

The Legal Effects of Dual Nationality

By Lester B. Orfield*

I. HOW DUAL NATIONALITY ARISES

From an examination of the nationality laws of seventy states, a leading American expert concludes that

seventeen are based solely on *jus sanguinis*, two equally upon *jus soli* and *jus sanguinis*, twenty-five principally upon *jus sanguinis* but partly on *jus soli*, and twenty-six principally upon *jus soli* and partly upon *jus sanguinis*.¹

This must inevitably lead to cases of dual nationality as to children of foreign parents. Furthermore as pointed out by the late Chief Justice Hughes: "As municipal law determines how citizenship may be acquired, it follows that persons may have a dual nationality."²

Some writers of the United States assert that dual nationality includes only a nationality status at birth.³ It seems more common, however, to include nationality acquired after birth as by naturalization or by marriage or by legitimation. Thus, there are two main classes of dual nationality: at birth and acquired subsequent to birth. The former has been referred to as "original nationality" and the latter as "derivative nationality."⁴

The principal cases of dual nationality, only the first involving dual nationality at birth, arises in the following ways:

- (1) Birth in a state the law of which impresses upon the person the nationality under the *jus soli*, while the nationality of another country attaches because of the *jus sanguinis*, the parents (or one of them) being nationals of other states.
- (2) Birth of an illegitimate child in one state followed by its legitimation by its foreign-born father.
- (3) Naturalization in a state the nationality of which is acquired by the person, without the loss of the nationality borne prior to the naturalization.
- (4) Joining the armed forces of another state and acquiring its nationality without losing the old nationality.
- (5) Return of a naturalized citizen to the country of his origin and reacquisition of his former nationality without loss of that which he gained by naturalization.

- (6) Acquisition of a nationality by a child through the parents (foreign) naturalization, without loss by the child of the nationality which he previously had.
- (7) Marriage to a spouse whose nationality is acquired without loss of the prior nationality.

II. WHAT THE CONSEQUENCES OF DUAL NATIONALITY ARE

Even outside the territorial limits of a state, a person having only its nationality is in many important respects subject to its laws. He may be recalled and penalized for his failure to return.⁵ He may be taxed.⁶ He may be punished for crimes committed outside the state.⁷ He may be subjected to judgments obtained against him *in absentia*.⁸ Conceivably a person having two nationalities might be exposed to such claims made by both states.

In practice, however, it is the presence of the individual who remains or resides within its territory, which justifies a state claiming him as a national, though another state also claims him, in exacting from him the performance of duties that ordinarily may be demanded of a national.⁹ This is true of both adults and minors. The other state should not and does not interfere with the first state's claim to him. With respect to physical control over his body only the state of his residence may reach him.

A person with dual nationality may be subjected to taxes by both states of which he is a national. He is not entitled to protection by one of the two states of which he is a national while in the territorial jurisdiction of the other.¹⁰ Either state not at war with the other may insist on military service when the person is present within its territory. In time of war if he supports neither belligerent, both may be aggrieved. If he supports one belligerent, the other may be aggrieved. One state may be suspicious of his loyalty to it and subject him to the disabilities of an enemy alien, including sequestration of his property, while the other holds his conduct treasonable.

Possibly the most valid objection to dual nationality arises in states where status and personal rights depend on nationality rather than domicile.¹¹ In South America, for example, Brazil has embraced the doctrine of nationality while Argentina adheres to the traditional basis of domicile.¹²

The Department of State has held that a person who has the nationality of a foreign state as well as that of the United States and who has resided for a long period of time in such foreign state should not be granted a passport of this

government except for use in returning to the United States.¹³ Children not born in the United States but citizens *jure sanguinis*, continuing to reside outside of the United States, are deemed by the Department of State to be entitled to passports during minority.¹⁴ Children born to foreign parents in the United States, if taken to the state of the parents' nationality, are deemed to be entitled to passports during minority.¹⁵

A solution as to military service is offered in Article One of the Protocol Relating to Military Obligations in Certain Cases of Double Nationality, signed at The Hague on April 12, 1930, to which the United States is a party and which is now in effect, providing:

A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country, shall be exempt from all military obligations in the other country or countries.¹⁶

