The Democratic Roots of Expatriations

Ben Herzog[*]

Patti Tamara Lenard assesses the justifications given for the right to revoke citizenship in democratic states and concludes that this practice is inconsistent with a commitment to democratic equality. She provides three normative reasons for the mismatch between democratic principles and revocation laws: that the practice of revocation discriminates between different citizens within each state; that it provides differential penalties for the same crime; and that it does not provide transparent justification or due process for this harsh punishment. Although I too am repulsed by this practice, I do not think it is necessarily undemocratic. Moreover, such analysis overlooks one legitimate motivation behind expatriation: the aim to regulate national allegiance. The new revocation initiatives act as a powerful symbolic tool in reinforcing a world order based on sovereign nation-states.

Holding multiple citizenships may be a multicultural value; however, it is less clear to me that it is a democratic right. Because of the imperative to avoid statelessness, most revocation laws are written so that the only individuals subject to having their status revoked are dual citizens. According to Lenard, the power to revoke discriminates against dual citizens on the basis of their national origin and subjects individuals guilty of the same crime to unequal punishments. In many cases, however, holding dual citizenships is a sign of privilege, and not of inequality. One could argue that it is the possession of dual citizenship, and not its revocation, that violates the principle of political equality, a core democratic value. Since dual citizens can participate in both polities, the existence of multiple citizenships contradicts the "one man, one vote" principle. While this principle is

[*]*Editor's Note:* This essay is in response to "Democracies and the Power to Revoke Citizenship" by Patti Tamara Lenard, which appeared in the Spring 2016 issue of *Ethics & International Affairs*, vol. 30, no.1.

Ethics & International Affairs, 30, no. 2 (2016), pp. 261–264.
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doi:10.1017/S0892679416000125

https://doi.org/10.1017/S0892679416000125 Published online by Cambridge University Press

still maintained within each polity, from a global perspective, having multiple votes expands the political rights of particular individuals.

Lenard argues that punishment in a democracy must meet at least these three criteria: "First, there must be a clear connection between the policy objective being pursued and the means proposed to meet it; second, the proposed policy must be recognizably better than existing policies in some respect; and, third, assuming these criteria are met, the proposed policy must be shown to be the least burdensome mechanism by which the goal can be achieved." It is true that revocation as a punishment may not be practical and may not produce the desired deterrence. As the author suggests, a genuinely dangerous individual may continue to plot criminal activity against the state that revoked his or her citizenship. Nevertheless, the same logic can be applied to all punishments, and it is not clear to me that harsh punishments, unjustifiable regulations, or even ineffective punishments are intrinsically undemocratic. Laws are often passed in a democracy because they are politically viable or beneficial for gaining public support, and not because they are just or the least harmful policy option available.

Democratic theory expresses multiple values and commitments, and its actual implementation around the world varies greatly; as Robert Dahl has written, "There is no democratic theory—there are only democratic theories."[1] While the revocation of citizenship indeed violates some democratic values, it can at times be consistent with democratic rule. I do not wish to argue that the revocation of citizenship is useful, ethically justifiable, or progressive—it is not—but merely to show that the revocation of citizenship is consistent with the national logic, which is the foundation of modern democracies.

In the past, revoking citizenship was typically connected with assumptions about exclusive national identity. National allegiance was thought to be essentially singular, and thus dual citizenship (or actions that suggested multiple loyalties) could be penalized by the revocation of citizenship.[2] Dual citizenship was perceived as an imminent threat to a world order that supposes a one-to-one relationship between the individual and the state. To regulate the inconsistencies that were produced through immigration or shifting borders, states encouraged the voluntary renunciation of citizenship and even sometimes recommended—and carried out—forced expatriations.

Modern democracies are also inherently connected to the national logic that divides the world into territorial states. The Western geopolitical imagination endows territorial demarcation with normative significance: the border marks the

https://doi.org/10.1017/S0892679416000125 Published online by Cambridge University Press

limits of sovereignty of each nation-state because the state and the nation are supposedly coextensive. Individual democracies, each with its own particular democratic values, are also bounded by these same borders. That is, ideas about rights, equality, political representation, fairness, legal protections, shared commitments, and even security are all confined within each territorial state.

Since states are bound by international law and conventions that prohibit any revocation of citizenship that would result in statelessness, the new revocation bills and proposals target neither all disloyal activities or terrorism nor all dual citizens. States are now revoking citizenship exclusively from terrorists, but only if they hold a second citizenship. It is this disjuncture between international law and norms and national logic that creates the current incoherence in expatriation policy.

