Dual citizenship as human right

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Dual citizenship has become an unexceptional status in the wake of globalization yet remains at the sufferance of states. This essay advances the novel claim that dual citizenship should be protectable as a human right. In light of the threat that dual nationals once posed to stable bilateral relations, states were justified, historically, in suppressing the status. As that threat has dissipated, the values of freedom of association and liberal autonomy implied by citizenship ties should trump lingering state resistance. Failure to recognize the status also burdens the exercise of political rights by raising the cost of naturalization. Insofar as dual citizenship undermines state solidarities, that interest is too diffuse to justify nonapplication of associational and self-governance norms. There is growing evidence from state practice that dual citizenship is appropriately situated in a human rights framework.

For most of modern history, dual citizenship was considered an anomaly, at best, and an abomination, at worst. It has since become a commonplace of globalization. The sequence has been from strong disfavor to toleration; indeed, some states have moved to embrace the status. Could plural citizenship now achieve the status of a right?

This essay makes a bounded case for recognizing a right to acquire and maintain plural citizenship. It does so through the optics of freedom of association and liberal autonomy values. Citizenship comprises both a form of association and a vehicle for individual identity. The liberal state has no business obstructing alternate national ties in the absence of a compelling interest. That interest once existed, to the extent that dual nationality destabilized interstate relations, and it explains the historical opprobrium attached to the status. Now, however, laws directed at reducing the incidence of dual citizenship may also unjustifiably burden the exercise of political rights. Today, the material downside risks (if any) posed by plural citizenship have dissipated to the point that the state is no longer justified in suppressing the status.

The essay traces the historical trajectory of dual nationality and its recent acceptance. It then makes the case for more broadly conceiving of plural citizenship as a right. I address two objections. First is the argument that plural citizenship violates

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equality norms insofar as only some will be positioned to acquire the status. (It should be clear up front that when I speak of a right to acquire and maintain plural citizenship, I do not mean a right to acquire any nationality of one's choosing.[1] Rather, the right would be to acquire and/or maintain an additional nationality when otherwise eligible under a state's citizenship rules.) This objection fails because plural citizenship does not give rise to inequality within the polity. More formidable is the claim that plural citizenship undermines state solidarities. I agree that the dramatic rise of plural citizenship ultimately threatens to demote the state from the pedestal it has occupied during the Westphalian era. That, however, is too diffuse an interest to overcome individual autonomy values.

In the meantime, individuals should be as free to affiliate with states as they are with other nonpathological membership entities. The essay concludes with some indirect evidence from practice that dual citizenship is gaining traction as a right.

1. A short history of dual nationality

There has been a remarkable shift in perceptions of dual nationality. Until the end of the twentieth century, the status was highly disfavored. In recent years, however, it has come to be widely accepted. Although statistical information is lacking, it is clear that there has been an explosion in the numbers of individuals holding plural citizenship.[2]

1.1. Historical disfavor

I have elsewhere recounted the historical aversion to dual nationality.[3] For present purposes, the key feature of this account is the serious threat that dual nationality posed to world order. States engaged in the human equivalent of turf contests over individuals to whom they both laid claim. State power was correlated with control of resources, and states sought to control resources, physical and human.[4] Just as world

[1] Contrast this with Franck's articulation of "a growing consciousness of a *personal* right to compose one's identity." Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 Am. J. Int'l L. 359 (1996). *See also id.* at 377 ("What is remarkable today is the extent to which a person's loyalty system today, for the first time in history, has become a matter of *personal* choice"). Institutional identities will typically be a two-way street, often determined by individual option but also by internally constituted membership rules. An individual cannot simply decide that she wants to be a citizen of Italy, an employee of Google, or a member of the Catholic Church, all of which might loom large in an identity composite; she first needs to satisfy membership qualifications and secure admission.

[2] For surveys of state practice relating to dual citizenship, see Alfred M. Boll, Multiple Nationality and International Law (Martinus Nijhoff 2007); U.S. Office of Personnel Management, Citizenship Laws of the World (2001), *available at* www.multiplecitizenship.com/documents/IS-01.pdf

[3] *See* Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 Emory L.J. 1411 (1997); *see also* Peter J. Spiro, Beyond Citizenship: American Identity After Globalization, ch. 3 (Oxford Univ. Press 2008).

[4] John Torpey links the innovation of the concept of nationality to state interests in "holding onto" individuals, by way of a kind of human mercantilism. John Torpey, The Invention of the Passport: Surveillance, Citizenship, and the State (Cambridge Univ. Press 2000).

order was undermined by unclear jurisdiction over and competing claims to territory, so, too, with persons.

For purposes of affiliation to the state, this incentive was translated into the vocabulary of natural law and the rule of perpetual allegiance, under which birth allegiance to the sovereign was indissoluble. So long as migration was an epiphenomenon, as it was during the feudal age, the approach was benign. Indeed, the concept of nationality itself was marginal during the early modern period (hence the minimal treatment of the subject by such writers as Grotius and Vattel).[5] The advent of nontrivial migration gave rise to conflicts between states. Countries of origin refused to recognize transferred national affiliations. Where the opportunity presented itself, states would (literally) make a grab for their natives for purposes of military service, even where the individual had naturalized in a new state of residence. The resulting struggles gave rise to serious bilateral disputes between the state of origin and state of naturalization, sometimes resulting in military conflict, for example, the War of 1812.

More generally, conflicts of nationality and dual nationality (in the sense of competing claims) offended the core orienting principles of sovereignty. Under the law of nations before the advent of human rights (that is, before World War II), states were free to treat their own nationals as they pleased but constrained in their treatment of nationals of other states, under the law of state responsibility. The divide reflected international law's posture vis-à-vis individuals as mere extensions of the state. Sovereigns had complete discretion within their own realm (in this application, the realm of their subjects) but could not interfere in the realm of other sovereigns (here, the subjects of other sovereigns). These ground rules could not account for dual nationals. Bilateral conflict was the upshot.

States thus saw an imperative in minimizing the incidence of dual nationality. Dual nationals represented instability in a world in which the downside risks of instability were serious, in an era in which there were no brake triggers on the way to war. But there were no easy mechanisms for suppressing the status. Sovereignty itself precluded the imposition of a supranational regime to harmonize citizenship rules so as to avoid multiple nationality, since states were unwilling fully to cede discretion over their membership practices. So long as some states retained perpetual allegiance, for instance, dual nationality would be the result of naturalization. Likewise, the interplay of jus sanguinis and jus soli approaches resulted in dual nationality at birth.

