could be cited as indications of intent to retain U.S. citizenship. Another list, that of actions or indications of intent to relinquish citizenship included requesting a visa to enter the United States, entering the United States on a foreign passport, the exclusive use of a foreign passport, and membership in a political party in a foreign country.

In an undated State Department leaflet issued after Terrazas, but before 1986, it is stated: “The issues of intent and voluntariness cannot be resolved until a potentially expatriating act has actually been performed. Therefore it is not possible to state in advance that a person will or will not lose U.S. citizenship if that person becomes a citizen of a foreign country.” In addition to listing the paper-trail items noted above, the leaflet notes, “[a] written statement submitted to the Embassy or Consulate in advance, expressing an intent to maintain U.S. citizenship and to continue to respect the obligation of U.S. citizenship, despite one’s plans to obtain naturalization in a foreign country, would be accorded substantial weight in a loss of nationality proceeding.” It adds, “[a]lthough personal and financial considerations can occasionally provide compelling reasons for obtaining foreign citizenship, these reasons do not, in themselves, constitute evidence of intent to retain U.S. citizenship.”

In the early 1980s an academic couple of my acquaintance, both U.S. citizens but both living and teaching in Canada, were advised by a Canadian lawyer that they could safely become Canadian citizens without losing their U.S. citizenship by writing a letter such as the leaflet describes and providing details about the financial benefits Canadian citizenship would give them. The response that each received from the Consul read as follows:

I am writing to confirm the Department of State's decision

110. Memorandum from the U.S. Dep't of State, CA/OCS/CCS, A-1787 (Aug. 27, 1980).
111. The complete lists are given by Keelaghan-Silvestre, supra note 21, at 321 nn. 173-74.
113. Id.
to your citizenship status following your naturalization as a Canadian citizen.

The Department of State has informed this office that the evidence on record is insufficient to support a holding that you intended to relinquish your claim to U.S. citizenship by becoming naturalized in Canada. You may therefore continue to be documented as a U.S. citizen.\footnote{114. Letter from Frances T. Lide, U.S. Consul at Montreal (Sept. 17, 1985)(on file with author).}

This declaration was not phrased in the most reassuring of terms, and one could well have had the feeling that the State Department was keeping an open file and continuing to amass evidence for loss of citizenship. Such an assumption, however, would probably have been unfair. In a State Department consular telegram describing the new policy to be discussed in the next section, there is a rubric, \textit{Cases which post has begun to develop involving the individual's lack of cooperation or indifference},\footnote{115. Telegram from James Baker, Secretary of State, Unclas State 177856, to the American Embassy in Canberra and the Consulates in Melbourne, Perth, and Brisbane, and (for information) to the American Embassies in Wellington, Manila, Seoul, and Tokyo and the Consulates in Auckland and Hong Kong, § 3 (June 4, 1990)[hereinafter June 1990 Telegram](on file with author).} but such cases involved only instances in which individuals failed to reply to a questionnaire.\footnote{116. Information for Determination of U.S. Citizenship, in June 1990 Telegram, supra note 115, § 3 (questionnaire for people seeking U.S. citizenship).} As the telegram explains, "[i]t has been our past practice to regard an individual's silence regarding possible interest in retaining U.S. citizenship as evidence of a person's abandonment of U.S. citizenship."\footnote{117. June 1990 Telegram, supra note 115, § 3.} We will now see how it came about that this practice itself was abandoned.

\section*{IX. The New State Department Presumption, April 1990}

In 1986, the old provision (c) of section 1481 was retained, but was relabeled (b).\footnote{118. Act of Nov. 14, 1986, § 19, 100 Stat. 3655, 3658 (codified as amended in 8 U.S.C. § 1481(b) (1988)).} It notes that there is a presumption of voluntariness in the performance of "any act of expatriation under the provisions of this chapter."\footnote{119. 8 U.S.C. § 1481(b) (1988).} But none of the acts listed in 1481(a) constitutes an act of expatriation unless they are done not only voluntarily but also with the intention of relinquishing U.S. citi-
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Therefore, even though voluntariness may be presumed, the intention of relinquishing citizenship should not be.

The State Department, however, did not immediately, as a matter of policy, give the benefit of the doubt to those who performed such acts and assume that they did not intend to give up U.S. citizenship. Old prejudices, it seems, died hard. But even in 1980 Charles Gordon could write, "The Supreme Court's repeated bouts with the problem of expatriation have engendered increased reluctance on the part of courts and administrators to find that citizenship has been lost, and this reluctance doubtless will continue." Before the end of the decade, he added, "Indeed, this reluctance is underscored in recent administrative decisions, which generally find that the government has failed to sustain its burden of establishing that the citizen had intended to relinquish his citizenship."

He was particularly impressed with a series of cases decided in the latter part of 1987 by the State Department Board of Appellate Review. Two of them dealt with U.S. citizens who became Canadian citizens. In one case, the evidence cited by the government for the petitioner's loss of citizenship was, besides his being naturalized as a Canadian, "non-discharge of civic duties as U.S. citizen." In the other, it was that the petitioner had assumed that in becoming a Canadian he would lose his U.S. citizenship. In both cases the evidence was rejected as insufficient. The conclusion in the second case is particularly interesting: "It is not conceptually inconsistent [for the individual] to assume that he might have lost citizenship without necessarily willing that result." In other words, even if I believe that performing a certain action will strip me of my U.S. citizenship, I can wish it were not so; then, according to the law, it is not so. That is, I have not fulfilled the necessary condition of willingness to relinquish my citizenship.

