NOTES AND COMMENTS

EXPATRIATING THE DUAL NATIONAL*

Qui duabus civitatibus servire vult bonum advocatum habere debet. Anon.

IN large part, those sections of the Immigration and Nationality Act of 1952 which govern the divestment of United States citizenship [1] do not distinguish between expatriating persons who are dual nationals [2] and expatriating persons who are citizens of the United States alone. Like earlier statutes,[3]

*Jalbuena v. Dulles, 254 F.2d 379 (3d Cir. 1958).

1. 66 Stat. 267, 8 U.S.C. §§ 1481-89 (1952), as amended, 8 U.S.C. § 1481(a)(9) (Supp. V, 1958). In accordance with common usage, this Note treats the terms citizenship and nationality as synonymous. For a statutory differentiation, see 66 Stat. 238, 8 U.S.C. § 1408 (1952). See also 3 HACKWORTH, INTERNATIONAL LAW § 220 (1942); Note, 23 TEMP. L.Q. 399 (1950).

2. As used in this Note, the term dual national connotes a person who is a citizen of the United States and at least one other country. Dual nationality arises from the various combinations of laws through which citizenship may be conferred. 3 HACKWORTH, INTERNATIONAL LAW § 255 (1942); Harvard Research in International Law, *Draft Convention on Nationality* art. 10 [hereinafter cited as *Draft Convention*], 23 AM. J. INT'L L. SP. SUPP. 38-40 (1929); Flournoy, *Dual Nationality and Election*, 30 YALE L.J. 545 (1921).

The two primary bases for conferring citizenship are *jus soli*, under which place of birth is determinative of citizenship, and *jus sanguinis*, that is, the law of descent. 3 HACKWORTH, INTERNATIONAL LAW §§ 221-22 (1942); 2 HYDE, INTERNATIONAL LAW §§ 343-45 (1945); *Draft Convention* art. 3, 23 AM. J. INT'L L. SP. SUPP. 27-29 (1929). See also Flournoy, *supra* at 550-54 (early American history on the use of these two theories).

Since countries refuse to follow one basis uniformly, and in fact usually adopt both, dual nationality is inevitable. See *Draft Convention* art. 3, 23 AM. J. INT'L L. SP. SUPP. 28 (1929); Flournoy, *supra* at 545. Thus, a child born in country *A*, which follows *jus soli*, of parents who are citizens of country *B*, which follows *jus sanguinis*, is a citizen of both countries. Sandifer, *A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality*, 29 AM. J. INT'L L. 248, 259 (1935).

Dual citizenship also arises when a person naturalized by one country is still considered by the country of his previous allegiance as one of its nationals. See Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. REV. 427, 428 (1949) (also listing other ways in which a person may become a dual national). For a survey of the laws which nations use in determining whether citizens who have become naturalized in other countries retain their original nationality, see U.S. DEP'T OF STATE, PUB. No. 6485, INFORMATION FOR BEARERS OF PASSPORTS 43-103 (1957). For a comprehensive review of the present nationality laws of most nations, see LAWS CONCERNING NATIONALITY, U.N. Doc. No. ST/LEG/SER.B/4 (1954).

3. *E.g.*, Act of March 2, 1907, ch. 2534, 34 Stat. 1228; Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1168.

The first legislation dealing with expatriation was enacted in 1868; Congress adopted a policy of permitting a person to divest himself of his allegiance to any state. Act of

the act specifies certain conduct which, if voluntarily undertaken, automatically results in loss of citizenship.[4] As enlarged in 1940 and 1952, section 349 of the 1952 act[5] (section 401 of the 1940 statute)[6] lists ten acts of expatriation, among them: "voting in political election in a foreign state";[7] "taking an oath . . . of allegiance to a foreign state";[8] "entering . . . the armed forces of a foreign state."[9] One of these ten acts—accepting a job with a foreign

July 27, 1868, ch. 249, 15 Stat. 223. See Mandoli v. Acheson, 344 U.S. 133, 135-36 (1952); Borchard, *Decadence of the American Doctrine of Voluntary Expatriation*, 25 AM. J. INT'L L. 312 (1931). See generally Liddell, *The U.S. Position in Regard to the "Right of Expatriation,"* 23 TEMP. L.Q. 325 (1950).

In 1907, Congress expanded upon this policy by passing the first United States statute to list acts of expatriation: naturalization in a foreign country, taking an oath of allegiance to a foreign country, and marrying a foreign male. Act of March 2, 1907, ch. 2534, 34 Stat. 1228. See also 41 CONG. REC. 1464-67 (1907); H.R. REP. No. 6431, 59th Cong., 2d Sess. (1907); Roche, *The Loss of American Nationality—The Development of Statutory Expatriation*, 99 U. PA. L. REV. 25, 25-26 (1950). Congress's power to make marriage to a foreigner an act of expatriation was upheld by the Supreme Court in Mackenzie v. Hare, 239 U.S. 299 (1915). *But see* Perez v. Brownell, 356 U.S. 44, 69-73 (1958) (dissenting opinion) (*Mackenzie* merely suspended citizenship); Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (concurring opinion) (*Mackenzie* should be partially overruled).

4. Nishikawa v. Dulles, 356 U.S. 129, 133, 135-37 (1958), requires that the Government affirmatively prove the voluntariness of an alleged expatriating act once the individual claims "duress." Although expatriation statutes have usually made no mention of the voluntariness of the fatal conduct, courts have read that element into the statutes in order to uphold their constitutionality. See Note, *"Voluntary": A Concept in Expatriation Law*, 54 COLUM. L. REV. 932 (1954).

The 1952 act, 66 Stat. 268, 8 U.S.C. § 1481(b) (1952), provides that:

> any person who commits or performs any [expatriating] act specified in subsection (a) shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act.

In light of *Nishikawa*, this conclusive presumption appears to be unconstitutional. See Note, 54 COLUM. L. REV. 932, 933 n.6 (1954). *Contra, Developments in the Law—Immigration and Nationality*, 66 HARV. L. REV. 643, 734 (1953).

5. 66 Stat. 267, 8 U.S.C. § 1481 (1952), as amended, 8 U.S.C. § 1481(a)(9) (Supp. V, 1958). See generally Comment, *The Expatriation Act of 1954*, 64 YALE L.J. 1164 (1955); *id.* at 1164-65 (discussing the 1954 amendment which enlarged the treason-divesting acts of the statute to include Smith Act-type convictions); *Developments in the Law—Immigration and Nationality*, 66 HARV. L. REV. 643, 731 (1953); THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION, REPORT—WHOM WE SHALL WELCOME 235-44 (1953).

6. Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1168. See generally Roche, *supra* note 3.

7. 66 Stat. 268, 8 U.S.C. § 1481(a)(5) (1952).

8. 66 Stat. 267, 8 U.S.C. § 1481(a)(2) (1952).

9. 66 Stat. 267, 8 U.S.C. § 1481(a)(3) (1952). The other listed acts include naturalization in a foreign country, making a formal renunciation of United States nation-

government [10]—effects the expatriation only of dual nationals,[11] specifically,

ality, wartime desertion, committing any act of treason, and remaining outside the United States during war to avoid the draft. 66 Stat. 267, 8 U.S.C. § 1481(a) (1952), as amended, 8 U.S.C. § 1481(a)(9) (Supp. V, 1958). For a general discussion of the statute see authorities listed at note 5 *supra*. The wartime desertion provision was held unconstitutional in Trop v. Dulles, 356 U.S. 86 (1958). See note 27 *infra*.

10. 66 Stat. 268, 8 U.S.C. § 1481(a)(4)(A) (1952). A person who is a citizen of the United States alone, but who takes an oath of allegiance to a foreign power in order to gain foreign employment, has committed an act of expatriation under 66 Stat. 268, 8 U.S.C. § 1481(a)(4)(B) (1952).

11. Previous statutes had made little differentiation between dual and nondual nationals. The 1940 act contained two provisions which applied only to dual nationals. The first made service in the army of a foreign country cause for expatriation if the person involved had or acquired the citizenship of that country. Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1169. In 1952, this provision was made applicable to all United States citizens who serve in foreign armies without the Secretary of State's permission. 66 Stat. 267, 8 U.S.C. § 1481(a)(3) (1952). For the view that this change wrongly tends to create stateless individuals, see THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION, REPORT—WHOM WE SHALL WELCOME 241-43 (1953).

The second specific reference of the 1940 act to dual nationals provided that, if a dual citizen resided for six months or longer in the country of his other nationality, he was presumed to have committed the expatriating acts listed under subsection (c) (serving in the armed forces of his other state of nationality) or (d) (being employed by his other state of nationality in a job which only nationals of that state were permitted to hold). Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1169. This provision, which was drastically revised in 1952 and is now § 350, was rarely applied and was particularly aimed at a limited group of Hawaiians who served in the Japanese army. See Roche, *supra* note 3, at 65-67.

Despite the fact that previous statutes made little distinction between the dual and nondual national, they were clearly intended to eliminate the status of dual nationality. See, *e.g.*, 41 CONG. REC. 1464 (1907); 86 CONG. REC. 11944 (1940).

The United States has also sought to limit the number of dual nationals by other means. Various treaties limit citizenship to one nation. See, *e.g.*, Convention on Naturalization With Great Britain, May 13, 1870, 16 Stat. 775; Treaty With Prussia, Feb. 22, 1868, 15 Stat. 615; 3 HACKWORTH, INTERNATIONAL LAW § 256 (1942); 2 HYDE, INTERNATIONAL LAW §§ 361-64 (1945). The expatriation statutes do not pre-empt these treaties. 66 Stat. 272, 8 U.S.C. § 1489 (1952).

The United States has also attempted to eliminate dual nationality by restricting the application of *jus sanguinis*. United States citizenship is conferred only on children, one or both of whose parents are American citizens, and who have met requirements such as specified residence in this country. 66 Stat. 235, 8 U.S.C. § 1401 (1952). In addition, certain persons acquiring citizenship through *jus sanguinis* must reside in the United States for five continuous years between the ages of fifteen and twenty-eight in order to retain American citizenship. 66 Stat. 236, 8 U.S.C. § 1401(b) (1952). See Orfield, *supra* note 2, at 433-34. Thus, *jus sanguinis* is normally not extended beyond the first generation of children born outside the homeland. Compare *Draft Convention* art. 4, 23 AM. J. INT'L L. SP. SUPP. 30 (1929) (suggesting that *jus sanguinis* not be applied beyond the second-generation of citizens habitually residing in a foreign country).

The United States also requires that anyone accepting this country's citizenship through naturalization disclaim all allegiance to other countries. 66 Stat. 258, 8 U.S.C. § 1448 (1952). The effectiveness of this provision is limited, however, for many nations will not accept such a disclaimer as ending their claims over naturalized Americans.

of American citizens who are also citizens of the employing government.[12] Generally, however, the statute treats Americans who are and are not dual nationals similarly.[13]

Last year, in *Jalbuena v. Dulles*,[14] the Third Circuit restricted with respect to dual nationals certain section 349 provisions governing expatriation. Jalbuena was born in the United States in 1920 of a Filipino father,[15] and acquired dual nationality at birth on the basis of *jus soli* and *jus sanguinis*.[16] At the age of fourteen months, he was taken to the Philippines, where he resided for over thirty years.[17] In 1952, he obtained a Philippine passport and visited

See U.S. DEP'T OF STATE, PUB. No. 6485, INFORMATION FOR BEARERS OF PASSPORTS *e.g.*, 97-99 (Turkey), 101-02 (U.S.S.R.) (1957); Sandifer, *supra* note 2, at 271-73.

12. In the 1940 act, this provision applied to any United States citizens acquiring jobs ordinarily open only to nationals of the employing country. Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1169. See Roche, *supra* note 3, at 51-52.

The report of the House Committee on the Judiciary does not indicate why the provision's applicability was limited by the 1952 revision to dual nationals. H.R. REP. No. 1365, 82d Cong., 2d Sess. 83 (1952). The National Council on Naturalization and Citizenship endorsed the 1952 amendment because it tended to decrease the incidence of statelessness. *Joint Hearings Before the Subcommittees of the Committees on the Judiciary on S. 716, H.R. 2379, and H.R. 2816*, 82d Cong., 1st Sess. 112 (1951). In one sense, the applicability of the provision was broadened, since it now applies to all employment by a foreign government, not merely to those jobs ordinarily open to nationals. See *Developments in the Law—Immigration and Nationality*, 66 HARV. L. REV. 643, 736 (1953).

