

Dual Allegiance
A Challenge to Immigration Reform
and Patriotic Assimilation

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Foreword by Newt Gingrich

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Executive Summary

When immigrants become American citizens they take a solemn oath to "absolutely and entirely renounce" all previous political allegiances. They transfer their loyalty from the "old country" to the United States. Dual allegiance violates this oath.

Dual allegiance is incompatible with the moral basis of American constitutional democracy because 1) Dual allegiance challenges our core foundation as a civic nation (built on political loyalty) by promoting an ethnic and racial basis for allegiance and, thus, subverts our "nation of (assimilated) immigrants" ethic; and 2) Dual allegiance violates the core American principle of equality of citizenship.

The Founders, along with Theodore Roosevelt, Woodrow Wilson, Louis Brandeis, Franklin D. Roosevelt, Felix Frankfurter, and Newt Gingrich, among others, have all affirmed that undivided political loyalty to the United States should be an absolute condition for citizenship.

Mexican government policies today directly challenge the patriotic assimilation of immigrants, just as Italian government policies did in the past. What is different is that, in the past, the American government and elites opposed dual allegiance and insisted upon patriotic assimilation. Today, they are mute.

In 1967, the U.S. Supreme Court in *Afroyim v. Rusk*, by a vote of 5-4, overturned 200 years of traditional American practice toward dual allegiance. Nevertheless, there is plenty of effective action that Congress could take within current Supreme Court interpretations.

Given that almost all immigrants come from countries that permit dual citizenship, and given that Congress is currently examining immigration proposals that would result in a massive increase in the number of potential dual citizens, it is time to ask: Do we continue to permit the rapid increase in dual allegiance, which will happen by default if no Congressional action is taken, or do we begin to act to reject dual allegiance in principle and restrict it in practice?

Congress should exercise its undisputed authority in this arena and prohibit certain acts (e.g., voting in a foreign election) that indicate dual allegiance. The purpose of such legislation would not be to punish people who have acted in good faith in the past, but to establish clear rules for the future in order to

discourage and restrict dual allegiance. Such legislation would affirm the principles and norms that underlie our constitutional heritage and proud tradition of patriotically assimilating immigrants.

Foreword

By Newt Gingrich, Senior Fellow, American Enterprise Institute, and former Speaker of the U.S. House of Representatives

Immigration has been one of America's greatest success stories, because as Washington Post columnist Charles Krauthammer puts it, "America's genius has always been assimilation, taking immigrants and turning them into Americans."¹ Since the earliest days of the Founding Fathers, Americans as a people have insisted upon the patriotic assimilation of immigrants. That is to say, we have welcomed immigrants and, at the same time, insisted that they assimilate and become loyal Americans. And, overwhelmingly, they have.

For most of our history the idea of immigrant dual citizenship – that is, the retention by a naturalized American citizen of political allegiance to his or her birth nation after taking an oath of allegiance to the United States – was anathema. In this paper, Hudson Institute Senior Fellow John Fonte, clearly and cogently explains that the concept of dual allegiance – simultaneous loyalty to both the United States and a foreign nation – is incompatible with membership in our constitutional democracy built on the principle of equality of citizenship.

This rejection of dual allegiance is not a "conservative" or "liberal" principle; it is an American principle. I would imagine that the vast majority of Americans today would agree with the opposition to dual allegiance and foreign voting taken by Franklin Roosevelt's New Deal Administration in the 1930s. As Dr. Fonte writes in his essay:

"The Administration of Franklin D. Roosevelt believed that: 'Taking an active part in the political affairs of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United States...'

In the Nationality Act of 1940, Congress enacted the Roosevelt Administration recommendations into law and codified all our immigration legislation dating back to the days of the Founding Fathers. Essentially, from the 1790s to 1967, Congress had the power to establish laws that defined how and when American citizens could lose their citizenship, such as voting in a foreign election and serving in a foreign government.

In 1958, the U.S. Supreme Court re-affirmed and upheld this congressional power in *Perez v. Brownell* in a decision written by Justice Felix Frankfurter. Nevertheless, nine years later, the Supreme Court under Chief Justice Earl Warren reversed *Perez* in a 5-4 decision in the case of *Afroyim v. Rusk* (1967), and stripped Congress of the power that it had held and exercised since the Washington Administration to remove citizenship from individuals for violating one of the expatriating acts.

While *Afroyim v. Rusk* has created problems for implementing traditional American principles restricting dual allegiance, these problems are not insurmountable. Dr. Fonte argues that there is plenty that Congress can do to contain dual allegiance, even within the limits established by *Afroyim* and other court cases.

One doesn't have to agree with every recommendation or every bit of analysis in this essay to recognize that John Fonte's paper is a major contribution to our national debate over immigration policy. Frankly, it is one of the best critiques that I have ever read on the insidious challenge that dual allegiance poses to our national unity and to American exceptionalism.

If we are going to achieve a truly "comprehensive" immigration reform package, we must first understand, and then overcome, the contradiction between America's goal of "taking immigrants and turning them into Americans," (as Krauthammer puts it),² and the continuing expansion of immigrant dual citizenship that dilutes political allegiance to the United States. This essay is must reading for anyone trying to understand the current immigration reform debate.

Introduction

By Thomas L. Bock, National Commander of the American Legion, and Herbert I. London, President of the Hudson Institute

The U.S. Congress is examining immigration legislation that will legalize the status of an estimated 11 million illegal aliens and likely put them on the path to American citizenship. In addition, the proposed legislation would greatly increase the number of legal immigrants admitted annually to our country. If enacted into law without changes, this new policy would result in a massive increase in the potential number of American citizens who hold dual citizenship – allegiance to foreign countries, as well as the United States.

One of the nation's leading academic experts on dual allegiance, City University of New York political psychologist Stanley Renshon, has pointed out that nearly 90 percent of all immigrants today come from countries that allow or encourage dual citizenship. If we do nothing dual citizenship will simply multiply.³

In this paper, Hudson Senior Fellow Dr. John Fonte asks the crucial the question: Should we continue to permit the rapid increase in dual allegiance – which will happen by default if no Congressional action is taken – or should we reject dual allegiance in principle and restrict it in practice?

If immigration reform is to be truly "comprehensive," it must surely address the issue of dual allegiance for the newcomers who become American citizens. For more than 200 years, upon becoming American citizens, immigrants have taken a solemn oath to "absolutely and entirely renounce and abjure all allegiance" to their birth nations and transfer their full political loyalty to the United States of America. Should this oath mean what the words say they mean, or not?

In his essay, Dr. Fonte examines the issue of dual allegiance both in principle and practice. He reviews the U.S. Supreme Court's 1967 decision in *Afroyim v. Rusk* which overturned long-standing practice and restricted Congress's authority to revoke citizenship. Nevertheless, he concludes with specific proposals that Congress could enact to strengthen the patriotic assimilation of immigrants and discourage multiple citizenships which dilute their allegiance to the United States.

In 1999, representatives of the Hudson Institute and the American Legion formed a working alliance called the "Citizenship Roundtable" to strengthen the integrity of the citizenship naturalization process. At its national convention this year, the American Legion approved a Resolution titled, "Oppose Dual Allegiance; Enforce Citizenship Oath." Resolution No. 165 declares:

"Now, Therefore, be it Resolved, By The American Legion in National Convention assembled in Honolulu, Hawaii, August 23, 24, 25, 2005, That The American Legion encourage the Congress of the United States to enact measures to enforce the Oath of Renunciation and Allegiance and reject dual allegiance in principle and restrict and narrow its application in practice.

We believe that this paper is an indispensable guide to candidly and directly confronting the growing problem of immigrant dual allegiance that undermines the integrity of our citizenship naturalization process. In today's dangerous post-9/11 world the question of whether we as a people still believe in

undivided national loyalty – as did the Founding Fathers, Theodore Roosevelt, Woodrow Wilson, Louis Brandeis, Felix Frankfurter, and Franklin D. Roosevelt – is a serious one. John Fonte thinks we do and explains what we can do about it.

