

The Bancroft Conventions: Second-Class Citizenship for Naturalized Americans

It is now commonplace to assert that the law recognizes no second-class citizens with respect to race, creed, color or national origin. Unfortunately, this is not yet so with respect to national origin. Because of a set of old naturalization treaties known as the Bancroft conventions, naturalized Americans from twenty-one countries still risk losing their citizenship if they return to their country of origin and remain there two years. The 1964 Supreme Court decision in *Schneider v. Rusk*¹ invalidated a section of the Immigration and Nationality Act of 1952,² which stripped any naturalized American of his citizenship after three years' continuous residence in his country of origin. But the *Schneider* decision did not touch loss of nationality provisions in the Bancroft conventions which are essentially the same as the statutory provisions struck down by the Court. The result subjects American citizens from Bancroft convention countries to overseas residency restrictions which apply to no other Americans, whether naturalized or native born.

History and Major Provisions

Conceived in an era when the right of individuals to renounce their national allegiance was not widely acknowledged among the community of nations,³ the Bancroft conventions were a means of securing recognition by foreign governments of the right of their nationals to become American citizens.⁴

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¹377 U.S. 163 (1964).

²Section 352(a)(1), 66 Stat. 269, 8 U.S.C. § 1484(a)(1) (1952):

(a) A person who has become a national by naturalization shall lose his nationality by—

(1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated. . . .

³See Agata, *Involuntary Expatriation and Schneider v. Rusk*, 27 U. PITT. L. REV. 1, 19-21 (1965).

⁴See GORDON & ROSENFELD, *IMMIGRATION LAW AND PROCEDURE*, § 20.7b (1977).

From 1868 to 1937, the United States entered into twenty-six of these agreements. Seventeen of them remain in force, including the multilateral Interamerican Convention of 1906.⁵

Named for George Bancroft, the American historian and diplomat who negotiated the first of these treaties,⁶ each agreement is reciprocal. Though not identical, most Bancroft conventions have three major provisions. The first specifies the terms under which each party will recognize the naturalization of its citizens by the other. (Five years' uninterrupted residence in the country of adoption is usually required to complete the naturalization process.) The second provides that naturalized citizens of one party who return to their native country shall remain liable to punishment for crimes committed before emigration.

The third and most important provision holds that a naturalized citizen who returns to his country of origin may be deemed to have resumed his former nationality after two years' continuous residence.⁷ The main purpose of this provision was to prevent naturalization from becoming a way to avoid military service in one's native country.⁸ Another purpose was to limit the time during which a naturalized citizen living abroad could demand the diplomatic protection of his adopted country. This consideration was prompted by suspicions that some persons sought naturalization for fraudulent purposes. It was feared that such persons would return to their native country to live and pursue their business affairs, enjoying the ad-

⁵Bilateral treaties remain in force with Albania, Belgium, Bulgaria, Costa Rica, Czechoslovakia, Denmark, El Salvador, Haiti, Honduras, Lithuania, Nicaragua, Norway, Peru, Portugal, Sweden and Uruguay. See BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA, 1776-1949, *passim*. Norway and Sweden are included in a single treaty in 1869 while the two countries were joined in a personal union under the Swedish crown. Cf. Treaty on Naturalization, May 26, 1869, United States-Sweden and Norway, 17 Stat. 809, T.S. No. 350. The treaty is still in force with both countries. See *Anderson v. Howe*, 231 F. 546, 549 (D.C.N.Y. 1916).

The Interamerican Convention of 1906 (Aug. 13, 1906, 37 Stat. 1653, T.S. No. 575) remains in force with Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Nicaragua and Panama. (Bolivia, Brazil, Cuba, the Dominican Republic, Guatemala, Mexico, Paraguay, Peru and Uruguay are no longer parties to the Convention.)

Treaties concluded with Austria-Hungary, Brazil, Mexico, the United Kingdom and the German states of Baden, Bavaria, Hesse, the North German Confederation (Prussia) and Wurttemberg are no longer in force. The treaties with each of the German states except Prussia became obsolete when the German Empire was proclaimed in 1871. The treaties with Prussia and Austria-Hungary were not revived after World War I. Brazil, Mexico and the United Kingdom each denounced their treaties according to the provisions governing termination. See BEVANS, *supra*.