The sole other statutory provision keyed exclusively to dual nationals, § 350, makes the "claiming of benefits of the nationality of a foreign state" an additional ground for expatriating persons who acquired two nationalities at birth, resided for three years in the country of their other nationality, and failed to take an oath of allegiance to the United States during that period. 66 Stat. 269, 8 U.S.C. § 1482 (1952). As originally proposed, § 350 divested the dual national of his citizenship only if he resided abroad for the three-year period and did not come under the complicated saving clauses. H.R. REP. No. 1365, 82d Cong., 2d Sess. 87, 303-04 (1952). But the House-Senate Conference Committee inserted the stipulation that § 350 would not apply unless the dual national voluntarily sought the benefits of his foreign nationality. This provision was intended to limit expatriation to instances involving an affirmative act by the dual national. H.R. REP. No. 2096, 82d Cong., 2d Sess. 129 (1952). See also *Developments in the Law—Immigration and Nationality*, 66 HARV. L. REV. 643, 738-39 (1953); THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION, REPORT—WHOM WE SHALL WELCOME 240-41, 282 (President's Veto Message to the House of Representatives) (1953).

13. See LOWENSTEIN, THE ALIEN AND THE IMMIGRATION LAW 345 (1958). Section 350 does not pre-empt § 349 which also applies to dual nationals. See 22 C.F.R. § 50.6 (1958) (State Dep't Reg.); Carliner, *The Immigration and Nationality Act of 1952*, 20 J.B.A.D.C. 392, 397 (1953); Dulles v. Katamoto, 256 F.2d 545, 548 (9th Cir. 1958). In fact, § 349(a)(4)(A) can be applied only to dual nationals.

14. 254 F.2d 379 (3d Cir. 1958).

15. Findings of fact of the Federal District Court for the Eastern District of Pennsylvania [hereinafter cited as Findings], reported in Brief for Appellant [hereinafter cited as Brief], p. 2a.

16. See Conclusions of Law of the Federal District Court for the Eastern District of Pennsylvania [hereinafter cited as Conclusions], reported in Brief, p. 7a. For a discussion of *jus soli* and *jus sanguinis*, see note 2 *supra*.

17. Findings, Brief, p. 3a.

his mother in the United States.[18] To acquire the passport, he was required to swear to "support and defend the Constitution of the Philippine Islands from enemies, foreign and domestic * * * [and to] bear true faith and allegiance to the same * * * ."[19] Although, at the time he took the oath, Jalbuena knew that he had been born in the United States, he was unaware of the fact that he was an American as well as a Philippine citizen.[20] After arriving in the United States and learning of his dual nationality, he requested the Department of State to confirm his American citizenship.[21] But the Department, relying on section 401 of the 1940 act[22] (section 349 of the 1952 act),[23] determined that his citizenship had been lost through the commission of a proscribed act—taking an oath to support a foreign government.[24] Subsequently, a federal district court refused Jalbuena relief and approved the State Department's ruling.[25] On appeal, the Third Circuit, reversing, held that Jalbuena had not renounced his allegiance to the United States and therefore had not lost his citizenship.[26]

The court of appeals acknowledged that three recent Supreme Court de-

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18. Findings, Brief, p. 3a; 254 F.2d at 380.
19. Findings, Brief, pp. 3a-4a; 254 F.2d at 380.
20. Findings, Brief, p. 4a; 254 F.2d at 380.
21. Findings, Brief, pp. 4a-5a.
22. Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1164.
23. 66 Stat. 267, 8 U.S.C. § 1481(a)(2) (1952).
24. See Findings, Brief, p. 5a.

In the principal case, the Third Circuit accepted the standard definition of an oath made by Secretary of State Hughes, in 3 HACKWORTH, INTERNATIONAL LAW 219-20 (1942). 254 F.2d at 381-82 n.2. Under that definition, an oath must be of the type which completely subjects the person taking it to the liabilities and duties of foreign citizenship.

> It is the spirit and meaning of the oath, and not merely the letter, which is to determine whether it results in expatriation. It is not a mere matter of words. The 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 taken, at least for the period of the contract, so that it is impossible for him to perform the obligations of citizenship to this country.

Ibid.

Jalbuena argued that he had not taken an oath meeting this definition. Brief, pp. 4-12. The Third Circuit did not reach this argument as such.

For the varying content given the word "oath," *compare* Savorgnan v. United States, 338 U.S. 491, 495, 501 (1950), *Ex parte* Griffin, 237 Fed. 445, 455 (N.D.N.Y. 1916), *and* Federici v. Miller, 99 F. Supp. 962 (W.D. Pa. 1951), *with* Lehmann v. Acheson, 206 F.2d 592, 597 (3d Cir. 1953), *and* Fletes-Mora v. Rogers, 160 F. Supp. 215, 217-20 (S.D. Cal. 1958).

As a minimum, an oath, to effect expatriation, must be officially required, and must be administered by a competent government official. Also, the person taking the oath must be mentally competent. See 3 HACKWORTH, INTERNATIONAL LAW 218-19 (1942); Roche, *supra* note 3, at 33, 36.

25. Conclusions, Brief, p. 7a; 254 F.2d at 380. The district court's decision was not reported.
26. 254 F.2d at 382.

cisions, especially *Perez v. Brownell*,[27] indicate "that within reasonable limits, not yet precisely defined, Congress can make and has made a forfeiture of citizenship the legal consequence of voluntary conduct which, in legislative judgment, embarrasses our government in its international relationships."[28] But, the Third Circuit continued,

> the Court [in the *Perez* case] has gone no further than to approve forfeiture of citizenship under Section 401 where the nature and circumstances of the allegedly expatriating conduct have been such as to indicate some flouting of obligations inherent in American citizenship, if not an implied renunciation of the tie.[29]

Apparently treating "flouting" and "renunciation" as synonymous,[30] the Third Circuit held that neither was present in the principal case because Jalbuena, by taking an oath in order to obtain a passport, had merely asserted a right of his other nationality which in no way clashed with his American citizenship.[31] "[C]onduct merely declaratory of what one national aspect of dual citizenship necessarily connotes, cannot reasonably be construed as an act of renunciation of the other national aspect of the actor's dual status."[32] The court found support for this rule in a statement by the Supreme Court in *Kawakita v. United States*: "The mere fact that . . . [a dual national] asserts the rights of one citizenship does not without more mean that he renounces the other."[33]

The Third Circuit thus revived a confusing Supreme Court decision and converted it into a general rule.[34] In *Kawakita*, a jury had found a national of the United States and Japan guilty of committing treasonous acts against captured Americans during World War II.[35] Unlike the usual case in which

27. 356 U.S. 44 (1958), Comment, 56 MICH. L. REV. 1142 (comment on all three decisions).