Dual Allegiance: A Challenge to Immigration Reform and Patriotic Assimilation

Since the beginning of the Republic in the 18th century, American political leaders have welcomed immigrants and at the same time insisted that they become loyal Americans. In 1794 President George Washington wrote to Vice President John Adams on immigration policy. Washington deplored the situation in which newcomers would remain isolated in immigrant enclaves and cling to their old ways. He recommended that immigration policy encourage assimilation into the mainstream of American life and values so that immigrants and native-born Americans would "soon become one people."

the policy...of its [immigration] taking place in a body (I mean settling them in a body) may be much questioned; for, by so doing, they retain the Language, habits and principles (good or bad) which they bring with them. Whereas by an intermixture with our people, they, or their descendants, get assimilated to our customs, measures and laws: in a word soon become one people.⁴

A leading immigration scholar, Noah Pickus of Duke University, writes that the U.S. Congress passed the Naturalization Acts of 1795 requiring candidates for citizenship to "satisfy a court of admission as to their good moral character and of their attachment to the principles of the Constitution." Moreover, the new citizens took a solemn oath to support the Constitution of the United States and "renounce" all "allegiance" to their former political regimes.⁵

In *Vindicating the Founders*, Thomas West of the University of Dallas and the Claremont Institute has noted that all the leading Founders, even longtime ideological opponents Thomas Jefferson and Alexander Hamilton, agreed that undivided political loyalty (or what could be called "patriotic assimilation") was central to a successful immigration policy. Thomas Jefferson insisted on assimilating newcomers into the American political regime because he worried that the "greatest number of emigrants" will come from countries whose political principles differed greatly from American principles. Unless Americans acted, Jefferson noted, "they will transmit to their children" these problematic political worldviews.⁶ In a 1790 speech to Congress on immigrant naturalization, Jefferson's chief political lieutenant, James Madison, declared that America should welcome immigrants who could assimilate, but exclude the immigrant who could not readily "incorporate himself into our society."⁷

Moreover, Jefferson's major political rival, Alexander Hamilton, agreed with him and the other Founders on the necessity of patriotic assimilation. Hamilton declared that we should gradually draw newcomers into American life, "to enable aliens to get rid of foreign and acquire American attachment: to learn the principles and imbibe the spirit of our government." Hamilton further maintained that the "safety of a Republic" depends upon a "love of country" and "the exemption of citizens from foreign bias and prejudice."⁸ The ultimate success of the American regime, Hamilton insisted, depended upon the "the preservation of a national spirit and national character" among native-born and immigrant alike.⁹

America's leaders during the period of large scale immigration, in the late 19th and early 20th centuries, like the Founding Fathers before them, promoted the patriotic assimilation of immigrants. In insisting that newcomers assimilate to American values and give their undivided loyalty to the United States, the language of Theodore Roosevelt, Woodrow Wilson, and Louis Brandeis paralleled that of George Washington, Thomas Jefferson, and Alexander Hamilton. Theodore Roosevelt declared that:

In the first place we should insist that if the immigrant who comes here in good faith becomes an American

and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed, or birthplace, or origin. But this is predicated upon the man's becoming an American, and nothing but an American... There can be no divided allegiance here. Any man who says he is an American, but something else also, isn't an American at all... We have room for one soul [sic] loyalty and that is loyalty to the American people.¹⁰

Republican Roosevelt's major political rival, Democrat Woodrow Wilson, favored a similar approach to the patriotic assimilation of immigrants. In 1915, President Wilson told a mass naturalization ceremony of new citizens:

I certainly would not be one even to suggest that a man cease to love the home of his birth... but it is one thing to love the place where you were born and it is another to dedicate yourself to the place in which you go. You cannot dedicate yourself to America unless you become in every respect and with every purpose of your will thoroughly Americans. You cannot become thoroughly Americans if you think of yourselves in groups. A man who thinks of himself as belonging to a particular national group in America has not yet become an American, and the man who goes among you to trade upon your nationality is no worthy son to live under the Stars and Stripes.¹¹

One day after President Wilson's speech in 1915, his chief political lieutenant, Louis Brandeis, reiterated the call for the "Americanization" or patriotic assimilation of immigrants, declaring that "the adoption of our language, manners, and customs is only a small part of the [Americanization] process," and that ultimately newcomers should "possess the national consciousness of an American."¹² Interestingly, more than 70 years later, in addressing pending immigration legislation, former Rep. Barbara Jordan (D-Texas) echoed the sentiments of Washington, Jefferson, Roosevelt, and Wilson by explicitly calling for the "Americanization" of our latest immigrants. The concept of Americanization may have sometimes been misused in the past, Jordan declared, "but it is our word and we are taking it back."¹³

Transfer of Allegiance

For more than 200 years, immigrants becoming American citizens have taken an "Oath of Renunciation and Allegiance" renouncing previous allegiance and pledging allegiance to the United States of America. The promise that candidates for citizenship currently make to the United States and their new fellow citizens reads as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by law; that I will perform noncombatant service in the Armed Forces of the United States when required by law; that I will perform work of national importance under civilian direction when required by law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

The oath is a vital part of patriotic assimilation, in some ways its symbolic heart. In taking the oath the immigrant is transferring allegiance and fidelity from his or her birth nation to the United States of America. This "transfer of allegiance" is central to who we are as a people and vital to our proud boast that we are a "nation of immigrants." It is central to who we are as a people because at the core of American self-government is the principle of government by "consent of the governed." The first words of our Constitution clarify that "the governed" are "We the People of the United States."

In taking the Oath of Renunciation and Allegiance, the immigrant is voluntarily joining "We the People," the sovereign American People. More significantly, by renouncing previous allegiance and fidelity, the newcomer is transferring sole political allegiance from his or her birth nation – and from any other foreign sovereignty or political actor – to the United States of America. For more than two centuries, the renunciation clause, this "transfer of allegiance" has been a central feature of our nation's great success in assimilating immigrants into what has been called the American way of life. To simply say that we are a "nation of immigrants" is incomplete. We are, more accurately, a "nation of assimilated immigrants" and their descendants, whose sole political loyalty is – or at least in principle and morally ought to be – only to the United States of America.

Dual Allegiance Is Incompatible with American Constitutional Democracy

Dual Allegiance is incompatible with the moral and philosophical basis of American constitutional democracy for two major reasons. First, dual allegiance challenges our core foundation as a civic nation (built on political loyalty) by promoting a racial and ethnic basis for allegiance and by subverting our "nation of (assimilated) immigrants" ethic. Second, dual allegiance violates a vital principle of American democracy: equality of citizenship.

Dual citizenship promotes ethnic/racial basis for nationhood. The transfer of allegiance (in other words, national loyalty) emanating from the renunciation clause of the oath of citizenship (and its clear moral rejection of dual allegiance) is central to America because of the kind of country we are. Unlike many other countries, our nationhood is not built upon American citizens belonging to a particular ethnicity, race, or religion, but instead upon political loyalty, i.e., upon those citizens being loyal to American constitutional democracy. If we were a country that did not receive large numbers of immigrants, this would not be as important in practical terms. It is important, however, precisely because we are a "nation of (assimilated) immigrants," whose citizens come from all parts of the world, that we must be serious about enforcing the Oath of Renunciation and Allegiance, and about rejecting, on principle and in practice, the concept of dual allegiance.

As noted, this Oath – this transfer of allegiance – is at the heart of citizenship naturalization. Surely, most Americans would agree that to retain allegiance to another nation (and another constitution) besides the American nation (and the American Constitution), and thus to continue to belong to another political community besides the American political community, is inconsistent with the moral and philosophical foundation of American constitutional democracy.

Regimes based on ethnicity and race adhere to the doctrine of "perpetual allegiance." In this concept, one is always a member of the ethnic or racial nation. The United States, as a civic nation (rather than an ethnic or racial nation), has consistently rejected this principle. In 1812, Americans went to war against the concept of the ethnic nation and the doctrine of "perpetual allegiance." At the time, Great Britain, under the slogan "once an Englishman, always an Englishman," refused to recognize the "renunciation clause" of our citizenship oath and seized British-born naturalized American citizens from American ships, and impressed them into the British navy.