⁶Treaty on Naturalization, Feb. 22, 1868, United States-North German Confederation, 15 Stat. 616, T.S. No. 261.

⁷The treaty with the United Kingdom was exceptional in that it did not fix an exact period of residence after which resumption of the naturalized citizen's former nationality was to be presumed. That determination was to be made according to the law of the country of origin. Treaty on Naturalization, May 13, 1870, United States-United Kingdom, art. III, 16 Stat. 775, 776, T.S. No. 130.

⁸Hackworth, DIGEST OF INTERNATIONAL LAW 377 (1942). See also, *Ex parte Gilroy*, 257 F. 110, 118 (S.D.N.Y. 1919).

vantages of two nationalities, but avoiding the obligations of each.⁹ Article III of the treaty with Portugal is typical of this type of provision:

If a Portuguese subject naturalized in America, renews his residence in Portugal, without intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in Portugal renews his residence in the United States, without intent to return to Portugal, he shall be held to have renounced his naturalization in Portugal.

The intent not to return may be held to exist when the person naturalized in one country resides more than two years in the other country.¹⁰

It must be emphasized that two years' residence by a naturalized citizen in his country of origin does not result automatically in his losing his American citizenship.¹¹ Instead, it gives rise to a *presumption* that he has voluntarily abandoned his adopted nationality.¹² That presumption may be overcome by evidence of an intention to return to the United States. Even a person who has lived many years in his native country may avoid losing his American citizenship provided he asserts and proves his intention to return to the United States.¹³ In this respect, the language of the Bancroft conventions can be distinguished from that of the statute declared unconstitutional in *Schneider v. Rusk*.¹⁴

⁹For a discussion of the problem of fraud in obtaining American citizenship, see 2 Wharton, DIGEST OF INTERNATIONAL LAW 348-57 (2d ed. 1887), and 3 Hackworth, DIGEST OF INTERNATIONAL LAW 287-88 (1942).

¹⁰Treaty on Naturalization, May 7, 1908, United States-Portugal, art. III, 35 Stat. 2082, 2083-84, T.S. No. 513.

¹¹See Agata, *supra* note 3 at 33.

¹²Two cases, *Ex parte Gilroy*, 257 F. 110, 117 (S.D.N.Y. 1919), and *Anderson v. Howe*, 231 F. 546, 548 (D.C.N.Y. 1916), have held that two years residence by a naturalized citizen in his native country is merely *prima facie* evidence of abandonment of American citizenship under the Bancroft conventions.

¹³With specific reference to the treaty with Portugal (*supra* note 10), the State Department has said:

Article III provides that a Portuguese subject naturalized in America shall be held to have renounced his naturalization if he renews his residence in Portugal without intent to return to America. Thus, foreign residence is not the sole criteria [*sic*] for finding loss of citizenship as in INA [Immigration and Nationality Act] Section 352(a)(1). Rather, the determining factor is whether the person intends to return to the United States. A person, for example, who asserts his intention of returning to the United States and can substantiate this assertion with evidence, can avoid loss of citizenship under Article III even if he has been residing in Portugal for many years.

Operations Memorandum from State Department Passport Office to American Consulate, Oporto, Portugal (Apr. 18, 1975). *Haaland v. Att'y Gen.*, 42 F. Supp. 13 (D.C. Md. 1941), held that residence in Norway for several years by a former Norwegian national naturalized in the United States did not demonstrate an intent not to return to America.

¹⁴In *Schneider*, a woman born in Germany emigrated to the United States with her parents while she was a small child. At the age of sixteen, she acquired derivative American citizenship through her parents' naturalization. She later married a German national and took up residence in Germany. When the State Department denied her a passport on grounds that she had lost her citizenship under the expatriation provisions of the Immigration and Nationality Act, she sought a declaratory judgment in federal district court.

