
Expatriation, Expatriates, and Expats: The American Transformation of a Concept

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THERE HAVE BEEN MANY EXPATRIATES, but few people have legally expatriated. Living abroad is one thing; losing one's citizenship is another. With the notable exception of Henry James in 1915, Americans who chose to live and write abroad rarely gave up or lost their citizenship in the process.¹ The terms "expatriate" and "expatriation" have a long and complex history, but they have been largely absent from recent studies of citizenship. Their use ranges from simple residence abroad ("for a considerable amount of time") to the more definitive legal renunciation or destitution of allegiance, "denationalization," or "decitizenization."² Most often, the noun "expatriate" conjures up the interwar "Lost Generation" writers. The lives, essays, and novels of the American expatriate writers in Paris in the 1920s have captured readers' imaginations and framed an important debate on exile and a comparative critique of the New World versus the Old. The term "expatriate" has been extended backward to refer to Edith Wharton in the early twentieth century and beyond World War II to James Baldwin and Richard Wright. Encompassing everyone from the Henrys—James and Miller—to Gertrude Stein and Alice B. Toklas, from White Bostonians and New Yorkers to Black Harlemites, from those escaping sexual and social convention to those fleeing prejudice and discrimination, expatriate writers, artists, and musicians have become a romanticized icon, haunting Parisian cafés where Hemingway's *Moveable Feast* can still be seen, clutched by earnest would-be Ernests.³

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¹ Alan G. James, "A Memorable Naturalization: How Henry James Became a British Subject and Lost His United States Citizenship," *Henry James Review* 12, no. 1 (1991): 55–68. (Alan James is no relation to Henry James.) In 1915, upset that the United States was not joining the Allied cause, Henry James took a public moral stance by becoming a British subject, and thereby automatically lost his U.S. citizenship under the Expatriation Act of 1907, discussed below.

² Ernest Earnest, *Expatriates and Patriots: American Artists, Scholars, and Writers in Europe* (Durham, N.C., 1968), viii; T. Alexander Aleinikoff, "Theories of Loss of Citizenship," *Michigan Law Review* 84 (1985–1986): 1471–1503, 1473; Richard W. Flournoy, Jr., "Naturalization and Expatriation," *Yale Law Journal* 31 (1921–1922): 702–719, 848–868, 866.

³ Earnest called the period of the 1920s one of "mass expatriation"; *Expatriates and Patriots*, 251. Cf. Harold T. McCarthy, *The Expatriate Perspective: American Novelists and the Idea of America* (Rutherford, Vt., 1974). The literature on James and Wharton and on the Lost Generation is too extensive to do it justice here. Two classic starting points for the interwar period by those who were there are

However, the writers and artists have eclipsed a broader understanding of expatriation both as a legal act and with regard to its meaning for changing notions of citizenship. The concept itself comprises somewhat contradictory elements. Ever since Roman times, the question of belonging has turned on the question of *patria* or *domus*. To which place does one belong and/or owe allegiance: to one's place of origin, or to the place where one hangs one's hat—literally, where one keeps one's seat (*sedes*)?⁴ Birthplace and domicile considerations have given way to the distinction between *jus sanguinis*, the right of blood or the acquisition of citizenship through parentage, and *jus soli*, the right of soil or citizenship by virtue of being born in a territory. Most contemporary democracies incorporate some of both in their citizenship laws, which means that one country's citizen by *jus soli* may be another's by *jus sanguinis*. With ever-increasing geographic mobility over the last two centuries, the uneasy relationship between birthplace and domicile and the multiple identities that they may engender have become ever more complex. The word "expatriation," loss of citizenship, is sometimes used as coterminous with "emigration," the physical change of domicile, and emigration and legal expatriation are often linked, but it is possible to move without losing one's citizenship of origin just as it has been possible to lose one's citizenship without ever leaving home. The meaning of expatriation also varies depending on who is initiating the act, the state or the individual, and whether or not it is voluntary. The state banishes; the subject can choose to depart. But the valence given to assignment or consent has changed over time. Whereas exile used to be the first definition of "expatriation," the *New Shorter Oxford English Dictionary* has explicitly decided to list voluntary leave-taking first and expulsion second, a sign of a transformation in the meaning of departure.⁵

The aim here is threefold. First, it is important to incorporate expatriation into our categories for understanding the state's relation to its citizens. The upsurge of citizenship studies since the 1990s has focused mainly on those *within* the state's

Malcolm Cowley, *Exile's Return: A Literary Odyssey of the 1920s* (New York, 1934), and Janet Flanner, *Paris Was Yesterday, 1925–1939* (London, 2003). A spurt of new literature in the 1970s and 1980s includes more focus on women and African Americans, e.g., Shari Benstock, *Women of the Left Bank: Paris, 1900–1940* (Austin, Tex., 1986); Ernest Dunbar, ed., *The Black Expatriates: A Study of American Negroes in Exile* (New York, 1968); Michel Fabre, *From Harlem to Paris* (Urbana, Ill., 1991); Tyler Stovall, *Paris Noir: African-Americans in the City of Light* (Boston, 1996). Stovall has, however, pointed out that the notion of African American expatriates in particular took some getting used to, since the term had been so closely linked to the white writers in Paris. *Ibid.*, xiii, 180–181. James Baldwin insisted that the term "expatriate" was a misnomer: "I am in 'exile' and was; one can never be an expatriate, really. One cannot possibly leave where he came from. You always carry home with you." Fabre, *From Harlem to Paris*, 210.

⁴ Yan Thomas, "Origine" et "commune patrie": *Etude de droit public romain* (89 av. J.-C.—212 ap. J.-C.) (Rome, 1996). Thomas argues, contrary to the usual interpretation that sees the Roman recognition of territoriality or domicile as innovative, that a hereditary link to one's place of origin persisted.

⁵ Peter H. Schuck and Rogers M. Smith, *Citizenship without Consent: Illegal Aliens in the American Polity* (New Haven, Conn., 1985). Without agreeing with their conclusion (they argued for a more restrictive notion of *jus soli* today, from which Smith himself subsequently backed away), one can read this book for a useful intellectual history of competing tensions between consent and ascription with regard to citizenship. For a critique of Schuck's and Smith's conclusions, see Gerald L. Neuman, "Back to Dred Scott," *San Diego Law Review* 24 (1987): 485, or <http://judiciary.house.gov/legacy/618.htm>; cf. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton, N.J., 1996). See also Dominique Daniel, "Automatic Birthright Citizenship: Who Is an American?" in C. Van Minnen et al., eds., *Federalism, Citizenship, Collective Identities in U.S. History* (Amsterdam, 2000), 245–267. In the 1993 edition of the *New Shorter Oxford English Dictionary*, the definition of "expatriate" as a noun reads: "Orig., an exile. Now, a person who lives from choice in a foreign country."

boundaries. Long celebrated as a country of inclusion, the United States has had its history rewritten to include the history of exclusion within its borders. T. H. Marshall's notion of social citizenship, the right to participate in educational, welfare, and other social services, has been abundantly used to look at the domestic limitations of belonging. Slavery, gender, and policies toward Native Americans have been reexamined in a broader understanding of long-embedded exclusions within American social citizenship.⁶ Much less attention, however, has been given to those who have left the country and/or lost their legal citizenship.⁷ Only the expatriation of American women who married foreign nationals between 1907 and 1931 has received due attention in recent years.⁸ Yet even this well-known case of involuntary expatriation needs to be situated within the longer history of the term.

