Student Note: An Afro-American Perspective on Dual Citizenship

By
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The meaning of citizenship has been an ever expanding one: citizenship has been defined as the state of being a member of society; it has been thought of as the nationality of an individual; others consider the individual citizen to be a member of the international legal community able to define and change his existence and to receive the benefits of the Law of Nations.

A citizen of a state is one who possesses the privileges, rights, and duties as defined by the Constitution of that nation-state.[1] Logically then, one who is a citizen of two or more states possesses the privileges, rights, and duties as defined by the Constitution of each of the states of his citizenship.

> The concept of dual citizenship recognizes that a person may have and exercise rights or 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.[2]

Dual nationality is "a status long recognized in the law,"[3] though not always favorably.[4] The acquisition of dual citizenship occurs in the same manner as one acquires single citizenship. Indeed, one may by the incident of his birth acquire dual citizenship.

This note will examine the feasibility of dual citizenship for the African citizen of the United States and the Caribbean (otherwise known as Afro-American, Black, Negro, Colored) with the land of his origin—Africa by focusing on:

(1) the means of acquiring citizenship or nationality (hereinafter used synonymously);
(2) the constitutional support for dual citizenship from the American perspective; and
(3) the political, social, and economic imperatives for opening the pathways to dual citizenship by African and independent Caribbean nation-states for the African citizen of the United States, Caribbean subjects and colonial foreign nationals.

Practically speaking, the concept of dual citizenship is more a matter of the spirit than of the flesh, because it is not possible for one person to be in two places at the same time. Since satisfying the flesh can only be accomplished in one place, dual citizenship becomes crucial when an individual is denied rights as a citizen at his place of residence or domicile. Historically this has been the case for

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1. BLACK'S LAW DICTIONARY (4th ed. 1968).
2. Kawakita v. United States, 343 U.S. 717, 723, 234 (1952).
3. *Id.* at 717.
4. Rogers v. Bellei, 401 U.S. 815 (1971); Savorgun v. United States, 338 U.S. 491 (1950).

Africans in America who constantly do battle in the courts for the rights of citizenship, but who have always been burdened with the duties of citizenship. There are countries in Africa (South Africa, Rhodesia) that have completely denied Blacks in their own lands. The present rulers of those lands have developed the legal fiction called *apartheid*, a doctrine similar to the "separate but equal doctrine" found in the constitutional history of America. There Africans are the majority, the natural owners of the lands, but are yet denied the rights of citizenship.

An examination of the concept of dual citizenship poses legal as well as political implications. This article does not pretend to be an exhaustive study, but does hope to raise the level of discussion by providing a framework for the consideration of unification through citizenship.

Acquisition of Citizenship

It is a recognized principle of international law that nationality is determined under the laws of each nation-state. Articles I and II of the Hague Convention of 1930 provides as follows:

> Article I. It is for each state to determine under its own law who are its nationals. This law shall be recognized by other states insofar as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality. Article II. Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.[5]

There are five possible ways of acquiring nationality: birth, naturalization, redintegration, subjugation, and cession.[6] Most individuals acquire nationality by birth either through *jus sangunis* where one born to the nationals of a given State automatically becomes a citizen of that State whether born within or outside of the territory; or through *jus soli*, where, regardless of the citizenship of the parents, one born within that territory becomes a citizen thereof.[7] Many countries afford the acquisition of citizenship through *jus sangunis* and *jus soli* thereby allowing dual citizenship to many persons upon birth.

Naturalization allows an alien by birth to acquire the nationality of the naturalizing State. It is the second most widely used means for acquiring citizenship, and the means most readily available for African and Caribbean Nations to confer dual citizenship on those applying for same. "Naturalization . . . can be defined as reception of an alien into the citizenship of a State through a formal act on the application of the individual concerned. International law does not at present provide any rules for such reception, but it recognizes the competence of every State to increase the number of its subjects through naturalization."[8] In his treatise on International Law, Mr. Oppenheim states:

> The object of naturalization is always an alien. Some States will naturalize such aliens only as are stateless because they never have been

5. Hague Convention on Certain Questions Relating to the Conflict of Nationality Law, 12 April 1930, 179 L.N.T.S. 89: J.G. STARKE, An Introduction to International Law 281 (5th ed. 1963). *See generally*, M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 105 (1970).