The centrality of nationality and citizenship in constructing identity, and therefore the insistence on exclusivity, is fading. While some scholars see the demise of national identity as inevitable with the process of globalization,[3] others lament this development. For example, scholars such as Rainer Bauböck, Linda Bosniak, and Paul Johnston argue that citizenship is increasingly taking nonnational forms in order to cope with transnational and postnational practices and institutions.[4] In contrast, Stanley Renshon, a political psychologist, argues that exclusive national loyalty is critical to the American civil process.[5]

In any case, it is widely acknowledged that exclusive national allegiance has ceased to be a normative standard.[6] Today, dual citizenship is becoming implicitly, and at times explicitly, accepted. For example, the United States does not formally recognize dual citizenship, but neither does it act against it. (Currently, the number of Americans with dual citizenship is in the millions.) Unlike in the past, the courts maintain that actions that symbolize dual or split allegiance, or even the abandonment of allegiance, are not sufficient for compulsory expatriation or any other legal action.

How can we explain the revocation measures targeting terrorists in light of the current acceptance, legal and political, of multiple allegiances? Their recent proliferation is even more perplexing if we accept Lenard's conclusion that revoking citizenship may not deter dual citizens from committing acts of terror and violence, and that this policy is undemocratic. I believe the recent expatriation policies are tied to the same national logic that has directed these policies in the past. Following Pierre Bourdieu, we can conceptualize the debates, controversies, definitions, analyses, limits, and possibilities in the imagining and practice of citizenship as aspects of the classification struggles in the symbolic space of citizenship. The various groups

https://doi.org/10.1017/S0892679416000125 Published online by Cambridge University Press

and subgroups in a polity are constantly engaged in symbolic struggles, trying to impose a definition of the social world that reproduces their own existence and maintains their hierarchical superiority.[7] For Bourdieu, "symbolic systems are not simply instruments of knowledge; they are also *instruments of domination*."[8]

Seen in this light, the revocation of citizenship is a powerful symbolic tool for reinforcing the prominence of the nation-state. In proposing to take away citizenship from terrorists, politicians reconstruct a worldview that asserts that citizenship should be exclusive (gathering support from nationalistic constituents as they do so). In a similar manner, Vesco Paskalev argues that expatriation policies may help define and redefine the meaning of the concept of citizenship itself—not just the conditional citizenship of terrorists, but the centrality of national citizenship for everyone within a given body politic.[9] Thus, another reason for the recent threats of expatriation might be an attempt to reestablish an older normative conception of citizenship as tied to the nation-state in the face of globalization and associated ideas of "post-national" or "multiple" belonging.

The motivation behind expatriation policy today, as in the past, is not to introduce undemocratic practices or to enhance inequality, but to reinforce the national world order. Indeed, critical analysis of political concepts, and their renegotiation, is a central feature of democracy itself.

NOTES

[1] Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), p. 1.
[2] Ben Herzog, *Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror* (New York: New York University Press, 2015).
[3] Peter J. Spiro, *Beyond Citizenship: American Identity After Globalization* (New York: Oxford University Press, 2008).
[4] Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Cheltenham, U.K.: Edward Elgar, 1994); Linda Bosniak, "Denationalizing Citizenship," in A. T. Aleinikoff and D. Klusmeyer, eds., *Citizenship Today: Global Perspectives and Practices* (Washington, D.C.: Carnegie Endowment for International Peace, 2001); Paul Johnston, "The Emergence of Transnational Citizenship among Mexican Immigrants in California," in Aleinikoff and Klusmeyer, *Citizenship Today: Global Perspectives and Practices*.
[5] Stanley A. Renshon, *The 50% American: Immigration and National Identity in an Age of Terror* (Washington, D.C.: Georgetown University Press, 2005).
[6] Peter Spiro suggests that denationalization is not only a toothless policy, but that it is anachronistic in the face of diminished conceptions of citizenship as an institution and the changed locations of allegiance. Peter J. Spiro, "Terrorist Expatriation: All Show, No Bite, No Future," in Audrey Macklin and Rainer Bauböck, eds., *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?*, European University Institute Working Paper RSCAS 2015/14, Robert Schuman Centre for Advanced Studies, February 2015.
[7] Pierre Bourdieu, *Language and Symbolic Power* (Cambridge, Mass.: Harvard University Press, 1991).
[8] Pierre Bourdieu and Loïc J. D. Wacquant, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992), p. 13, emphasis in the original.
[9] Vesco Paskalev, "It's Not About Their Citizenship, It's About Ours," in Macklin and Bauböck, eds., *The Return of Banishment*.

https://doi.org/10.1017/S0892679416000125 Published online by Cambridge University Press