Evolving Standards of Dual Citizenship

JOSEPH LANDAU


In *At Home in Two Countries*, Peter Spiro provides a detailed account of the largely untold history of dual citizenship in the United States. The story is complex: laws, policies, and practices surrounding dual nationality have evolved inconsistently across various nations and legal systems; even today, dual citizenship is pervasive inside and outside the United States but largely hidden from careful accounting. Spiro deftly covers more than 150 years of development to the present day, interlacing legal history with political acts, court decisions, and powerful vignettes of dual citizens whose fate was often tied to more foundational understandings of citizenship well beyond their control. These biographical sketches provide the human side of a common and vital practice bereft of authoritative statistics. They resonate with some of the most shameful constitutional moments in our history, from the poor treatment of longtime U.S. residents accused of Communist Party affiliations validated by the Supreme Court in *Shaughnessy v. Mezei* to the internment of Japanese Americans during World War II that was ordered by President Roosevelt, ratified by Congress, and endorsed by the U.S. Supreme Court in *Korematsu*.

*At Home in Two Countries* opens with the story of John Warren, an Irish-born U.S. citizen who was charged with smuggling guns during the 1867 Fenian Uprising against British rule in Ireland. Tried for treason in Ireland, Warren invoked his U.S. citizenship to seek a jury *de medieta linguae* composed half of British subjects and half of foreigners assumed to be more sympathetic to a dual citizen. But Warren’s claim on the court was a non-starter: under the extant understandings of “perpetual allegiance,” a concept drawn from the feudal order reflective of that time, the very notion of an alienage separate from one’s original citizenship undermined the transcendent bond believed to exist between an individual and his country of birth.

While the notion of perpetual allegiance made sense for societies in which most citizens were bound to their land, Spiro describes that sovereigns began to loosen
their jealous grip on their citizens when travel became more widespread. Yet, even after feudal understandings dissipated, states still attempted to force a choice among homelands, either by finding that naturalization in a foreign state automatically resulted in the loss of citizenship, or by mandating a choice through a process known as “election.” Meanwhile, the dueling theories of *jus soli*—that any child born within a state’s territory was a subject—and *jus sanguinis*—citizenship by parentage—resulted in conflicting outcomes during periods of mass immigration and international travel.

One frequent scenario involved a naturalized citizen who visited his homeland and found himself forced into military service. The 1930 Hague Conference on the Codification of International Law tried to address this problem by linking military service obligations to one’s country of habitual residence. Though few countries ratified the Convention, it spawned many bilateral agreements to the same effect. Nations adopted internal laws to limit the exposure of external citizens to military service, like France’s 1928 law, which released nationals abroad from military service upon establishing compliance with the military law in their other country of citizenship. While this decrease in disputes over military service and increase in bilateral agreements between nations did not spell the end of disdain for dual citizens, it marked an important shift toward greater toleration.

Spiro shows how uncertainty over immigration status was made worse when compounded with traditional understandings of gender roles. The Expatriation Act of 1907 provided for the expatriation of U.S.-citizen women who married foreign-national men, affecting Ulysses Grant’s daughter upon her return to the United States after the death of her British husband and requiring an act of Congress to restore her citizenship. While this provision changed in 1922, a citizen could still be expatriated for living abroad with a spouse for an extended period of time. Even as the law over time became less punitive of dual nationality, the status was disdained by most as a kind of civic polygamy and “self-evident absurdity.”

The United States was the most significant destination for immigrants during the 19th and 20th centuries, and U.S. law thus figures prominently throughout the book. When international conflict and world war renewed fears of Americans who maintained a second nationality, legislation in 1940 and 1952 made it almost impossible to actively maintain another nationality without forfeiting one’s U.S. citizenship. Congress increased the range of conduct giving rise to expatriation, and the Supreme Court upheld hair-trigger expatriation rules if the expatriating conduct was undertaken voluntarily. In 1958, for example, the Supreme Court in *Perez v. Brownell* dismissed a challenge to a congressional act mandating expatriation on account of voting in a foreign election.

But if *Perez* reflected a high-water mark of U.S. antipathy toward dual citizenship, subsequent decades were defined by greater toleration—and ultimately acceptance—of the practice. Indeed, by 1967, the Supreme Court reversed *Perez* by categorically rejecting congressional power to terminate an American citizen’s citizenship without his or her consent. Justice Black’s opinion in *Afroyim v. Rusk* framed citizenship as a right and raised the bar for its dispossession. Black vehemently rejected the idea of “a fleeting citizenship, good at the moment it is acquired but subject to destruction by the government at any time.”