Expatriation has also been largely absent from migration studies. Immigration history, written primarily in the countries of arrival, has most often focused on the problematic policies and experiences of entry, acceptance, rejection, and/or settlement of newcomers. Yet emigration and expatriation provide reverse mirrors of immigration and are connected to it both in theory and in practice.⁹ Individuals are emigrants before they reach the other shore and become immigrants; their past and present cannot be so neatly severed. For states, one country's emigrant is another's immigrant, embedding the process in a web of international relations. For historians, immigration studies need to integrate emigration and expatriation. We can reverse the usual immigration and citizenship questions by reflecting on how the state defines itself not only through those whom it incorporates (more or less well) within its boundaries but also with regard to those who cross beyond.

⁶ T. H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge, 1950), 1–85. See, for example, James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill, N.C., 1978); Alexander Keyssar, *The Right to Vote* (New York, 2000); Neuman, *Strangers to the Constitution*; Judith Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, Mass., 1991); Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, Conn., 1997); Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge, Mass., 2006). For an optimistic view of the American egalitarian ideal, see, e.g., Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven, Conn., 1989).

⁷ Yet see, notably, Smith, *Civic Ideals*; and Linda K. Kerber, "The Stateless as the Citizen's Other: A View from the United States," Presidential Address, *American Historical Review* 112, no. 1 (February 2007): 1–34.

⁸ Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley, Calif., 1998); Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830–1934," *American Historical Review* 103, no. 5 (December 1988): 1440–1474; Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, 2000); Linda K. Kerber, "The Meanings of Citizenship," *Journal of American History* 84, no. 3 (1997): 833–854; Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York, 1998).

⁹ "Expatriation and repatriation represent nothing new in the history of this country; it is new only to those who are unfamiliar with its history." Theodore Saloutos, "Expatriates and Repatriates: A Neglected Chapter in United States History" (unpublished paper, Rock Island, Ill., 1972), 18. Although political economists have studied the impact of the "brain drain" on the economies of origin, a more general history of exit and the relationship of countries to their citizens who leave is just beginning to be studied. See Nancy L. Green, "The Politics of Exit: Reversing the Immigration Paradigm," *Journal of Modern History* 77, no. 2 (2005): 263–289; Nancy L. Green and François Weil, eds., *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation* (Urbana, Ill., 2007); Eileen Scully, *Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844–1942* (New York, 2001), 52–59; Robert C. Smith, "Diasporic Memberships in Historical Perspective: Comparative Insights from the Mexican, Italian and Polish Cases," *International Migration Review* 37, no. 3 (2003): 724–759; "Symposium: A Tribute to the Work of Kim Barry—The Construction of Citizenship in an Emigration Context," *New York University Law Review* 81, no. 1 (2006).

Second, the concept of expatriation must be understood as both a legal and a social construct. Legal debates in the United States over citizenship rights and obligations have been grounded in the political and the social. The shifting image of the presumed expatriate has helped frame the legal issues tackled at each juncture. By laying the basis for an interactive history of the figure of the leave-taker and the state's legislating of citizenship loss, we can see how the "imagined expatriate" has played an important part in constructing the ways in which citizenship has been conceived.

Third, this socio-legal history of the last two centuries can be seen as comprising four different periods, during which the meaning of expatriation has shifted from an inclusive view to an exclusionary notion to today's new embracing of citizens abroad. In the first two periods, both of which were inclusive in nature, an expatriate was imagined as someone coming to America. During the revolutionary and early national period, expatriation was tied to the very construction of a new country. Separation from Britain depended upon defining the right of expatriation from Britain to the United States, and the early-nineteenth-century American debates were conceptualized with British seamen or landless Englishmen in mind. From the mid-nineteenth century on, with mass immigration from northern Europe, a second, equally inclusive, period expanded on the first. Legal thinking about expatriation could now be seen as a corollary to immigration policy, reassuring newcomers that their naturalization in the United States was secure against competing claims from the countries of their birth. By the early twentieth century, however, a third period, marked by the Expatriation Act of 1907, reflected a new, more worrisome figure. The expatriate was now defined as someone leaving America, whether for love (American women marrying foreign men), for money (naturalized businessmen staying away too long), or just to write, although only the first two would be legally excluded from citizenship. The list of potential acts that could incur citizenship loss was codified and lengthened. Yet, at the same time, globalization was already leading more and more Americans abroad, with a major leap in departures after World War II. A fourth period, from the 1960s on, has thus seen yet one more shift in the meaning of expatriation, leading to a more inclusive consideration of citizens abroad. One could argue that the business expat has had a role in whittling down the list of legal expatriating acts, as voting abroad and even dual citizenship have become increasingly accepted. This discussion about expatriation has often used different terms, from "expatriation" to "expatriates" to "expats," to imagine, condone, condemn, and again accept those otherwise suspected of dual loyalties. From welcoming "expatriated" foreigners in the nineteenth century, to becoming suspicious of those Americans who waded overseas throughout much of the twentieth century, to easing laws on citizenship loss today, two centuries of American comings and goings have shifted the representation of expatriation from welcomed newcomer to traitor to emissary.

EXPATRIATION WAS INITIALLY a form of nation-building. For the United States to justify its break from Britain, it had, among other things, to legitimate the notion of leaving one's country of birth. Expatriation was thus seen as a form of inclusion in

America, with former British subjects in mind. Like citizenship itself, expatriation was both a theoretical/rhetorical and a practical/legal issue for the early state. The Declaration of Independence, which complained that King George III had impeded the peopling of the colonies (“He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither”), was a declaration of the right of emigration. In the ensuing decades, in order to consolidate American independence and citizenship, expatriation from Britain had to be deemed a legal, indeed natural, right for both the state and the individual. The United States had to counter both politically and philosophically the competing British claim that birth-right or perpetual allegiance bound those born under the crown everlastingly to it. This essentially feudal notion, most forcefully expounded by the famous jurist Sir Edward Coke in 1608, regarded expatriation as a moral travesty and a legal impossibility. It would take several decades for the new nation to impose its view that expatriation was in turn a natural right. The right of exit was the necessary corollary to a right of entry, and a Lockean notion of free will underwrote the definition of the new American citizen.

The founding fathers and early jurists did not fully agree on these matters, however, as political scientist I-mien Tsiang well showed in *The Question of Expatriation in America Prior to 1907* (1942), one of the most complete treatments of the first century of expatriation law. Alexander Hamilton, for example, still stressed the primacy of an organic, “natural” attachment to the state. When legislation was proposed in New York in 1784 to cancel the citizenship of those who had taken the British side during the Revolution, Hamilton objected: “The idea, indeed, of citizens transforming themselves into aliens, by taking part against the State to which they belong, is altogether of new invention, unknown and inadmissible in law, and contrary to the nature of the social compact.”¹⁰ In this view, the right of government superseded that of the individual (and the federal government that of the individual states). Thomas Jefferson, however, tended to emphasize a consensual notion of citizenship choice, defending expatriation as a natural individual right in order to justify American independence and the right of British citizens to become Americans.¹¹

The worry about American citizens voluntarily giving up their citizenship was raised in several early Supreme Court cases. In *Talbot v. Jansen* (1795), the question was whether the native Virginian William Talbot had committed treason when he illegally outfitted a French privateer ship. When arrested, he claimed that since he had become a French citizen in Guadeloupe, he could not be tried for treason in the United States. Treason is a matter of citizenship; only a citizen can be a traitor.¹² Someone who had forsworn or lost his or her birthright citizenship could be an enemy, perhaps, but not a traitor. Talbot was found guilty as charged. However, while

¹⁰ Cited in I-mien Tsiang, *The Question of Expatriation in America Prior to 1907* (Baltimore, 1942), 28.