The two other cases cited by the Third Circuit were Trop v. Dulles, 356 U.S. 86 (1958), and Nishikawa v. Dulles, 356 U.S. 129 (1958). In *Trop*, § 349(a)(8) of the 1952 Nationality Act (expatriation for wartime desertion) was characterized as providing for unconstitutionally cruel and unusual punishment. For a comprehensive discussion of cruel and unusual punishment as it relates to the expatriation statute, see Comment, 64 YALE L.J. 1164, 1178-1200 (1955). The *Nishikawa* case is discussed note 4 *supra*; for its probable effect, see note 75 *infra*.

28. 254 F.2d at 381.

29. *Ibid.*

30. At one point, the Third Circuit seemed to indicate that "flouting" and "renunciation" are distinguishable. 254 F.2d at 381. But the court applied a general rule resting solely on renunciation: "It follows that, because nothing done by Jalbuena can fairly be viewed as a *renunciation* of the United States citizenship he enjoyed simultaneously with Philippine citizenship, Section 401(b) cannot properly be read as applying to his conduct." *Id.* at 382. (Emphasis added.)

31. *Id.* at 381.

32. *Ibid.*

33. 343 U.S. 717, 724 (1952), cited in 254 F.2d at 381. The *Jalbuena* court also cited Lehmann v. Acheson, 206 F.2d 592 (3d Cir. 1953), an opinion based on *Kawakita*.

34. On the confusing aspects of the case, see note 38 *infra*.

35. 343 U.S. at 719-20.

the Government attempts to prove expatriation over the protests of the defendant, expatriation was there alleged as a defense.[36] The Supreme Court dictum which the *Jalbuena* court relied on went to the reasonableness of a jury finding which was only arrived at after eight days' deliberation.[37] The finding, essential to holding Kawakita responsible under American law for his heinous conduct, was that Kawakita had not committed an act of expatriation and therefore still owed allegiance to the United States when he committed an act of treason.[38] In elevating the *Kawakita* dictum to a general limitation on the Nationality Act's expatriation provisions, *Jalbuena* ignored the procedural posture and emotional context in which the dictum was employed.[39]

36. See Kawakita v. United States, 190 F.2d 506, 513 (9th Cir. 1951).

37. 343 U.S. at 724-27. On the jury aspect of the case see note 39 *infra*.

38. 343 U.S. at 722.

On the heinous aspects of his conduct, see note 39 *infra*.

The references to "intent" in the *Kawakita* decision are exceedingly ambiguous. The Court indicated that the determination of Kawakita's intent was a jury matter. 343 U.S. at 726-27. But the charge to the jury had stated that Kawakita could only be expatriated by performing one of the acts set out in § 401 of the 1940 statute. United States v. Kawakita, 96 F. Supp. 824, 842 (S.D. Cal. 1948) (jury charge 11-G(2)). It would thus appear that the issue presented to the jury was whether Kawakita had performed any § 401 acts, not whether his conduct demonstrated that he intended to renounce his citizenship. Since Kawakita's conduct, as the Court viewed it, was equivocal, his intent might have been considered relevant in determining whether his conduct included one of the § 401 acts. See 343 U.S. at 723. The Supreme Court's *Kawakita* decision might also be interpreted, however, as introducing subjective-intent-to-renounce as a separate criterion for ascertaining whether expatriation has occurred. See 343 U.S. at 726; Notes, 15 GA. B.J. 239, 241, 26 So. CAL. L. REV. 438, 440 (1953) (both adopting this interpretation). If so, *Kawakita* is definitely out of line with prior and succeeding decisions. See Perez v. Brownell, 356 U.S. 44, 61 (1958); Note, 54 COLUM. L. REV. 932, 945 (1954).

The intent issue was further confused by the fact that, if Kawakita had not expatriated himself but thought that he had renounced his American citizenship, he could not have been convicted of treason because he lacked the necessary *mens rea*. Intent therefore could have been a factor bearing on whether or not he had committed treason. See 343 U.S. at 732. In sum, it is difficult to ascertain with precision whether the Supreme Court viewed intent as a separate prerequisite to expatriation, or only as evidence in determining whether Kawakita committed a § 401 act, or as an element of the crime of treason. See 343 U.S. at 724.

The *Kawakita* opinion is also puzzling because of its seemingly favorable statements about dual nationality. The opinion thus appeared to contradict the previous Supreme Court decisions and the articles which it cited, 343 U.S. at 723 n.2. *Compare* 343 U.S. at 723-25 *with, e.g.*, Savorgnan v. United States, 338 U.S. 491, 500 (1950); Mackenzie v. Hare, 239 U.S. 299, 311-12 (1915); Flournoy, *Dual Nationality and Election*, 30 YALE L.J. 545, 545-46 (1921); *and* Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. REV. 427, 438, 442-45 (1949).

39. The *Kawakita* case was one of the most highly publicized and dramatic trials in recent American history. See N.Y. Times, Sept. 3, 1948, p. 40, cols. 2-3; *id.*, Oct. 6, 1948, p. 15, cols. 2-3; *id.*, Feb. 5, 1952, p. 2, col. 2; *id.*, June 3, 1952, p. 25, col. 1; *id.*, Dec. 13, 1952, p. 11, col. 1; *id.*, Nov. 3, 1953, p. 56, col. 5; *id.*, Nov. 4, 1953, p. 34, col. 5. The three-month long trial unfolded a long list of heinous and brutal crimes which the

The general rule erroneously derived from *Kawakita* would frequently preclude the expatriation of dual nationals under the terms of section 349. Voting in a political election in the country of the other nationality, serving in that country's armed forces, and taking an oath of allegiance to that country would not constitute renunciation of United States citizenship—the Third Circuit's prerequisite for expatriation. Acts of this sort would fit within the *Kawakita-Jalbuena* definition of conduct which serves only to reaffirm the dual national's right to claim the benefits and assume the liabilities related to his other nationality; these acts would merely be "declaratory of what one national aspect of dual citizenship necessarily connotes" and therefore could not "reasonably be construed as an act of renunciation."[40]