Finally, by means of a telegram sent by Secretary of State James Baker to all diplomatic and consular posts in April 1990, a "uniform administrative standard of evidence" was established in

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120. Id. § 1481(a).
121. Gordon, supra note 44, § 20.8b(1).
122. Id. at 50 (Supps. 1989, 1990, and 1991).
124. Id. (citing In re J.J.S., Bd. App. Rev. (Dec. 17, 1987)).
125. Id. (citing In re E.J.P., Bd. App. Rev. (Oct. 12, 1987)).
the State Department, which was "based on the premise that United States nationals intend to keep their U.S. nationality when they obtain the nationality of another state, make a pro forma declaration of allegiance to another state, or accept a non-policy level position in another state." This was a revolutionary move, which completely changed the attitude and methodology of the government with regard to loss of nationality. Before this time, the State Department was processing about 4,500 potential-loss cases each year, out of which about 800 certificates of loss of nationality were approved, about 200 of which were based on express renunciations. Under the new dispensation, when consular posts are notified by the foreign government that naturalization has occurred, they will no longer attempt to contact the individuals in question, or "seek out" possible-loss cases. The number of cases processed from now on can be expected to be only a small fraction of the previous rate.

The title of this Article could be taken to imply, with some room for irony, that the State Department experienced a change of heart and began to look upon dual nationality with a benign eye, reversing its previous stance of rather hostile toleration, much as the Canadian government did in 1976. But this is not in fact what happened. For even though Secretary Baker, in speaking for the Department, does allege a desire for greater equity in deciding cases of loss or non-loss of citizenship and does recognize that the new policy will result in an increase of dual nationality, he indicates that the same unbending attitude towards dual nationality is to be maintained. This attitude might be described as "disap-

128. Id. § 9.
130. See R. A. Gould, Multiple or Dual Nationality Under Canadian Law, 57 INTERPRETER RELEASES 556-62 (1980).
131. See April 1990 Telegram, supra note 127, § 9.
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proval on philosophical and practical grounds,” or as the State Department leaflet Dual Nationality puts it, “While recognizing the existence of dual nationality and permitting Americans to have other nationalities, the U.S. Government does not endorse dual nationality as a matter of policy because of the problems which it may cause.”[132] Secretary Baker puts it thus:

This action should not be seen as an endorsement of dual nationality. Our obligation is to ensure that the administration of our laws is equitable and consistent, regardless of the fact that dual nationality may be an incidental product of that treatment. The adoption of this administrative standard is consistent with our resolve to continue to meet our statutory obligation to determine whether loss has occurred by ascertaining the citizen’s intent.[133]

There was a practical as well as theoretical reason for adopting the new standard: the workload in processing cases under the old assumption was becoming too great. As Baker notes,

Changes in interpretation of citizenship law have made cases progressively more difficult to manage. In a given case, the facts may yield a number of different interpretations, or leave conscientious officers in the field and at the Department unsure of whether the facts fall just short of or just beyond the applicable standards. The officer reviewing the case, however, is left with a simple and uncompromising choice: loss or retention of American citizenship. In the past, we have 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.[134]

The final form of the new policy was embodied in a telegram sent in October of 1990[135] and in a revision of the leaflet designed for general distribution.[136] The “acts of expatriation” listed in the section 1481(a)[137] are now referred to in the new leaflet as only “potentially” expatriating. The first two provisions, concerning for-

132. See infra App. I, para. [9].
134. Id. § 4.
135. Telegram from James Baker, Secretary of State, Unclas State 349075, to all diplomatic and consular posts (Oct. 1990)(copy on file with author).
eign naturalization and oaths, have been almost eliminated from consideration, while the fourth, concerning employment in a foreign government, has been qualified.138 The official leaflet states:

In light of the administrative premise discussed above, a person who:

(1) is naturalized in a foreign country;
(2) takes a routine oath of allegiance; or
(3) accepts non-policy level employment with a foreign government

and in so doing wishes to retain U.S. citizenship need not submit prior to the commission of a potentially expatriating act a statement or evidence of his or her intent to retain U.S. citizenship since such an intent will be presumed.139

However, the text goes on to say that when “such cases” come to the attention of a consular officer, the person in question will be asked to complete a questionnaire, “to ascertain his or her intent toward U.S. citizenship.” Citizenship will be declared retained unless the person states a contrary intent.140

Where does this leave the sort of naturalization oath, like the Australian form noted above,141 which includes a clause renouncing all other allegiances? In 1987, Charles and Gittel Gordon warned, “Absent highly unusual circumstances, it is virtually impossible to show an intent not to lose citizenship in the face of a renunciation oath.”142 Are such oaths now classified as routine? The answer is yes. I am assured by the Office of Citizens Consular Services that formulas of renunciation contained in naturalization oaths are now considered merely pro forma declarations, without any indication of intention to give up U.S. citizenship.143

The leaflet does not specifically relate the third and sixth (potentially) expatriating acts listed in section 1481(a)144 to this new