¹¹ *Ibid.*, chap. 2. On Jefferson, see also Frederick G. Whelan, “Citizenship and the Right to Leave,” *American Political Science Review* 75, no. 3 (1981): 636–653; Smith, *Civic Ideals*, 155–159.

¹² Treason is also a matter of dates, as Talleyrand once said: “Sire, c’est là [ceux qui ont trahi la cause de l’Europe] une question de date.” Talleyrand, *Mémoires 1754–1815*, ed. Paul-Louis and Jean-Paul Couchoud (1957; repr., Paris, 1982), 723. To be faithful to Napoleon, for example, was no longer a good idea after Waterloo.

arguing that expatriation was a qualified right that should be constrained by patriotism and the public good, Justice James Iredell left one of the more memorable expressions of the principle of expatriation, still quoted today:

That a man ought not to be a slave; that he should not be confined against his will to a particular spot because he happened to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidentally attached, when he can better his situation elsewhere, much less when he must starve in one country, and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world appear clearly to recognize.¹³

Iredell thus turned the wily pirate into an oft-cited legal precedent. Ironically, a native American trying to abandon the U.S. became a touchstone for considering the right of others to abandon their birthplace to come to America.

By the early nineteenth century, the focus was less on the Talbots who might jump the American ship than on British seamen and others who opted for the newly created American citizenship. The War of 1812 unleashed a period of heated debate in the United States over the question of expatriation, considered to be one of the three great international issues of the time, along with the neutral flag and blockades. The war broke out, among other things, over competing definitions of expatriation and differing conceptions of citizenship. With a full panoply of family metaphors linked to the notion of perpetual allegiance and insistence that one could not alienate oneself from one's mother country, Britain continued to object to the upstart new nation's redefinition of those whom it still considered to be its subjects.¹⁴ Britain thus refused to recognize American naturalization and forcefully conscripted British-turned-American seamen as its own. This led American jurists and publicists of the period to condemn vigorously the notion of perpetual allegiance. Nonetheless, a spirited pamphlet debate broke out, which lasted throughout the three-year war, showing that the matter was not just a British-American dispute but an internal American discussion as well. Should the U.S. defend this revolutionary concept of expatriation to the point of war over who belonged to whom? Some argued that expatriation was a natural right to be defended at all costs. Others, while agreeing with the principle of expatriation, did not think it was worth fighting an extended war over.

A "Gentleman of the City of New York," as one polemicist signed his pamphlet in 1813, argued passionately that it should be "no crime for a man to leave that country, where, by chance, he commenced his existence."¹⁵ He strenuously made the case that emigration devolved from a (competing) natural right, that of departure,

¹³ *Talbot v. Jansen*, 3 U.S. 3 Dall. 133 (1795) at 162. The judges spoke in terms of both allegiance and citizenship. At the same time, Iredell stressed that a citizen cannot dissolve his or her duties to the state unilaterally. The Constitution did not specify that one must be a citizen to be a traitor; this silence created the "roots of ambiguity" that Rogers Smith has examined in *Civic Ideals*, chap. 5.

¹⁴ In 1813 the Prince Regent reiterated his belief in the inalienable nature of allegiance: "Allegiance is no optional duty, which they can decline and resume at pleasure. It is a call which they are bound to obey: it began with their birth and can only terminate with their existence." Quoted in David Feldman and M. Page Baldwin, "Emigration and the British State, c. 1815–1925," in Green and Weil, *Citizenship and Those Who Leave*, 144. See also Aristide R. Zolberg, "The Exit Revolution," *ibid.*, 33–60. On the American refutation of perpetual alliance, see, e.g., Kettner, *The Development of American Citizenship*, 44–61, 173–209; and Smith, *Civic Ideals*, esp. 79–80, 102–103.

¹⁵ A Gentleman of the City of New York [S. Johnson], *An Inquiry into the Natural Rights of Man as*

and that all laws to prevent it were unjust and highly tyrannical. In 1814, the anonymous author of another brochure, *A Treatise on Expatriation*, similarly emphasized that the young nation should welcome all those who came from abroad, a matter not just of liberty but of the pursuit of happiness. While the author conceded that the term itself was of Roman extraction, he argued that the contemporary definition was of American origin, as used in a Virginia statute of 1792. He linked expatriation to domicile (“without residence there can be no citizenship”), and although he left aside the question as to whether the individual act alone was sufficient and did not need the original country’s consent, his purpose was to prove that British law itself consented to the expatriation of its subjects. The author was hardly subtle in his critique of perpetual allegiance and its defenders: “Reason, justice, humanity, unite to stamp folly, tyranny, and wickedness like this, with the indelible marks of their reprobation!” Praising his own logic at the expense of everyone else’s, he argued that the concept of perpetual allegiance was not only “bad in theory, it is odious and detestable in practice. It has served to embroil two nations.”¹⁶

“A Massachusetts Lawyer,” as John Lowell (Jr.) signed his anonymous treatise, responded by unmasking the author of *A Treatise on Expatriation* as a warmonger. Lowell, a Federalist lawyer, son of “The Old Judge” John Lowell but himself known as the “Boston Rebel,” was against the war, which led him to take a somewhat different tack. He was in favor of expatriation on principle but against going to war over it. He heatedly pointed out that the “obscure individual” from Virginia was none other than George Hay, Attorney of the U.S. for the District of Virginia, who in effect was “Mr. Madison’s Advocate” and thus was in favor of going to war over the matter. Lowell mocked this “presidential pamphleteer” and castigated him for the temerity of using the Old Testament example of Israelites emigrating from Egypt to justify British traitors (i.e., newly minted Americans) in taking up arms against their former sovereign. Lowell suspected that Hay’s overly vigorous critique of perpetual allegiance was aimed at preparing people for a long conflict.¹⁷

The treatises, while attempting to justify or criticize the War of 1812, argued forcefully on the basis of competing principles, but in so doing, they also sketched the image of the expatriate, even if the authors disagreed in their characterization of those doing the expatriating. Hay had explicitly stated that he could not imagine a wealthy emigrant or one who would leave land and/or children behind: “The people who compose the great mass of emigration have no land . . . The rich, the powerful, the landholder, are content to remain at home.” However, Lowell regarded Hay’s

Regards the Exercise of Expatriation, Dedicated to All the Adopted Citizens of the United States (New York, 1813), 5.

¹⁶ [George Hay], *A Treatise on Expatriation* (Washington, D.C., 1814), 70, 2–3, 6, 45, 32, 20–21, 64, 87; cf. 60. The Virginia statute (drafted by Jefferson) was the first to be passed, and it was quoted in *Talbot v. Jansen*. Pennsylvania was the first state to inscribe the right of emigration in its constitution: “That all men have a natural, inherent right to emigrate from one State to another that will receive them, or to form a new State in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness.” Vermont, Kentucky, Louisiana, Indiana, Mississippi, Alabama, and Missouri followed suit. Tsiang, *The Question of Expatriation*, 41 n. 55; Smith, *Civic Ideals*, 156.