An American statute authorizes the restraint and detention in wartime of "all natives, citizens, denizens, or subjects of the hostile nation or government...who shall be within the United States and not actually naturalized."¹⁷ The Department of Justice did not interpret this as authorizing detention of American citizens who also possess enemy citizenship.¹⁸

Following the end of a war, difficult questions may arise as to the right of one of dual nationality of the two hostile countries to the return of property seized by the Alien Property Custodian. It was recently held that a native-born American citizen stranded in Germany upon the outbreak of hostilities in 1939, and thereafter marrying a German citizen, thus acquiring German citizenship, could, on her return to the United States, properly apply for and obtain a return of her property seized by the Alien Property Custodian since under the law of the United States she had continued to be a citizen thereof.¹⁹

Dual nationality may have serious effects when claims are espoused by the state of one nationality against the state of the other nationality. When a person of dual nationality resides in one of the states of his nationality, the other will not generally espouse a claim on his behalf against the country of his residence.²⁰

If the time should come, through the operation of an International Bill of Rights or otherwise, that the right to fair treatment is regarded as the right of an individual and not merely the right of a state with which he is connected, the law as to dual nationality would undergo a striking change. As Jessup states:

If X is a national of both States A and B and is mistreated in B, A could make legal representations on his behalf and B could not offer as a defense that X was at the same time its national, since B would owe a duty to X, not as a national of A, but as an individual. Granted appropriate procedural developments in international relations, such as the establishment of special claims commissions to which the individual would have the right of direct access, X himself could present his claim, and the question of nationality would clearly become irrelevant and immaterial.²¹

How is one having dual nationality to be treated in a third country not claiming him as a national? Article 5 of The Hague Convention of 1930 offers a satisfactory solution in providing:

Within a third state a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third state shall, of the nationalities which any such person possesses, recognize exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.²²

III. DUAL NATIONALITY AT BIRTH

Dual nationality at birth may arise from the application of the *jus soli* and the *jus sanguinis*. One can of course be born in only one place, so that only one *jus soli* can apply. Most cases of *jus soli* will involve birth in the physical territory of the state, but under the views of some states the *jus soli* will include the territorial waters²³ and ships on the high seas flying the flag of the state.²⁴ Where both parents have the same nationality, only one *jus sanguinis* will apply. But if the parents have separate nationalities, neither of the place of birth, and if women have been equalized with men, as have women of the United States, then the nationality of two states will be applied as to *jus sanguinis*. But no other law than those of *jus sanguinis* and *jus soli* should be applied as to nationality at birth. Such is the provision of Article 3 of the Harvard Research in International Law, the Law of Nationality:

A state may not confer its nationality at birth upon a person except upon the basis of

- (a) the birth of such person within its territory or a place assimilated thereto (*jus soli*), or

(b) the descent of such person from one of its nationals (*jus sanguinis*).

Limitations on the rule of citizenship *jure sanguinis* will materially reduce the number of cases of dual nationality. In 1925 Mussolini announced: "Once an Italian, always an Italian, to the seventh generation." A reasonable solution is the following:

A state may not confer its nationality at birth (*jure sanguinis*) upon a person born in the territory of another state beyond the second generation of persons born and continuously maintaining an habitual residence therein, if such person has the nationality of such other state.²⁵

The rule of the United States goes even farther in reducing the possibility of dual nationality. Even though both parents are American citizens, one of them must have resided in the United States prior to the birth of the child.²⁶

A number of states confer citizenship *jure sanguinis* upon children, if one of the parents is a national even though such parent be the mother.²⁷ This, of course, increases the number of cases of dual nationality. It seems well to reduce such cases by requiring as does the United States that the parent through whom nationality is gained must have resided in the state conferring nationality prior to birth of the child and that the child must before reaching the age of twenty-one have taken up residence for a five year period between the ages of thirteen and twenty-one in such state; hence if he fails to establish residence before attaining sixteen his American citizenship will cease.²⁸ The citizen parent must have had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years.

Application of the *jus soli* to children born of aliens of certain classes results in some unfortunate cases of dual nationality. For instances in the United States children of foreign consuls,²⁹ of transient aliens, and of aliens on merchant vessels within American territorial waters are probably American citizens. The solution seems to be a statute providing an easy mode of expatriation. In states regarding as nationals persons born on their ships on the high seas, the same solution would apply.