138. See infra App. II.
139. Id.
140. Id.
141. Supra note 109 and accompanying text.
142. CHARLES GORDON & GITTEL GORDON, 2 IMMIGRATION LAW AND PROCEDURE § 67.12[1][b][ii], at 67-60 (1987).
143. Telephone conversation with Carmen DiPlacido, director, Office of Consular Services, U.S. Dept of State (July 18, 1991). This policy is confirmed for Australia in Baker’s June 1990 Telegram, supra notes 115, 129.
administrative directive. But it specifically withholds its favorable premise from the fifth provision, the seventh provision, and a version of the fourth provision. That is, in these cases, there is no presumption against intent to relinquish U.S. citizenship. This is not quite the same as saying that there is a presumption of such intent, although it is in fact presumed in the first case (making a formal renunciation outside the United States). But even here, one could easily imagine that no real desire of relinquishment might exist. Foreign work requirements or pressures could drive a person to make a formal renunciation of U.S. citizenship, albeit with reluctance. In the other two situations (conviction of treason and high-level service in a foreign government), the State Department will investigate each individual instance carefully to determine intent. In both cases, circumstances are likely to vary widely. One could commit treason solely for financial gain, with no accompanying intention to lose U.S. citizenship. Even more understandably, one could work at a high level of a foreign government, even serving as head of state, without wanting to relinquish one’s U.S. nationality. The recent appointment of Raffi Hovannisian as foreign minister of Armenia is a case in point. He has stated publicly, “I certainly do not renounce my American citizenship, and I do not foresee any problem.”

The State Department leaflet goes on to note that the seven statutory actions listed as potentially expatriating are not eligible for the administrative premise against relinquishment if “accompanied by conduct which is so inconsistent with retention of U.S. citizenship that it compels a conclusion that the individual intended to relinquish U.S. citizenship.” Such cases, which are admitted to be very rare, would come even closer to an opposite presumption—in favor of intent to relinquish—especially if they involve one of the three actions already withheld from the administrative directive.

145. Id. § 1481(a)(5) (addressing formal renunciation outside the United States).
146. Id. § 1481(a)(7) (conviction of treason or of sedition or conspiring to overthrow the government).
147. Id. § 1481(a)(4) (working for a foreign government). The leaflet withholds favorable presumption from those who accept a policy-level position with a foreign government. Infra App. II.
149. Infra App. II.
150. See supra notes 145-47.
Finally, the leaflet notes that persons who have previously lost their U.S. citizenship can have their cases reconsidered in light of the new administrative premise.  

X. Renunciation of Allegiance and the Question of Perjury

The new State Department policy not only allows an adult U.S. citizen to acquire citizenship in countries that require naturalized citizens to renounce other allegiances. It also permits minors who are citizens of the United States and of another country which does not allow dual nationality to adults to take the oath renouncing U.S. citizenship without in fact suffering loss of U.S. citizenship or endangering it. But where does that leave the question of perjury, both in the forum of conscience and in the tribunals of the country requiring the oaths of renunciation?

The United States requires a declaration of renunciation from adults becoming naturalized as U.S. citizens, including those who know that their renunciation will not in fact cause the loss of their present citizenships. Mexico is an example of a country that has a law against dual nationality for adults; it was the precipitating factor in the Terrazas case. Mexico requires those who wish to retain Mexican citizenship after reaching adulthood to obtain a certificate of Mexican nationality, which includes a declaration renouncing any other citizenship. Italian law since 1983 provides another example: in the case of double citizenship, the child must choose only one citizenship within a year after reaching

151. Infra App. II.
152. 444 U.S. 252; supra notes 103-04 and accompanying text.
153. This was the law beginning in 1949. See United States v. Matheson, 532 F.2d 809, 817 (2d Cir. 1976). In this case, Dorothy Burns, née Gould, became a Mexican citizen by marriage in 1944, and claimed that she had thereby lost U.S. citizenship and that her estate was not subject to U.S. taxes. Id. The court, however, ruled that she had not relinquished her U.S. citizenship. Id. However, in Vance v. Terrazas, Laurence Terrazas desired to retain his citizenship, and it was denied on remarkably slender grounds. 444 U.S. 252. He was a dual national by birth, having been born in the United States of a Mexican father. Id. at 255. When he was 22, he needed a certificate of Mexican citizenship in order to receive his college degree. Id. The standard form for such certificates contains a renunciation clause, with blanks to be filled by naming any other allegiances that the applicants might have. Id. n.2. After a number of appeals and a remand by the Supreme Court, the U.S. government was victorious in its claim that Terrazas had renounced his U.S. citizenship in applying for and receiving such a certificate, even though he had not personally signed any document; it had all been done through political influence. Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981). His citizenship was later restored extrajudicially. Telephone Conversation with Kenneth Ditkowsky, Attorney for Laurence J. Terrazas (July 6, 1989).
majority.154

The Italian law does not provide a formula for making such a choice. If, however, it were like the one that I was given orally by the Italian Consulate in Los Angeles, namely, "I elect Italian citizenship over all other allegiances,"155 such a declaration, before the administrative directive of 1990, would result in loss of U.S. citizenship only if and when the government could prove that it was done with the intention of relinquishing citizenship. In other words, the reported Italian formula falls considerably short of a formal renunciation of other allegiances. Conceivably, one could intend to value Italian allegiance somewhat more than U.S. allegiance, without intending to repudiate or relinquish the latter. The State Department leaflet on dual nationality recognizes the concept of greater and lesser allegiance when it says: "It generally is considered that while dual nationals are in the other country of which they are citizens that country has a predominant claim on them."156

Can one go further and argue that a genuine renunciation of allegiance can be made without intending to relinquish citizenship? I have heard this distinction made by a person who took U.S. citizenship and, as required by section 1448 of the Nationality Act, swore "to renounce and abjure absolutely and entirely all alleg-