¹⁷ A Massachusetts Lawyer [John Lowell], *Review of a Treatise on Expatriation by George Hay, Esq.* (Boston, 1814), 16–17; cf. 5. For Hay’s self-description as an “obscure individual,” see *A Treatise on Expatriation*, 80.

description of essentially poor and landless British emigrants/expatriates who were obliged to seek sustenance abroad as “ludicrously absurd.” Lowell countered that he personally knew at least three English freeholders who had come to the United States, been naturalized there, and yet returned to Britain.¹⁸ The wealthy transnational who crisscrossed the seas was already a knowable figure for Lowell.

As these early debates show, the American expatriation *imaginaire* was constructed in three ways. First, in contrast to the British refusal of expatriation based on fear of egress, the American perspective in the early part of the nineteenth century was constructed primarily to defend the ingress of British subjects who were becoming Americans. Second, the philosophical justification for this change of status was based on the idea that individual consent to citizenship was essential. Third, the legal debates were also construed with actual expatriates in mind. Subsequent imaginings of *who* was doing the leave-taking would have an important impact on transformations in the social and legal notion of expatriation over the next two centuries.

BY THE SECOND HALF OF THE NINETEENTH CENTURY, expatriation had become immigration. The Expatriation Act of 1868, declaring “the right of 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,” was another way of welcoming the new “expatriates” of the mass migration—Germans, Irish, Scandinavians—to the demographically growing nation. The image of expatriation had changed, from British seamen to North European immigrants in general. This second period of American thought on the subject of expatriation reaffirmed the right of ingress in a double context, domestic and international. On the domestic front, the 1868 act was passed one day before the Fourteenth Amendment was ratified, which reinforced birthright in order to overturn the *Dred Scott* decision and confirm African Americans’ right to citizenship. For Peter Schuck and Rogers Smith, the Expatriation Act and the Fourteenth Amendment represented a “marriage of convenience.”¹⁹ Together they allowed ascriptive *jus soli* citizenship to ensure the rights of African Americans born on American soil while at the same time permitting European immigrants to extricate themselves from the prescriptive citizenship of their birth lands. It was a necessary contradiction, one that shows how nation-building can be linked to sociological understandings of the citizens at stake.

Expatriation was also a domestic demographic issue. Chief Justice Oliver Ellsworth had invoked this matter in 1799 when he argued in his controversial opinion against expatriation that the lightly populated country needed to keep its inhabitants, not lose them: “In countries so crowded with inhabitants that the means of subsistence are difficult to be obtained, it is reason and policy to permit emigration. But our policy is different; for our country is but sparsely settled, and we have no inhabitants to spare.”²⁰ Concern for the peopling of America ultimately worked to the advantage of ideas in favor of expatriation as the mass migrations that began in the

¹⁸ Hay, *A Treatise on Expatriation*, 9, 10–12; Lowell, *Review of a Treatise*, 6–7, 9.

¹⁹ Schuck and Smith, *Citizenship without Consent*, 87.

²⁰ *U.S. v. Isaac William*, cited in Tsiang, *The Question of Expatriation*, 33. Ellsworth was castigated by the anti-Federalists as anti-Republican and pro-monarchical for his stand on perpetual allegiance.

middle of the nineteenth century brought ever more inhabitants to the land. The passage of the Expatriation Act also came two years after a *cause célèbre* in which the U.S. government had protested energetically against the arrest in Ireland in 1866 of two Irish-born naturalized American citizens who had returned to their birth country during the Fenian agitation.²¹ The 1868 law was a way of reassuring European newcomers that expatriation to the United States and acquisition of American citizenship were secure against demands by their native states.

The Expatriation Act of 1868 was also a sign of new international times. As the mass European migrations moved millions of people away from their places of birth, the notion of perpetual allegiance was in decline throughout Europe by the 1870s, leading to an “entire change of doctrine” and a flurry of international treaties redefining who belonged to whom.²² Other countries were declaring emigration to be a natural right, albeit often with strings still attached, and even Great Britain, one of the most articulate proponents of perpetual allegiance, revised its Nationality Law in 1870 to allow expatriation. Naturalization treaties were signed by the United States with Belgium, Norway and Sweden, Great Britain, Austria-Hungary, Denmark, Mexico, and Ecuador, essentially an acknowledgment that one country’s expatriate was another’s citizen, although momentum slowed as a number of European countries introduced obligatory military service that had to be undertaken before legal emigration could occur. Refuting other states’ claims to perpetual allegiance and emphasizing individual consent, the American courts and the 1868 law confirmed the proposition that new immigrants, like the revolutionaries before them, had the right to choose to change the legal ties that bind. As one legal scholar commented, the law formulated “a practical desire to secure international recognition for the view that naturalization in the United States effects complete expatriation from a former allegiance.” “Dictated by expediency, though announced in terms of principle,” the Expatriation Act still emphasized ingress and inclusion, defending those who wanted to become American citizens.²³

BY THE TURN OF THE TWENTIETH CENTURY, however, the concept of expatriation had changed radically, from a perspective of ingress to one of egress. Ellsworth’s night-

²¹ Edwin M. Borchard, *The Diplomatic Protection of Citizens Abroad; or, The Law of International Claims* (New York, 1915), 675–676; Feldman and Baldwin, “Emigration and the British State,” 145. See Lucy Salyer’s forthcoming work on Fenians and the expatriation crisis of the 1860s, <http://www.law.harvard.edu/faculty/faculty-workshops/abstracts.html> (accessed February 26, 2009).

²² “Opinions of the Heads of the Executive Departments, and Other Papers, Relating to Expatriation, Naturalization, and Change of Allegiance,” in United States, Department of State, *Foreign Relations of the United States*, 1873, pt. 2: 1188–1231, 1188; see also Edwin M. Borchard, “The Citizenship of Native-Born American Women Who Married Foreigners before March 2, 1907, and Acquired a Foreign Domicile,” *American Journal of International Law* 29, no. 3 (1935): 396–422, 399, on the figure of the expatriate in these treaties: “it was primarily to citizens of foreign countries emigrating to the United States, and not to American citizens emigrating to foreign countries, that the treaties were deemed to have their practical application.” On expatriation law as linked to immigration flows, see also John Bassett Moore, “The Doctrine of Expatriation,” *Harper’s Magazine* 110, no. 656 (1905): 225–236; Zolberg, “The Exit Revolution”; and Flournoy, “Naturalization and Expatriation.”

²³ Both quotes come from Edwin M. Borchard, “Decadence of the American Doctrine of Voluntary Expatriation,” *American Journal of International Law* 25, no. 2 (1931): 312–316, 313. More generally, on other countries’ shifts on this issue, see Green and Weil, *Citizenship and Those Who Leave*.

mare was coming true: Americans were now leaving as well as coming. In this third period, expatriation became conceptualized less as a welcoming inclusion of newcomers than as a discussion about excluding certain categories of American citizens. Whereas the Expatriation Act of 1868 had reaffirmed the right of aliens to become Americans, a new law, the Expatriation Act of 1907, sought to define the contours of Americans who became aliens.²⁴ On the one hand, the country no longer felt demographically challenged. Indeed, anti-immigration forces had gained the momentum that would ultimately culminate in the quota laws of 1921 and 1924. Accepting other countries' expatriates was no longer a priority. Naturalizations themselves were now sometimes suspect in the face of increasing fraud and corruption; Presidents Grover Cleveland, Benjamin Harrison, and Theodore Roosevelt all made appeals to Congress to provide stricter controls on naturalization to rout out spurious citizenship, but their pleas were ignored.²⁵ On the other hand, a century of American globalization had begun, and American expansion overseas was leading more and more citizens abroad. Yet the image of the departed citizen was complex, and those leaving were a mixed bunch.