One major country in which citizenship traditionally has been based on race and ethnicity is Germany. The term *Volksdeutsch* means people of German ethnicity living outside Germany, who were traditionally considered part of the German people (*das deutsche Volk*), in the sense of a racially homogenous people. The German word *das Volk* is equivalent to the Spanish term *La Raza* (the Race). Traditional German immigration law afforded German citizenship to *Volksdeutsch*, including people who were ethnically German, but who did not speak German, had no knowledge of German culture, and who had never been in Germany.

Today, many countries that send large numbers of immigrants to the United States support the concepts of ethnic-based nationhood and perpetual allegiance – and are attempting to maintain the loyalty of those immigrants. Renshon describes this phenomenon: "increasingly, governments of dual-citizen sending

countries are taking steps to ensure that the loyalties and attachments that many immigrants feel for their country of origin are maintained and even stimulated."¹⁴

Dual allegiance violates equality of citizenship. Besides challenging our conception of ourselves as a civic (rather than ethnic or racial) nation, dual allegiance contradicts our core principle of equality of citizenship. The normative values of our nation's principles – what could be called our "constitutional morality" – tell us that "We the People of the United States," the American people, consists of individual citizens with equal rights and responsibilities. Equality of individual citizenship in a government based on constitutional liberty and the consent of the governed (self-government) is central to America's liberal democratic regime.

The concept of dual allegiance and "dual citizenship," that is to say, individuals belonging to several "peoples" (and thus, several political communities) at the same time, violates equality of citizenship because it means that some individuals (dual citizens) are more equal than others (American "single" citizens).

For example, we believe in the principle of "one person, one vote." An American with homes and legal residences in both Indiana and California, does not vote for president in both states. He or she is not permitted to vote in both the Indiana and California gubernatorial and congressional elections. Double voting within American constitutional democracy is forbidden by law and is a clear violation of the principle of equality of citizenship. It violates our "constitutional morality."

What about double voting outside of American constitutional democracy? Let us examine the "constitutional morality" of this issue. I recently talked to a British immigrant who had become an American citizen, while at the same time retaining "allegiance to the Crown," or British citizenship. The immigrant dual citizen was a double voter in 2004, casting ballots in both the United States Bush-Kerry presidential contest and Great Britain's Blair-Howard election within five months of each other. In this case, did the dual citizen do anything morally wrong (in the sense of violating the constitutional morality of American democracy)? Yes.

First, he violated the Oath of Citizenship in which he had promised to "absolutely and entirely renounce and abjure all allegiance" to his birth nation. He had a moral obligation to take this oath seriously regardless of any legal loopholes that currently exist.

Second, he participated in and expressed loyalty (explicitly and implicitly) toward two different constitutions (the American constitution and the British constitution) and exercised the rights of membership in two different peoples (the American people and the British people). The dual citizen, in this case, could be described as a type of "civic bigamist," whose allegiance and loyalty included another constitutional regime besides the United States.

The fact that Britain is a liberal democracy (and perhaps our closest ally) does not alter the moral principle or practical consequences involved in this situation. After all, America is a different nation than Britain, Canada, India, Chile, or any other democratic nation. Our constitution, interests, principles, history, and culture, while similar to that of Britain and other democracies, are not identical or interchangeable. In becoming Americans, immigrants (and native-born citizens) are supposed to be loyal to the American constitution and the American liberal democratic regime, not simply to a generic form of democracy detached from the American nation. I suspect (although I have seen no data on this) that most Americans (though not all) believe in civic monogamy – that is to say, the principle that an American citizen should be loyal only to the United States and to no other country.

The concept of the hyphenated-American (Irish-American, Italian-American, Mexican-American, Japanese-American) has been in our mainstream culture for a long time. That is, the idea that recent immigrants retain some customs of and affection toward their birth nations, and that therefore, ethnic subcultures exist within a mainstream American culture. This view has been widely accepted both descriptively (as a fact) and, for many, normatively (as a positive, or at least, benign, value). Nevertheless, it is particularly significant that two leading immigration law professors writing in a Wall Street Journal op-

ed in 1998 welcomed the replacement of the hyphen with the ampersand.¹⁵

Thus, for example, according to the law professors, the hyphenated Mexican-American or, in the specific case that we are examining, the British-American (i.e., a loyal American of Mexican or British descent) would be replaced by someone who is both Mexican & American or British & American, voting in two countries and simultaneously "loyal" to both America and a foreign government. Clearly, unless action is taken by the Congress and the executive, the continuing increase in dual citizenship will exacerbate this tendency of strengthening the ampersand and weakening the hyphen.

Third, the immigrant dual citizen in the example listed above violated the principle of equality of citizenship. He exercised the special privilege of double voting, a right not available to most Americans. To wit, most American citizens did not vote in the British elections of 2004, while a privileged few did. In 2006 Mexico will have a presidential election and again some American citizens (a special category of citizens) will be double voters, casting ballots for the president of Mexico and for a governor, Senator and/or representative in American elections.

Double, or in some cases multiple, voting in different nations could be (and, indeed, has been) characterized as "neo-Medievalism." Dual citizens are like pre-modern medieval aristocrats – privileged "supra-citizens." Like aristocrats in the Middle Ages, such as the Electors in the Holy Roman Empire, they have voting power in more than one government and are supposedly "loyal" to more than one regime.

Of course, the 18th century American Founders intellectually and morally rejected the medieval and feudal political order of kings, princes, and aristocrats, in favor of the modern vision of ordered liberty and equality of citizenship (a "new science of politics," as the Federalist Papers puts it). Thus, as historian Gordon Wood has pointed out, the upper house of the national legislature (the American Senate) was not, like its British counterpart, established to represent an aristocracy, and the lower house to represent the people.¹⁶ It is ironic that some 21st century American law professors seem to prefer a pre-modern, pre-Enlightenment, illiberal concept of dual (and even multiple) citizenships to the modern democratic republican views of the Founders of "single" citizenship as made explicit in the 1795 Congressional insistence upon naturalized citizen "renunciation" of all prior allegiances.

It could also be noted that, in practical terms these specially privileged "supra-citizens" will, by definition, have less time for civic participation in American public life, since they have political obligations (e.g. voting) and political allegiances in another (and foreign) political community. In terms of obligation and commitment, then, these dual citizens are cheating their fellow "single" citizens in both countries. They cannot politically give themselves wholly to the United States; they consciously hold something back.

Some argue that dual political allegiance is no different than a variety of allegiances that people hold simultaneously. It is argued that one is a member of the Yale Club and the Harvard Club, one is Catholic or Jewish, one is a New Yorker or Californian, one is American or Canadian – and that it is possible, in today's complex and interdependent world, to hold a series of loyalties at the same time, without a great deal of difficulty. What these apologists for dual allegiance continually do is to mix apples and oranges.¹⁷ Of course, it is possible to be Jewish, a scientist, a Californian, a member of both the Harvard and Yale clubs, and an American.

Nevertheless, in rebutting the dual allegiance advocates, Renshon notes that some identities are more important than others, and some identities are incompatible with each other.¹⁸ It is not possible to be Jewish and Catholic or Jewish and Muslim at the same time. Nor is it possible to seriously be a loyal citizen of the American Republic and the French Republic (or even Britain or Canada) at the same time. As noted earlier, even the closest of democratic allies do not have identical interests and principles. Like an "ampersand" religious believer, an "ampersand" political citizen is trying to square an impossible circle, ultimately one identity or the other (and usually both) is being short-changed.