6. 1 L. OPPENHEIM, INTERNATIONAL LAW 644-645 (8th ed. 1955). Redintegration (natural-born citizens who have lost original nationality and who later recover same), subjugation and cession will not be discussed in this paper.

7. *Id.* at 651. *See also* STARKE *supra* note 2, at 280.

8. *Id.* at 660. This discussion on the methods of acquiring citizenship relies heavily on *Id.* 650-663.

> citizens of another State or because they have renounced, or been released from, or deprived of, the citizenship of their home State. *But other States naturalize also such aliens as are, and remain, subjects of their home States* (emphasis added). Most States . . . naturalize such persons only as have taken up their domicile in their country, have been residing there for some length of time, and intend permanently to remain in their country. Although every alien may be naturalized, no alien has, according to the Municipal Law of most States, a claim to become naturalized, naturalization being a matter of discretion for the Government, which can refuse it without giving any reasons. If granted, naturalization makes an alien a citizen. But it is left to the discretion of the naturalizating State to grant naturalization upon any conditions it likes. Naturalization need not give an alien absolutely the same rights as are possessed by natural-born citizens. Thus according to Article II of the Constitution of the United States of America a naturalized alien can never be elected President.[9]

The legal principles essential to a Black thrust for dual citizenship are: (1) that States may naturalize persons who remain citizens of other States; (2) that it is left up to the discretion of the naturalizing State to grant naturalization, and to establish the conditions for such naturalization; and (3) that international law recognizes the competence of every State to increase the number of its subjects through naturalization. Dual citizenship then will depend upon the country conferring such status, as well as the laws concerning the loss of nationality in the country first conferring citizenship.

Loss of nationality is also left to the discretion of the different States. Nationality may be lost by release, deprivation, expiration, renunciation and substitution. Loss of citizenship will be discussed in light of the policies of the United States regarding dual citizenship.

Loss of Citizenship and the United States Constitutional Support for Dual Citizenship

Of the five means by which an individual may lose his citizenship, deprivation, expiration, and substitution, are the processes which concern us, for they involve the possible loss of citizenship upon becoming a dual national through no intent of the individual involved. Release and renunciation grant to the individual the privilege to request denationalization (if granted release occurs); or to renounce his citizenship (generally used by one who, born a dual national, upon becoming of age declares a desire to terminate the citizenship of one Nation).

The Statutes of many Nation-States recognize numerous grounds for the deprivation of citizenship.[10] The Nationality Act of 1940 specifically provided for loss of United States nationality in the following ways:

(1) Obtaining naturalization in a foreign state.
(2) Taking an oath of allegiance in a foreign state.
(3) Entering or serving in the armed forces of a foreign state while a national thereof without foreign legal authorization.
(4) Holding any office, post or employment in the government of a foreign state.
(5) Voting in a political election in a foreign state.
(6) Formal renunciation before a United States Diplomatic or consular officer in a foreign state.

9. *Id.* at 661, 662.
10. *Id.* at 657.

(7) Formal renuniciation in the United States approved by the Attorney General during wartime.
(8) Court martial conviction and discharge from armed forces for desertion during wartime.
(9) Court martial on civil court conviction for treason, attempting by force to overthrow, or bearing arms against the United States.
(10) Deporting from or remaining outside of the United States during wartime for purposes of evading training and service in armed forces.[11]

Many of these provisions have been held unconstitutional by the Supreme Court of the United States in the 1967 case *Afroyim v. Rusk*.[12] The Court in *Afroyim* held:

> The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color or race. Our holding does no more than to give this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.[13]

Afroyim involved a naturalized United States citizen who went to Israel in 1950 and voted in an election for the Israeli legislative body in 1951. In 1960 the Department of State refused to renew Afroyim's United States passport on grounds that he had lost his citizenship under the Nationality Act of 1940 by voting in a foreign political election. The record in *Afroyim* did not establish that he was a dual national; rather, the District Court assumed that he had acquired Israeli citizenship since he made no claim that the deprivation of his United States citizenship would render him stateless.