It was not for want of trying. The United States was able to conclude bilateral agreements with select European states providing for the transfer of nationality (the Bancroft treaties), and, in the face of intense American pressure,[6] other states came to

[5] Boll, *supra* note 2, at 183 ("Multiple nationality was simply not conceived as an issue as such by Vattel and early writers on the law of nations").

[6] *See, e.g.,* the so-called Hostage Act, Act of July 27, 1868, 15 Stat. 223 (codified at 22 U.S.C. § 1732 (2006)) (declaring expatriation to be "a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness" and directing the president to use all means short of war to secure the release of U.S. citizens subject to unjust imprisonment by foreign governments).

recognize the possibility of expatriation. British nationals naturalizing in the United States after 1870 lost their British citizenship and avoided dual nationality as a result. The early part of the twentieth century witnessed a high-profile initiative to negotiate a nationality regime aimed at eliminating the status, hatched with Rockefeller money, hosted by the Harvard Law School, and aimed at a major international legal codification conference, held at the Hague in 1930.[7] That effort was a near-complete failure, however. The resulting Convention on Certain Questions Relating to the Conflict of Nationality Laws set a strong discursive tone against dual nationality ("recognizing," in its preamble, "the ideal towards which the efforts of humanity should be directed is the abolition of all cases both of statelessness and double nationality"); but it did little in its operative terms to reduce incidence of dual nationality, and, in any case, the agreement enjoyed a mere dozen ratifications.[8]

Unable to complete an effective international regime governing nationality practices, other domestic law mechanisms took hold. In addition to expatriation upon naturalization before another sovereign, some states required election at the age of majority between the two.[9] Others expatriated nationals who engaged in conduct premised on the holding of another nationality, such as the holding of public office. Under U.S. law, voting in a foreign political election resulted in expatriation.[10] These mechanisms helped police against active dual nationality, but—in the absence of multilateral cooperation—they were inevitably leaky. Many individuals held the status through birth circumstance, including most children born in the United States to noncitizen parents.

It is perhaps because dual nationality was at one time so threatening to world order and so immune to legal resolution that it became the object of fierce condemnation. If the status could not be eliminated through policy-making channels it had to be deterred through other means. Strong social norms excoriated the active condition of dual nationality. The standard metaphorical frame was marriage, with dual nationality taking the place of bigamy.[11] Through the nineteenth century into the twentieth, dual nationality was condemned as nothing less than a moral abomination. If the law could not stop one from holding the status (the status itself was typically not "illegal"), social norms went a long way toward mitigating its threat to world order.

This proposition is important to understanding the use of such terms as "loyalty" and "allegiance" in the context of dual nationality. These terms had little independent

7 *See* Harvard Research in International Law, *The Law of Nationality*, 23 Am. J. Int'l L. 11 (Supp. 1929).

8 Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, 179 L.N.T.S. 89.

9 *See, e.g.*, Richard W. Flournoy, Jr., *Dual Nationality and Election*, 30 Yale L.J. 693 (1921).

10 *See* Perez v. Brownell, 356 U.S. 44 (1958) (upholding § 349(e) of the Immigration and Nationality Act).

11 *See, e.g.*, Letter from George Bancroft to Lord Palmerston (Jan. 26, 1849), *in* S. Exec. Doc. No. 36–38, at 164 (1850) (nation-states should "as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it").

material significance. Rather, they were a cultural backstop to ineffective legal ordering. Claims of "disloyalty" worked as a shaming mechanism against the practice of dual nationality even where the law could not. Framing the issue this way was congruent with general conceptions of nationality and of duty to sovereign (from the era during which a sovereign could have commanded and expected obedience), though that was more convenient than consequential. Dual nationals have never posed any particular security threat. There were no notable cases of dual nationals committing espionage, for example. Nor was dual nationality a problem even in the context of war between alternate nation-states. Individuals in that situation (true of many Japanese and German nationals who held U.S. citizenship at the outbreak of World War II) had to choose between the two. Under the laws of many countries the fact of enlistment in a foreign army would result in the termination of nationality. Still, those who chose to fight with the adversary posed no special threat by virtue of their (former) dual nationality.

In short, the historical threat posed by dual nationals was indirect rather than direct. There was nothing essentially immoral about multiple national connections, nor were dual nationals enabled by their status to harm the state. By blurring the boundaries of human community between states, the status destabilized interstate relations. This was a consequence of legal conventions. Dual nationality was the chink in armor of sovereignty, a condition that the logic of sovereignty could not process. Individual agency had little to do with the problem; the worst that could be said of dual nationals is that they sometimes sought, strategically, to use their alternate nationality for purposes of diplomatic protection.[12] The indirect nature of the threat, however, made it no less serious. Because the ultimate risk of dual nationality was to provoke the antagonism of other states, it was more serious than the prospect of "disloyalty." That explains why states were so intent on eradicating the status.

1.2. Recent acceptance

Isolating the source of disfavor for dual nationality also explains its more recent acceptance. Sovereignty, such as it is, no longer allows states full discretion in the treatment of nationals. That eliminates the architectural feature of international society that had rendered dual nationality a threat to interstate order. Other developments incidentally have further diminished the threat. The end point is that dual nationality (now more appropriately denominated as dual citizenship,[13] even plural citizenship,

[12] *See, e.g.*, 3 John Bassett Moore, Digest of International Law 713 (Government Printing Office 1906) (annual message of President Grant, Dec. 7, 1874) (decrying persons living in a foreign country using "claims to citizenship of the United States simply as a shield from the performance of the obligations of a citizen elsewhere").

[13] At one time "nationality" and "citizenship" had important distinct legal meanings, the former generally applying to the international aspects of attachment to a state, the latter the marker of equal membership in constitutional democracy. Although the distinction persists in a dwindling number of contexts (where individuals are nationals but not citizens), the latter is more appropriate after the advent of human rights and the decline of membership short of citizenship.

as more individuals come to possess more than two citizenships) does not pose a material social cost. This changes the balance in evaluating the justification for residual governmental interference with the status.

The key moving part here is the advent of human rights. Human rights norms have not been thought to protect plural citizenship, as such; the claim I make below to that effect is novel in its breadth. However, the constraints imposed by human rights norms on how states treat their own citizens have eliminated the anomalous position of the dual citizen. Before human rights, dual nationals were the only nationals with respect to which a sovereign faced legal constraint, even where they did not recognize the legitimacy of the individual's holding of an another nationality (or, more precisely, the legitimacy of the other state of nationality coming to its national's assistance). After human rights, sovereigns faced such constraint with respect to all nationals, whether or not they had the additional tie.[14] As a result, dual nationality no longer reflected a special threat to peaceful bilateral relations.