About a decade ago, syndicated columnist Georgie Anne Geyer in a prescient book, *Americans No More: The Death of Citizenship*, lamented: "Dual citizenship? America has now made it possible, thus diluting a person's commitment and making citizenship akin to bigamy."¹⁹ She warned, "the idea and practice of

citizenship in America may for all intents and purposes die in our lifetimes unless we act to reverse certain trends...."20

Mexico Challenges Patriotic Assimilation

Among immigrant-sending countries Mexico is unique. It accounts for the largest share of the immigrant population (about 30 percent of the total); the largest number of illegal immigrants (approximately 58 percent of the 10 million-plus illegals); it lost a large chunk of its national territory in the 19th century to the colossus to the north; and, of course, it shares a 2,000 mile border with the United States.

In the 1990s, Mexico changed its strategy vis-a-vis the United States (e.g., greater economic integration, support for NAFTA, etc.) and toward Mexican-Americans, seeking to build closer relations with both. One of the tools of this new strategy was the slow but steady and increasing promotion of dual allegiance for Mexican-Americans – the promotion, essentially, of the "ampersand;" and the effort to create a transnational political space and identity.

Shortly before the Mexican Congress enacted its first version of the dual nationality law allowing many Mexican-Americans to possess dual U.S.-Mexican nationality, Linda Chavez voiced concerns in her syndicated column:

Never before has the United States had to face a problem of dual loyalties among its citizens of such great magnitude and proximity. Although some other countries – such as Israel, Colombia, and the Dominican Republic also allow dual nationality – no other nation sends as many immigrants to the United States nor shares a common border. For the first time, millions of U.S. citizens could declare their allegiance to a neighboring country.²¹

Chavez further explained that a series of measures, laws, and tendencies, including the 1967 Supreme Court decision ending involuntary loss of citizenship for voting in a foreign election (discussed later in this paper) have helped diminish American national loyalty:

All of these changes, no doubt, erode loyalty to the United States but, until now, have involved relatively few people. What is significant about the change in Mexican law is its potential to affect so many newcomers at a time when other pressures also diminish attachment to the immigrants' adopted nation. Unlike previous immigrant groups, Mexicans travel only a short distance.... Not only can they travel easily back and forth, keeping ties to their homeland stronger, but many live in large immigrant enclaves in the United States, where Spanish is heard more frequently than English....²²

"Mexicans who live north of the border." Let us examine Mexican government actions in some detail. In 1995, the New York Times reported that Mexican President Ernesto Zedillo told a group of American politicians of Mexican descent in Dallas, "You're Mexicans – Mexicans who live north of the border."²³ One of the elected officials who attended the Dallas meeting, Texas state representative Robert R. Alonzo, said, "There's been a clear change of policy. Before, the Mexican Government didn't want to be seen as interfering in the U.S., but now they've understood the importance of building ties."²⁴ University of Texas Professor Rodolfo O. de la Garza commented on the purpose of Zedillo's new policy to the Times: "the Mexican government wants them [Mexican-Americans] to defend Mexican interests here in the United States."²⁵

Two years later in 1997, Zedillo addressed the annual convention of the National Council of La Raza in Chicago, the first time a Mexican President spoke before a major Latino-American organization. According to the Copley News Service: "In a stirring address, delivered in impeccable English to a crowd of more

than 2,000, Zedillo evoked feeling of patriotism and pride in Mexican roots." He told the La Raza conventioners: "I have proudly affirmed that the Mexican nation extends beyond the territory enclosed by its borders...."26

Like Zedillo, Mexico's current president, Vicente Fox, repeatedly says that the Mexican nation extends beyond its borders. Under Fox, the official website of the President of Mexico (www.presidencia.gob.mx) on July 16, 2002, stated that Cabinet member, Juan Hernandez, head of the Office for Mexicans Abroad, had "been commissioned to bring a strong and clear message from the President [Vicente Fox] to Mexicans abroad – Mexico is one nation of 123 million citizens – 100 million who live in Mexico and 23 million who live in the United States – and most importantly to say that although far, they are not alone."27 On August 23, 2001, in El Paso, Hernandez stated, "We are a united nation," while referring to the "Mexican population" as "100 million within the borders [of Mexico] and 23 million who live in the United States" (including, of course, millions of American citizens).28

In 1997-1998, Mexico changed its Constitution to permit Mexican immigrants in the United States to retain Mexican nationality. Committee Chairman Senator Amador Rodriguez Lozano explained the philosophical significance of what Barnard College Sociology Professor Robert C. Smith called the "redefinition of the Mexican Nation:"29

Fellow senators: the reports [on dual nationality] that we present today have historical importance, because they complete a qualitative change in the judicial conception that until now, we have had of Mexican heritage. It signifies the recognition that nations are more than concrete, specific territorial resources. ... The reports recognize that Mexicans abroad are equal to those of us who inhabit Mexican national territory. Belonging to Mexico is fixed in bonds of a cultural and spiritual order, in customs, aspirations and convictions that today are the essence of a universally recognized civilization.30

"Even to the seventh generation." The goal of this conceptual "redefinition of the Mexican nation" appears to be to gain the allegiance of Mexican-Americans. Hernandez, who headed the Presidential Office of Mexicans Abroad from 2000 to 2002 (and is a dual citizen born in Ft. Worth of a Mexican father and an American mother), was quite candid about the end goal of Mexican strategy; on June 7, 2001, Hernandez told ABC's Nightline, "we are betting" that Mexican-Americans who are American citizens will "think Mexico first, even to the seventh generation."31 On July 11, 2001, he told the Denver Post that Mexican immigrants to the United States "are going to keep one foot in Mexico" and that they "are not going to assimilate in the sense of dissolving into not being Mexican."32

The grand tactics of the new Mexican policy were articulated shortly before Vicente Fox became President by the late Adolfo Aguilar Zinser, Fox's future national security advisor. Writing in *El Siglo de Torreon* on May 5, 2000, Zinser advocated that the Mexican government work with "20 million Mexicans" in the United States to advance Mexican "national interests." Zinser criticized American efforts to halt illegal immigration, stating that "Mexicans [i.e., illegal aliens crossing the border] are subjected every day to mean-spirited acts and their rights are permanently threatened by ambitious politicians who are hunting for the Anglo vote." Zinser attacked "reactionary Senator Jesse Helms" and recommended that Mexico "find allies in the U.S. political system," particularly on the left among "Liberal Democrats, labor unions, civil rights organizations, and social movements."33

In practice, for more than 10 years the Mexican government has been deeply involved in issues of American domestic politics: vigorously promoting particular policies, working with special interest groups, and lobbying state legislatures. The Mexican state strongly opposed Proposition 187 in California prohibiting using non-emergency public funds, including education money for illegal immigrants; and Proposition 227 (also in California) that promoted learning English and restricted bilingual programs that emphasized Spanish acquisition over English.

In opposing Proposition 187 the Mexican government coordinated the meeting of the Zacatecas Federation of Los Angeles with the Zacatecas Federation of Chicago, and facilitated the financial contribution of the

Chicago group to the anti-Proposition 187 cause in California. As Barnard professor Robert C. Smith put it, "The theoretically interesting thing is that these are two groups organized within U.S. civil society on the basis of their common origin in a Mexican state [Zacatecas], being brought together by the Mexican [nation] state and then participating together in American politics in two different American states."³⁴

In recent years, Mexican government lobbyists in state capitols throughout the United States have strongly advocated drivers licenses for illegal immigrants and formal recognition of special Mexican identification documents (matricula consular). Technically the matricula consular, or Mexican consulate ID card, would be for any Mexican citizen, legal or illegal, but if one is in the United States legally with a visa or passport, it is not necessary to have a matricula consular. So, in effect, there is no reason to use such a document unless one is illegally in the United States.

In 2004, the Mexican state opposed Arizona's Proposition 200 that forbids all but emergency funds going to illegal immigrants. Although this measure passed overwhelmingly with 56 percent of the vote (including 47 percent of Latino voters), the Mexican government has even joined with American advocacy groups (including the Mexican American Legal Defense and Education Fund, or MALDEF) in a lawsuit to overturn the decision of the citizens of Arizona.