True, both *Kawakita* and *Jalbuena* implied that a dual national's conduct, if it "clashed in any way" with his responsibilities as an American citizen, would evidence renunciation.[41] But the holdings of both cases give this qualification little content. In *Kawakita*, the Court refused to rule as a matter of law that various wartime acts of the defendant constituted anything more than a declaration of his existing Japanese nationality.[42] Although he had registered in a family census book evidencing Japanese allegiance,[43] traveled on a Japanese passport,[44] removed his name from a Japanese alien-registration list,[45] and made statements against the United States to United States citizens,[46] the Court held that the jury could have found beyond a reasonable doubt that Kawakita had not renounced his American citizenship.[47] The *Jalbuena* court took almost as narrow a view of conduct clashing "in any way with any responsibility of . . . American citizenship."[48] Holding that the oath at issue

defendant allegedly committed against American prisoners of war. Kawakita v. United States, 190 F.2d 506, 510 n.4 (9th Cir. 1951). See also note 46 *infra* (statements Kawakita made to the prisoners). It took eight days and repeated consultations with the judge for the jury to reach a verdict. At a hearing to overrule the verdict on grounds of undue influence upon the jury, one juror collapsed on the witness stand. N.Y. Times, Oct. 6, 1948, p. 15, cols. 2-3. See also 190 F.2d at 521; 96 F. Supp. at 831-35 (discussing the jury's difficulties in reaching a verdict).

The Supreme Court upheld the conviction by a 4-3 vote. See Carrington, *The Supreme Court: The Problem of Minority Opinions*, 44 A.B.A.J. 137 & n.2 (1958). The case finally ended in 1953, six years after it started, when President Eisenhower commuted Kawakita's death sentence to life imprisonment and a $10,000 fine. The President's action came after he had received thousands of letters from this country and abroad. N.Y. Times, Nov. 3, 1953, p. 56, col. 5.

40. 254 F.2d at 381.

41. See *ibid.*, Kawakita v. United States, 343 U.S. 717, 726-27 (1952).

42. *Id.* at 724.

43. *Id.* at 720, 724.

44. *Id.* at 723.

45. *Id.* at 722.

46. *Id.* at 725. The statements are reported at Kawakita v. United States, 190 F.2d 506, 516-17 n.13 (9th Cir. 1951).

47. 343 U.S. at 727.

48. 254 F.2d at 381.

In one respect, the view taken in *Jalbuena* was even narrower than that taken in *Kawakita*. The *Kawakita* decision merely refused to hold that a reasonable doubt existed

was not incompatible with the duties of an American national, the court evidently did not consider that support of the Philippine Constitution might at times be inconsistent with the interests of the United States.[49] In sum, both *Kawakita* and *Jalbuena* suggest that, with respect to dual nationals, most section 349 acts are "merely declaratory"[50] of an existing obligation to another citizenship; and that renunciatory conduct must be flagrant indeed to terminate a dual national's American citizenship.

The Third Circuit may have felt driven to negative the concept of renunciation because established doctrine makes it irrelevant that Jalbuena did not know of his American citizenship when he took the Philippine oath. The Supreme Court has long held that the performance of a section 349 divesting act evidences an objective intent-to-renounce sufficient to warrant expatriation.[51] To avoid the harshness of the objective-intent standard, courts have expanded the defense of "duress," a defense which justifies the commission of a divesting act.[52] For example, a Japanese dual national was viewed as

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over whether Kawakita had in *fact* renounced his American citizenship through the performance of conduct which clashed with the responsibilities attaching to that citizenship. The *Jalbuena* court, on the other hand, held as a matter of *law* that Jalbuena had not renounced his citizenship.

49. Compare *Ex parte* Griffin, 237 Fed. 445, 455 (N.D.N.Y. 1916); Fracassi v. Karnuth, 19 F. Supp. 581, 583 (N.D.N.Y. 1937); H. Doc. No. 326, 59th Cong., 2d Sess. 23 (1906); Note, 54 COLUM. L. REV. 932, 938-39 (1954); *Developments in the Law—Immigration and Nationality*, 66 HARV. L. REV. 643, 733-36 (1953); Flournoy, *supra* note 38, at 693, 702.

Philippine-American relations have not always been harmonious as evidenced by the bitter and prolonged conflict over American military bases and personnel located in the Philippines. The dispute seems closely tied with domestic Philippine politics. See N.Y. Times, July 1, 1956, p. 18, col. 1; *id.*, July 4, 1956, p. 1, cols. 2-3; *id.*, p. 2, cols. 2-8; *id.*, Sept. 4, 1956, p. 10, col. 1; *id.*, Sept. 25, 1956, p. 3, col. 2; *id.*, Dec. 6, 1956, p. 1, col. 1; *id.*, p. 18, col. 5; *id.*, Nov. 20, 1957, p. 10, cols. 4-5. *Quaere:* what part, if any, may Jalbuena take in this domestic dispute?

50. 254 F.2d at 381.

51. *E.g.*, Perez v. Brownell, 356 U.S. 44, 61-62 (1958); Savorgnan v. United States, 338 U.S. 491, 499-502 (1950); Mackenzie v. Hare, 239 U.S. 299 (1915); Acheson v. Wohlmuth, 196 F.2d 866 (D.C. Cir. 1952). *But see* Perez v. Brownell, 356 U.S. 44, 62 (1958) (dissenting opinion); Nishikawa v. Dulles, 356 U.S. 129, 138 (1958) (concurring opinion).

52. *E.g.*, Nishikawa v. Dulles, 356 U.S. 129 (1958) (Government must affirmatively prove voluntary character of act); Stipa v. Dulles, 233 F.2d 551 (3d Cir. 1956) (economic duress a defense); Augello v. Dulles, 220 F.2d 344 (2d Cir. 1955) (conscription); Kuwahara v. Acheson, 96 F. Supp. 38 (S.D. Cal. 1951) (influence of American occupation forces); Nakashima v. Acheson, 98 F. Supp. 11 (S.D. Cal. 1951) (fear of interference with plans to return to United States).