The overall global setting has also become more stable. Although there were great risks in interstate relations through the Cold War, they were unlikely to be triggered by dual nationals in part because movement was tightly controlled between East and West, in part because the danger of conflagration reduced the utility of intermediate armed response. In the Charter era, states were not legally enabled to use force as a recourse for mistreatment of their nationals, as they had been in the past. The risk of conflict has diminished further in the wake of globalization, the greater incidence of democratic governance at the level of the state, and the existence of more robust fail-safe mechanisms on the road to war.

Conflict still exists, including military conflict. In some unstable contexts, citizenship has been a factor in justifying the use of force, most recently with respect to Russia's invasion of Georgia on the grounds of protecting Russian citizens resident in Georgia. But dual citizenship has not been a defining feature of this justification, which, in any case, has been rejected by the international community.[15] The modern cognate to conflicts provoked by the straddling nature of dual nationality is humanitarian intervention, in which states intervene militarily as a response to human rights violations. Humanitarian interventions are not contingent on the citizenship status of the victims of human rights abuses.

In short, dual citizens are no longer an exceptional source of conflict, in a world in which conflict has been reduced. They do not pose other direct costs on states, which is reflected in the more recent practice of states. Where dual nationality was once highly disfavored, if not outlawed, it has become widely accepted. Many states no longer

[14] It is true that even today states can as a legal matter more aggressively intercede with other states on behalf of their own nationals than on behalf of nationals of other states (mostly with respect to commercial dealings). But that is a matter of vanishing degree, not the binary of the historical approach.

[15] *See, e.g., Russia Resurgent*, Economist, Aug. 16, 2008, at 57 (noting Russia's "perfunctory attempts to justify the invasion" on the basis that it was defending Russian citizens; "[t]his excuse, as Sweden's foreign minister tartly noted, recalled Hitler's justifications of Nazi invasions").

pursue strategies intended to suppress dual nationality. Many have abandoned the practice under which naturalization in another country automatically resulted in loss of citizenship. Under the new majority practice, those who naturalize maintain their original citizenship as a default position.[16] With respect to those born with plural citizenship, few states now require election at the age of majority. Both of these changes in state practice have made plural citizenship legally sustainable in many instances.

Some among so-called sending states (states that are net sources of immigrants) have determined that dual citizenship is in their national interest. Among these, dual citizenship is not merely tolerated but embraced and encouraged. For these states, emigrants represent an important source of foreign exchange and entrepreneurial capital. Previously, emigrants from these states were considered to have turned on their homelands as part of the brain-drain phenomenon. More recently, allowing emigrants to retain their original citizenship after naturalizing in the state to which they have immigrated has been adopted as a strategy for cementing the home-state tie, with ancillary economic benefits.[17] Along similar lines, states have liberalized the basis for acquiring citizenship on the basis of descent, with an understanding that in most such cases original citizenship will be maintained in addition to citizenship in the state of residence. Receiving states have also come to understand that acceptance of dual citizenship among immigrants facilitates naturalization and advances integration.

These observations frame dual citizenship in terms of state interest: previously a clear detriment, more recently a neutral quantity and now perhaps a benefit. Historically, individual interests in the status were ignored. To the extent they were considered at all, it was by way of asserting the congruence of state and individual interests in combating the status. It is true that in many cases dual nationality translated into dual obligations, especially with respect to military service, and that individuals shared an interest in shedding one or the other of their nationalities (typically that of the state of nonresidence).[18] This individual interest in avoiding dual nationality was dressed up as resolving associated "psychological difficulties" with the status, working from the loyalty tropes described above.[19] No allowances were made in the commentary or elsewhere for the possibility that persons eligible for more than one nationality would desire to maintain them.

It is now difficult to argue that dual citizenship is categorically inimical to individual interests. State acceptance of the status has often been as a result of expatriate lobbying. Fewer states require military service, and, among those that do, bilateral arrangements have resolved duplicative military service obligations for those holding dual

[16] *See* Boll, *supra* note 2; *see also* Stanley A. Renshon, The 50% American: Immigration and National Identity in an Age of Terror 6–20 (Georgetown Univ. Press 2005) (highlighting fact that 19 out of top 20 source states for immigrants to the United States allow retention of citizenship upon naturalization).

[17] *See, e.g.*, Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 NYU L. Rev. 11 (2006).

[18] Hence the conception of a "right" to expatriation, even though the interest was as much the state's as the individual's. In practice, where available, expatriation was a duty, not an option, from the individual's perspective.

[19] *See, e.g.*, Nissim Bar-Yaacov, Dual Nationality 265 (Stevens 1961).

citizenship.[20] Taxes are now assessed primarily on criteria other than citizenship, usually on the basis of residence (and to the extent that duplicative tax obligations arise as a result of dual citizenship or residence, they also have been mitigated by treaty).

At the same time that additional citizenships pose few additional obligations, they may present some added benefits, among them rights of entry and residence, some public benefits (most additionally contingent on residence, such as educational benefits), eligibility for employment, and the like. Although these benefits are usually not dramatic, where the costs of securing and/or maintaining an additional citizenship is effectively zero, any nontrivial benefit will suffice to render plural citizenship in the interest of the individual concerned.

2. Plural citizenship as right

It is one thing to frame plural citizenship as an individual interest, another to frame it as an individual right. There are alternate bases for establishing a right to acquire and maintain plural citizenship. The first works from a conception of citizenship as identity and as a form of association. The other portrays citizenship as necessary to perfecting political rights of self-governance. Both cases are theoretically strong but enjoy almost no direct support in constitutional practice. This may result from the social and cultural nature of the historical norms against dual nationality. These norms are stickier than merely legal ones, and it will take something on the order of a cognitive shift to establish plural citizenship as a right.

For purposes of the rights analysis, there are three primary variants on the acquisition and obstruction of plural citizenship.

(*a*) Plural citizenship acquired at birth, through mixed parentage or the jus soli/jus sanguinis interplay. In these cases, as noted above, states historically attempted to combat dual nationality by requiring election at the age of majority. The right in this context would be asserted against either or both states, to the extent they required election, to maintain the status into adulthood.

(*b*) Plural citizenship which would result from naturalization but for the practice of the country of origin terminating original citizenship upon the acquisition of another citizenship (an expatriation mechanism). The right in this context would be asserted against the country of origin, to maintain original citizenship notwithstanding the acquisition of the additional citizenship.