154. Law No. 112 of Apr. 26, 1983, Gazetta Ufficiale della Repubblica Italiana [Gaz. Uff.] 3149 (Ital.) ("Nel caso di doppia cittadinanza, il figlio dovrà optare per una sola cittadinanza entro un anno dal raggiungimento della maggiore età."). The law also provides for the first time that mothers as well as fathers can pass on Italian citizenship. For older Italian law, see Nationality Act of June 13, 1912, art. 7 (U.N. Secretariat trans.) reprinted in U.N. LEGIS. SERIES, LAWS CONCERNING NATIONALITY, at 267-71, U.N. Doc. ST/LEG/SER.B/4, U.N. Sales No. 1954.V.1 (1954)("An Italian citizen who was born and is resident in a foreign country in which he is treated as a citizen of that country by birth, shall nevertheless retain Italian citizenship unless he renounces Italian citizenship on attaining the age of majority or on becoming sui juris."). The last clause of article 7 does not do justice to the original Italian, which reads, "ma, divenuto maggiorenne o emancipato, può rinunciarvi," meaning "but, on becoming of age or legally independent, he can renounce it." I CINQUE CODICI 498-9 (Rosario Nicolò & Giovanni Leone eds., 1967). Since I am writing on the myth of election, I should note for the record that after being initially informed by the Italian Consulate in Los Angeles that an election was necessary between the ages of 18 and 19, I was assured by the San Francisco Consulate that this was not the case. Telephone Conversation with the Italian Consulate in Los Angeles (July 11, 1989); Telephone Conversation with the San Francisco Consulate (July 27, 1989). At first, I tended to believe that the Los Angeles office was indulging in a myth of election, until the Los Angeles Consul General sent me a copy of the 1983 legislation. It turns out that the San Francisco branch was operating under the older law, which had been superseded.

155. Telephone Conversation with the Italian Consulate in Los Angeles (July 11, 1989); see supra note 154.

156. Infra, App. I, para. [10].
T. G. E. acted properly, as far as the U.S. government was concerned, when leaving a documentary record of his intention to

160. Id.
withhold consent when renouncing his U.S. citizenship. However, if such a record were to come to the attention of the Mexican government, he would doubtless not only lose his Mexican citizenship but also be subject to prosecution for taking a false oath.

Today, M.P.G.'s case would not even be considered by U.S. field officers as a possibility for loss of citizenship because of the new administrative premise. Were M.P.G. to apply for restoration of citizenship, it would be routinely granted.

Under Australian law, if an adult Australian wished to obtain another nationality, no mental reservation would help. An Australian citizen who accepts naturalization in a foreign country, whether or not there is a renunciation clause, automatically ceases to be an Australian citizen. The operation of the Australian Act is much like the principle of *excommunicatio latae sententiae* in canon law: excommunication occurs as soon as the prohibited action is committed, because sentence has already been passed. In contrast, New Zealand law resembles *excommunicatio ferendae sententiae*, where one must be convicted and sentenced in court for the censure to take effect. According to section 22 of New Zealand's Citizenship Act, “[t]he Minister may by order deprive any person of his New Zealand citizenship” for acquiring another nationality, if it is thought “not conducive to the public good that he should continue to be a New Zealand citizen.” I am told that it is current administrative practice not to exercise this option of deprivation, and that New Zealanders are freely permitted and even encouraged to acquire new nationalities without fear of losing their native citizenship.

**XI. Kelly Family Examples**

I will now draw some practical conclusions from the above sur-

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162. Citizenship Act, 1948, *Austl. Acts* P. No. 83, § 17 (Austl.). The Australian law on dual citizenship is contained in section 18: a person who is a dual citizen before the age of eighteen (or before the age of twenty-one if born before 1973) may at the age of eighteen (or twenty-one) renounce Australian citizenship. In other words, it is not possible for a dual citizen to expatriate himself before the stipulated age; it is possible thereafter, but, of course, not required. Furthermore, there is no requirement to renounce one's other citizenship.


164. Id.

165. I have been assured that this is the situation by a New Zealander who has become a U.S. citizen but who still retains his New Zealand citizenship and is periodically retained for consultations by the New Zealand government.
vey of rules and laws of various countries, using my own family as examples.

1. Ansgar Kelly, born in Iowa in 1934; mother, Inez Anderson, daughter of Swedish immigrants; father, Harry Kelly, whose father, Patrick Kelly, was born in County Sligo, Ireland, in 1851. Having Swedish grandparents has no effect on my status; but a 1956 statute of the Republic of Ireland made an Irish citizen out of anyone born before 1956 who had a grandparent born in Ireland.166 If I had registered as a citizen before 1986, my children would have been great-grandfathered in as citizens. I am still entitled to register as a citizen and to apply for an Irish passport. Nothing in U.S. law would prevent such actions or jeopardize my U.S. citizenship, as is made clear in a flyer to this effect issued by the State Department.167 However, one should remember that acquisition of citizenship in another country may also bring new tax obligations as well as potential estate claims.