Dual nationality as to children of unknown parentage is largely eliminated in the United States by the statutory provision that a child "of unknown parentage found in the United States, until shown not to have been born in the United States" is an American national and citizen.³⁰

The United States eliminates many possible cases of dual nationality as to persons born in its outlying possessions. Mere birth in the outlying possession does not confer American nationality. One of the parents must have American nationality (not necessarily citizenship).³¹ The Department of State has for years held that a child born of a citizen of the United States in an outlying possession of the United States acquired citizenship of the United States *jure sanguinis*.³²

Dual nationality as to native-born American citizen of one *jure sanguinis* who goes abroad to enter a foreign army or accept employment under a foreign government is very stringently restricted by a statutory provision that such a person is presumed to expatriate himself when he remains for six months or longer within any foreign state of which he or either of his parents shall have been a national.³³ Strangely enough the statute does not apply to naturalized citizens. Its purpose seems to have been to protect against subversive activities.³⁴ There is no other statutory provision applicable to individuals who acquire dual nationality at birth. Under one statute, a citizen of the United States is able to make his election effective without question, thus divesting himself of his American allegiance, by making a formal renunciation of American nationality before proper authorities.³⁵ But the act does not provide for the common case, that of a failure to take affirmative action. Thus the doctrine of election may continue here so far as the right to diplomatic protection abroad is concerned.

Perhaps the simplest and most satisfactory solution as to persons having dual nationality at birth is

an agreement under which persons born with a dual nationality should after reaching majority be considered citizens of the country in which they are domiciled at the time of reaching majority. Under such a provision those residing in a third country might be considered citizens or subjects of the one of the two countries claiming their allegiance in which they were last domiciled.³⁶

Customary international law furnishes no solution since as Flournoy states:

If it is true that international law recognizes election, it recognizes it merely as a principle and not as a definite rule of action.³⁷

Article 12 of the Draft Convention on Nationality prepared by the Research in International Law, Harvard Law School provides:

A person who has at birth the nationality of two or more states shall, upon his attaining the age of twenty-three years, retain the nationality only of that one of

those states in the territory of which he then has his habitual residence; if at that time his habitual residence is in the territory of a state of which he is not a national, such person shall retain the nationality only of that one of those states of which he is a national within the territory of which he last had his habitual residence.³⁸

A result of the Nationality Act of 1940 is that four possible ages ranging from sixteen to twenty-three will be employed under varying circumstances to determine nationality. The age may be as low as sixteen when a child born abroad of American parents fails to acquire residence in the United States before attaining the age of sixteen.³⁹ As to derivative nationality the age will be eighteen under the statutory provision that a child born of alien parents outside of the United States becomes a citizen of the United States upon the naturalization of both parents, the surviving parent, or the parent having legal custody of the child, provided the child is under eighteen at the time the parent is naturalized.⁴⁰ The age will be twenty-one as to many cases of dual nationality at birth, such as native-born children of foreign parents and foreign-born children of native parents.⁴¹ The age will be twenty-three as to children of parents naturalized abroad,⁴² or residing abroad for certain periods.⁴³

IV. DUAL NATIONALITY ACQUIRED SUBSEQUENT TO BIRTH

Today in most states a national can expatriate himself through naturalization in another state. In 1935 forty-three states provided for the unconditional loss of nationality upon naturalization in another state, while twenty-four states required the consent of the government before a national could acquire the nationality of another state.⁴⁴ Thus, today most states, like the United States,⁴⁵ make denationalization automatic upon naturalization in a second state. Until 1940 the statutes of the United States postulated loss of original nationality on naturalization elsewhere as a principle of international law.

The Hague Conference of 1930 failed to grapple with some of the major problems of dual nationality. Notably, it failed to establish the principle that naturalization abroad terminates prior nationality, although it adopted a *voeu* recognizing it to be “desirable that states should apply the principle that the acquisition of a foreign nationality involves the loss of a previous nationality.” The Harvard Research in International Law, the Law of Nationality deals squarely with the issue in Article 13:

Except as otherwise provided in this convention, a state may naturalize a person who is a national of another state, and such person shall thereupon lose his prior nationality.