(*c*) Plural citizenship which would result from naturalization but for the requirement of the naturalizing state that the applicant terminate original citizenship (an effective renunciation requirement).[21] The right here would be asserted against the state of prospective naturalization.

[20] *See* Stephen H. Legomsky, *Dual Nationality and Military Service: Strategy Number Two*, *in* Rights and Duties of Dual Nationals 79 (David A. Martin & Kay Hailbronner eds., Kluwer 2003).

[21] "Effective" in the sense that the renunciation is enforced and evidence of termination of prior citizenship must be produced, as opposed to those regimes in which renunciation is included in a naturalization oath but is not enforced. *See* David A. Martin, *Introduction: The Trend Toward Dual Nationality*, *in* Rights and Duties, *supra* note 20, at 3, 6 (noting that renunciation has become "an empty verbal gesture" in some jurisdictions).

These variants are salient to the rights analysis. Ultimately, however, the right to acquire or maintain plural citizenship can be sustained in each.

2.1. Plural citizenship as associative freedom

To the extent that citizenship is taken to be a form of membership, it is not clear what grounds there are to restrict it. In this context, citizenship is equated with membership in other organizations and affiliations that define identity. Membership in the state is akin to membership in religions, clubs, nongovernmental organizations, and political parties.[22] These memberships may have both instrumentalist and noninstrumentalist motivations. As a matter of both constitutional and international law, states may not restrict membership in nonstate entities absent necessary cause.[23]

Most constitutional jurisprudence relating to freedom of association involves the denial of membership and the question of whether the state should intervene to require the extension of membership by a group to an excluded individual. A recent example from the U.S. Supreme Court involved the exclusion of homosexuals from the Boy Scouts. The Court struck down a state statute that would have required the inclusion of the unwanted class of persons. It found forced inclusion justified only where it "serve[s] compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms."[24]

Plural citizenship, by contrast, involves an entity (a state) that is willing to take or maintain an individual as a member. This is most clearly the case with respect to expatriation mechanisms, where a country of origin terminates citizenship upon acquisition of citizenship in another state. The capacity to join the association (the other state) is burdened by the expatriation consequence. The question is whether a state can impose the cost on the consensual relationship.

At the threshold, there can be little doubt that expatriation constitutes a rights-salient cost. It is not a criminal penalty, the imposition of which would situate the issue squarely as one of free association.[25] One need not draw on overheated Warren Court characterizations of citizenship (including a finding that expatriation constitutes

[22] *Cf.* Rogers Smith, Civic Ideals 489–504 (Yale Univ. Press 1997) (analogizing American nation to political party).

[23] For instance, the International Covenant on Civil and Political Rights provides that "[e]veryone shall have the right to freedom of association with others," derogable only where "necessary . . . in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." International Covenant on Civil and Political Rights art. 22, Dec. 19, 1966, 999 U.N.T.S. 171.

[24] Boy Scouts of America v. Dale, 530 U.S. 640, 648 (2000).

[25] Anti-immigration advocates in the United States have proposed criminalizing dual citizenship, see H.R. 3938, 109th Cong. §§ 702–704 (2005), but such efforts show no probability of success.

a worse punishment than death)[26] to make the case that termination of citizenship requires justification. In the context of association with the Communist Party, for example, the Supreme Court found that public-sector employment ineligibilities triggered First Amendment protections.[27]

The next step is to establish citizenship in another state as associational activity, thus raising the justificatory bar. It is self-evidently associational in a nonformal sense, at least, involving the coming together of individuals in a structured organization to advance material and sentimental interests. To the extent it implicates redistribution, citizenship has material ends. But it also clearly comprehends an affective attachment; as Peter Schuck observes, citizenship provides a focus of "emotional energy on a scale capable of satisfying deep human longings for solidarity, symbolic identification, and community."[28] The question, then, is whether the fact that the association takes place in the structure of a (foreign) state removes citizenship from the category for constitutional purposes, so that no heightened justification is required. It cannot be that the prospective additional citizenship implicates membership in a foreign entity, as membership in foreign organizations is subject to associational protection. Membership and participation in foreign associations, including foreign political associations, is protected activity. Absent heightened justification, the government cannot burden membership in a foreign-based human rights group or the Catholic Church, even though both might challenge state policies and interests. Subject to ordinary constraints on freedom of association, membership in a foreign state would seem indistinguishable.

One might pose the availability of putative substitutes for formal nationality. In the United States, for instance, there is a long tradition of homeland-oriented, nongovernmental forms of association such as the Knights of Columbus and the Ancient Order of Hibernians around which immigrant communities have organized. In the era in which dual nationality was condemned, these entities served as a sort of surrogate home for original nationalities, and it might be argued that they continue to supply an adequate outlet for the associational impulse. (For that matter, it may be possible in many cases today to join foreign political parties, which could be taken as organizational proxies for citizenship.) That would involve judgment on the part of the state and the constraint of individual autonomy. At the same time that they may

[26] *See* Trop v. Dulles, 356 U.S. 86, 101 (1958) ("There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development"); *see also* Perez v. Brownell, 356 U.S. 44, 64 ("Citizenship is man's basic right for it is nothing less than the right to have rights") (Warren, C.J., dissenting); Afroyim v. Rusk, 387 U.S. 253, 268 (1967) ("The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship"). This essentialist discourse nonetheless allowed for expatriation in the context of dual nationality and might thus have been limited to contexts in which expatriation resulted in statelessness (although it remains difficult to reconcile with the logic of the argument in these opinions).

[27] *See* Elfbrandt v. Russell, 384 U.S. 11 (1966).

[28] Peter Schuck, Citizens, Strangers, and In-Betweens 175 (Westview 2000).

be aligned, the state of Italy and the Knights of Columbus are distinct. An individual might well be interested in associating with the former but not the latter. The same analysis holds for institutional vehicles of the new diasporas, such as hometown associations; they satisfy parallel but differentiated needs for membership in the homeland state. Citizenship is a vehicle for identity.

Because citizenship qualifies as associational activity, expatriation as the result of naturalization in another country should require special cause. Rather than the current international legal regime, under which states have full discretion to terminate the citizenship of those who naturalize elsewhere, states should be held to a more exacting test. In the doctrinal formulation of U.S. constitutional law, because the expatriation mechanism obstructs freedom of association, strict scrutiny is warranted, and a governmental measure restricting this freedom should stand only where narrowly tailored to advance a compelling governmental interest.