Rather than use "duress" to preclude expatriation, the United States District Court for the District of Hawaii repeatedly held the pertinent provisions of the Nationality Act unconstitutional. Murata v. Acheson, 99 F. Supp. 591 (D. Hawaii 1951), *rev'd on other grounds*, 342 U.S. 900 (1952); Okimura v. Acheson, 99 F. Supp. 587 (D. Hawaii 1951), *rev'd on other grounds*, 342 U.S. 899 (1952), *unconstitutionality reaff'd*, 111 F. Supp. 303 (D. Hawaii 1953).

For a comprehensive analysis of "duress" as employed in expatriation cases, see Note, 54 COLUM. L. REV. 932 (1954).

having acted under "duress" if "forced" to vote in a Japanese election by the head of his family.[53] In *Jalbuena,* however, duress, be it Pickwickian or actual, was lacking, and the court may consequently have considered *Kawakita* to offer the only escape from the rigors of the objective-intent doctrine.[54]

The Third Circuit could have circumvented that doctrine instead of eviscerating it. The Supreme Court cases which announced the objective-intent rule all turned on acts committed by nationals who were aware of their American citizenship and who realized that their conduct related to foreign citizenship or allegiance, although they may not have known Congress had stipulated that their acts would effect expatriation.[55] Thus, under these cases, a United States citizen who was uninformed as to the statute could still make a choice. He could reject any indicium of foreign citizenship, or he could voluntarily accept a benefit or duty of foreign citizenship and assume the risk of a previous congressional determination that his conduct evidenced renunciation.[56] Jalbuena did not have this choice since he was unaware of his dual nationality. Therefore, by restricting the objective-intent rule to the facts of the cases enunciating it, the Third Circuit could have freed itself to consider subjective intent in *Jalbuena.*[57] Although this rationale would restrict the doctrine of objective-intent, it would be more in harmony with previous judicial attitudes toward expatriation [58] than the court's substantial preclusion of implied renunciation in cases involving dual nationals.[59]

Irrespective of the reasoning employed to support the conclusion that Jalbuena did not renounce his American citizenship, the Third Circuit erroneously held that renunciation is a prerequisite of expatriation. True, prior to *Perez*

53. Takehara v. Dulles, 205 F.2d 560 (9th Cir. 1953).

54. Compare Soccodato v. Dulles, 226 F.2d 243, 247 (D.C. Cir. 1955); Takehara v. Dulles, 205 F.2d 560, 561 (9th Cir. 1953) ("Most courts seem to have attempted to repeal the statute by a 'liberal' interpretation of the word 'voluntary.'"); *id.* at 562 (dissenting opinion).

55. See Comments, 56 MICH. L. REV. 1142, 1154-57 (1958); 64 YALE L.J. 1164, 1177-78 (1955). See also Perez v. Brownell, 356 U.S. 44, 69-75 (1958) (dissenting opinion); Savorgnan v. United States, 338 U.S. 491, 494-95, 502 (1950).

56. See Perez v. Brownell, 356 U.S. 44, 61-62 (1958); Savorgnan v. United States, 338 U.S. 491, 499-502 (1950); Mackenzie v. Hare, 239 U.S. 299, 311-12 (1915).

57. In fact, a previous Third Circuit decision had suggested by way of dictum that a person who is unaware of his American nationality cannot renounce it. Perri v. Dulles, 206 F.2d 586, 591 (3d Cir. 1953).

Unawareness of American citizenship was recently raised as a defense in an expatriation case; the court did not render a decision, but did indicate that the Supreme Court might have precluded such a defense in Savorgnan v. United States, 338 U.S. 491 (1950). Fletes-Mora v. Rogers, 160 F. Supp. 215, 220 (S.D. Cal. 1958). The *Savorgnan* case is distinguishable, however, since Mrs. Savorgnan had known that she would have to become an Italian citizen before she could marry her prospective husband; and, knowing this, she applied for Italian citizenship. 338 U.S. at 494.

58. See authorities cited and text accompanying note 55 *supra.*

59. Previous Supreme Court cases have found dual nationality undesirable and have recognized the congressional desire to eliminate that status. See Savorgnan v. United States, 338 U.S. 491, 500 (1950); Mackenzie v. Hare, 239 U.S. 299, 311 (1915).

v. Brownell, expatriation was usually occasioned by renunciation.[60] But, as the *Jalbuena* court conceded, *Perez* and other recent Supreme Court decisions have established a separate basis for expatriation—the power of Congress to regulate foreign affairs.[61] Within reasonable limits, therefore, Congress may expatriate persons who commit acts which are potentially embarrassing to the United States in its foreign relations.[62] The Third Circuit read the *Perez* case itself, however, as approving expatriation for acts which were *both* potentially embarrassing to the Government *and* indicative of a "flouting of obligations inherent in American citizenship, if not an implied renunciation of the tie."[63] This reading of *Perez* is inaccurate. That decision rested explicitly on Congressional power over foreign affairs, on the view that Congress may reasonably characterize voting in a foreign political election as a potential foreign embarrassment, and on a finding that expatriation is a reasonable way to eliminate this source of embarrassment.[64] To be sure, *Perez* also pointed out that, in the eyes of Congress, to vote in a foreign political election is to evince less than complete allegiance to the United States.[65] But the very content and wording of this observation show that the Court, speaking to the reasonableness of the congressional determination, was simply suggesting that the expatriation of Perez might also have been upheld on a "flouting" or "renunciation" theory.[66] Clearly, no limitation on the "foreign embarrassment" rationale was intended.[67] In denying expatriation "because nothing done by Jalbuena can fairly be viewed as a renunciation,"[68] the Third Circuit missed the thrust of *Perez*.[69]

Nevertheless, *Perez* may properly be deemed inapposite whenever the possibility of foreign friction is *de minimis*.[70] Previous Supreme Court decisions[71]

60. See Comment, 56 MICH. L. REV. 1142, 1147-57 (1958); Note, 107 U. PA. L. REV. 118, 119-20 (1958).

61. 254 F.2d at 380-81.

62. 254 F.2d at 381.

63. *Ibid.*

64. Perez v. Brownell, 356 U.S. 44, 57-61 (1958), see Comment, 56 MICH. L. REV. 1142-43, 1158; Note, 47 GEO. L.J. 177; *The Supreme Court, 1957 Term*, 72 HARV. L. REV. 77, 167.

65. 356 U.S. at 60-61.