As noted below, my wife Marea is Australian, and if we were to go to Australia to live, I would be interested in being naturalized as an Australian citizen, if it could be done without losing my U.S. citizenship. Before 1990, this would have been difficult, since the current Australian naturalization oath, in force since 1973, includes a renunciation of all other allegiance.168 I would have needed to convince both Australian and American authorities, and myself, that I could take, and actually did take, the oath and really mean it, but without intending to relinquish U.S. citizenship. Since 1990, there is no longer a problem from the side of the U.S. government. I doubt that a fine distinction between allegiance and nationality would be found acceptable to the Australian government; but as for myself, my training as a former Jesuit in the science of casuistry (that is, drawing fine lines in cases of conscience) would enable me to swear in good faith to renounce all other allegiances (with the qualification, sotto voce, "insofar as any such allegiances are incompatible with my being a good Australian citizen").

2. Marea Kelly, wife of Ansgar, born in Sydney, Australia, in

166. See J.M. KELLY, THE IRISH CONSTITUTION 40 (2d ed. 1984). Other countries that extend citizenship abroad beyond the second generation are Great Britain and, since 1976, Canada. For the former, see NISSIM BAR-YAAKOV, DUAL NATIONALITY 26 (1961), and for the latter, R.A. Gould, supra, note 130.

167. Infra App. III (reprint of an untitled and undated flyer from the U.S. Dep't of State on Irish citizenship)(copy on file with author).

1938. Her father, Arnold Tancred, was born in 1904, the son of Thomas Tancred, who was born in the California gold fields in 1852 of Irish-Australian parents and taken to Sydney as an infant. Thomas, therefore, was a U.S. citizen by "soil," that is, _de jure soli_, and remained so until he died in 1932. Arnold and his fourteen brothers and sisters were U.S. citizens by blood, _de jure sanguinis paterni_, because their father was American by birth and resided, however briefly, in the United States, thus fulfilling the requirements of the 1855 Act.\(^{169}\) Arnold and his siblings lost their right to U.S. protection by not fulfilling the requirements of the 1907 Expatriation Act\(^ {170}\) when they turned eighteen and twenty-one. However, they did not lose U.S. citizenship by operation of law until 1955, when they failed to take up residence in the United States as required by section 1482 of the Nationality Act of 1952.\(^ {171}\) Those who were still alive in 1978 regained their citizenship when this provision was repealed. Marea, however, is not a U.S. citizen, even though she is the daughter of a citizen-by-birth, because Arnold had never resided in the United States. If she, as an Australian citizen living in the United States on a green card, were to be naturalized as a U.S. citizen (which she has no intention of doing), she would _ipso facto_ lose her Australian citizenship by operation of Australian law. This would be the case even if the American oath of allegiance did not contain a renunciation of all other allegiance.

3. Sarah Kelly, born in Los Angeles in 1970, daughter of Ansgar and Marea. By _jus soli_ and _jus sanguinis paterni_ she was automatically a U.S. citizen, and since Australia in 1969 allowed Australian citizenship to be passed on by women, she also had the right to be registered as an Australian citizen _de jure sanguinis materni_. She was registered as such soon after birth. We were told by officials of both countries that at the age of eighteen she would have to elect one citizenship and give up the other. At first, she was added to the passports of both Marea and me, and eventually she obtained her own U.S. and Australian passports. When she turned eighteen, she did not go through a ritual of election or renunciation. When she applied to renew her Australian passport at the age of nineteen in 1989, she stated, as required on the form, that she also held U.S. citizenship. The new passport was issued

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without incident, and she completed a semester at the University of New South Wales in Sydney as an Australian citizen, without having to pay foreign fees.

Just before her return to the United States in August of 1990, Sarah renewed her U.S. passport at the U.S. consulate in Sydney, where no objection was made to her holding an Australian passport as well; but she was held up by an official in passport control at the airport, who told her that she needed a visa to enter the United States. When she replied that she did not need a visa because she had a U.S. passport, he declared that it was illegal to hold both passports. She, however, snatching the Australian passport from his hand and strongly asserting that it was legal, passed through the gate without waiting for his reply. He was sufficiently dumb-founded—and, no doubt, uncertain of his position—that he made no effort to stop her.

As far as the current laws of both countries are concerned, Sarah will always be able to renew both passports; and she should be able to exercise normal rights and duties in both homelands without jeopardizing either citizenship, if she takes the proper precautions.

4. Dominic Kelly, born in 1972 in Rome, son of Ansgar and Marea, had the right to be registered as a U.S. citizen because of sanguis paternus and as an Australian citizen by sanguis maternus. We immediately registered him as a U.S. citizen, but as time went on we were not able to recall whether we had done the same for the Australian side, since we were not able to find his certificate of registration. According to section 11 of the Australian Citizenship Act, a child born of an Australian parent outside Australia must be registered as a citizen within five years of birth or within such further period as the Minister allows.172 The current policy, as stated on the registration form and accompanying leaflet, is that registration must take place before one's eighteenth birthday.173 Dominic had an Australian passport, which was scheduled to expire in September 1989. According to the renewal instructions, he would have been able to get a new one simply by producing the expired passport, which also would have served as proof of citizenship. Nevertheless, as a matter of caution, we had his records searched at Canberra to see if he had been registered in