The expatriation mechanism cannot survive this test. In these terms and in most contexts, the balance is lopsided in favor of protecting an associational right to acquire membership in another state without risk of forfeiting original citizenship. As described above, dual citizens no longer pose the serious (albeit indirect) threat to stable interstate relations that once explained the intense historical disfavor for the status. Why should Japan be enabled to expatriate a Japanese citizen when she acquires, say, U.S. citizenship (as is now the case under Japanese law)? There is no risk that the dual Japanese-U.S. citizen will undermine peaceful relations between the two states. To the extent that direct security threats are the concern (though there has never been a correlation between dual nationality and subversive behavior), they can addressed through more surgical forms of regulation, like espionage laws.

A handful of pairings would pose a closer question in what Rainer Bauböck calls "complex cases,"[29] for example, in the contexts of Central and Eastern Europe and of the former Soviet republics. If a large number of Latvian citizens of Russian ethnicity were to naturalize as Russian citizens, Latvia might justify terminating their Latvian citizenship on the grounds that as dual citizens they would increase the risk of Russian-Latvian conflict. Considered solely from a state interests perspective, on balance Latvia would have an incentive to adopt an expatriation mechanism in this context. Bauböck argues that extending citizenship of a kin state to transborder minorities is "a different matter" to the extent that it destabilizes "clearly demarcated" territorial jurisdictions.[30] But that justification for suppressing dual citizenship appears marginal when set against dual citizenship as an associational right (leaving aside the self-governance issues, discussed below, implicated by the deprivation of political rights that come with citizenship). Although Russia might attempt to use its citizens residing in Latvia as a pretext for intervention in Latvian affairs (perhaps even for military action, as it did in Georgia), the citizenship status of ethnic Russians would probably make little difference

[29] Rainer Bauböck, *The Trade-off Between Transnational Citizenship and Political Autonomy*, *in* Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship 69, 79 (Thomas Faist & Peter Kivisto eds., Palgrave Macmillan 2007).

[30] *Id.* at 86.

to its calculation, nor certainly to international audiences. These territorial jurisdictions are already being destabilized by developments both universal and particularistic.

Outside of the citizenship context, consensual affiliations can be proscribed only where they are criminal. The current regime—under which plural citizenship is a matter of grace, not of right—sustains an equivalence between membership in criminal organizations and membership in other states. It may once have been the case that both represented a similar level of threat, insofar as membership in another state posed both an indirect threat to interstate relations and (possibly) a more direct threat by doing the bidding of competitors in a zero-sum game. It is difficult to sustain this logic in a world in which interstate relations have stabilized.[31] To the extent that an individual is eligible to acquire and maintain another citizenship, associational freedoms demand protection of the status.

The associational analysis maps well onto the use of the expatriation mechanism, where the acquisition of another citizenship is burdened by the threatened termination of existing citizenship. The analysis may be more complex where the state of naturalization requires an applicant to terminate original citizenship as a condition of naturalization, the effective renunciation condition. (German practice supplies an example.) Both international and constitutional law have allowed states to distinguish between members and would-be members in a rights frame.[32] For citizenship purposes, this is reflected in the fact that states may not arbitrarily expatriate citizens, for instance, on a racially discriminatory basis, at the same time that they are thought to maintain near-complete discretion with respect to naturalization.[33] On the other hand, given an individual who is otherwise qualified for naturalization, the imposition of a renunciation condition burdens associational activity that parallels the expatriation mechanism. In both cases the maintenance/acquisition of one state identity requires the sacrifice of the other.[34]

[31] One could also make the instrumentalist argument that dual citizens could be a cause as well as a feature of this global condition. It is possible that between two states the existence of large number of dual citizens might act as a stabilizing force in interstate relations, although I suspect it would be a secondary one.

[32] *See generally* David Weissbrodt, The Human Rights of Non-Citizens (Oxford Univ. Press, 2008).

[33] *See, e.g.*, Paul Weis, Nationality and Statelessness in International Law 65–66 (2d ed., Stevens & Sons 1979) ("the right of a State to determine who are, and who are not, its nationals is an essential element of its sovereignty"); Kay Hailbronner, *Nationality in Public International Law and European Law*, *in* Acquisition and Loss of Nationality, Volume 1: Comparative Analyses 35 (Rainer Bauböck et al. eds., Amsterdam Univ. Press 2006) ("public international law has very little to say about the scope and limits of a state's determination of nationality").

[34] Ruth Rubio-Marín has also argued that emigrants should have a right to retain their original nationality upon naturalization in another state. *See* Ruth Rubio-Marín, *Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants*, 81 NYU L. Rev. 117, 142–143 (2006). She works from the premise that naturalization will "have nothing to do with a lack of attachment to their national identities or interests in preserving their ties to their countries of origin." *Id.* at 142. While I agree that this is typically true as an empirical matter, it may be a fragile basis for establishing a right insofar as it implies that instrumental retention of citizenship should not be protectable. It might also buttress the grounds for receiving states to require the termination of original citizenship, although Rubio-Marín argues that they, too, "should stop asking immigrants to renounce their nationality as a condition for naturalization." *Id.* at 143; *see also* Rainer Bauböck, *Towards a Political Theory of Migrant Transnationalism*, 37 Int'l Migration Rev. 700, 711 (2003) ("after some time of legal residence immigrants acquire a right to naturalization that should not depend on renouncing their previous citizenship").

As for the plural citizenship acquired at birth, it presents perhaps the best application for the associational analysis, especially where it results from mixed-status parentage. In the typical case, a child's identity is molded by the parents'. Thus, the child of parents of different citizenships is likely to identify with both. The formerly common requirement that birthright dual nationals undertake a choice at majority (the election requirement) interferes with the individual's autonomy to maintain each connection, both of which will often be central to identity. The result of imposed election, in effect, is a requirement to choose between mother and father. The strength of the case for protecting the maintenance of dual citizenship in these cases is reflected in the 1997 European Convention on Nationality, which requires parties to allow the maintenance of dual citizenship acquired automatically at birth.[35]

Karen Knop argues that the relational elements of citizenship—in effect, situating citizenship in the family—requires the acceptance of dual citizenship resulting from mixed status parentage, working from the "psychological, physical, and material relevance of a common nationality for the mother-child relationship." More broadly, relational nationality acknowledges:

> Loyalty to our state of birth is bound up with our love for our parents and siblings, who are part of the state; it is possible that loyalty to a spouse's state is affected by our love for him or her or by our love for our children, who have ties to that state.[36]

That covers each of three variants in the context of the family (birth dual citizenship by mixed parentage and naturalization as a result of spousal relationships). Knop works from feminist premises and the intensity of family ties. Eligibility for plural citizenship is often generated by such ties. But even where family ties are absent, the associational optic is relational. The logic applies to plural citizenship generally, whatever the source of "loyalty" to the relevant states. In the absence of governmental interest, there is no cause to suppress the actuation of such sentiments.