At the same time, the Mexican government, with the acquiescence and support of some American educational officials in American public schools, is cultivating dual allegiance among Americans of Mexican descent. For example, the February 26, 2002, issue of *The Californian* (Salinas) reported that a local elementary school was visited by Mexico's Counsel General in San Jose, Marco Antonio Alcazar. The Mexican national anthem was played and Alcazar told Mexican-American fifth- and sixth-graders that they had the right to automatically obtain Mexican citizenship. Promoting the concept of the "ampersand," the Mexican diplomat stated that, "This is exciting because there are many children, who were born in the United States, whose parents are Mexican. And these children have the opportunity now to enjoy different nationalities and be proudly American and proudly Mexican." The Mexican diplomat gave the California school "complete collections of educational books from the Mexican government, intended to help the students understand Mexican history and culture."³⁵

Mexican legislative bodies have reserved seats for deputies representing "Mexicans living in the United States." This would make sense, except for the fact that the term "Mexicans living in the United States" is interpreted to include naturalized American citizens and their American-born children, instead of, as one would assume, simply Mexican legal residents of the United States. For example, on July 4, 2004, Manuel de la Cruz, a naturalized American citizen from the Norwalk section of Los Angeles, was elected to the legislature of the Mexican state of Zacatecas. Thirty-three years earlier de la Cruz had emigrated from Mexico to the United States; he eventually became an American citizen and took an oath of allegiance in which he promised to "absolutely and entirely renounce all allegiance and fidelity" to any "foreign state or sovereignty." Of course, when Mr. de la Cruz took his seat in the Zacatecas Legislature, as a new elected official, he took an oath of allegiance to the Mexican republic.³⁶

Spreading American values? It is sometimes argued that even if the principle of retaining political loyalty to the "old country" is inconsistent with the moral basis of American democracy, the result is a good thing in practice because immigrant dual citizens promote "pro-American" and "democratic" values in elections in their birth countries. This sounds reasonable, but is not necessarily the case.

For example, Mr. de la Cruz was elected as member of the traditionally anti-American Democratic Revolutionary Party (PRD). The website of the California PRD, the political home of many naturalized American citizens, contains blatant lies about the United States, including the charge that "the Mexican migrant who lives abroad [in the United States] is a citizen without human rights" and efforts to get the United States "to treat them as human beings" have "not been heard in the structures of American government."³⁷ Of course, as anyone who has lived in the United States should know, all residents of this country, citizen and non-citizen, legal and illegal, have the rights of indigent medical care, free public schooling for their children, access to the courts, and a whole array of constitutional liberties. In 2003, the California PRD website contained pictures not only of Che Guevara, but of V.I. Lenin as well.³⁸ So much

for the promotion of "American values."

The long-term ideological vision of President Vicente Fox was made clear in a speech on "Mexican Foreign Policy in the 21st Century" delivered in Madrid in 2002.³⁹ Fox declared:

Eventually, our long-range objective is to establish with the United States and Canada, our other regional partner, an ensemble of connections and institutions similar to those created by the European Union, with the goal of attending to future themes as important as the prosperity of North America, and the freedom of movement of capital, goods, services, and persons. This new framework we wish to construct is inspired in the example of the European Union. [emphasis by Fox]

Moreover, Fox made it clear that he did not stand with the United States on issues of vital importance to American democratic sovereignty. In this regard, he warned the Europeans that, "we [Mexicans and Europeans] have to confront...what I dare to call Anglo-Saxon prejudice against the establishment of supranational organizations." Anglo-Saxon prejudice would presumably mean American (and, in some cases, British) support for the concept of national democratic self-government (the liberal democratic nation-state) over transnational institutions such as the UN, the EU, the International Criminal Court, and other supranational bodies.

Fox further stated in an indirect manner that Mexican political principles were closer to the Continental European model than the American system. He declared that "Mexico is closely linked with European nations for historical reasons and because of cultural affinity...it is logical that Mexico approach Europe. We have an identity of values which unites us with the European nations, even more than with our neighbors of North America." In addition, Fox suggested that Mexico stood with the Europeans (and implicitly not with the United States) on issues such as the Kyoto Protocol (on global climate issues), and on the UN Durban Conference (that became an anti-Semitic and anti-Israeli hate-fest and called for slavery reparations from the United States).

It appears that President Fox and leading members of the Mexican elite envision a closely integrated North America in both economic and political terms, in which dual citizenship would be a natural outcome (and, indeed, a tool) in the creation of EU-style transnational arrangements that would ultimately supercede both American and Mexican national constitutions. If one is interested in a quick overview of this imagined future, a glance at the website of the Pacific Council on International Policy will suffice.

The Los Angeles-based Pacific Council has held a series of conferences on "Envisioning North American Futures: Transnational Challenges and Opportunities." Participants included leading figures from the Mexican elite, such as Carlos Gonzalez-Gutierrez (Executive Director, Institute of Mexicans Abroad), Amb. Andres Rosental (former Mexican Ambassador to the United States), Carlos Manuel Sada Solana (Consul General of Mexico in Chicago), Dr. Ruben Puentes (Regional Representative of the Rockefeller Foundation in Mexico City); as well as leading American and Mexican academics and activists including: Antonia Hernandez (MALDEF), Jeannie Butterfield (American Immigration Lawyers Association), Robert Pastor (former Assistant Secretary of State, and a leading promoter of North American integration), Rep. Xavier Becerra (D-Calif.), and others.⁴⁰

Promoting a transnational future. The Pacific Council project trumpets a politically integrated "transnational" future, declaring that: "Mexicans, Americans, and Canadians are acting increasingly as 'North Americans' with a transnational identity and a common vision." Moreover, "U.S. residents of Mexican origin are campaigning for elective office in Mexico, taking advantage of the dual nationality provision in place since 1998...Cross-border activism raises key questions regarding citizenship, sovereignty, and the emergence of transnational political identities."⁴¹

The solution to these problems, the Pacific Council insists, will "require" a "bi-national" (sometimes a "tri-national") and certainly, a "transnational" approach. "We want to chart alternative scenarios for how the

North American relationship might evolve – politically, economically, socially, culturally, and institutionally – in the coming 10-15 years," the Pacific Council project tell us. Implicit in this social-science language is the notion that traditional American self-government or democratic sovereignty must ultimately be subordinated to new transnational institutions in which political decision making will be bi-national (or tri-national), but not "national" (that is to say, not solely within the framework of the U.S. Constitution).⁴²

In other words, what is envisioned by Mexican elites and their American allies is not (as some would have it) a crude attempt at reconquista (or a reconquest of the American Southwest), but a sophisticated and long-term strategy similar to the approach promoted by leaders of the European Union and other global and transnational elites, of slowly and steadily building a series of institutions and structures that would lead to greater and greater political integration in North America – and thus, by definition, a weakening of American constitutional sovereignty.

They envision what Mark Krikorian of the Center for Immigration Studies has called a North American Condominium of "shared sovereignty" in the borderlands and among the large Mexican-American population in the United States, who would be dual citizens ("ampersands") and have dual allegiance to the United States and Mexico. This would be a new type of post-U.S. Constitutional (and essentially "post-American") political arrangement. In the final analysis, it would be a new type of transnational political regime, different from the liberal democratic nation-state.

Italy Then and Mexico Now

Michael Barone has examined what he calls "a close, almost uncanny resemblance between the Italian immigrants who arrived in the United States in great numbers from 1890 to 1924 and the Latino [predominately Mexican] immigrants who began arriving in great numbers in the late 1960s."⁴³ Both groups of immigrants were characterized by an emphasis on family, religion, and hard work. Moreover, Barone tell us, they both came from mostly Catholic rural areas with problematic political institutions and (unlike yesterday's Jewish and today's Asian immigrants) embraced manual labor and entrepreneurial self-employment, rather than higher education, as the means of social mobility, at least, in their beginning years in the new country. Barone writes: "By the 1970s, Italians were thoroughly interwoven into the fabric of American life. It took 80 years."⁴⁴ For Latinos, he contends: "With luck, it will take less than 80 years."⁴⁵

Another similarity, that Barone noted for Italians, but didn't examine for Latinos (or Mexicans specifically) is the historical success of the patriotic assimilation of both immigrant groups. For Italian-Americans the epitome of patriotic assimilation occurred during World War II when Americans of Italian descent were engaged in combat against Italian soldiers on the battlefields of North Africa and Sicily.