173. Copies on file with author.
1972, with the help of the Australian consulate in Los Angeles.\textsuperscript{174} We were prepared to register him before he reached the cut-off age, but it turned out that he was indeed already registered; his passport was subsequently renewed. When he turned eighteen on June 2, 1990, he refrained from exercising his right as an adult to repudiate his U.S. citizenship. Like Sarah, he will always be able to keep and exercise both U.S. and Australian citizenships. As for Italian citizenship, at the time that he was born it came only by way of paternal blood; maternal blood became a basis in 1983,\textsuperscript{175} but at the same time the possibility of retaining Italian citizenship and some other nationality after reaching nineteen was removed.\textsuperscript{176} Therefore, even if \textit{jus soli} had been added as a third way of becoming an Italian citizen, Dominic would not have been able to take advantage of it without renouncing his other two nationalities, or at least giving them second preference to Italian. In doing so, no matter what the formula, he would not have lost or endangered his U.S. citizenship, since a couple of months before he turned eighteen the State Department decided that such renunciations were merely \textit{pro forma}, and constituted no presumption of intention to relinquish citizenship. Similarly, his Australian citizenship would probably not have been lost, since the Australian law provides for loss of citizenship only by acquiring another nationality, not by retaining one already possessed, and specifies that anyone born before 1973, like Dominic, cannot renounce Australian citizenship before reaching twenty-one.\textsuperscript{177}

**XII. Conclusion: Dealing with Anti-Dualism**

Dual nationality has always been permitted in this country, and there has never been a law requiring persons with more than one citizenship to elect one and repudiate the other(s). But the mind-set that there was, and is, such a "principle of election" has infected the judgment of the populace in general, including many persons in public service, public office, and the judiciary. One upshot is that laws dealing with quite different matters have been misread as mandating such an election. Thus, the requirement for certain kinds of dual nationals living abroad to take up residence

\textsuperscript{174} All such records are kept at the seat of the Australian federal government in Canberra, ACT (Australia Capital Territory).

\textsuperscript{175} See \textit{supra} note 154.

\textsuperscript{176} \textit{Id.}

\textsuperscript{177} Australian Citizenship Act, 1973, \textit{Austl. Acts} P. No. 83 § 18 (Austl.)
in the United States was mistakenly read as a demand that all dual nationals must choose to be only an American and renounce their other nationality, or vice versa. Doubtless the fact that some countries do demand such a decision of dual nationals (we have seen the examples of Mexico and Italy) has added to the belief that the same is true of the United States. Again, U.S. laws listing actions that can cause any U.S. citizens, including those who are not dual nationals, to lose their U.S. citizenship have been mistakenly transmuted into a doctrine of election between nationalities in those cases where persons do in fact have citizenship both in the United States and in another country. Finally, the fact that United States law in the past has prohibited adult U.S. citizens from acquiring another nationality without losing U.S. citizenship has contributed to the idea that no adult American is allowed to retain another citizenship.

As a result, one is very likely to find persons ignorant of the law working in consulates and passport agencies, both foreign and domestic, who are true believers in the false doctrine of election. It may very well be true, then, what a staffperson at the Australian consulate in Los Angeles told me, that U.S. officials have insisted that dual nationals give up their foreign citizenship; and it may also be true what another former employee of the Australian consulate said about Australian officials in the past insisting that dual citizens of Australia and the U.S. must surrender their U.S. passports. If so, however, they would have been acting contrary to the law, or, as one of the judges cited above put it, "under a mistake of law."\textsuperscript{178} The best defense against such illegal encroachments upon one's rights is to bring along copies of the relevant laws and policies—and specifically, where U.S. law is concerned, to have at the ready the State Department leaflet on dual nationality.\textsuperscript{179}

As I noted at the beginning of this Article, I think that the State Department is overreading the law in saying that all U.S. entries and exits are to be on U.S. passports. But it would be senseless to seek confrontation when there is no need. One should therefore always have both (or all) of one's passports available for inspection, but one should vehemently object to any attempt to confiscate a passport. All dual citizens should firmly insist on their rights, and, if these rights are threatened in some diplomatic out-

\textsuperscript{179} Infra. App. I.
post, they should immediately telephone the State Department. One should ask for the person in charge of the other country of which one is a citizen. In my first attempt to get information from the State Department, the person at the front desk gave me the wrong answer. The wrong answer, needless to say, was nothing other than the myth of election.

APPENDIX I

DUAL NATIONALITY

What It Is

[1] Dual nationality is the simultaneous possession of two citizenships. The Supreme Court of the United States has stated that dual nationality is "a status long recognized in the law" and that "a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other," Kawakita v. U.S., 343 U.S. 717 (1952). The concepts discussed in this leaflet apply also to persons who have more than two nationalities.

How Acquired

[2] Dual nationality results from the fact that there is no uniform rule of international law relating to the acquisition of nationality. Each country has its own laws on the subject, and its nationality is conferred upon individuals on the basis of its own independent do-

180. The phone numbers of the various desks of the Overseas Citizens Services are given at the end of App. II, infra.

181. This appendix is a current edition of U.S. DEP'T OF STATE LEAFLET. DUAL NATIONALITY. I have seen four versions of this leaflet, all undated:

A. Short version, dating from between the Terrazas decision of 1980 and the 1986 legislation on nationality. It lacks the subheadings, paragraphs 5, 12, 13, and 14, and most of the references to Supreme Court decisions. It also lacks the first and last sentences of paragraph 1, while the rest of paragraph 1 occurs in the place of the current paragraph 5. It also has a different conclusion to paragraph 7, as noted in the text.

B. Short version, dating from after 1986 and before 1990. Like A, but with current paragraph 5.

C. Long version, like B, but containing also paragraphs 1, 12, 13, and 14.

D. Long version, dating from around October 1990. Like C, but containing revised paragraph 7.

The text above follows D, but with the paragraph divisions of C. I have added the paragraph numbers and other bracketed matter.
mestic policy. Individuals may have dual nationality not by choice but by automatic operation of these different and sometimes conflicting laws.