2.2. Plural citizenship as political right

Plural citizenship also implicates self-governance values. Formal status as a citizen is typically necessary to the perfection of political rights. If plural citizenship is obstructed, with the result that an individual is denied a citizenship for which she would otherwise be eligible, political rights are likely to be compromised. The acquisition and maintenance of plural citizenship thus becomes a protectable predicate status.

The effective renunciation condition is most vulnerable when set against this proposition. This tool for reducing the incidence of plural citizenship is deployed by states of immigration with respect to residents seeking to naturalize. Renunciation becomes a part of the price of naturalization. The magnitude of this price will vary. In some cases it may be low, as in the case of a refugee who has fled persecution in his country of origin.

[35] European Convention on Nationality art. 14, Nov. 6, 1997, C.E.T.S. No. 166 (entered into force Jan. 3, 2000).

[36] Karen Knop, *Relational Nationality: On Gender and Nationality in International Law*, *in* Citizenship Today: Global Perspectives and Practices 89, 112 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., Carnegie Endowment for International Peace 2001).

In many cases, it will be high for material and/or sentimental reasons. With renunciation, emigrants may lose various capacities with respect to the ownership of property and commercial enterprises, entry rights, and public benefits. They will also give up political leverage with which to influence homeland policies relevant to emigrant interests. The sentimental costs are probably more prevalent, for all the reasons discussed above in the context of associative freedoms. In the context of the effective renunciation condition, one is usually dealing with the renunciation of original birth citizenship. As Schuck observes, the early acculturation that comes with original citizenship makes it something like first love,[37] suggesting not just an expressive but an intimate association.

Renunciation thus attaches a cost to naturalization. Assuming that an unwillingness to naturalize deprives individuals of political rights, and that renunciation will only be required from habitual residents,[38] the condition compromises self-governance values. An individual from country A who immigrates to country B and now habitually resides there must pay for full political rights in the form of terminating his formal connection to country A.

This again implicates state discretion in determining membership qualifications. International law has afforded states broad discretion with regard to naturalization. There is, however, an increasing disconnect between the legal regime and the liberal self-governance paradigm. Liberal theory works from the premise that those who are territorially present are members of "society," are affected by governmental action, and should be able to participate in self-governance on the basis of equality. Hence, liberal theory has assumed the virtue of low barriers to naturalization. Some theorists have asserted the necessity of a naturalization option after a period of residence.[39] Under that approach, the renunciation condition appears to offend liberal values, insofar as it contributes to a disconnect between society (defined in territorial terms) and the polity (defined by citizenship status).

The expatriation and election mechanisms are more consistent with the territorial foundations of liberal-governance paradigms. The expatriation mechanism would work to reinforce the correlation of territorial location and citizenship, in the typical case by terminating the citizenship of an individual who has moved to another country on a permanent basis. Similarly with the election requirement, insofar as individuals forced to choose between citizenships will choose the citizenship associated with residence. However, a political rights argument can be deployed against these practices as well. In the face of continuing material and affective connections, nonresident citizens will often have a stake in the politics of their homelands. The fact of this stake is reflected

[37] Schuck, *supra* note 28, at 228.

[38] Renunciation of original citizenship is not typically required of those securing citizenship in the new diasporas on the basis of descent (Irish, Italian, and Mexican citizenship are examples), for the obvious reason that nonresidents would be highly unlikely to subscribe on that condition.

[39] *See, e.g.,* Rainer Bauböck, Transnational Citizenship ch. 4 (Edward Elgar 1994); Ruth Rubio-Marín, Immigration as a Democratic Challenge (Cambridge Univ. Press 2000); Joseph Carens, *Citizenship and Civil Society: What Rights for Residents?, in* Dual Nationality, Social Rights and Federal Citizenship in the United States and Europe 100 (Randall Hansen & Patrick Weil eds., Berghahn Books 2002).

in the increasingly prevalent practice of external citizen voting, under which nonresident citizens are extended the franchise even where they have naturalized in their new country of residence.[40] There is thus a self-governance critique of expatriation and election, although it is most powerfully applied to the renunciation condition.

3. Confronting objections: Undermining equality and diluting solidarity

Two objections to recognizing a human right to dual citizenship are possible, even from liberal premises: that it undermines equality and dilutes the solidarity of the citizenry. Contrary to the political rights optic, some argue that dual citizenship may be the source of—not a solution to—inequality. Because dual citizens will have rights in more than one state, they will have more rights than mononationals.[41] This was a prominent theme in the opposition to dual citizenship in debates over German citizenship reform in the late 1990s. The equality objection also questions dual voting.[42]

But suppressing dual citizenship, especially through the renunciation condition, creates an equality problem of its own. Some residents (citizens) have full political rights, where others (noncitizens, including those who would naturalize but for the renunciation condition) do not. The resulting inequality is internal to the societal unit. Meanwhile, the dual citizen is not endowed with extra political rights within either polity; as Bauböck observes, "[a]s long as these votes are not aggregated at a higher level, the principle of one person/one vote has not been infringed."[43] As a formal matter, the dual citizen enjoys the diplomatic protection of his other country of nationality. If a dual UK-Pakistani citizen gets in trouble with the British authorities, Pakistan can come to his assistance under international law, a potential advantage not shared by the mononational Briton similarly situated. However, that advantage has been devalued with the advent of human rights and the protection of all persons against governmental mistreatment, regardless of nationality. To the extent the additional nationality actually pays protection dividends, it is more in the way that affiliation with nonstate entities can advantage individuals relative to the state. A member of the Catholic Church or an employee of Exxon will have institutional support against

[40] *See* Peter J. Spiro, *Political Rights and Dual Nationality*, in Rights and Duties, *supra* note 20, at 135; Rainer Bauböck, *Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting*, 75 Fordham L. Rev. 2393 (2007).

[41] This objection works from the premise, as do I, that not all individuals will be eligible for plural citizenship.

[42] David A. Martin, *New Rules on Dual Nationality for a Democratizing Globe: Between Rejection and Embrace*, 14 Georg. Imm. L.J. 1, 30 (1999) ("What is most fundamentally at stake is the equality that has been a key element in the basic understanding of what it means to be a citizen").