Article 15 of the Universal Declaration of Human Rights, adopted on December 10, 1948, provides:

No one shall be arbitrarily deprived of his nationality nor denied the right of change his nationality.⁴⁶

It seems a fair assumption that the word “change” means not only the acquisition of a new but also the loss of an old nationality.

As above stated, the United States has done its part to eliminate dual nationality following naturalization. Dual nationality as to even native born Americans who become naturalized in other countries is prevented by the statutory provision that a person

who is a national of the United States, whether by birth or naturalization, shall lose his nationality

by obtaining naturalization in a foreign state.⁴⁷

Dual nationality of American born and even naturalized minors through the naturalization of their parents in other countries is largely eliminated after attainment of adulthood by statutory provisions that American nationality is lost when the child attains the age of twenty-three years without acquiring permanent residence in the United States.⁴⁸ Thus it is the policy of the United States to regard dual nationality of minors as not objectionable. The protection of the rights of minors against unintelligent loss of citizenship is regarded as more important than the complete elimination of dual nationality.

Conversely, the United States has done its part to eliminate double nationality as to children of parents becoming naturalized in the United States by requiring that the child reside in the United States at the time of naturalization of the parent or parents or thereafter begin to reside permanently in the United States while under the age of eighteen years; moreover the naturalization of the parent or parents must take place while the child is under eighteen.⁴⁹ Thus many children of immigrants to the United States will have only their original nationality. As to those children gaining American nationality through the naturalization of their parents, the country of origin may prevent dual nationality by providing for their expatriation. Treaties have sometimes so provided.⁵⁰

Cases of dual nationality as to persons who have become naturalized American citizens and then left the United States are substantially reduced by statutory provisions that a naturalized citizen who resides for two years in the territory of a

foreign state of which he was formerly a national or in the country of his birth shall lose American nationality “if he acquires through such residence the nationality of such foreign state.”⁵¹ Moreover with certain exceptions he will lose his American nationality if he resides continuously for three years in such places regardless of whether he acquires the nationality of the state of residence.⁵² Likewise with certain exceptions he will lose his American citizenship if he resides continuously for five years in any other foreign state.⁵³

Where a new nationality is gained by way of naturalization it would seem desirable that the person naturalized take up residence in the country of naturalization. Yet a number of states have conferred nationality without such residence.⁵⁴ Article 14 of the Harvard Research in International Law, *The Law of Nationality* provides:

Except as otherwise provided in this convention, a state may not naturalize an alien who has his habitual residence within the territory of another state.

According to certain writers it is a doctrine of customary international law that compulsory naturalization is not permissible.⁵⁵ In other words no state may confer its nationality upon nationals of another state unless the individual himself asks for such a change of his status. The United States has several times protested against Latin-American laws providing for automatic naturalization of certain classes of aliens. The protests were successful. For example the reformed nationality law of Mexico in 1939 dropped the provision of the former law of May 28, 1886 under which aliens acquiring real estate in Mexico and failing to make a declaration of their nationality of origin thereby automatically become Mexican nationals.⁵⁶ A different rule, however, is applicable to cases of inhabitants of territories transferred from one state to another. If such persons are nationals of the first state, their nationality is as a rule transferred to the second state with the transfer of the territory if they remain therein. This matter is frequently governed by treaty.⁵⁷

Under the proposed draft of a new Argentinean constitution foreigners who spent two years in Argentina must become citizens or leave the country. This would affect from 3,000 to 4,000 citizens of the United States, and 13,000 British subjects. It was not clear that the old nationality would be recognized by Argentina as still continuing. It is arguable that this is not compulsory naturalization. As Jessup states:

It may be noted, however, that just as the legal consequences of expatriation may properly ensue upon certain voluntary acts of the individual, so there is no

reason why a state may not assert that naturalization will automatically result from certain acts.⁵⁸

Article 15 of the Harvard Research in International Law, the Law of Nationality, provides:

Except as otherwise provided in this convention, a state may not naturalize a person of full age who is a national of another state without the consent of such person; but a state may naturalize a person not of full age, in connection with its naturalization of his parent, without the consent of such person.⁵⁹