66. See Comment, 56 MICH. L. REV. 1142, 1166 (1958).

67. None of the commentary on *Perez* suggests that such a limitation was intended or can be read into the opinion. See Note, 44 A.B.A.J. 565; Note, 25 BROOKLYN L. REV. 113; Note, 47 GEO. L.J. 177; *The Supreme Court, 1957 Term*, 72 HARV. L. REV. 77, 166; Comment, 56 MICH. L. REV. 1142; Note, 30 MISS. L.J. 76; Note, 107 U. PA. L. REV. 118 (1958).

68. 254 F.2d at 382.

69. See Note, 107 U. PA. L. REV. 118, 122 n.27 (1958).

70. See Note, 47 GEO. L.J. 177, 179-80 (1958).

71. See, *e.g.*, Tot v. United States, 319 U.S. 463 (1943); Helvering v. City Bank Farmers Trust Co., 296 U.S. 85 (1935) (dictum); Nebbia v. New York, 291 U.S. 502 (1934) (dictum); Manley v. Georgia, 279 U.S. 1 (1928).

and, to a degree, the majority opinion in *Perez*[72] have recognized that "due process" imposes a limit of reasonableness upon all legislation; that statutory prescriptions must have a "substantial relation" to the fulfillment of valid congressional objectives.[73] Of course, as the majority opinion pointed out, Congress must be permitted "ample scope" for eliminating any possibility of foreign embarrassment.[74] But the Supreme Court has long recognized that denial of citizenship is a singularly drastic sanction and one not to be lightly undertaken.[75] On balance, then, transforming a single national like Perez into a stateless pariah[76] would seem an unreasonable exercise of legislative power when the danger of foreign entanglement is slight.[77] Indeed, Perez's voting

72. 356 U.S. at 58.

73. Nebbia v. New York, 291 U.S. 502, 525 (1934); see Note, 47 GEO. L.J. 177, 179-80 (1958).

74. 356 U.S. at 60; *cf.* United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936); Mackenzie v. Hare, 239 U.S. 299 (1915).

75. *E.g.*, Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Gonzales v. Landon, 350 U.S. 920 (1955); Schneiderman v. United States, 320 U.S. 118, 122 (1943).

Because divestment of citizenship entails onerous consequences, the Government must prove the voluntary character of an expatriating act by "clear, convincing, and unequivocal evidence." Nishikawa v. Dulles, *supra* at 138. The lower federal courts will probably use this standard to limit the effect of *Perez*. See Gonzalez-Jasso v. Rogers, Civil No. 14626, D.C. Cir., March 5, 1959; Dulles v. Katamoto, 256 F.2d 545 (9th Cir. 1958). See also *The Supreme Court, 1957 Term*, 72 HARV. L. REV. 77, 172 (1958); Note, 30 MISS. L. REV. 76, 78 (1958). *Gonzalez-Jasso* held that the plaintiff's previous statements under oath that he had voted in a foreign election were not sufficient evidence to establish that he had actually voted. Civil No. 14626, D.C. Cir., at 6-7.

76. See Perez v. Brownell, 356 U.S. 44, 84 (1958) (dissenting opinion); Trop v. Dulles, 356 U.S. 86, 101-02 (1958); Comment, 64 YALE L.J. 1164, 1186-1200 (1955); Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. REV. 427, 442 (1949); United Nations Universal Declaration of Human Rights art. 15, approved by the United Nations General Assembly in Paris, Dec. 1948, U.N. Doc. A/810, reprinted in UNESCO, HUMAN RIGHTS, A SYMPOSIUM app. III, at 276 (1949). *Perez* is generally recognized as the first Supreme Court case in which a nondual national was divested of United States citizenship. Perez v. Brownell, 356 U.S. 44, 80 (1958) (dissenting opinion); Note, 107 U. PA. L. REV. 118, 121 (1958). For a district court decision expatriating a nondual national, see *Ex parte* Griffin, 237 Fed. 445 (N.D.N.Y. 1916).

The Court in *Perez* regarded plaintiff as a national only of the United States. But, if his parents were Mexican citizens (as they likely were), he would have been a dual national, and his expatriation would not have made him stateless. See Comment, 56 MICH. L. REV. 1142, 1159 n.82 (1958).

77. The *Perez* decision has been generally criticized as having permitted Congress to exceed the constitutional restrictions imposed on the foreign-relations power, especially in view of the fact that the foreign embarrassment inherent in voting is either nonexistent or slight. See, *e.g.*, Comment, 56 MICH. L. REV. 1142, 1158-59 (1958); Note, 107 U. PA. L. REV. 118, 121 (1958).

For background and analysis of the statutory voting provision, see Roche, *The Loss of American Nationality—The Development of Statutory Expatriation*, 99 U. PA. L. REV. 25, 52-54 (1950); Schwartz, *The Supreme Court—1957 Term*, 57 MICH. L. REV. 315, 323-27 (1959); Note, 54 COLUM. L. REV. 932, 936-37 (1954).

in a Mexican election—the basis of his expatriation—may have been *de minimis* for reasons not examined by the Court. If Mexico allows all aliens to vote, an American-cast ballot could not provoke rational charges of undue United States participation in the politics of another nation.[78] But the Court, having failed to require the Government to prove Mexican law,[79] was unable to balance the actual likelihood of foreign embarrassment against the harshness of rendering Perez stateless.

Jalbuena could not have been termed a *de minimis* case, however, for the plaintiff created a likelihood of foreign embarrassment by asserting allegiance to two sovereigns.[80] A dual national who, like Jalbuena, acquires both United States and foreign citizenship at birth and fails formally to disclaim either, represents a focal point of United States power to the country of his other nationality.[81] He owes allegiance to the United States, yet is entitled to the privileges of foreign citizenship. When subjected to the duties of foreign citizenship, he may seek to avoid them with the declaration, *civis Americanus sum*.[82] Should the State Department then intervene on his behalf,[83] the United

78. The effective implementation of our foreign relations may be hindered by the participation of Americans in the internal affairs of foreign countries. Such participation is frowned upon by the State Department and may lead to the withdrawal of protection from an individual. See Perez v. Brownell, 356 U.S. 44, 59 (1958); 3 HACKWORTH, INTERNATIONAL LAW § 278, at 552 (1942) (participation in political activities); 2 HYDE, INTERNATIONAL LAW §§ 392-93 (1945) (participation in internal domestic affairs; acts of hostility). Propaganda based on individual intermeddling in foreign nations' affairs may have an unfavorable effect upon American foreign relations and policy. See MORGENTHAU, POLITICS AMONG NATIONS 197-206 (1949). See also Preuss, *International Responsibility for Hostile Propaganda Against Foreign States*, 28 AM. J. INT'L L. 649 (1934).