Schneider v. Rusk

Section 352(a)(1) of the Immigration and Nationality Act of 1952 made loss of citizenship *automatic* after three years' residency in the country of origin, though exceptions were enumerated in another part of the act.¹⁵ In *Schneider v. Rusk*, a majority of the Justices held this provision to be discriminatory and therefore in violation of the Fifth Amendment's due process guaranty. Writing for the majority, Justice Douglas declared:

This statute proceeds on the impermissible assumption that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born. This is an assumption that is impossible for us to make. Moreover, while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is "so unjustifiable as to be violative of due process." *Bolling v. Sharpe*, 347 U.S. 497, 499. A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship. The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship. *Living abroad, whether the citizen be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance.* It may indeed be compelled by family, business or other legitimate reasons.¹⁶

Despite the distinction between the automatic expatriation mechanism of Section 352(a)(1) and the rebuttable presumption of voluntary expatriation contained in the Bancroft conventions, the language of the Douglas opinion makes it extremely doubtful that the latter would survive a court test based on the Fifth Amendment.¹⁷ Like Section 352(a)(1), the expatriation provisions of the treaties impose a burden on naturalized citizens which is not shared by the native born. Moreover, the demise of Section 352(a)(1) leaves persons whose status is governed by the Bancroft conventions subject to restrictions which no longer apply to naturalized citizens as a class. The treaty provisions also contradict the Douglas opinion in that they establish overseas residency as partial evidence of voluntary renunciation of one's nationality.

But are the provisions of a treaty subject to the same tests of constitutionality which normally apply to statutes? Addressing this question in the 1957 case of *Reid v. Covert*,¹⁸ Justice Black declared that "no agreement with a foreign nation can confer power on the Congress, or on any other branch of Govern-

¹⁵See § 353, 66 Stat. 270, 8 U.S.C. § 1485 (1952).

¹⁶377 U.S. 163, 168-69 (1964). (Italics supplied.)

¹⁷The Douglas opinion also would seem to cast doubt on the constitutionality of § 352(a)(2) of the Immigration and Nationality Act, which reads:

- (a) A person who has become a national by naturalization shall lose his nationality by—
 (2) having a continuous residence for five years in any other foreign state or states. . . .

For a thorough survey of the impact of various Supreme Court decisions on other sections of the Immigration and Nationality Act, see Master, *United States Citizenship*, 5 INT'L LAW. 324 (1971).

¹⁸354 U.S. 1.

ment, which is free from the restraints of the Constitution.¹⁹ Continuing, Justice Black observed:

This court has . . . repeatedly taken the position that an Act of Congress, which must comply with the Constitution, is on a full parity with a treaty, and that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of the conflict renders the treaty null. It would be completely anomalous to say that a treaty need not comply with the Constitution when such an agreement can be overridden by a statute that must conform to that instrument.²⁰

Thus, the constitutional objections to Section 352(a)(1) raised by Justice Douglas in *Schneider v. Rusk* can be applied with equal force to the expatriation provisions of the Bancroft conventions.

Yet the Fifth Amendment rationale of the Douglas opinion is not the only basis for doubting the constitutionality of the expatriation provisions of the Bancroft conventions. Three years after the *Schneider* decision, in *Afroyim v. Rusk*,²¹ the Court again invalidated a loss of nationality statute, this time on Fourteenth Amendment grounds.

Afroyim v. Rusk

Though any American, whether naturalized or native born, may voluntarily renounce his citizenship, Congress has no power to divest persons of their citizenship. This was the Supreme Court's holding in the 1967 case of *Afroyim v. Rusk*, which knocked out Section 401(e) of the Nationality Act of 1940.²² Section 401(e) stripped Americans of their citizenship for voting in foreign elections. In holding that Section 401(e) was contrary to the Fourteenth Amendment's grant of citizenship to "[a]ll persons born or naturalized in the United States," the Court explicitly overruled its 1957 decision in *Perez v. Brownell*,²³ which sustained the validity of that section. Writing for the majority in *Afroyim*, Justice Black declared

The Constitution . . . grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power. And even before the adoption of the

¹⁹*Id.* at 16.

²⁰*Id.* at 18 (footnote omitted).

²¹387 U.S. 253 (1967).

²²Section 402(e), 54 Stat. 1168, as amended by 58 Stat. 746, 8 U.S.C. § 801(e) (1946). *Re-enacted as* Immigration and Nationality Act, § 349(a)(5), 66 Stat. 267, 8 U.S.C. § 1481(a)(5):

(a) . . . [A] person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by—

(5) voting in a political election in a foreign state or participating in an election to determine the sovereignty over foreign territory. . . .