[43] Bauböck, *supra* note 34, at 717. *See also* Randall Hansen & Patrick Weil, *Introduction: Dual Citizenship in a Changed World: Immigration, Gender and Social Rights*, *in* Dual Nationality, Social Rights and Federal Citizenship in the United States and Europe, *supra* note 39, at 1, 8–9 (concluding that dual citizenship does not violate Michael Walzer's principle of complex equality insofar as citizenship in one state will not advantage individual in his state of additional citizenship).

governments that others lack. That fact—that life is unfair—does not violate the principle of equal citizenship.[44] Nor should the advantage of affiliation with other states.

Relatedly, the objection might measure equality at the global level. Assuming full political rights in each country of citizenship, a plural citizen (so the argument goes) will have multiple channels of access—two or more votes rather than one, aggregated at the higher level of the global polity—thus affording him greater status than those holding a single citizenship only. This argument is supported by institutional logic. Within domestic, particularly federal, systems, the analogy would be the bar on multiple residences for purposes of national voting. One cannot be a resident/citizen of both New York and California for voting purposes, even if you own houses in both and split your time between the two; if you were allowed to vote for national representatives in both jurisdictions, you would have more formal power than others in the process. Leaving aside the undemocratic implications of this domestic practice,[45] it does not translate to the global level. Such as it exists at all, global democracy is not formally democratic on the basis of equality, except at the level of states. (Considered at the level of the individual, the citizen of San Marino has far greater clout than the citizen of China.) Representation through states in international institutions is highly attenuated. Moreover, the channels to global influence are multiple and include nonstate vehicles. Amnesty International, the Catholic Church, and Exxon clearly have influence in international decision making, sometimes with formal status. That does not mean that plural "citizenship" in a state and in a powerful nonstate community violates equality norms.[46]

The more serious objection to plural citizenship through a liberal optic is that it will undermine the solidarities necessary to support the liberal state. Liberal theorists advocate low barriers to naturalization. This is coupled with the premise that territorial presence generates "communities of character" (in Michael Walzer's articulation). This premise appears to be degrading. Although some theorists hold out durational residence alone as a criterion for naturalization, others allow for additional naturalization requirements.[47]

[44] *See* Larry Alexander, *What is Freedom of Association and What Is Its Denial?,* 25 Soc. Phil. & Pol'y 1, 14 (2008) ("Equality at the level of rights of citizens will result in unequal, discriminatory treatment at the level of the exercise of those rights").

[45] Undemocratic in the sense that individuals with important interests in local government are left without political status as a result of the rule. For an inventive workaround, see Jerry Frug, *Decentering Decentralization,* 60 U. Chi. L. Rev. 253, 324–325 (1993) (proposing that all citizens be given an equal number of multiple votes which they could deploy geographically at their will).

[46] This supplies a response to Ayelet Shachar's argument that plural citizenship compounds the inequalities of citizenship as a form of inherited property. *See* Ayelet Shachar, The Birthright Lottery: Citizenship and Global Inequality 130–131 (Harvard Univ. Press 2009) ("with the marked increase in dual nationality . . . some will be in possession of more diversified bundle or shares in several membership 'corporations,' whereas others will own merely a single citizenship parcel . . . , further deepening concerns about stratification and unequal opportunity").

[47] *See, e.g.,* Seyla Benhabib, The Rights of Others: Aliens, Residents, and Citizens 139 (Cambridge Univ. Press 2004); Noah M. J. Pickus, *To Make Natural: Creating Citizens for the Twenty-First Century, in* Immigration and Citizenship in The Twenty-First Century 107 (Noah M.J. Pickus ed., Rowan & Littlefield 1998).

All barriers to naturalization represent costs in one form or another (including the literal cost of application fees), costs that will be imposed on the access to citizenship and associated political rights. To the extent that naturalization requirements are necessary to maintain communal solidarity, on this view they may be justified, even if their imposition results in the exclusion of some individuals from citizenship who are territorially present. Many countries require that naturalization applicants demonstrate facility in a dominant national language, for example. Liberal theorists appear, generally, to accept such "reasonable" requirements even though the requirements will prevent some individuals from securing citizenship and deter others.

The consequence is often underexamined. That is, few commentators consider that the consequence of failing to satisfy naturalization requirements is unequal status and the deprivation of self-governance. Most barriers to naturalization look flimsy seen against those important norms.[48] For present purposes, however, I will accept the legitimacy of naturalization conditions beyond presence to the extent they are necessary to sustain communal bonds. The question, then, is whether a bar on plural citizenship qualifies as such.

The case is strongest where it centers the acquisition or maintenance of secondary or tertiary citizenships. Plural citizenship, definitionally, enables the acquisition or maintenance of subordinate citizenships. If an individual is permitted to hold only one citizenship, then holding that citizenship comes at the price of not holding others. On average, a regime that effectively suppresses plural citizenship creates an incentive for the individual to select the citizenship with the greatest personal salience. That salience may be measured in instrumental or affective terms; practicalities and emotions will both figure in the balance. But whether the citizenship is chosen for instrumental or affective reasons, it is likely to be substantial in orienting the individual's identity.

Plural citizenship, by contrast, tolerates trivialization. It lowers the cost of acquiring and maintaining an additional citizenship to whatever obligations are peculiar to that citizenship. In many cases, that level of obligation is effectively zero. The primary historical obligation of citizenship—military service—has been abandoned by many states and in others is based on residence rather than citizenship status. Taxes are almost entirely based on residence or the location of property. To the extent that citizenship is free, the decision to acquire or maintain a citizenship will turn on whether the status promises benefits. Although the benefits of citizenship have diminished, there continue to be advantages to the status, including the right of entry and some public benefits.

In that balance, it is rational to acquire and maintain any citizenship for which one is eligible, so long as it does not require the sacrifice of primary citizenship. Examples would include: any person born in the United States (but no longer resident there) and, therefore, eligible on a jus soli basis for citizenship; any person outside the European Union eligible for citizenship (but not necessarily resident) in such states as Ireland, Italy, or Greece, on the basis of ancestry; and individuals resident and eligible to naturalize in immigration-restrictive states who intend to retire to their country of origin but who wish to retain an ability to return. These citizenships will be secondary

[48] *See* Peter J. Spiro, *Questioning Barriers to Naturalization*, 13 Georg. Imm L.J. 479 (1999).

in the composite of the identity of their holders; they are citizenships of convenience, implicating all three techniques for suppressing plural citizenship. The examples are archetypes. On the ground, most cases will involve instrumental or sentimental interests. But plural citizenship will almost always involve one citizenship that is dearer than the other.