The successful patriotic assimilation of Mexican immigrants prior to the post-1960s immigration era is described by classicist Victor Davis Hanson in an insightful memoir that recalls his Mexican-American friends, neighbors, and relatives.

Hanson writes of the predominately Mexican-American public school he attended in Selma, Calif., where the old assimilationist model worked. The students learned a "tough Americanism" with "biographies of Teddy Roosevelt, stories about Lou Gehrig, recitations from Longfellow, demonstrations of how to fold the flag, a repertoire of patriotic songs to master." Professor Hanson recalled his fellow students singing God Bless America with "the Spanish-accented refrains of 'Stand bêsid her.' " He notes that the end result of this deliberate (and sometimes crude) assimilation policy was a Selma, Calif., run by assimilated, patriotic Mexican-Americans, Hanson's friends, neighbors, and in-laws.⁴⁶

Hanson declares: "Almost all of those from my second-grade class are today's teachers, principals, business men and women, and government employees. If the purpose...[of an assimilation policy] was to turn out true Americans of every hue, and to instill in them a love of their country and a sense of personal responsibility, then the evidence 40 years later would say that it was an unquestionable success."⁴⁷

Now let us examine other similarities between Italian immigration in the past and Mexican immigration today, specifically the policies of the sending governments. Interestingly, Italian government policies (circa 1900s-1930s) paralleled those of the Mexican government (1990s-2000s) – both attempted to maintain the allegiance of their emigrants who lived in the United States, supported dual nationality, and tried to use their former compatriots as political leverage upon the United States.

Just as the Mexican government established the Presidential Office for Mexicans Abroad to promote close ties between the government and its emigrants, the Italian government had established the General Bureau of Italians Abroad for the same purpose. Just as Mexican consuls are active in American politics today, so were Italian consuls active in American politics in the past, including both representatives of the pre-Mussolini liberal government and the later Mussolini regime. Just as the Mexican government has established 21 Cultural Institutes in the United States to foster ties with Mexican immigrants – and in the words of the then-Foreign Relations Secretary Fernando Solana, act as "political agents"⁴⁸ contributing to Mexico's foreign policy goals – the Italian government established similar cultural institutions (e.g., the Italian Veterans Association) to foster Italian foreign policy interests. Just as the Mexican government redefined membership in the Mexican nation to include "Mexicans living abroad," even those who had become American citizens, the Italian government redefined the concept "emigrant." Italian emigrants were no longer considered "emigrants," but "citizens" (as Mussolini put it, "an Italian citizen must remain an Italian citizen.")⁴⁹

Some other comparisons are highlighted in the following table.

Like the Mexicans today, Italian politicians in the past promoted the concept of dual allegiance, but unlike the Mexicans of today they were unsuccessful because of opposition from the United States. It is important to note that in addition to the politicians at home, many Italian immigrants to the United States in the past (just as many Mexican immigrants today) favored dual citizenship. The Italian government-funded Istituto Coloniale convened the first and second "Congress of Italian immigrants" in 1907 and 1911 during which Italian immigrants urged the home government to promote dual citizenship for Italians in America.⁶¹ In a similar vein, many leaders of Mexican immigrant community in the United States, particularly representatives of the Zacatecan Federation of Clubs, have pushed for dual citizenship and double voting.⁶²

All of this reminds us that assimilation is difficult and that it does not just happen naturally, or by chance. Human nature remains; Italian immigrants in the past and Mexican immigrants today acted in similar manner. Moreover, the Italian government in the past and the Mexican government today have acted in a similar manner. They are doing what governments usually do: Trying to maximize their national interests in relation to other governments. What is different now is that in the past the American government actively promoted our national interests in patriotic assimilation and the rejection of dual allegiance; today our government and elites are essentially mute on these critical issues.

Clearly, there are a range of important differences between Italian immigration in the past and Mexican immigration today. Italy did not have a 2,000-mile border with the United States. Italian immigrants had to cross the Atlantic Ocean in an age when communication with the old country was much more difficult. There was no bilingual or multicultural education for the children of Italian immigrants. Italian immigrants did not represent (as Mexicans do today) a disproportionately large percentage (approximately 30 percent) of all immigrants. Italian was not the language of half of all immigrants, as Spanish is today. In addition, the immigration restriction legislation of the 1920s had the practical effect of fostering assimilation among Italian immigrants. Finally, in the past, of course, there was no large body of illegal aliens from any country as there is today.

Nevertheless, while the above are all important differences between then and now, I would argue that one of the most important differences is the attitude of American elites and the American regime. Italian immigrants and other immigrants assimilated in the past, not because it was easy or natural, but because we as a nation insisted upon Americanization and patriotic assimilation. Ultimately that insistence – including

the promotion of Americanization and the rejection of dual allegiance – facilitated patriotic assimilation and proved to be a great gift to the immigrants from Italy. We owe today's Mexican immigrants the same concentrated attention in fostering patriotic assimilation that was applied to the Italians and all the other immigrants who came through Ellis Island. Today's new arrivals from Mexico, Central America, Asia and everywhere else deserve nothing less.

Supreme Court Decisions

Prior to 1967, American citizens who committed certain "expatriating acts," including voting in foreign elections, serving in foreign governments, and swearing allegiance to foreign powers, could by commission of these acts involuntarily lose their citizenship. In the early 1930s, President Franklin D. Roosevelt, at the request of Congress, established a Cabinet Committee consisting of his Secretary of State, Attorney General, and Secretary of Labor to review all the scattered nationality laws of the United States going back more than 150 years and codify them in one comprehensive statute to submit to Congress.

Drawing upon older laws and crafting new requirements, FDR's Cabinet Committee recommended that U.S. citizens would lose their citizenship if they performed any of the following acts: "...becoming naturalized in a foreign country; taking an oath of allegiance to a foreign state; being employed by a foreign government in a post for which only nationals of that country are eligible; voting in a foreign political election or plebiscite; using a passport of a foreign state as a national thereof..."⁶³

In support of the recommendation that for voting in a foreign election an American should lose his or her citizenship, President Roosevelt's committee declared:

Taking an active part in the political affairs of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United States, whether or not the person in question has or acquires the nationality of the foreign state. In any event it is not believed that an American national should be permitted to participate in the political affairs of a foreign state and at the same time retain his American nationality. The two facts would seem to be inconsistent with each other.⁶⁴

In June 1938, President Roosevelt submitted the Cabinet Committee recommendations to Congress, most of which became law with the passage of the Nationality Act of 1940. Congress was thus heavily guided by advice from the Roosevelt Administration.

In 1958, the Supreme Court in *Perez v. Brownell* upheld the section of the Nationality Act of 1940 declaring that an American voting in a foreign political election could lose his citizenship for this act. The petitioner had asked the court to rule this section of the Nationality Act unconstitutional on the grounds of the 14th Amendment. In *Perez* the Supreme Court held that "There is nothing in the language, the context, the history, or the manifest purpose of the Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship."⁶⁵

Former New Deal lawyer Justice Felix Frankfurter wrote the majority decision. He reviewed the legislative and executive branch history of nationality laws including the 19th century treaties permitting involuntary forfeiture of citizenship; the recommendations of the Citizenship Board of 1906 (which stated that "no man should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance be due to more than one");⁶⁶ the Expatriation Act of 1907; and the Roosevelt Administration-inspired Nationality Act of 1940. Justice Frankfurter declared:

...the fact is not without significance that Congress has interpreted [356 U.S. 44, 61] this conduct, not irrationally, as importing not only something less than complete and unswerving allegiance to the United States but also elements of an allegiance to another country in some measure, at least, inconsistent with

American citizenship.⁶⁷

Frankfurter concluded: "It cannot be said then, that Congress acted without warrant when, pursuant to its power to regulate the relations of the United States with foreign countries, it provided that anyone who votes in a foreign election of significance politically in the life of another country shall lose his American citizenship. To deny the power of Congress to enact the legislation challenged here would be to disregard the constitutional allocation of government functions that it is this Court's solemn duty to guard."⁶⁸