Nevertheless, the threat of involuntary expatriation remained a real concern. The acclaimed violinist Yehudi Menuhin was threatened with the loss of his U.S. citizenship in 1970 for merely accepting honorary Swiss citizenship, and post-*Afroyim* rulings continued to sow doubt
about the status of dual citizenship, with the Supreme Court in one case upholding a statute requiring a dual-national child to spend at least five years in the United States between the ages of 14 and 28 or risk forfeiting U.S. citizenship, while clarifying in another case that expatriation “could only be undertaken where conduct evidenced a specific intent on the individual’s part to relinquish citizenship.” Although these opinions left an opening for the government to police dual nationality—as late as the 1980s the State Department was initiating an average of 4,500 potential loss-of-citizenship cases annually—Spiro observes that they reflected a turning point mirrored elsewhere around the world in which dual nationals increasingly gained acceptance. In 1978, Congress eliminated residency requirements and the policy of terminating the citizenship of birthright dual nationals who lived in their second country of nationality for more than three years. In 1990, the State Department reversed its former policies toward a far friendlier approach to dual citizenship as well.

Spiro documents how other countries gradually came to embrace dual citizenship, with Britain dropping restrictions on the practice in 1948, France in 1973, Canada in 1976, and Mexico in 1998. In the late 1990s and 2000s a number of other countries with extensive immigration ties to the United States followed suit, so that 19 out of the top 20 sending countries that are sources of U.S. immigration now either accept dual citizenship or do nothing to police it. Naturalization in a new country now adds to the count of dual citizens in the majority of cases (where expatriation had once been the norm). Spiro also mentions that a number of Americans, such as the foreign ministers of Armenia and Bosnia and the chief of the Estonian army, have even retained their U.S. citizenship while serving in foreign governmental posts. These developments reflect a newfound tolerance and acceptance of dual citizenship. Emigrating citizens once had to choose one country or another; today, no such ranking of preferences is required and citizens can maintain attachments to multiple countries at once.

Not only are dual citizens spared from having to choose between one nationality and another, many individuals (including Spiro) pursue multiple passports for a host of educational and professional opportunities, immigration benefits, and additional advantages. In today’s global economy, people often seek out several passports for convenience or business purposes rather than out of fierce loyalty to a state. Indeed, several countries offer a range of immigration benefits, including citizenship, to those able to pay for it. Even some athletes who failed to qualify for the Olympics in their native lands have acquired citizenship in a second country to compete under a different flag. This new conception of citizenship is undermining traditional state-based identities. Spiro recognizes that dual citizenship still occupies a place of ambivalence in American law. But he argues that it should be embraced as serving both the national interest and the interests of dual citizens without significant social costs. Citizenship is an important part of identity, and dual citizens deserve opportunities to accentuate and cement their connections to their heritages and homelands, as worthy of protection as any other form of association or membership. Whether nationalizing through continual presence, blood ties, or marriage, Spiro argues that dual citizens enhance deliberative democracy while transmitting American ideals and concepts back to the states from which they emigrated. And sending states have begun to see emigrant communities as economic resources that provide benefits (especially financial ones) to their native homelands. The result is that both sending states and receiving states have seen reason to liberalize their understanding and treatment of dual citizens. And while individuals cannot simply choose to acquire a second (or third, or fourth) citizenship
without foundation, Spiro contends that those who obtain multiple nationalities should not be forced to choose among them.

As the availability of dual citizenship has evolved—providing key benefits to those fortunate enough to be in a position to claim them—the wealthy and connected have found ways of making use of dual citizenship that the poor cannot. Spiro likens these benefits to a kind of “rich kid’s problem” that pales in comparison to those in poorer countries who would benefit enormously from a second citizenship in a wealthier one. In that sense, dual nationality tends to reflect the same inequities that separate have-nots from haves more generally. Taking these concerns seriously, Spiro wonders what can be done to address them, “given the improbability of states moving to suppress the status” on grounds of inequality. Certainly, more stringent policing of dual citizenship is not the solution. From “a global perspective, what single citizenship you are born with has been among the best predictors of economic well-being. Citizenship has long been an instrument of exclusion and a vehicle for inequality. In other words, dual citizenship isn’t the problem, citizenship is.”

While At Home in Two Countries is largely descriptive, covering more than 150 years of legal and historical development, it endorses dual citizenship as a net positive, reinforcing important associational values and critical bonds—emotional and otherwise—between citizens and their homelands. Spiro brings welcome wit and levity to these accounts, including his personal pursuit of a second, German citizenship for himself and his children to connect with their heritage and to experience the benefits of holding an EU passport. He concludes with an optimistic outlook on a world in which dual citizenship could rise to the level of a protected right that “shouldn’t have to be sacrificed at a false altar of exclusive national attachment.”

Of course, events occurring after the publication of the book—from the United Kingdom’s withdrawal from the European Union to the election of Donald Trump—could alter the next chapter of dual citizenship in unanticipated ways. While Brexit and Trumpism raise questions about the current appetite for globalization and cosmopolitanism, it is hard to fathom a retreat to the kind of tribalism that defined an earlier age given the long historical arc that has led us to tolerate, if not fully embrace, dual citizenship today. Overall, At Home in Two Countries is full of insights to those curious about the past, present and future of dual citizenship, and Spiro’s expert path through the jagged historical terrain and surrounding legal landscape makes a lasting contribution to the field.

Joseph Landau is a Professor of Law at Fordham Law School.