If not trivialization, secondary citizenship threatens to dilute citizenship solidarities. Dilution of solidarity threatens the project of the liberal state. Liberal theorists are aware of this threat. Although they generally accept plural citizenship (perhaps because it entails autonomy and self-governance values), it makes them fidget.[49] One response is the call to limit dual voting. Another is Schuck's proposal to require U.S. naturalization applicants to swear their primary loyalty to the United States.[50] That would mitigate the rights-compromising tendencies of the effective renunciation condition. However, to the extent it were consequential, it would be difficult both to implement and to justify. Interested in their own coherence, other liberal states presumably would adopt a similar strategy, in which case the exercise would become either meaningless or a disguised renunciation mechanism. On the normative side, it is not clear why the United States should be able to extract primary loyalty relative to another country of citizenship on pain of deprivation of the self-governance and other rights of citizenship.

Nor are the traditional mechanisms for suppressing plural citizenship justified on the grounds that the status dilutes solidarities. The threat is too diffuse and unspecific when balanced against political, associational, and other rights contingent on protecting the status. Although plural citizenship will sometimes implicate trivial underlying attachments, in most cases there will be underlying associational or political interests. Governments are poorly positioned to measure the authenticity of such interests. Free speech norms supply an analogy. Speech cannot be suppressed where it might conceivably result in societal harms; the threat must be immediate, the interest compelling, and the response circumscribed. Likewise with respect to the suppression of plural citizenship. Because the status poses no immediate threat, it must be protected, even if that protection ultimately facilitates the degradation of the state itself. Nor would the suppression of the status resolve the challenge, as the state faces challenges on multiple fronts.

4. Setting plural citizenship right

The suggestion of a right to maintain plural citizenship is largely novel, the apparent logic notwithstanding. This failure of perception implicates cultural barriers. So deep until recently has been the animosity toward the status that there has not been

[49] *See, e.g.*, Noah Pickus, True Faith and Allegiance: Immigration and American Civic Nationalism 181 (Princeton Univ. Press 2005) (on one hand, acknowledging a positive aspect of plural citizenship in "enlarging communal identity" and "facilitat[ing] the spread of transnational communities of descent"; on other hand, warning that if "pursued indiscriminately, [it] risks exacerbating the process of alienation and fragmentation already at work within the United States").

[50] Peter H. Schuck, *Plural Citizenships*, *in* Dual Nationality, Social Rights and Federal Citizenship in the United States and Europe, *supra* note 39, at 61, 88–89.

adequate space for a rights frame to take hold. The practice has shifted toward tolerance, at the option of the state. However, there is evidence that plural citizenship may come to be conceived of as a protectable right.

As a predicate, the status is now understood to represent an individual interest. Individuals who hold or are eligible for plural citizenship are seeking the change of relevant legal regimes to the extent that these regimes continue to obstruct the status. The fact that states increasingly accept the practice helps lay the groundwork for the assertion of a right, both as a matter of culture (transforming the status from anomaly to commonplace) and law (transforming the trend from mere practice to customary or soft law).

As a matter of domestic constitutional law, recognition of a right to plural citizenship, as such, appears nonexistent. There are contexts in which constitutional wedges have been applied toward protecting the status. Antidiscrimination norms have been deployed to expand the availability of plural citizenship. Where dual citizenship has been accepted in one context, it has been pressed in others. In Australia, the fact that immigrants were allowed to keep their original citizenship upon naturalization in Australia (eschewing the effective renunciation condition) was an important factor in allowing native-born Australians to keep their original citizenship after naturalizing elsewhere (overcoming the expatriation mechanism).[51] In Germany, the fact that emigrant Germans are increasingly able to retain their citizenship may explain the high proportion of waivers (45 percent by one count)[52] from a renunciation condition. To the extent that states are finding it in their interest to allow or even encourage emigrants to maintain citizenship,[53] then, it may facilitate expanded acceptance of plural citizenship on a rights basis.

States are also confronting second-order rights issues associated with plural citizenship. The constitutions of several countries bar officeholding by dual nationals, including Australia, Jamaica, Bangladesh, Malawi, Nigeria, and Latvia, as well as in Hong Kong. Several of these regimes have come under attack.[54] These debates do not directly confront a right to maintain dual citizenship, and none appears to have been repealed recently. But the fact that restrictions on officeholding are being contested at all could presage an end point at which plural citizens are not only protected in their status but protected from discrimination on that basis.

International law shows more direct signs of an emerging right to plural citizenship. In contrast to all previous multilateral instruments relating to the status, the 1997 European Convention on Nationality refrains from condemning multiple nationality

[51] As the leading authority on Australian citizenship observed, "there was a basic inequality in the former system . . . some people were able to be dual citizens and others were not entitled to this privilege; it depended upon the order of obtaining the citizenship." Kim Rubenstein, Australian Citizenship in Context § 4.6.1.1 (Lawbook 2002).

[52] *See* Betty de Hart & Ricky van Oers, *European Trends in Nationality*, *in* Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, *supra* note 33, at 317, 356 n.37.

[53] *See generally* Christian Joppke, Immigration and the Nation-State (Cambridge Univ. Press 2000).

[54] *See, e.g.*, Gianni Zappala & Stephen Castles, *Citizenship and Immigration in Australia*, *in* Citizenship Today: Global Perspectives and Practices, *supra* note 36, at 32, 58–62 (describing debate in Australia).

as a problem, instead noting "the desirability of finding appropriate solutions to consequences of multiple nationality and in particular as regards the rights and duties of multiple nationals." In its operative provisions, the convention requires states to permit plural citizenship in the case of children born with the status and in the case of persons acquiring nationality automatically by marriage. The convention also provides that states may not make termination of original nationality a condition of naturalization, where such termination is not possible or cannot be reasonably required.[55] The 1997 European Convention on Nationality may represent a watershed, creating a foundation on which to build more expansive protections under international law.[56]

5. Conclusion

Plural citizenship has been normalized as an incident of globalization. Nonetheless, some states will continue to obstruct individuals from holding the status. Acceptance of the status has been conceived of as a matter of policy and state interest. It is now possible to frame acquisition and maintenance of the status as a right, to the extent that plural citizenship implicates individual autonomy and self-governance values. Because it no longer poses a substantial threat to state interests, these values should be vindicated and state acceptance of the status universalized.

[55] European Convention on Nationality, *supra* note 35, at preamble, arts. 14 & 16.

[56] *See* Kim Rubenstein, *Globalization and Citizenship and Nationality*, *in* Jurisprudence for an Interconnected Globe 159 (Catherine Dauvergne ed., Ashgate 2003) (predicting "increasing willingness in international treaty law to acknowledge and encourage dual and multiple nationality").