Dual nationality of married women may arise where a woman having the nationality of one country marries a man having the nationality of another country, which regards her as taking the nationality of her husband, although the other country regards her as retaining her former nationality. In the United States dual nationality of an alien woman marrying an American has been ended since 1922.⁶⁰ However, it is made easier for her to acquire American nationality in two respects: (1) no declaration of intention is required; and (2) she need reside in the United States only three years preceding the filing of the petition instead of five.⁶¹

Dual nationality may arise as to illegitimate children of American fathers born abroad. The American statute provides for American nationality as to illegitimate children of American fathers “provided the paternity is established during minority by legitimation, or adjudication of a competent court.”⁶²

Dual nationality as to Americans joining the armed forces of other states and thereby acquiring a foreign nationality is prevented by the statutory provision that an American national shall lose his nationality by “entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state.”⁶³

V. POSSIBLE GENERAL SOLUTIONS

What has caused the difficulties and slowness in the solution of dual nationality problems? Professor Hyde has concluded that political considerations “produce reluctance in the surrendering of claims to allegiance even under circumstances when they lack merit.”⁶⁴ This was the cause of the failure of the Hague Conference of 1930. The desire of some states to retain man-power causes reluctance to surrender up claims to nationality or allegiance. Yet the demands of international justice should be the determining factor. Certain continued contacts between a

state and a person especially through residence within the state's territory may give that state the strongest and soundest claim.

The preamble to the 1930 Hague Convention recognized that

the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality.

At the same time it recognized that

under the economic and social conditions which at present exist in the various countries, it is not possible to reach immediately a uniform solution of all the above mentioned problems.

At one time there were provisions in the constitutions or laws of Czechoslovakia, Estonia, Latvia, Lithuania, and Poland forbidding dual nationality.⁶⁵ But this could scarcely prevent other states from claiming dual nationality. There would be no dual nationality under the law of the states having such provision. But under the law of other states or under international law there still might be dual nationality.⁶⁶

One solution would be for all states to apply a single rule in determining nationality, as for example, the *jus sanguinis*. This rule would be more than acceptable to states where emigrants exceed immigrants. But in North and South America where immigrants are being constantly received, the rule would gain but small support. The United States of America would have to repeal the Fourteenth Amendment which lays down the *jus soli* as one basis of citizenship.

Vattel has suggested a compromise solution. Let the nationality of the child follow that of the father, but if the father takes up his abode in another state, then his nationality and that of his child will be that of such state.⁶⁷ This rule would thus make native citizenship depend on the parental domicile, rather than upon descent or place of birth. The children of domiciled aliens would become citizens, but not those of alien sojourners. Flournoy has favored Vattel's proposal.⁶⁸ Failing the adoption of this solution Flournoy favors a uniform rule of election following minority to be adopted only by international conventions, supplemented by uniform legislation in the several states. Domicile at the age of reaching majority would be the test.

A distinguished English lawyer and author has suggested that those "who are permanently settled in its territory with no definite intention of departing

therefrom” be treated as nationals of such state.⁶⁹ “A year’s residence would not be too much to extract.”⁷⁰

The late Dean Wigmore would identify citizenship with domicile, both internationally (as affecting the state’s rights over its citizens) and externally (as affecting the state’s rights against other states).⁷¹ He would also make citizenship compulsory, and make the new resident elect within two years of his arrival; two years’ residence should be enough to become a citizen. Finally, such citizenship must be exclusive. An able analyst has recently stated that it is “no unreasonable guess that domicile rather than birthplace or filiation may in the future be the favorite fact of attachment for the acquisition of nationality.”⁷²

Flournoy rejects domicile as the basis for nationality, stating that “because of its vagueness and uncertainty, it would lead to more confusion than the present clash of nationality laws.”⁷³ Domicile is not easy to ascertain in all cases. Moreover the Fourteenth Amendment lays down the *jus soli* in the United States. As a practical matter the prospect of the adoption of domicile as the test seems slight.

VI. RECOMMENDATIONS

1. The elimination of dual nationality of adults should be recognized as an attainable goal.
2. It should be recognized that not all cases of dual nationality during minority are obnoxious.
3. To avoid more than one claim for military service, the Hague Protocol limiting military service to the state of habitual residence should be adopted.
4. An International Bill of Rights should be adopted, so that when there is a claim of unfair treatment to an individual by one of the countries involved in a case of dual nationality, the victim may himself appeal directly to an international commission.
5. The number of cases of dual nationality at birth should be decreased by national statutes forbidding the application of the *jus sanguinis* upon a person born in another state beyond the second generation of persons born and maintaining an habitual residence therein.
6. Each state should provide by statute that persons having dual nationality at birth should upon attaining twenty-three years of age retain the nationality only of that state in which he habitually resides.
7. Each state should by statute provide that upon the naturalization of its citizens in another state they lose their old nationality.