Nevertheless, in 1967, the Supreme Court in *Afroyim v. Rusk*, overruled *Perez* and declared that "Congress has no express power under the Constitution to strip a person of citizenship.... The Fourteenth Amendment's provisions that 'All persons born or naturalized in the United States... are citizens of the United States...' completely controls the status of citizenship..."⁶⁹ The majority drew upon Chief Justice Earl Warren's dissent in *Perez* arguing that the 14th Amendment prohibited Congress from taking citizenship from anyone without their intent to relinquish American citizenship. Justice Hugo Black wrote for the 5-4 majority stating that, "the [14th] Amendment can most reasonably be read as defining citizenship which a citizen keeps unless he voluntarily relinquishes it. Once acquired this Fourteenth Amendment citizenship was not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit."⁷⁰

Justice Black noted that the "chief interest" of the sponsors of the 14th Amendment was to protect the citizenship rights of African-Americans.⁷¹ They feared the Civil Rights Act of 1866 was not enough because it could be reversed by a future Congress. Black quotes the Amendment's chief Senate sponsor, Howard of Michigan, as explaining the purpose of a constitutional definition and grant of citizenship:

It settles the great question of citizenship and removes all doubts as to what persons are or are not citizens of the United States... We desired to put this question of citizenship and the rights of citizens... under the civil rights bill beyond the legislative power.... [ellipses by Black]⁷²

Justice John Harlan wrote a stinging dissent in *Afroyim* supported by Justices Clark, White, and Stewart. Harlan declared:

The Court today overrules *Perez* and declares 401(3) unconstitutional, by a remarkable process of circumlocution. First, the Court fails almost entirely to dispute the reasoning in *Perez*; it is essentially content with the conclusory and quite unsubstantiated assertion that Congress is without 'any general power, express or implied,' to expatriate a citizen 'without his assent.'.... Finally the Court declares that its result is bottomed upon the 'language [387 U.S. 253, 270] and the purpose of the Citizenship Clause of the Fourteenth Amendment'; in explanation, the Court offers only the terms of the clause itself, the contention that any other result would be 'completely incongruous,' and the essentially arcane observation that the 'citizenry is the country and the country is the citizenry.' I can find nothing in this extraordinary series of circumventions which permits, still less compels, the imposition of this constitutional constraint upon the authority of Congress. I must respectfully dissent.⁷³

Harlan directly attacks Black's crucial argument that the Congressional sponsors of the 14th Amendment intended to place the forfeiture of citizenship beyond the reach of the Congress and that only the voluntary renunciation of citizenship was acceptable under the terms of the Amendment. Harlan notes:

There is, however, even more positive evidence that the Court's construction of the [citizenship] clause is not that intended by its draftsmen. Between the two brief statements from Senator Howard relied upon by the Court, Howard, in response to a question, said the following:

'I take it for granted that after a man becomes a citizen of the United States under the Constitution he cannot cease to be a citizen, except by expatriation or the commission of some crime by which his citizenship shall be forfeited.'

It would be difficult to imagine a more unqualified rejection of the Court's position; Senator Howard, the clause's sponsor, very plainly believed that it would leave unimpaired Congress' power to deprive unwilling citizens of their citizenship.⁷⁴

Harlan also pointed out that Congress from 1864 through 1867 enacted a series of bills that explicitly stripped citizenship from American citizens (mostly former Confederates) without their "assent."⁷⁵ Harlan notes that President "Lincoln makes it quite plain that he was not troubled by any doubts about the constitutionality" of these measures.⁷⁶ The Harlan dissent continues by examining the history of the involuntary expatriation of American citizens that was supported by both the legislative and executive branches of government in the latter half of the 19th century; with the Expatriation Act of 1907; and in the Nationality Act of 1940.

He concludes:

...nothing in the history, purposes, or language of the clause [Citizenship Clause of the 14th Amendment] suggests that it forbids Congress in all circumstances to withdraw the citizenship of an unwilling citizen. To the contrary, it was expected and should now be understood, to leave Congress at liberty to expatriate a citizen if the expatriation is an appropriate exercise of a power otherwise given to Congress by the Constitution, and if the methods and terms of expatriation adopted by Congress are consistent with the Constitution's other relevant commands....it is not proper to create from the Citizenship Clause an additional, and entirely unwarranted, restriction [387 U.S. 253, 293] upon legislative authority. The construction now placed on the Citizenship Clause rests, in the last analysis, simply on the Court's ipse dixit, evincing little more, it is quite apparent, than the present majority's own distaste for the expatriation power.⁷⁷

In 1980, the Supreme Court in *Vance v. Terrazas* reaffirmed the "assent" principle of *Afroyim*. The case involved Laurence Terrazas who was born in the United States to a Mexican father and acquired both American and Mexican citizenship at birth. While studying in Mexico, Terrazas signed a document affirming allegiance to Mexico and expressly renouncing allegiance to the United States. Later, Terrazas claimed that despite his formal declaration he did not really "intend" to give up his citizenship. The Court declared that according to *Afroyim* the Congress does not have the power to take citizenship away from a citizen unless it was the "intent" of that citizen to voluntarily forfeit his citizenship. Specifically, "intent" had to be proved separately, it could not simply be assumed by the actions of the citizen.⁷⁸

The Court did, however, rule that Congress was free to establish a "preponderance of evidence" standard to determine if the citizen intended to give up his citizenship. The "preponderance of evidence" is used in civil lawsuit cases and is a lower standard of proof than the "clear and convincing evidence" standard that is used in criminal trials.⁷⁹ Four justices (Marshall, Stevens, Brennan, Stewart) dissented on the "preponderance of evidence" standard favoring the more defense-friendly "clear and convincing" evidence.⁸⁰

In 1986 Congress amended the section of the Immigration and Nationality Act dealing with loss of citizenship to conform to the judicial interpretation of *Afroyim*. With little discussion, the phrase, "voluntarily performing any of the following acts with the intention of relinquishing United States nationality" was added after the phrase "shall lose his nationality by," and the list of what previously were, for the most part, automatically expatriating acts.⁸¹

In 1990, the U.S. Department of State changed its long-standing policy and adopted a "clear and convincing" evidence approach that assumed an intention to retain citizenship, regardless of the act performed.⁸² However, at the same time, Secretary of State James Baker officially stated: "The action should not be seen as an endorsement of dual nationality. Our obligation is to ensure that the administration of our laws is equitable and consistent, regardless of the fact that dual nationality may be an incidental product of that treatment. The adoption of this administrative standard is consistent with our resolve to continue to meet our statutory obligation to determine whether loss has occurred by ascertaining the citizen's intent."⁸³

What Is to Be Done?

This paper has outlined the utter incompatibility of American constitutional morality with the maintenance of political allegiance by American citizens to a foreign state or power. Dual citizens exist in an "extra-Constitutional" or "post-Constitutional" political space. That is to say, dual citizens inhabit a supranational political space which is, by definition, beyond, and not bound by, the full range of responsibilities and rights inherent in the American constitutional community. The dual citizens as members of another, and foreign, political community, have different (and in some cases competing and conflicting) responsibilities, rights, interests, and commitments that – of objective practical necessity, as well as moral obligation – dilute their commitment, attachment, and allegiance to the United States of America.

To be sure, for some limited number of individuals, (e.g., children with one foreign parent) dual citizenship in some form may be necessary, at least temporarily. The question is: Do we continue to permit the rapid increase in dual citizenship, which will happen by default if no Congressional action is taken, or do we want to begin to limit dual allegiance and scale it back? Current immigration legislation will exacerbate the dual allegiance problem. For example, if the proposed McCain-Kennedy bill (S.1033) becomes law, 11 million currently illegal aliens (plus millions of future arrivals) from Mexico, Central America, and elsewhere will be eligible for citizenship in their birth nations as well as the United States. Indeed, CUNY political psychologist Stanley Renshon has noted that today "almost 90 percent of all immigrants come from countries that allow or encourage multiple citizenship."⁸⁴ Never has there been such a potential challenge to the integrity of our body politic and the Oath of Allegiance and to our entire citizenship naturalization process – and ultimately to the principle of patriotic assimilation.