[3] The laws of the United States, no less than those of other countries, contribute to the situation because they provide for acquisition of U.S. citizenship by birth in the United States and also by birth abroad to an American, regardless of the other nationalities which a person might acquire at birth. For example, a child born abroad to U.S. citizens may acquire at birth not only American citizenship but also the nationality of the country in which it was born. Similarly, a child born in the United States to foreigners may acquire at birth both U.S. citizenship and a foreign nationality.

[4] The laws of some countries provide for automatic acquisition of citizenship after birth, for example, by marriage. In addition, some countries do not recognize naturalization in a foreign state as grounds for loss of citizenship. A person from one of those countries who is naturalized in the United States keeps the nationality of the country of origin despite the fact that one of the requirements of U.S. naturalization is a renunciation of other nationalities.

Current Law and Policy

[5] The current nationality laws of the United States do not specifically refer to dual nationality. [Added after 1986. There is, however, still a reference to dual nationality in U.S.C. § 1481(a)(4)(A), as noted in Parts II and VII of the above Article.]

[6] The automatic acquisition or retention of a foreign nationality does not affect U.S. citizenship; however, the acquisition of a foreign nationality upon one's own application or the application of a duly authorized agent may cause loss of U.S. citizenship under Section 349(a)(1) of the Immigration and Nationality Act [8 U.S.C. § 1481(a)(1)].

[7] In order for loss of nationality to occur under Section 349(a)(1), it must be established that the naturalization was obtained voluntarily by a person eighteen years of age or older with the intention of relinquishing U.S. citizenship. Such an intention may be shown by the person's statements or conduct, Vance v. Terrazas, 444 U.S. 252 (1980), but in most cases it is assumed that Americans who are naturalized in other countries intend to keep their U.S. citizenship. As a result, they have both nationalities. [This is the text since 1990. Previously, after the citation of the 1980 Supreme Court
case, Terrazas, the text read: "If the U.S. Government is unable to prove that the person had such an intention when applying for and obtaining the foreign citizenship, the person will have both nationalities."

[8] United States law does not contain any provisions requiring U.S. citizens who are born with dual nationality to choose one nationality or the other when they become adults, Mandoli v. Acheson, 344 U.S. 133 (1952).

[9] While recognizing the existence of dual nationality and permitting Americans to have other nationalities, the U.S. government does not endorse dual nationality as a matter of policy because of the problems which it may cause. Claims of other countries upon dual-national U.S. citizens often place them in situations where their obligations to one country are in conflict with the laws of the other. In addition, their dual nationality may hamper efforts to provide diplomatic and consular protection to them when they are abroad.

Allegiance to Which Country

[10] It generally is considered that while dual nationals are in the other country of which they are citizens that country has a predominant claim on them.

[11] Like Americans who possess only U.S. citizenship, dual national U.S. citizens owe allegiance to the United States and are obliged to obey its laws and regulations. Such persons usually have certain obligations to the foreign country as well. Although failure to fulfill such obligations may have no adverse effect on dual nationals while in the United States because the foreign country would have few means to force compliance under those circumstances, dual nationals might be forced to comply with those obligations or pay a penalty if they go to the foreign country. In cases where dual nationals encounter difficulty in a foreign country of which they are citizens, the ability of U.S. Foreign Service posts to provide assistance may be quite limited since many foreign countries may not recognize a dual national's claim to U.S. citizenship.

Which Passport to Use

Dual nationals may be required by the other country of which they are citizens to enter and leave that country using its passport, but do not endanger their U.S. citizenship by complying with such a requirement. [See Part II of the above Article for an argument that dual nationals do not need to use U.S. passports when leaving the United States, but may fulfill the law by using a valid passport from another country.]

How to Give Up Dual Nationality

[13] Most countries have laws which specify how a citizen may lose or divest citizenship. Generally, persons who do not wish to maintain dual nationality may renounce the citizenship which they do not want. Information on renouncing a foreign nationality may be obtained from the foreign country's Embassies and Consulates or from the appropriate governmental agency in that country. Americans may renounce their U.S. citizenship abroad pursuant to Section 349(a)(5) of the Immigration and Nationality Act [8 U.S.C. § 1481(a)(5)]. Information on renouncing U.S. citizenship may be obtained from U.S. Embassies and Consulates and the Office of Citizens Consular Services, Department of State, Washington, D.C. 20520.

[14] For further information on dual nationality, see Marjorie M. Whiteman's Digest of International Law (Department of State Publication 8290, released September 1967), volume 8, pages 64-84.

APPENDIX II

ADVICE ABOUT POSSIBLE LOSS OF U.S. CITIZENSHIP AND DUAL NATIONALITY

The Department of State is responsible for determining the citizenship status of a person located outside the United States or in connection with the application for a U.S. passport while in the United States.