²³356 U.S. 44 (1957). *Perez* upheld the constitutionality of § 401(e) under the implied power of Congress to regulate foreign relations. Writing for the majority in *Perez*, Justice Frankfurter cited the Bancroft conventions as examples of the exercise of that power:

This series of treaties initiated this country's policy of automatic [sic] divestment of citizenship for specified conduct affecting our foreign relations. *Id.* at 48.

Fourteenth Amendment, views were expressed in Congress and by this Court that under the Constitution the Government was granted no power, even under its express power to pass a uniform rule of naturalization, to determine what conduct should and should not result in the loss of citizenship.²⁴

Justice Black concluded:

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 to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.²⁵

Afroyim was silent about what might constitute voluntary relinquishment of one's citizenship. But an attorney general's opinion issued in 1969 concluded that expatriation cannot be based on "an act which does not reasonably manifest an individual's transfer or abandonment of allegiance to the United States."²⁶ The crucial question, therefore, in expatriation cases which arise under the surviving sections of the Nationality Act, is whether a person by his acts or declarations has manifested an intent to renounce his American citizenship.²⁷

The Bancroft Conventions After *Afroyim v. Rusk*

Because of the *Afroyim* decision, the same determination now must be made in loss of nationality cases which might arise under the Bancroft conventions. In order to establish loss of nationality under one of the treaties, it must be shown that a naturalized American has taken up residence in his country of origin without intent to return to America *and for the purpose of resuming his former nationality or of abandoning his allegiance to the United States.*²⁸

²⁴387 U.S. 253, 257 (1967).

²⁵*Id.* at 267.

²⁶42 OP. ATT'Y GEN. 34 (1969), reprinted in 34 Fed. Reg. 1079 (1969).

²⁷The Attorney General's opinion further declared that voluntary relinquishment is not confined to a written renunciation, but that "[i]t can also be manifested by other actions declared expatriative under the [Nationality] Act, if such actions are in derogation of allegiance to this country." *Id.* But the opinion makes it clear that even in these cases, *Afroyim* permits the individual to raise the issue of intent, thus shifting to the government the burden of proving that expatriation has, in fact, occurred. Voluntary relinquishment means, of course, that the individual was free of duress when he engaged in legislatively-defined expatriative conduct. *Jolley v. Immigration and Naturalization Service*, 441 F.2d 1245 (5th Cir. 1971), cert. denied, 404 U.S. 946 (1971). But it also has been interpreted to mean the presence of "specific subjective intent" to renounce American citizenship. *King v. Rogers*, 463 F.2d 1188, 1189 (9th Cir. 1972). *Accord*, *United States v. Matheson*, 532 F.2d 809, 814 (2d Cir. 1976). For an item-by-item analysis of the grounds for expatriation under the Nationality Act of 1940, see Wasserman, *The Voluntary Abandonment of United States Citizenship*, 17 S. TEX. L.J. 31, 40-66 (1975).

²⁸The State Department Operations Memorandum (*supra*, note 13) issued to clarify the impact of *Schneider* on the treaty with Portugal likewise offered guidance with regard to the effect of *Afroyim*:

The Department also considers the *Afroyim* decision applicable to all determinations of Loss of Nationality made in conjunction with Article III. Thus, not only must it be established that the

Despite this additional safeguard against involuntary expatriation and despite the best efforts of the Department of State's Passport Office to administer the treaty provisions with fairness,²⁹ it seems completely contrary to the spirit of *Schneider* and *Afroyim* that the Bancroft conventions remain in force. Only four of the treaties—those with Albania, Bulgaria, Czechoslovakia and Lithuania³⁰—still afford significant protections to naturalized Americans native to these countries. An article in each of the four treaties guarantees that naturalized Americans who return to their former countries will not be punished either for the original act of emigration or for failure to respond to calls for military service issued after they took up permanent residence in the United States.³¹ Because the potential value of such guarantees from Eastern European countries with restrictive emigration policies far outweighs the inconvenience imposed by the other treaty provisions, these four Bancroft conventions ought to remain in force. The rest should be abrogated.