The Court in *Afroyim*, while concerned about the accordance of statelessness, placed more emphasis on the importance of citizenship, believing that its citizenry is the country and the country is its citizenry.[14]

Under *Afroyim* loss of citizenship is contingent upon evidence of a specific intent to transfer or abandon allegiance, and therefore raises questions on the constitutionality of other provisions of the Immigration and Nationality Act of 1940, and 1952.[15]

Since *Afroyim* the Justice Department articulated guidelines for the Department of State and the Immigration and Naturalization Service to examine dual citizenship issues on a case by case basis.[16]

11. 54 Stat. 1137; Nationality Act of 1952, ch. 477, Title III, 66 Stat. 163, *as amended*, 8 U.S.C. 1101-1503 (1970).

12. 387 U.S. 253 (1967).

13. *Id.* at 268.

14. *Id.* at 267. The Supreme Court under Chief Justice Marshall held similarly in the 1823 case—Osborne v. Bank of the United States (9 Wheat 738): Congress under the power of nationalization has "a power to confer citizenship, not a power to take it away.". "No act . . . of Congress . . . can effect citizenship acquired as a birthright, by virtue of the Constitution itself . . . " Justice Black quoted this passage from Marshall in *Afroyim*, *supra* at 266, 267.

15. Duvall, *Expatriation Under United States Law, Peril to Afroyim. The Search for a Philosophy of American Citizenship*, 56 VA. L. REV. 408 (1970).

16. Prior to *Afroyim* the Supreme Court in Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963), and in Schneider v. Rusk, 377 U.S. 163 (1964) invalidated sections of the Immigration and Nationality Act mandating loss of citizenship when leaving the country to avoid wartime service; and the section providing that a naturalized citizen loses citizenship by continuous residence for three years in the country of origin.

> Voluntary performance of the following acts is considered highly persuasive of an intent to relinquish citizenship, and will result in expatriation absent countervailing evidence of an intent not to transfer or abandon allegiance to the United States:[17]
>
> (a) Naturalization in a foreign State.
> (b) A meaningful oath of allegiance to a foreign State.
> (c) Service in Armed Forces of a foreign State engaged in hostilities against the United States.
> (d) Service in an important political post under a foreign government.
>
> Other voluntary acts under the remaining statutory expatriative provisions normally will not result in expatriation unless intent to abandon is shown.[18]

The then Attorney General Ramsey Clark reasoned that:

> Although *Afroyim* did not define what conduct constituted voluntary relinquishment, it was clear that an act which does not reasonably manifest an individual's transfer or abandonment of allegiance to the United States cannot be made a basis for expatriation. However, 'voluntary relinquishment' is not limited to formal written renunciation . . . , it can also be manifested by other actions declared expatriative under the Act, if such actions are in derogation of allegiance to this country. In each case the administrative authorities must make a judgment, based on all the evidence, whether the individual comes within the terms of an expatriation provision and has in fact voluntarily relinquished his citizenship.[19]

In applying the Department of State guidelines to each of the four acts considered highly persuasive of an intent to abandon citizenship Duvall reasoned as follows: (1) it has been argued that the *Afroyim* doctrine is most difficult to apply in loss of nationality cases arising from naturalization in a foreign state. The following circumstances, coupled with naturalization in a foreign state *obtained for reasons inconsistent with continuing allegiance* to the United States *may* result in expatriation by voluntary relinquishment of United States citizenship:[20]

> voluntary service in the armed forces of a foreign state; deliberate exposure to the military draft of a foreign state; intense involvement in the civil process and life of another nation by voting, serving in public office, working for a foreign corporation in engaging in a business dependent upon close association and rapport with foreign civil authorities; or acceptance of substantial benefits of foreign nationality, such as use of a foreign passport for travel beyond mere entry and departure of the issuing country.[21]