79. See Perez v. Brownell, 356 U.S. 44, 76-77, 84-85 (1958) (dissenting opinions); Comment, 56 MICH. L. REV. 1142, 1159 (1958) (indicating that aliens probably were not allowed to vote in Mexican elections; implying that the Court should not have viewed the question of voting eligibility as irrelevant).

80. See, *e.g.*, Mackenzie v. Hare, 239 U.S. 299, 311 (1915); Guadio v. Dulles, 110 F. Supp. 706, 708-09 (D.D.C. 1953) (dictum); 86 CONG. REC. 11944 (1940); H.R. REP. No. 1365, 82d Cong., 2d Sess. 87 (1951); 2 HYDE, INTERNATIONAL LAW § 372 (1945); Flournoy, *Dual Nationality and Election*, 30 YALE L.J. 545 (1921); *cf.* Savorgnan v. United States, 338 U.S. 491, 500 (1950); Hamamoto v. Acheson, 98 F. Supp. 904, 905 (S.D. Cal. 1951).

81. See Wigmore, *Domicile, Double Allegiance, and World Citizenship*, 21 ILL. L. REV. 761, 761-62 (1927).

82. Compare *Acts of the Apostles* 22:25-27 (King James); CICERO, IN VERREM, bk. 5, ch. 57, l. 147; ch. 62, l. 162. See BORCHARD, DIPLOMATIC PROTECTION OF CITIZENS ABROAD §§ 257-58 (1919); 3 HACKWORTH, INTERNATIONAL LAW § 255 (1942); 2 HYDE, INTERNATIONAL LAW § 374 (1945); Flournoy, *supra* note 80, at 545, 703; Note, 54 COLUM. L. REV. 932, 938 (1954).

83. Accepted principles of international law are unclear as to whether the United States may extend diplomatic protection to one of its dual nationals while he is in the country of his other nationality. In practice, the granting of protection depends upon the facts of each case and upon whether the individual concerned has manifested allegiance to the United States. See BORCHARD, DIPLOMATIC PROTECTION OF CITIZENS ABROAD §§

States would of necessity be involved in foreign conflict. A refusal to offer protection, while lessening the possibility of friction, will not eliminate it. That the individual seeking to avoid the burdens of one citizenship is an American citizen will by itself highlight both his allegiance to the United States and his ability to demand special considerations because of that allegiance.

Moreover, thanks to his ambivalent allegiance, the dual national, unlike a person who is an American citizen only, need not actively participate in the internal affairs of a foreign country to generate official embarrassment. By affirming his foreign citizenship through an act such as taking an oath, the dual citizen leads the country of his other nationality to rely on his allegiance.[84] This oath invites the imposition of duties attaching to his foreign citizenship—duties which give rise both to problems of protection and to competing claims inducing international friction. Whether or not the dual national is aware of his American citizenship when he takes the oath is unimportant. In either event, his oath is equally significant to the United States. True, unapprised of his duality, he will not invoke his American citizenship. But his continued innocence cannot be assured, and, so long as he is liable to the claims of his other nationality, he may become a source of conflict. Even if he cannot use his American citizenship as a protective device, his oath still serves to expose him to alien demands potentially inconsistent with the responsibilities of a United States citizen.

Congress may therefore legitimately find that conduct such as Jalbuena's merits expatriation. A dual national's foreign oath poses a far greater possibility of embarrassment than did the balloting in *Perez*. Furthermore, expatriation works substantially less hardship on a dual national than on an American with no other country.[85] The expatriated dual national still retains

257-58 (1919); 3 HACKWORTH, INTERNATIONAL LAW § 255 (1942). See also U.S. DEP'T OF STATE, PUB. NO. 6485, INFORMATION FOR BEARERS OF PASSPORTS 20-23 (1957).

84. See BORCHARD, DIPLOMATIC PROTECTION OF CITIZENS ABROAD § 259 (1919); Note, 54 COLUM. L. REV. 932, 938 (1954). The original purpose behind the Nationality Act's oath provision was to prevent parties from deliberately placing themselves in a position where their allegiance can be claimed by more than one government. H.R. DOC. No. 326, 59th Cong., 2d Sess. 23 (1906). The 1940 enactment constituted a restatement of this earlier policy. HOUSE COMMITTEE PRINT, NATIONALITY LAWS OF THE UNITED STATES, 76th Cong., 1st Sess. (1939), reprinted in *Hearings Before House Committee on Immigration and Naturalization on H.R. 6127 Superseded by H.R. 9980*, 76th Cong., 1st Sess. 405, 490 (1945).

85. See Comment, 64 YALE L.J. 1164, 1173-78 (1955).

Divesting the dual national of his American citizenship does not appear harsh in context. When a dual national travels abroad on an American passport, he receives ample warning of the possible effects of the expatriation statute. See U.S. DEP'T OF STATE, PUB. NO. 6485, INFORMATION FOR BEARERS OF PASSPORTS, introduction, 20-23, 27-32 (1957). The dual national who is unaware of the statute is ordinarily one who has spent most of his life abroad and is also unaware of his American citizenship. He could hardly be deemed to value a citizenship of which he was unaware and which he never took the time to ascertain. For the view that American citizenship is a valuable possession

the citizenship of one country—a citizenship which, in light of his voluntary conduct, he apparently does not disfavor. Of course, the expatriation statute alone will not eradicate the potential foreign embarrassment inherent in dual nationality. Only the elimination of dual nationality can do so. Accordingly, Congress might reasonably insist that, on attaining his majority, every person who acquired dual nationality at birth choose one nationality or the other.[86]

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which a dual national should be alert to protect, see Soccodato v. Dulles, 226 F.2d 243, 250-51 (D.C. Cir. 1955) (dissenting opinion).

86. Compare Flournoy, *Dual Nationality and Election*, 30 YALE L.J. 693, 705-09 (1921); Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. REV. 427, 442-45 (1949); Wigmore, *supra* note 81, at 762. See also note 11 *supra*, paras. 3-6.