By clearly delineating the acts that could lead to loss of citizenship, the Expatriation Act of 1907 in effect marked the shift from inclusion to exclusion. Whereas the 1868 law had made explicit an abstract principle, it had not actually defined what constituted expatriation, and ever since *Talbot* there had been a sense of the need to codify the matter. This explains why for Tsiang, the 1907 law was the satisfying resolution of "the long circuit of doubts" resulting from the founding fathers' reluctance to take a definitive stand on born or acquired allegiance. But Tsiang, focusing on a legal teleology, did not see the exclusionary aspects of the law. The three principal acts that incurred citizenship loss were naturalization or an oath of allegiance pledged to a foreign state, extended residence abroad (of naturalized American citizens), and marriage of women to foreign citizens. Naturalized American citizens were still protected under the law no matter where they roamed, but they were now at risk of losing their new citizenship if they resided for two years in their country of origin or five years in any other foreign state. The presumption of loss of American citizenship due to extended residence abroad could be overcome only if satisfactory evidence was provided that there had been no intent to relinquish American citizenship. The image of the transnational traveler picking up citizenships at will before going "home" or elsewhere was already beginning to develop, and it was not a particularly positive picture. There was talk of "serious abuse" on the part of naturalized citizens who took up American citizenship only to leave again.²⁶ Dual citizenship was inconceivable.

The image of the American abroad was complex. On the one hand, in a notable

²⁴ In relation to this point, see John P. Roche's virulent critique of ahistorical legal interpretations. Roche, "The Expatriation Decisions: A Study in Constitutional Improvisation and the Uses of History," *American Political Science Review* 58, no. 1 (1964): 72–80.

²⁵ Tsiang, *The Question of Expatriation*, 100. Flournoy was particularly suspicious of fraud and questioned the good faith of immigrants, suspecting them of taking on U.S. citizenship solely to avoid military service in their country of origin; "Naturalization and Expatriation," 848–849.

²⁶ Elihu Root, "The Basis of Protection to Citizens Residing Abroad," *American Journal of International Law* 4 (1910): 517–528. His examples were Turkey, Morocco, and Mexico. On the issue of return in general, see Mark Wyman, *Round-Trip to America: The Immigrants Return to Europe, 1880–1939* (Ithaca, N.Y., 1993).

address on “The Basis of Protection to Citizens Residing Abroad” in 1910, former secretary of state Elihu Root hailed the brave new world of American businessmen forging into new markets. Emphasizing the new importance of trade and commerce, he spoke of the declining tariffs and the increasing facility of transportation and communication that had “set in motion vast armies of travelers who are making their way into the most remote corners of foreign countries to a degree never before known.” In an early paean to globalization, Root spoke eloquently of the enormous shifting of population and the increased mobility of everything from (European) peasants to money to (American) businessmen. The generalized abandonment of the doctrine of inalienable allegiance, “so inconsistent with the natural course of development of the new world,” had created “a new class of citizens traveling or residing abroad.” This meant new concerns for states, as Edwin M. Borchard’s *The Diplomatic Protection of Citizens Abroad*, published in 1915, also attested. “The drawing together of the world by increased facilities of travel and communication” justified the new attention to the matter.²⁷ Root and Borchard emphasized that citizenship was not just a domestic matter. It was enmeshed in international relations in regard to not only the government’s responsibility for its citizens abroad but also the ways in which immigration and emigration necessarily implied treaties to respect one another’s nationals.

Yet other figures raised questions about the loyalties of Americans who dabbled with the foreign: naturalized citizens going home and American women married to foreigners. By setting clearer parameters regarding those who had overstepped the boundaries of belonging, the 1907 law more explicitly defined those who could be excluded. Over the next half-century, a widening circle of acts that could result in the loss of citizenship were confirmed, leading to an increase in involuntary expatriation. The 1940 Nationality Act expanded the criteria for nationality loss by adding service in the armed forces of or employment by a foreign state, voting, desertion, or treason.²⁸ The Immigration and Nationality Act of 1952 (known as the McCarran-Walter Act) consolidated all previous nationality laws, and all of the expatriating criteria were maintained. Expatriation thus came to be reconceptualized over the first half of the twentieth century under a cloud of doubt. In contrast to one discourse that expressed admiration for American entrepreneurs abroad, a competing negative vision considered leave-takers with misgiving. More than one government immigration expert questioned both a too-inclusive right of naturalization and the extension of protection to Americans abroad.²⁹ The image of expatriation had shifted from a friendly figure being welcomed to a sparsely populated continent, to a series of sus-

²⁷ Root, “The Basis of Protection,” 517, 518; Borchard, *Diplomatic Protection*, v. Root, no longer secretary of state, was president of the American Society of International Law, to which this paper was presented.

²⁸ Sec. 401. For the full text, see the useful website initiated by Sarah Starkweather, <http://library.uwb.edu/guides/USimmigration/USimmigrationlegislation.html> (accessed February 26, 2009). Treason was explicitly included for the first time, turning Talbot’s reasoning on its head. Whereas he had tried to argue that expatriation would invalidate an accusation of treason, in 1940 treason became cause for expatriation.

²⁹ Flournoy, “Naturalization and Expatriation,” 702–719, 848–868; Alan G. James, “Expatriation in the United States: Precept and Practice Today and Yesterday,” *San Diego Law Review* 27 (1990): 853–905, 855, 875.

picious characters ranging from increasingly unwanted immigrants and suspect naturalized citizens to two very different groups: women and writers.

EXPATRIATION WAS EXPLICITLY GENDERED. Among the most egregious historical cases of involuntary expatriation are those of American women who married alien men between the Expatriation Act of 1907 and the Married Women's Independent Citizenship Act ("Cable Act") of 1922, which putatively rectified the injustice, although women who married aliens who themselves were ineligible for citizenship, such as Chinese, Japanese, and Filipinos, were still expatriated until 1931. Section 2 of the Expatriation Act of 1907 stipulated that "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."³⁰ The "he" was explicit because the subsequent section dealt specifically with women, only to understand their expatriation as being effected through marriage. Section 3 specified that any American woman who married a foreigner would take the nationality of her husband. A circular instruction on April 19, 1907, clarified the evidence that would be considered as overturning the presumption of loss for naturalized citizens due to extended residence abroad, once again using a telling "he":

(a) That his residence abroad is solely as a representative of American trade and commerce, and that he intends eventually to return to the United States permanently to reside; or

(b) That his residence abroad is in good faith for reasons of health or for education.³¹

Business, health, education—the wealthy American naturalized male was protected from citizenship loss as long as he could prove a worthy reason for absenting himself.³² The American female, however, "followed" her husband's nationality whether she left the United States or continued to reside there. In the latter case, expatriation could occur without emigration.