8. Each state should by statute provide that when its citizens establish a residence abroad with their children, such children should lose their old nationality if they fail to return and acquire permanent residence in the state before reaching twenty-three.
 9. Each state should by statute provide that its naturalized citizens who return to their original state for two or more years and thereby reacquire their original nationality shall thereupon lose its nationality.
 10. Each state should provide by statute that residence is a prerequisite to naturalization.
 11. No state should naturalize a person of full age without his consent.
 12. Each state should provide by statute that the sole fact of marriage to its national shall not confer nationality.
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Footnotes:

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1. Flournoy, *Research in International Law, Nationality* (1929) 23 Am. J. Int. L. Special Supp. 21, 29.
2. Perkins v. Elg, 307 U. S. 325, 329, 59, Sup. Ct. 884, 83 L. ed. 1320 (1939).
3. Sandifer, *The Elg Case: Election of Citizenship at Majority by Minors* (1940) 14 U. of Cin. L. Rev. 423, 431; Flournoy, *Nationality Convention, Protocols and Recommendations Adopted by the Conference on the Codification of International Law* (1930) 24 Am. J. Int. L. 467, 470 (or at marriage). This view was predicated on the theory that naturalization resulted in expatriation.
4. Note (1941) 25 Minn. L. Rev. 348, 349.
5. Blackmer v. United States, 284 U. S. 421, 52 Sup. Ct. 252, 76 L. ed. 375 (1932).
6. Cook v. Tait, 265 U. S. 47, 44 Sup. Ct. 444, 68 L. ed. 859 (1924).
7. Rex v. Casement, [1917] 1 K. B. 98.
8. Grubel v. Nassauer, 210 N. Y. 149, 103 N. E. 1113 (1914).
9. 2 Hyde, *International Law* (2d ed. 1945) p. 1113; Hanna, *Nationality and War Claims* (1945) 45 Col. L. Rev. 301, 308-309.
10. Article 4 of the 1930 Hague Convention on Conflict of Nationality Laws provides: "A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possess." While this

convention went into effect July 1, 1937, the United States did not sign it and has not become a party to it, principally because it contains no recognition of the right of expatriation through naturalization.

11. Goodrich, *Conflict of Laws* (2d ed. 1938), sec. 15, p. 28; Lorenzen, *The Pan-American Code of Private International Law* (1930) 4 Tulane L. Rev. 499. The French, German and Italian Codes are based on the principle of nationality. The Bustamante Code, Article 7, leaves it open to each contracting state to choose either the principle of nationality or of domicile.
12. Lorenzen, *Developments in the Conflict of Laws, 1902-1942* (1942) 40 Mich. L. Rev. 781, 802.
13. 3 Hackworth, *Digest of International Law* (1942) p. 357.
14. Hyde, *op. cit. supra* note 9 at p. 1134.
15. *Id.* at p. 1136.
16. See discussion *Id.* at pp. 1157-1159. To similar effect see Article 11 of the Harvard Research, *The Law of Nationality* 40 (1929) *supra* note 1.
17. 40 Stat. 531 (1918), 50 U.S.C. § 21 (1946).
18. See S. Rept. 1496, 88th Cong., p. 2 (1942); Note (1948) 34 A. B. A. J. 321.
19. *Zander v. Clark*, 80 F. Supp. 453 (D. C. 1948).
20. *The Canevaro Case* (1912) Scott, *Hague Court Reports* 284 (1916); *United States (Alexander Tellech) v. Austria and Hungary*, *Tripartite Claims Commission, Decisions and Opinions* (1929) p. 71.
21. Jessup, *A Modern Law of Nations* (1948) p. 100-101.
22. 24 Am. J. Int. L. 192-195 (Supp. July 1930). The United States did not sign or adhere. Hyde proposes a similar solution as to children. Hyde, *op. cit. supra* note 9 at p. 1134.
23. Children born on a merchant vessel within American territorial waters are American citizens, but not those born on a foreign public ship. Note (1941) 54 Harv. L. Rev. 860, 861 n. 9. Compare Note (1941) 27 Va. L. Rev. 531, 532 n. 8. The Canadian law is not clear. Tamaki, *The Canadian Citizenship Act, 1946* (1947) 7 U. of Toronto L. J. 68, 74.
24. Children of foreigners born aboard an American ship on the high seas are not American citizens. *In re Lam Mow*, 19 F. (2d) 951 (N. D. Calif. 1927) *aff'd sub. nom.* *Lam Mow v. Nagle*, 24 F. (2d) 316 (C. C. A. 9th, 1928). The Mexican Constitution, Article 30 provides that "persons born on board Mexican warships or merchant vessels or aircraft" have Mexican nationality. Persons born on a Canadian ship are Canadians. Tamaki, *supra* note 23 at p. 73.
25. *Research in International Law*, Harvard Law School, *Draft Convention on Nationality*, Art. IV, (1929) 23 Am. J. Int. L., Spec. Supp. 30.
26. 54 Stat. 1138 (1940), 8 U. S. C. § 601 (c).