Abrogating the Bancroft Conventions

Abrogation is a simple matter. All but one of the treaties provide for termination twelve months after one party notifies the other that it no longer wishes to be bound. The exception is the treaty with Portugal, which requires only six months' notice of an intention to terminate.³²

Though the Constitution contains no provision regarding the power to terminate treaties, it seems generally accepted that the President, acting alone, may terminate a treaty which has come into conflict with the laws of the United States; but amending or otherwise modifying a treaty requires the consent of the Senate.³³ Citing the *Schneider* and *Afroyim* decisions as authority,

subject does not intend to return to the United States as provided in the terms of the treaty, but it must also be established under the *Afroyim* guidelines that the person, by residing in Portugal, intended to transfer allegiance to the foreign state or intended to abandon allegiance to the United States. As to this last point, the case must be fully developed in the same manner as in all other loss of nationality cases.

²⁹Richard H. Williams' *Time to Review Some Naturalization Conventions*, (May 1975) appeared in issue 5 of *Open Forum*, a journal of opinion circulated within the Department of State by the Secretary's Open Forum Panel.

³⁰As of the date of the present paper, the United States has not recognized the incorporation of Estonia, Latvia, and Lithuania into the Union of Soviet Socialist Republics. The Department of State has regarded treaties between the United States and those countries as continuing in force. U.S. DEP'T OF STATE, PUB. NO. 8847, TREATIES IN FORCE 171 (Jan. 1, 1976).

³¹See the following Naturalization Treaties: Apr. 5, 1932, United States-Albania, art. II, 49 Stat. 3241, 3242-43, T.S. No. 892; Nov. 23, 1923, United States-Bulgaria, art. II, 43 Stat. 1759, 1760, T.S. No. 684; July 16, 1928, United States-Czechoslovakia, art. II, 46 Stat. 2424, 2425, T.S. No. 804; and the United States-Lithuania, art. I, 53 Stat. 1569, 1570, T.S. No. 936.

³²Treaty on Naturalization, May 7, 1908, United States-Portugal, art. IV, 35 Stat. 2082, 2084, T.S. No. 513.

³³See 14 Whiteman, DIGEST OF INTERNATIONAL LAW 460-64 (1970). Compare Goldwater, *Abrogating Treaties*, N.Y. Times, Oct. 11, 1977, at 37, col. 1.

the President, without consulting the Senate, probably could invoke, as a reason for abrogating the Bancroft conventions, if any were desired, the rationale that they are in conflict with basic concepts of our constitutional system. But Presidential action pursuant to a Senate resolution would doubtless raise fewer questions in that body. A more cumbersome alternative to abrogation would be to seek the consent of the other parties to strike the loss of nationality provisions, then obtain Senate approval of this modification, treaty by treaty.

Conclusion

When the Bancroft conventions were signed, they provided important safeguards for many naturalized Americans. Today, however, they symbolize second-class citizenship for the very people they were meant to protect. The principal function of the treaties—preventing foreign governments from imposing military obligations on naturalized Americans—has been superseded in large part by other international agreements, most notably the 1930 Protocol on Military Obligations in Certain Cases of Double Nationality, which contains an article exempting naturalized persons from military service in their former countries.³⁴

³⁴Protocol on Military Obligations in Certain Cases of Double Nationality (opened for signature Apr. 12, 1930), art. III, 50 Stat. 1317, 1318, T.S. No. 913, 178 L.N.T.S. 227:

A person who has lost the nationality of a State under the law of that State and has acquired another nationality, shall be exempt from military service in the State of which he has lost the nationality.

Twenty-five countries, including the United States, are currently parties to the 1930 Protocol. Cf. U.S. DEP'T. OF STATE, PUB. NO. 8847, TREATIES IN FORCE 394 (Jan. 1, 1976).

Four Bancroft Convention countries—Belgium, Colombia, El Salvador and Sweden—have ratified the 1930 Protocol. Five others—Chile, Denmark, Peru, Portugal and Uruguay—have signed the Protocol, but have not yet ratified it. Cf. UNITED NATIONS, MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITORY FUNCTIONS: LIST OF SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. AS AT 31 DEC. 1976, U.N. Doc. ST/LEG/SER.D/10 (1977) 549.