182. This appendix is a reprint of U.S. DEP'T OF STATE, LEAFLET, ADVICE ABOUT POSSIBLE LOSS OF U.S. CITIZENSHIP AND DUAL NATIONALITY. The leaflet is undated but was compiled around October 1990; it explains the change of policy introduced in April 1990. I have added the bracketed references.
Potentially Expatriating Statutes

Section 349 of the Immigration and Nationality Act, as amended [8 U.S.C. § 1481], states that U.S. citizens are subject to loss of citizenship if they perform certain acts voluntarily and with the intention to relinquish U.S. citizenship. Briefly stated, these acts include:

(1) obtaining naturalization in a foreign state (Sec. 349(a)(1) INA [8 U.S.C. § 1481(a)(1)]);

(2) taking an oath, affirmation, or other formal declaration to a foreign state or its political subdivisions (Sec. 349(a)(2) INA [8 U.S.C. § 1481(a)(1)]);

(3) entering or serving in the armed forces of a foreign state engaged in hostilities against the U.S. or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state (Sec. 349(a)(3) INA [8 U.S.C. § 1481(a)(3)]);

(4) accepting employment with a foreign government if (a) one has the nationality of that foreign state or (b) a declaration of allegiance is required in accepting the position (Sec. 349(a)(4) INA [8 U.S.C. § 1481(a)(4)]);

(5) formally renouncing U.S. citizenship before a U.S. consular officer outside the United States (Sec. 349(a)(5) INA [8 U.S.C. § 1481(a)(5)]);

(6) formally renouncing U.S. citizenship within the U.S. (but only "in time of war") (Sec. 349(a)(6) INA [8 U.S.C. § 1481(a)(6)]);

(7) conviction for an act of treason (Sec. 349(a)(7) INA [8 U.S.C. § 1481(a)(7)]).

Administrative Standard of Evidence

As already noted, the actions listed above can cause loss of U.S. citizenship only if performed voluntarily and with the intention of relinquishing U.S. citizenship. The Department has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain United States citizenship when they obtain naturalization in a foreign state, subscribe to routine declarations of allegiance to a foreign state, or accept non-policy level employment with a foreign government.
Disposition of Cases When Administrative Premise Is Applicable

In light of the administrative premise discussed above, a person who:

(1) is naturalized in a foreign country;

(2) takes a routine oath of allegiance; or

(3) accepts non-policy level employment with a foreign government and in so doing wishes to retain U.S. citizenship need not submit prior to the commission of a potentially expatriating act a statement or evidence of his or her intent to retain U.S. citizenship since such an intent will be presumed.

When such cases come to the attention of a U.S. consular officer, the person concerned will be asked to complete a questionnaire to ascertain his or her intent toward U.S. citizenship. Unless the person affirmatively asserts in the questionnaire that it was his or her intention to relinquish U.S. citizenship, the consular officer will certify that it was not the person’s intent to relinquish U.S. citizenship and, consequently, find that the person has retained U.S. citizenship.

Disposition of Cases When Administrative Premise Is Inapplicable

The premise that a person intends to retain U.S. citizenship is not applicable when the individual:

(1) formally renounces U.S. citizenship before a consular officer;

(2) takes a policy level position in a foreign state;

(3) is convicted of treason; or

(4) performs an act made potentially expatriating by statute accompanied by conduct which is so inconsistent with retention of U.S. citizenship that it compels a conclusion that the individual intended to relinquish U.S. citizenship. (Such cases are very rare.)

Cases in categories 2, 3, and 4 will be developed carefully by U.S. consular officers to ascertain the individual’s intent toward U.S. citizenship.
Persons Who Wish to Relinquish U.S. Citizenship

An individual who has performed any of the acts made potentially expatriating by statute who wishes to lose U.S. citizenship may do so by affirming in writing to a U.S. consular officer that the act was performed with an intent to relinquish U.S. citizenship. Of course, a person always has the option of seeking to formally renounce U.S. citizenship in accordance with Section 349(a)(5) INA [8 U.S.C. § 1481(a)(5)].

Applicability of Administrative Premise to Past Cases

The premise established by the administrative standard of evidence is applicable to cases adjudicated previously. Persons who previously lost U.S. citizenship may wish to have their cases reconsidered in light of this policy. A person may initiate such a reconsideration by submitting a request to the nearest U.S. consular office or by writing directly to:

Director, Office of Citizens Consular Services (CA/OCS/CCS)
Room 4811 NS
Department of State
Washington, D.C. 20520-4818

Each case will be reviewed on its own merits taking into consideration, for example, statements made by the person at the time of the potentially expatriating act.

Dual Nationality

When a person is naturalized in a foreign state (or otherwise possesses another nationality) and is thereafter found not to have lost U.S. citizenship the individual consequently may possess dual nationality. It is prudent, however, to check with authorities of the other country to see if dual nationality is permissible under local law. The United States does not favor dual nationality as a matter of policy, but does recognize its existence in individual cases.

Questions

For further information, please contact the appropriate geographic division of the Office of Citizens Consular Services:

Europe and Canada Division (202) 647-3445
APPENDIX III

STATE DEPARTMENT FLYER ON IRISH CITIZENSHIP

It is the Department’s understanding that under the Irish Nationality and Citizenship Act of 1956, a person born outside Ireland may be recognized as an Irish national upon establishing to the satisfaction of the Irish authorities that he or she was born of a parent or grandparent who was born in Ireland. Since the Irish citizenship is conferred by automatic operation of Irish law and not by the act of naturalization, establishing a claim to Irish citizenship by registering one’s birth in the Foreign Birth Entry and acquiring an Irish passport is considered simply a confirmation for record purposes of the automatic acquisition of Irish citizenship at birth and does not affect one’s status as a United States citizen. The person would, under those circumstances, be considered a dual citizen.

183. This appendix is a reprint of an untitled and undated flyer on Irish citizenship from the U.S. Department of State, a copy of which is on file with the author. The flyer was issued in response to the 1956 Irish Act.