27. Orfield, *The Citizenship Act of 1934* (1934) 2 U. of Chi. L. Rev. 99, 101. Under Canadian law there is citizenship through the father, except as to illegitimates. Tamaki, *supra* note 23 at pp. 75, 76.
28. 54 Stat. 1139 (1940), 8 U. S. C. § 601 (g). As to the Canadian law on this point see Tamaki, *supra* note 23 at pp. 86, 87.
29. Article 12 of the Hague Convention of 1930 provided: “The law of each State shall permit children of consuls *de carrière*, or of officials of foreign States charged with official missions by their Governments to become divested, by repudiation or otherwise, of the nationality of the State in which they were born, in any case in which on birth they acquire dual nationality, provided that they retain the nationality of their parents.” See also Article 6 of the Harvard Research in International Law, *The Law of Nationality*. *Supra* note 25.
30. 54 Stat. 1138 (1940), 8 U. S. C. § 601 (f) (1946). For the similar Canadian rule see Tamaki, *supra* note 23 at p. 87.
31. 54 Stat. 1139 (1940), 8 U. S. C. § 604 (1946).
32. 54 Stat. 1138 (1940), 8 U. S. C. § 601 (e) (1946).
33. 54 Stat. 1169 (1940), 8 U. S. C. § 802 (1946).
34. The reason for section 802 was the insistence of the War Department that provision be made for “checking the activities of persons regarded as prospective 'fifth columnists.'” 86 Cong. Rec. 18090 (1940).
35. 54 Stat. 1169 (1940), 8 U. S. C. § 801 (f) (1946).
36. Flournoy, *New British Imperial Law of Nationality* (1915) 9 Am. J. Int. L. 870, 879.
37. Flournoy, *Dual Nationality and Election* (1921) 30 Yale L. J. 693, 706.
38. (1929) 23 Am. J. Int. L., Spec. Supp. 41.
39. 54 Stat. 1139 (1940), 8 U. S. C. § 601 (g) (1946). Under the 1934 Act the age was thirteen. Such early age has been advocated to ensure acquisition of American characteristics. Note (1941) 54 Harv. L. Rev. 860, 862.
40. 54 Stat. 1169 (1940), 8 U. S. C. § 714 (1946). Under 54 Stat. 1170 (1940), 8 U. S. C. § 803 (b) (1946) American nationals under eighteen may not expatriate themselves except in certain rare cases.
41. This is the long recognized legal age used in the application of the doctrine of election. See Hyde, *op. cit. supra* note 9 at p. 1133 n. 3, as to recent practice of the State Department, also pp. 1136, 1137.
42. 54 Stat. 1169 (1940), 8 U. S. C. § 801 (a) (1946).
43. 54 Stat. 1170 (1940), 8 U. S. C. § 807 (1946).
44. Sandifer, *A Comparative Study of Laws Relating to Nationality at Birth and to Law of Nationality* (1935) 29 Am. J. Int. L. 248, 271.