Norway and Sweden are parties to separate bilateral agreements with the United States respecting military service of dual nationals: Treaty on Military Service, Nov. 1, 1930, United States-Norway, 46 Stat. 2904, T.S. No. 832; Treaty on Military Service, Jan. 31, 1933, United States-Sweden, 49 Stat. 3195, T.S. No. 890.

Argentina and Costa Rica are each party to separate bilateral treaties with the United States which include provisions exempting each other's resident nationals from military service: Treaty of Friendship, Commerce, and Navigation, July 27, 1853, United States-Argentine Confederation, art. X, 10 Stat. 1005, 1009-10, T.S. No. 4; Treaty of Friendship, Commerce, and Navigation, July 10, 1851, United States-Costa Rica, art. IX, 10 Stat. 916, 921, T.S. No. 62.

Honduras is party to a bilateral treaty with the United States which permits each country in time of war to conscript the other's resident nationals who have declared their intention to become naturalized in the country of residence: Treaty of Friendship, Commerce, and Consular Rights, Dec. 7, 1927, United States-Honduras, art. VI, 45 Stat. 2618, 2622, T.S. No. 764. This treaty superseded an earlier one which exempted each other's resident nationals from military service: Treaty of Friendship, Commerce, and Navigation, July 4, 1864, United States-Honduras, art. IX, 13 Stat. 699, 704, T.S. No. 172. In 1957 the United States terminated a treaty with El Salvador which contained an article identical to article VI of the 1927 treaty with Honduras: Treaty of

Abrogating the Bancroft conventions would bring our treaty obligations into conformity with *Schneider* and *Afroyim* and would permit greater uniformity in applying our citizenship laws. It also would end the lingering risk of creating a small class of stateless persons through the operation of the treaties—a risk created if another party to one of the treaties should refuse to recognize an American “treaty victim” as having resumed his former nationality after losing his American citizenship. Both in *Afroyim* and in the 1957 case of *Trop v. Dulles*, the Supreme Court has condemned laws which might operate to produce statelessness.³⁵

As children of immigrants, American traditionally have regarded immigration to this country as a “golden door” to the enjoyment of citizenship in a free society. It is contrary to the spirit of America that the rights of any of its citizens—indeed, their very right to remain citizens—should be abridged by their national origin.

Friendship, Commerce, and Consular Rights, Feb. 22, 1926, United States-El Salvador, art. VI, 46 Stat. 2817, 2821, T.S. No. 827. When El Salvador rejected an American initiative to abrogate article VI only, the two countries agreed to terminate the entire treaty. See 7 BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA, 1776-1949, 521.

Seven Bancroft convention countries are not parties to the 1930 Protocol and have no separate military service agreements with the United States: Albania, Bulgaria, Czechoslovakia, Ecuador, Haiti, Lithuania and Panama. The United States and Haiti once had a treaty which exempted each other's resident nationals from military service, but it was terminated by Haiti in 1905. Treaty of Amity, Commerce, Navigation, and Extradition, Nov. 3, 1864, United States-Haiti, art. V, 13 Stat. 711, 713, T.S. No. 164.

In a 1968 opinion, the Attorney-General concluded that the United States must continue to recognize the treaty rights of resident aliens to exemption from military service. But the opinion stated that treaty aliens are required to register with the Selective Service System and specifically apply for relief under the treaties. Treaty aliens who apply for and receive exemptions are subject to a statutory bar against eligibility for citizenship. 42 OP. ATT'Y GEN. 28 (1968).

³⁵In *Trop v. Dulles*, 356 U.S. 86 (1957), Chief Justice Warren's majority opinion strongly condemned loss of nationality as a punishment because it would lead to statelessness:

This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native country may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies. It is no answer to suggest that all the disastrous consequences of this fate may not be brought to bear on a stateless person. The threat makes the punishment obnoxious. [Footnotes omitted.] *Id.* at 102.

Justice Black's opinion in *Afroyim* took similar note of statelessness as an unacceptable risk in loss of nationality, creating an individual without country or protection. 387 U.S. 253, 268 (1967).