As a number of scholars have shown, the American citizen had been conceptualized as a white male, who furthermore had the power, through marriage, to transform a foreign woman into an American citizen.³³ According to the Nationality Law of 1855, American citizenship was automatically granted to foreign women who married American men. There was no mention of the opposite category of mixed marriages, American women married to foreign men. This resulted in an anomalous situation that the 1907 law supposedly corrected, but it did so to the disadvantage

³⁰ Importantly, however, military service abroad was not (yet) considered an expatriating act at this juncture, undoubtedly owing to historical memory of the early British-turned-American sailors.

³¹ Cited in Tsiang, *The Question of Expatriation*, 106. An 1873 opinion had included amusement in the list of legitimate reasons for an American citizen to reside abroad for an indefinite period: "for purposes of health, of education, of amusement, or business." *Ibid.*, 108.

³² This did not always work. See Memorandum on the Citizenship of Mr. Emile Supper, July 27, 1915, from the American Consulate in Lyon to the Secretary of State, Washington, 351.11/890, General Records of the Department of State, Decimal Files, Record Group 59, 1910–1929, National Archives at College Park, Md. [hereafter RG 59, 1910–1929]. Files on Supper continue in 351.11/1105 and 351.11/1227. Having lived in France for twenty years, the German-born, U.S.-naturalized Supper claimed that he did not know of the Expatriation Act of 1907.

³³ Bredbenner, *A Nationality of Her Own*; Kerber, "The Meanings of Citizenship"; Kerber, *No Constitutional Right to Be Ladies*; Cott, "Marriage and Women's Citizenship"; Cott, *Public Vows*.

of all married women, by making them dependent on their husbands' status for their citizenship. Marriage, a voluntary act, was deemed to result in expatriation, voluntary or not. As one legal commentator later put it, dramatically, the Expatriation Act of 1907, "which indulged the fiction that by marrying an alien the lady consents to a result 'tantamount to expatriation,' caused the feminist revolution, whose echoes still reverberate at home and abroad."³⁴

The expatriation of American-born women was not just a consequence of trying to equilibrate a previous law. It can also be linked to the bad press that many such marriages had received. By the turn of the twentieth century, both men and women who married "out" came under nativist scrutiny.³⁵ Foreign men who married American women were considered questionable, if not conniving, in their efforts to obtain American citizenship and usurp the vote; the 1907 law was also known as "the Gigolo Act." At the same time, rich American women "who 'play[ed] at being' aristocrats by marrying (allegedly) titled foreigners instead of 'men of their own race'" came in for their share of castigation.³⁶ There seemed to be an epidemic of marriages between American heiresses and European nobility at the turn of the century. In 1895, two high-profile matches, those of Anna Gould and Count Boniface de Castellane and Consuelo Vanderbilt and the Duke of Marlborough, elicited envy and scorn, translated into images of pots of American gold leaving the country. A 1911 congressional debate criticized rich female legatees who were "suffering from chronic titleitis."³⁷ Beyond the financial arrangements, "snubbing that national icon, the citizen man, was a serious transgression."³⁸ Newspaper articles condemning the fake duchesses were legion; such slavish chasing after European titles was considered to be a particularly loathsome renunciation of American democratic ideals. "Countess Spaghettis" were mocked, and Franco-American marriages were criticized as "pathetic comedies of credulous inexperience."³⁹

Foreign women were also targeted in the images of unnatural alliances. Even the women's groups fighting the 1907 law (united at least over this issue in the interwar

³⁴ Borchard, "The Citizenship of Native-Born American Women," 403; Tsiang, *The Question of Expatriation*, 110, 94. Borchard chided Tsiang for ignoring the issue of expatriated American women. Edwin M. Borchard, "The Question of Expatriation in America Prior to 1907," *American Journal of International Law* 37, no. 3 (1943): 540–542. See also Smith, *Civic Ideals*, for whom the 1907 law is another example of the "multiple traditions" of the American citizenship debate and the constant tension between exclusionary ascriptive inequality (of women, African Americans, and Native Americans) and more liberal Lockean consent. Cf. Bredbenner, *A Nationality of Her Own*, 42, 19; and Marian L. Smith, "Any woman who is now or may hereafter be married . . . : Women and Naturalization, ca. 1802–1940," *Prologue Magazine* 30, no. 2 (1998), <http://www.archives.gov/publications/prologue/1998/summer/women-and-naturalization-1.html> and <http://www.archives.gov/publications/prologue/1998/summer/women-and-naturalization-2.html> (accessed May 26, 2008).

³⁵ There were in fact four different types of mixed-marriage situations, depending on gender and domicile: native-born women married to foreign-born men living in the United States (approximately 8.9 percent, according to birth statistics of white children born in 1920), the more numerous foreign-born women married to American men also living in the United States (about 14 percent; Bredbenner, *A Nationality of Her Own*, 4 n. 3), and both categories living abroad.

³⁶ Cited in Smith, *Civic Ideals*, 457.

³⁷ Maureen F. Montgomery, "Gilded Prostitution": *Status, Money, and Transatlantic Marriages, 1870–1914* (New York, 1989), 166; Amanda Mackenzie Stuart, *Consuelo and Alva Vanderbilt: The Story of a Daughter and Mother in the Gilded Age* (New York, 2005); Consuelo Vanderbilt Balsan, *The Glitter and the Gold* (New York, 1952).

³⁸ Bredbenner, *A Nationality of Her Own*, 74, 63.

³⁹ Anna Bowman Dodd, "The Expatriates: The American Colony in Paris," *The Bookman* 25 (May 1907): 247–266, 262. Cf. Montgomery, "Gilded Prostitution."

years) were not above making invidious comparisons between foreign women who easily gained American citizenship and proper American women who had now lost theirs. If all women were thus deemed equally dependent under the 1907 law, foreign women and native-born women could be represented differently, even by feminists. The gendered inequity and iniquity of the expatriation law was overturned by the Cable Act of 1922, albeit to the dismay of some: “another blow is struck at the unity of the family.”⁴⁰ Foreign women who married American men no longer automatically gained U.S. citizenship upon marriage—after all, some of them had become citizens without learning English, commented the horrified naysayers—but American women who married foreign men no longer automatically lost their American citizenship. American women who married Asians, however, were still liable to expatriation until 1931, and those who had lost their citizenship had to apply for naturalization to recover it. Fully equal nationality rights for American-born women were not reestablished until the 1940s.⁴¹

AND WHAT ABOUT THE “EXPATRIATE” PER SE? At the turn of the twentieth century, “expatriate” came into usage as a worrisome noun, denoting a suspect citizen. While American women were losing their citizenship involuntarily, an entirely different image was emerging. The expatriate writer or artist loomed as another problematic category of citizen, although one at little risk of actual involuntary citizenship loss. While American women could be expatriated without emigration, the 1920s writers were expatriates without expatriation. These best-known expatriates are thus testimony to another shift in the understanding of expatriation. Expatriation as a legal category of citizenship loss and the expatriate as simply a citizen abroad increasingly diverged in the early twentieth century. Tellingly, Elihu Root never used the term “expatriate” in his 1910 speech about “vast armies” of civilians abroad, since the legal meaning of expatriation, a loss of citizenship, is in fact the opposite of the legal meaning of “citizens traveling or residing abroad,” the language he used. By the 1920s, the concept of expatriation had shifted from a category of citizenship to one of residence.