(2) Expatriation by voluntary relinquishment growing out of the taking of an oath of allegiance to a foreign state is dependent on "meaningful oath." "(T)he form and meaning of the oath or affirmation of allegiance must have been such that it affirmed undivided allegiance to a foreign state or sovereign incompatible with continued allegiance to the United States."[22] "As Secretary of State Charles Evans Hughes viewed it, (t)he test seems to be the question whether the oath taken places the person taking it in complete subjection to the state to which it is

17. Duvall, *supra* note 15 at 433 (as cited from Department of State Circular A-6119, November 13, 1969).
18. *Id.* at 433.
19. *Id.* at 431, 432, *citing* 34 Fed. Reg. 1079 (1969).
20. *Id.* at 438.
21. *Id.*
22. *Id.* at 438, *citing* 8 Foreign Affairs Manual 224.2 (Interpretations).

taken . . . so that it is impossible for him to perform the obligations of citizenship to this country."[23]

(3) Expatriation growing out of service in the armed forces of a foreign state can occur in two ways: ". . . when the service is in the armed forces of a foreign state engaged in hostilities against the United States and the record contains no persuasive evidence that the person intended not to transfer his allegiance to the foreign state or to abandon his allegiance to the United States."[24]

(4) Employment in an important political post (policymaking) under a foreign government is expatriating barring evidence of an intent not to transfer allegiance to the foreign state.[25]

To sum up the current state of the constitutional support for dual citizenship by United States citizens, these words from Duvall are on point:

> American citizens may retain their U.S. citizenship even though they voluntarily obtain or retain a foreign nationality for practically any reason short of intentional transfer or abandonment of United States allegiance. An American citizen is free to vote in foreign political elections, and may, with impunity, take a meaningful oath of allegiance to, or hold an important office in, a foreign state, provided he shows by persuasive evidence no intent to transfer or abandon his allegiance to the United States.[26]

While on its face the above might seem clear, interpretation of dual citizenship in the international legal and political arena is essential. In the United States, the burden of proof of intentional renunciation is on the government. Determining the standard of evidence indicative of intent to renounce seems likewise in the hands of the government. This situation might foreseeably be intolerable if dual citizenship by Afro-Americans with African Nation-States proved undesirable to the United States. It is important then to look to other situations where dual citizenship has existed despite conceivable concern by the United States.

An example of a situation where dual citizenship has raised questions for the United States exist under the *Law of Return* in Israel. That law provides:

1. Every Jew has the right to come to this country as an *oleh*.
2. (a) *Aliyah* shall be by *oleh's* visa.
   (b) An *oleh's* visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of Immigration is satisfied that the applicant—
      (1) is engaged in an activity directed against the Jewish people; or
      (2) is likely to endanger public health or the security of the State.[27]

During the 1969 phase of the Arab-Israeli war, the discovery of American citizens fighting in the Israeli army touched off consideration by the Arab states of direct United States participation in the war.[28] American Jewish soldiers fighting and dying in the war proved embarrassing to the United States. The United States

23. *Id.* at 439, *citing* 36 HACKWORTH, DIGEST OF INTERNATIONAL LAW 1 at 219-220 (1942), *quoting* Letter from Secretary of State Hughes to the Hon. Frank L. Polk, March 17, 1924.

24. *Id.* at 443.

25. *Id.* at 445.

26. *Id.* at 453.

27. LAWS OF THE STATE OF ISRAEL 5710, No. 48, at 114 (1949/50) *authorized translation from the Hebrew, Prepared at the Ministry of Justice*); Law of Return 5710 (1950) at 114.

28. Dionisopoulos, *Afroyim v. Rusk: The Evolution, Uncertainty and Implications of a Constitutional Principle*, 55 MINN. L. REV. 235 (1971).

stated that although the United States announced that it discourages rather than encourages American citizens from serving in foreign armies, it also admitted that such service could not lead to automatic expatriation.[29]

More significant, however, is the intent of the newly formed Jewish State to claim those of Jewish origin and to do so by statute.