45. 54 Stat. 1168 (1940), 8 U. S. C. § 801 (a) (1946).
46. (1949) 35 A. B. A. J. 32, 33. See Jessup, *A Modern Law of Nations* (1948) p. 75.
47. *Supra* note 45.
48. 54 Stat. 1168, 1170 (1940), 8 U. S. C. §§ 801 (a), 807 (1946). Under the Canadian law a minor child of a “responsible parent” who ceases to be a Canadian citizen by voluntary act, ceases to be a Canadian citizen unless he gets no new nationality. Tamaki, *supra* note 23 at pp. 88, 90.
49. 54 Stat. 1169 (1940), 8 U. S. C. § 714 (1946). For Canadian law on this point see Tamaki, *supra* note 23 at p. 88.
50. Orfield, *Expatriation of American Born Minors* (1940) 38 Mich. L. Rev. 585, 596 n. 44.
51. 54 Stat. 1170 (1940), 8 U. S. C. § 804 (a) (1946).
52. 54 Stat. 1170 (1940), 8 U. S. C. § 804 (b) (1946).
53. 54 Stat. 1170 (1940), 8 U. S. C. § 804 (c) (1946).
54. Rohrllich, *World Citizenship* (1932) 6 St. John’s L. Rev. 246, 253-255.
55. Koessler, “*Subject,*” “*Citizens,*” “*National,*” and “*Permanent Allegiance*” (1946) 56 Yale L. J. 58, 74; Jessup, *op. cit. supra* note 46 at p. 76; Hyde, *op. cit. supra* note 9 at pp. 1089, 1090.
56. Koessler, *The Reformed Mexican Nationality Law* (1943) 5 La. L. Rev. 420, 425.
57. Van Dyne, *Citizenship of The United States*, Chap. IV; 2 Moore, *International Law Digest* § 379; Harvard Research, *Draft Convention on Nationality*, Art. 18. *Supra* note 25 at p. 60.
58. New York Times, January 11, 1949. The new constitution as finally adopted provides automatic citizenship for aliens after five years’ residence unless they decline to accept it. Philadelphia Evening Bulletin, March 12, 1949.
59. Jessup, *op. cit. supra* note 46 at p. 76. Professor Hyde, however, concludes that a transfer of allegiance is involuntary when without the consent of the individual it is made the legal consequence of his residence within the territory of a state or of his purchase of land. Hyde *op. cit. supra* note 9 at p. 1089.
60. See 54 Stat. 1144 (1940), 8 U. S. C. § 710 (1946) and Historical Note, Hyde, *op. cit. supra* note 9 at pp. 1117-1121. The Canadian Citizenship Act of 1947 is to the same effect. *The Canadian Citizenship Act* (1947) 25 Can. B. Rev. 346, 368, 369.
61. 54 Stat. 1144 (1940), 8 U. S. C. § 710 (b) (1946). The same rule is applied to an alien marrying an American woman.

62. 54 Stat. 1139-40 (1940), 8 U. S. C. § 605 (1946). For Canadian law on this point see Tamaki, *supra* note 23 at pp. 74, 86.
63. 54 Stat. 1169 (1940), 8 U. S. C. § 801 (c) (1946). See Note (1941) 54 Harv. L. Rev. 860, 868.
64. Hyde, *op. cit. supra* note 9 at p. 1131.
65. Dickinson, Cases and Other Readings on the Law of Nations (1929) pp. 221 n. 13, 234 n. 22.
66. *Supra* note 4 at p. 356.
67. Vattel, Law of Nations (1758) Book I, Ch. 29, sec. 215. See also H. Monroe Smith, Book Review, (1911) 6 Pol. Sci. Q. 737.
68. Flournoy, *supra* note 37 at pp. 706-709.
69. Baty, *The Interconnection of Nationality and Domicile* (1919) 13 Ill. L. Rev. 363, 373.
70. *Id.* at p. 374.
71. Wigmore, *Domicile, Double Allegiance, and World Citizenship* (1927) 21 Ill. L. Rev. 761, 762. Jessup states that residence “has been a familiar criterion under international law for aiding in the solution of problems of dual nationality.” Jessup, *op. cit. supra* note 46 at p. 70.
72. Koessler, *supra* note 55 at p. 76.
73. Flournoy, *supra* note 37 at p. 705.