The new term “expatriate,” which the writers and artists ultimately adopted, had a negative undertone that questioned the relationship of citizens abroad to the nation. True, the American novelists, painters, poets, and musicians in interwar Paris who had opted for creativity on foreign soil had not relinquished or lost their citizenship, let alone their attachment to the United States. Indeed, who was more American than Gertrude Stein, who proclaimed the “American Century” a good decade before Henry Luce?⁴² But their choice to live abroad and their explicit writings on exile raised important questions about the relationship of the citizen to home.

⁴⁰ Flournoy, “Naturalization and Expatriation,” 867.

⁴¹ On the limitations of the Cable Act, see especially Cott, “Marriage and Women’s Citizenship,” 1464–1471; and Bredbenner, *A Nationality of Her Own*, chap. 5. Women who had lost their citizenship under the 1907 law had to apply for naturalization to be fully reinstated, a measure that was not completely replaced by a simple application and oath of allegiance until 1940. Borchart, “The Citizenship of Native-Born American Women,” 404–406. For the texts of the laws, see “American Citizenship Rights of Women,” <http://www.loc.gov/law/find/hearings/pdf/0014160126A.pdf> (accessed May 24, 2008).

⁴² “America created the twentieth century.” Gertrude Stein, *The Autobiography of Alice B. Toklas*

Their cultural visibility and critical success, however appealing to like-minded intellectuals, were bound up with worries about the nature of the nation—all the more so insofar as many of them, including Stein, explicitly expressed their dismay with the standardization and mediocrity of American modernity. The 1920s expatriates were often viewed disapprovingly at the time, seen as rootless, hedonistic, extravagant, hard-drinking, and/or homosexual. In his 1968 book *Expatriates and Patriots*, Ernest Earnest made the distinction between the 1920s “Lost Generation” and those who had come before them, clearly preferring the more refined Whartons and Jameses, the old Brahmins and other upper-middle-class East Coasters who had crossed the Atlantic eastward between the Civil War and World War I.⁴³ Yet, while Hemingway and others embraced the life of the exile and its spur to creativity, however chilly the cold-water flats, even they acknowledged the ambiguity of the status. While justifying his stay abroad, yet insisting that he was very American although decidedly “against the emergence of articulate mediocrity,” Harold Stearns wrote in his “Apologia of an Expatriate”: “No one knows better than I the bitterness of being an expatriate or hates it more than I do.”⁴⁴

Furthermore, not all expatriates in Paris were café-dwelling Americans, and the category was more sociologically complex than is usually acknowledged. The American business community and the idle rich abroad—who were much more numerous than the writers and artists—also came in for their share of criticism. Whether or not the expatriate was a patriot was open to interpretation. The earliest American use of “expatriate” as a noun seems to have been in Lilian Bell’s novel *The Expatriates*, published in 1900. In it, Bell harshly mocked rich Americans in Paris who, to their financial and even physical peril, succumbed to the sirens of impoverished and scheming titled French men and women. “Where do you live now?” one of the characters in the novel asks another American. “In Paris,” he replies. “‘Expatriates—both of you!’ she said, scornfully, turning her glasses on them.” “Why did this man . . . deliberately live away from her dear country and tacitly repudiate the flag?”⁴⁵ Another American woman dies as a result of her desperate attempt to marry a French marquis. The sociological makeup of Americans in Paris in the first half of the twentieth century extended far beyond the well-known Left Bank writers and artists. It included everyone from rich American women married to en-titled but cash-poor Europeans, to business entrepreneurs, to former soldiers. There were an estimated 40,000 Americans in France in the 1920s, most of whom did not write or draw.⁴⁶

(1933; repr., New York, 1990), 78. Henry Luce’s famous article “The American Century” appeared in *Life*, February 17, 1941.

⁴³ Earnest, *Expatriates and Patriots*. On two centuries of an increasing democratization of travel to France, see Harvey Levenstein, *Seductive Journey: American Tourists in France from Jefferson to the Jazz Age* (Chicago, 1998); Levenstein, *We’ll Always Have Paris: American Tourists in France since 1930* (Chicago, 2004); Christopher Endy, *Cold War Holidays: American Tourism in France* (Chapel Hill, N.C., 2004).

⁴⁴ Harold Stearns, “Apologia of an Expatriate,” *Scribner’s Magazine* 85, no. 3 (1929): 338–341, both quotes from 339. The “Apologia” is a letter that Stearns had written to F. Scott Fitzgerald.

⁴⁵ Lilian Lida Bell, *The Expatriates: A Novel* (1900; repr., New York, 2005), 69, 121; *Oxford English Dictionary*, 2nd ed., 1989.

⁴⁶ Warren Irving Susman, “Pilgrimage to Paris: The Backgrounds of American Expatriation, 1920–1934” (Ph.D. diss., University of Wisconsin, 1957), 165, citing the *Chicago Tribune European Edition*.

Indeed, the vast majority of the interwar American colony in Paris took umbrage at the term “expatriate.” They considered it to be a derogatory epithet and wrote in to the *Paris Herald* to say so.⁴⁷ This generally well-heeled American community, living for the most part on the Right Bank of the Seine, did not want to be confused with the Left Bank writers and artists. But although they sought to distance themselves from those bohemian types, even this more posh set came in for some criticism. After the first income tax law was passed in 1913, the American industrialist overseas, while being hailed for opening up new markets, was nonetheless suspected, alongside the idle rich, of having left home in order to avoid paying taxes. Whether they were fleeing taxes or Prohibition, the writers, drinkers, and tax evaders never lost their citizenship in the process; marrying a foreign man was apparently a much more serious sin. But they contributed to an image that was often far from flattering. Into the 1960s, “expatriate” was still frequently a pejorative term. Those who left the United States during the Vietnam War era as draft evaders or conscientious objectors came in for their share of opprobrium.⁴⁸ And the critical implication of the term was summed up by a frequent misspelling: “expatriot.”

At the same time, a new explosion of historical writing in the 1960s and 1970s turned the focus to the 1920s writers, helping to reinvigorate a fascination with the concept of expatriation. The 1920s Americans in Paris and their 1950s cousins became the center of attention of a new generation of historians, themselves critical of American politics or culture and captivated anew by the stories of those who had left the United States in the interwar years or after World War II. Whites and African Americans, men and women, writers, artists, and musicians, straight and gay, were rediscovered and heralded for their intellectual vibrancy and critical spirit.⁴⁹ By the 1960s and 1970s, the noun “expatriate,” most often used in reference to a time and a place—1920s Paris—had clearly transformed the legal concept into a historical and metaphorical term. In the process, ironically, the romanticized interwar expatriates, a symbol of voluntary exclusion, can also be seen as harbingers of the more inclusive late-twentieth-century transition to a notion of expatriation without loss of citizenship.

BY THE MID-1960S, A NEW FIGURE of the leave-taker emerged: the globalized expat. In this most recent (fourth) period of contemplating expatriation, increased mobility, well beyond what either John Lowell or even Elihu Root had imagined, has given new meaning to the concept of citizens abroad. Just as immigration law itself was becoming more inclusive, with the 1965 Hart-Cellar Act finally eliminating nationality quotas and shifting to a hemispherically defined entry system that would ultimately change the complexion of America, expatriation case law was also evolving, to once again include categories of individuals who had formerly been banished for bad behavior.

American citizens abroad, acclaimed as a novel phenomenon by Root in 1910,

⁴⁷ Al Laney, *Paris “Herald”: The Incredible Newspaper* (New York, 1947), 144.