In the summer of 1974, following the 5th Pan African Conference in Dar-Es-Salaam, Tanzania, President Idi Amin of Uqanda, conferred Ugandan citizenship upon African-American citizens by issuing valid Ugandan passports.[30] It is hoped that other African governments will look deeply into their history so that they might see the necessity of encouraging Africans in the Americas and the Caribbean to consider Africa, the ancestral continent, as their home, their source of power, pride, and joy.

It must be made clear, however, that it is not the intent of dual citizenship (*vis-a-vis* Africa and the Americas) to de-emphasize the importance of the right to citizenship, equal participation and power in American society. Rather the emphasis shifts to our existence as sons and daughters of Africa who

> . . . do not desire what has belonged to others, though others have always sought to deprive us of that which belonged to us . . . If Europe is for the Europeans, then Africa shall be for the black peoples of the world. We say it, we mean it . . . The other races have countries of their own and it is time for the 400,000,000 Negroes to claim Africa for themselves.[31]

Dual or multiple nationality is not as undesirable as once believed to be.[32] Indeed, it has been seen to have economic advantages,[33] social advantages by having a broader base with which to identify,[34] and as "a constructive step in educating the public to the concept of a unitary world in which the individual's political allegiance will not be exclusively in his own country, but shared or coordinated with, and under certain conditions subordinate to, some international or regional authority, such as the United Nations . . ."[35]

Identification by Jews with the Jewish State of Israel has reaped significant economic benefits for that Nation-State.[36] Such identification by Africans throughout the world is conceivably more difficult in view of the fact that Africa has only recently been able to extricate itself from the hands of colonial rule with the accession to independence of Ghana in 1957. Many Africans are unaware of the vast numbers of Africans residing throughout the world; however, more

29. *Id.* at n.10, *citing* N.Y. Times, Oct. 21, 1969, at 15, col. 1.

30. Included in this group so honored is the Rev. Jesse Jackson, President of Operation People United Save Humanity (PUSH) and Roy Innis, Chairman of the National Congress of Racial Equality (CORE). Rev. Watkins, spokesman for PUSH, stated that the policy of his organization concerning dual nationality is that Afro-American citizens should get it if they want it. PUSH, however, is not actively pursuing the acquisition of dual nationality for its members. Denise Mitchell, press aide to Roy Innis of CORE, declared that Blacks have a right to dual citizenship and urged Black Americans to acquire dual citizenship with any country that will cooperate. Most leaders of CORE have dual citizenship with Uganda. All African Peoples Revolutionary Party (Stokely Carmichael, Chairman) was unavailable for comment. (Ed.)

31. E. CRONON, BLACK MOSES 65 (1955) (quote by Marcus Garvey).

32. M. AKENHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 109 (1970).

33. *See* Note, *Dual Mexican-American Nationality: A Vehicle to Investment*, 1 CAL. WEST INT'L. L.J. 115 (1970).

34. *Id.* at 126.

35. Duvall, *supra* note 15, at 455.

36. As of the Yom Kippur War on October 16, 1973 American citizens of the Jewish faith conduct massive fundraisers for Israel.

Africans outside of the Continent are exposed to the truths of world history. The burden, therefore, is on Africans in America to demonstrate to the leaders of Africa their concern with, and knowledge of African affairs.

Unfortunately, the impact of very real cultural differences as a result of 200 years of separation has created misunderstandings between individuals and groups from Africa and from America. These problems may reasonably be attributed to a lack of understanding. Further knowledge about each other should expose our similarities. Once a sincere attempt and claim is made by Africans in the Americas for their ancestral right (citizenship by *jus sanguinis*), then the leaders on the continent can respond. Presently, there has not really been any bold attempt to bring about an effective communication to start Africans on the Continent toward recognizing the beautiful Africans in the Americas. Once such attempts are made, the children of Africa in the Americas and Caribbean will be able to choose where to be domiciled:

> . . . (N)ationality must be made to serve the development and happiness of human beings, and not to perpetrate human bondage by anchoring people, against their will in a particular territorial community or alternatively casting them adrift when it is withdrawn. The time has come to make the law of nationality defend and fulfill the human rights of the individual.[37]

37. Larswell, *Nationality and Human Rights*, 83 YALE L.J. 900, 998 (1973).