The Supreme Court decision in *Afroyim v. Rusk* has tended to inhibit serious thinking about the means of restricting, regulating, and reducing dual allegiance. But opponents of dual allegiance should not be intimidated by *Afroyim*; there is plenty that can be done to restrict dual allegiance short of involuntarily taking citizenship away from anyone. Even legal observers who are strong adherents of dual citizenship and the *Afroyim* decision do not dispute the authority of Congress to regulate all forms of multiple allegiance.

Significantly, while Chief Justice Earl Warren's dissent in *Perez* became the intellectual foundation for *Afroyim*, Warren himself recognized the plenary powers of Congress in this area. After stating that under the 14th amendment the government did not have the power to "take citizenship away," Chief Justice Warren, in the very next sentence, declared: "If the Government determines that certain conduct by United States citizens should be prohibited because of injurious consequences to the conduct of foreign affairs or to some other legitimate governmental interest, it may within the limits of the Constitution proscribe such activity and assess appropriate punishment."⁸⁵ In other words, even Earl Warren said that Congress could prohibit the types of acts (voting in foreign elections, etc.) examined in *Perez* and later in *Afroyim*.

Clearly, within the boundaries of current Supreme Court interpretation, many acts that were formerly expatriating (such as voting in a foreign election, serving in a high office in a foreign government, etc.) could instead be made federal offenses, punishable by fines and imprisonment. Exceptions for serving the "national security interests of the United States" could be stipulated. The purpose of such legislation would not be to punish people (who might be well-meaning and merely following current custom), but rather to affirm our nation's deepest normative principles. The legislation would obviously not be retroactive, but simply inform citizens that from now on, "These are the new rules." This message will get out and there

should be very few, if any, prosecutions.

The principle that an American citizen should be loyal to the United States and to no other country or political power is a moral and constitutional issue of the highest order for our country. The purpose of this legislation is for the Congress (speaking for "we the people") to affirm and codify this vital American principle. Moreover, the purpose of this legislation is to reaffirm the integrity of the Oath of Renunciation and Allegiance and, therefore, the true significance of patriotic assimilation, which is the transfer of political loyalty from the "old country" to the United States of America. Are we a "nation of assimilated immigrants" or are we a nation whose citizens have divided political loyalties? Let's make this clear, particularly for our newest fellow citizens. Let us establish clear rules and help them assimilate (in popular parlance this would be "tough love") as we patriotically assimilated immigrants in the past.

The Founding Fathers believed that it was necessary for new citizens to renounce all previous political allegiance. The Administration of Franklin D Roosevelt believed that "taking an active part in the political affairs of a foreign state...involve[s] a political attachment and practical allegiance" to that foreign state, "inconsistent with continued allegiance to the United States."⁸⁶ The great New Deal lawyer and Supreme Court Justice Felix Frankfurter believed that voting in a foreign election, serving in a foreign government, and the like revealed "not only something less than complete and unswerving allegiance to the United States, but also elements of an allegiance to another country in some measure, at least inconsistent with American citizenship."⁸⁷

The Founders, FDR, and Justice Felix Frankfurter were all correct to vigorously affirm that nothing less than undivided political loyalty to the United States of America was an absolute condition for citizenship in our democracy. Today, former Speaker of the House of Representatives, Newt Gingrich echoes these views. As he writes in his new book, *Winning the Future*:

One of the most insidious assaults on American exceptionalism has been the rise of dual citizenship in which people no longer have to renounce allegiance to any other government in order to become Americans. This is a clear break with the Founding Fathers and the essence of American uniqueness. It is part of an ongoing assault on citizenship.⁸⁸

Gingrich ends this section of his book by endorsing the idea that violating the Oath of Renunciation and Allegiance should be a "matter of prosecutable federal law." We agree, and suggest that the enforcement of the Oath of Allegiance should be part of any immigration enforcement legislation being considered by the Congress.⁸⁹

Legislative Suggestions

The following are a series of possible legislative actions that could be taken by the Congress that would regulate multiple citizenships, dual citizenship, dual nationality, and dual allegiance in all forms, and would be within the constitutional requirements of recent Supreme Court decisions. Again, the purpose of such legislation is not punitive, it is not to punish naturalized citizens or native-born citizens who have in good faith voted in foreign elections or served in foreign governments and so on. The purpose is to affirm in law the principles and norms that are consistent with our constitutional heritage and our proud tradition of patriotically assimilating immigrants into the American way of life.

A section of any bill on immigration reform, or any amendment to the Immigration and Nationality Act; or a freestanding bill or amendment which would be a Sense of the Congress declaration that dual citizenship, dual nationality, and multiple allegiances are to be rejected in principle and that their application should be restricted and narrowed in practice. The section, amendment, or freestanding bill could state:

It is the sense of the Congress that it is a compelling national interest of the United States to reject dual

citizenship, dual nationality, and all forms of multiple allegiance arrangements in principle, and to restrict and narrow their application in practice. The agencies of the executive branch, all regulatory agencies, and of the judiciary of the United States at all levels shall be guided by this Congressional intent when addressing issues of dual citizenship, dual nationality, and multiple allegiances of all kinds.

Language to Enforce the Oath of Renunciation and Allegiance

Part 1. Sanctions for Acts Violating the Oath of Renunciation and Allegiance. The following acts performed by naturalized citizens are deemed violations of the Oath of Renunciation and Allegiance that was taken voluntarily by the new citizens. The following acts are subject to sanctions of a \$10,000 fine and one year in jail for each act.

- Voting in an election of the foreign state in which the persons were previously a subject or citizen;
- Running for elective office of the foreign state in which the persons were previously a subject or citizen;
- Serving in any government body (executive, legislative, or judicial; national, provincial, or local) of the foreign state in which the persons were previously a subject or citizen;
- Using the passport of the foreign state in which the persons were previously a subject or citizen;
- Taking an oath of allegiance to the foreign state in which the persons were previously a subject or citizen;
- Serving in the armed forces of the foreign state in which the persons were previously a subject or citizen.

In exceptional cases, naturalized citizens can obtain a waiver and exemption from sanctions if any of the acts are deemed to be in the "national interests of the United States." Waivers are granted in advance on a case-by-case basis by the Department of State in all of the above acts, except for the serving in the armed forces of the foreign state, in which case the exemption would be granted by the Department of Defense.

Part 2. Responsibility of the Department of Homeland Security to inform applicants for citizenship that the United States takes the Oath of Renunciation and Allegiance seriously and that it will be enforced. The Department of Homeland Security is directed to inform applicants for U.S. citizenship of the enforcement provisions of the Oath of Renunciation and Allegiance. The Department of Homeland Security is directed to incorporate knowledge and understanding of these enforcement provisions into the history and government test that applicants for citizenship take.

Part 3. Responsibility of the Department of State to articulate the position that the United States finds dual/multiple citizenship and nationality problematic and the presumption will be that its use should be restricted and limited as much as possible. The Department of State is directed to revise its 1990 memoranda and directives on dual citizenship and dual nationality and return to its traditional policy of viewing dual/multiple citizenship as problematic, as something to be discouraged not encouraged.

Part 4. Informing birth nations of their previous citizens' new status as American citizens. After naturalization ceremonies, the consulates and/or embassies of the immigrant-sending foreign states are to

be given a list of naturalized American citizens who are no longer subject to their jurisdiction. The Department of State, working in cooperation with the Department of Homeland Security, will inform foreign embassies and consulates that their former subjects and citizens have taken an oath of allegiance to the United States and renounced all previous allegiance and are now exclusively American citizens and no longer subject to the jurisdiction of their birth nations. The Department of State is directed to inform the foreign embassies and consulates that the United States rejects the doctrine of "perpetual allegiance."

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