⁴⁸ Roger N. Williams, *The New Exiles: American War Resisters in Canada* (New York, 1971); John Hagan, *Northern Passage: American Vietnam War Resisters in Canada* (Cambridge, Mass., 2001).

⁴⁹ See n. 3 above.

became increasingly common by the end of the twentieth century. “Expats” and, most recently, dual nationals have been conceptualized as potent proof in the new discourse on globalization. The colloquial abbreviation “expat” seems to have arisen in the British colonial context in the 1960s. It first appeared as the title of a poem by the British author D. J. Enright.⁵⁰ But by the latter part of the twentieth century, it was frequently used in the United States and elsewhere to mean a new class of citizens abroad, clearly differentiated from the 1920s writers and artists. In business circles, “expat” is most often used to designate someone sent abroad to represent a multinational firm. International companies offer assistance, advice, and benefits to those they send overseas. The expat’s status is generally a privileged one, complete with expense accounts and tax adjustments. It could not be further from the idea of loss of citizenship.

And, indeed, after half a century of generally expanding the definition of expatriating acts (with the happy exception of the 1922 and 1931 reversals on marriage), case law defining citizenship loss took a new turn in the second half of the twentieth century, ultimately restricting the list of actions that could lead to forfeiture of nationality. Voting abroad, for example, began to be called into question as a potentially expatriating act. When an American citizen living in Greece voted in an election there in the 1950s, it was not considered grounds for citizenship loss because the individual argued that he did so not with the intent of relinquishing his U.S. citizenship but under the duress of political circumstances: he had voted so as not to raise suspicion among his (hostile) neighbors that he was a Communist! However, in the early 1960s, when a dual national in Japan who had voted in a Japanese election defended himself against expatriation on the grounds that not to have done so would have incurred the suspicions of *his* neighbors, the court found that he had otherwise good relations with his neighbors, and there was no independent proof that he was at risk. In that case, the fear-of-neighbors defense did not suffice, and he lost his U.S. citizenship.⁵¹

The tide was generally turning, however, in favor of allowing a wider range of activities on the part of American citizens abroad. In 1967, in *Afroyim v. Rusk*, the U.S. Supreme Court made a key ruling that turned the page on the 1907, 1940, and 1952 definitions of expatriating acts. The *Afroyim* decision emphasized that expatriation must be the clear result of an individual’s voluntary intent to relinquish citizenship, and that the party alleging expatriation, that is, the government, has the burden of proof: “In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship.”⁵² This

⁵⁰ The shortened term, “expat,” is used only in the title. The poem uses the full term, “expatriates,” in a self-mocking way: they “speak in loud voices,” are “in it for gain”; “One is neither one thing nor the other. / So one is loved by no one.” D. J. Enright, “Expat,” *Times Literary Supplement*, August 10, 1962. Cf. *Oxford English Dictionary*, 2nd ed., 1989. The *Random House Dictionary*, 2nd ed. unabridged, 1983, dates the origins of the term to 1960–1965, and indeed it is absent from *Webster’s Third New International Dictionary*, begun in 1961. The 2000 *American Heritage Dictionary* considers the term “chiefly British.”

⁵¹ Immigration and Naturalization Service (INS), *Operations Instructions and Interpretations* (Washington, D.C., 1971-482-319/SC-6), sec. 349.1(f)(3)(i); 8 I. & N. Dec. 317 (1959); *Tanaka v. Immigration and Naturalization Service*, 346 F. 2d 438 (1965).

⁵² *Afroyim v. Rusk*, 387 U.S. 253 (1967) at 257. *Afroyim* overturned *Perez v. Brownell*, 356 U.S. 44, 61 (1958). See INS, *Operations Instructions and Interpretations*, sec. 349.1(d)(2); and Gerald C. Harvey,

renewed insistence on intent re-located the act of expatriation clearly with the individual rather than the state, in withdrawal rather than banishment. As voting and ultimately naturalization abroad have come to be viewed with greater equanimity, the risk of involuntarily losing one's American citizenship has decreased.

Acceptance of dual citizenship has been an important corollary to this limitation of involuntary expatriation.⁵³ The high era of the nation-state, from the late eighteenth century to the late twentieth century, rested firmly on the notion that a person could belong to only one country. Expatriation and naturalization were construed as antithetical to dual citizenship. The possibility of changing one's citizenship did not mean that one could belong simultaneously to two nations. The American view was that "naturalization invests the individual with a new and single allegiance, automatically absolving him from the obligations of the old."⁵⁴ Dual citizenship was characterized as everything from a "disagreeable dilemma" (Talbot, 1795) to "a self-evident absurdity" (Theodore Roosevelt in 1915). Through the 1960s, international law considered that "every person should have a nationality and should have one nationality only."⁵⁵ However, dual citizenship has grown recently as the result of two concomitant trends. First of all, major countries of emigration, such as Mexico, the Dominican Republic, and the Philippines, have begun allowing it, forcing receiving countries to accept the fact that those who naturalize do not necessarily shed their original identity, let alone their passports. The United States has long since abandoned the pretense of enforcing its own naturalization precept that requires the abjuring of previous citizenship. Secondly, dual citizenship today refers not only to Mexicans in the United States but also to Americans abroad. As Gerald Neuman has emphasized, U.S. citizenship has increasingly become disconnected from territorially limited rights, extending greater protection to citizens abroad along the lines of global due process. Growing acceptance of dual citizenship for Americans abroad

"Expatriation Law in the United States: The Confusing Legacy of *Afroyim* and *Bellei*," *Columbia Journal of Transnational Law* 13, no. 3 (1974): 406–435.

⁵³ On dual citizenship, see especially T. Alexander Aleinikoff and Douglas Klusmeyer, eds., *Citizenship Today: Global Perspectives and Practices* (Washington, D.C., 2001); Aleinikoff and Klusmeyer, eds., *From Migrants to Citizens: Membership in a Changing World* (Washington, D.C., 2000); Tomas Hammar, "Dual Citizenship and Political Integration," *International Migration Review* 19, no. 3 (1985): 438–450; Hammar, *Democracy and the Nation State* (Aldershot, UK, 1990); Randall Hansen and Patrick Weil, eds., *Dual Nationality, Social Rights, and Federal Citizenship in the U.S. and Europe: The Reinvention of Citizenship* (New York, 2002); "Symposium: A Tribute to the Work of Kim Barry"; Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, N.J., 2006), esp. chap. 6 on postnational and denationalized citizenship. As Christian Joppke put it, increasing ties to emigrants have meant a "re-ethnicization" of citizenship even in an increasingly transnational world; for the receiving state, however, it means a shift from an ethnic to a territorial view (de-ethnicization). Joppke, "Citizenship between De- and Re-Ethnicization (1)," *Archives Européennes de Sociologie* 44, no. 3 (2003): 429–458. On this point, cf. Andreas Fahrmeir, "From Economics to Ethnicity and Back: Reflections on Emigration Control in Germany, 1800–2000," in Green and Weil, *Citizenship and Those Who Leave*, 176–191.

⁵⁴ Borchard, "Decadence of the American Doctrine of Voluntary Expatriation," 315.

⁵⁵ Iredell in *Talbot v. Jansen*, 3 U.S. 3 Dall. 133 (1795) at 165; Theodore Roosevelt, "When Is an American Not an American," *Metropolitan Magazine*, June 1915, in 351.117/50, RG 59, 1910–1929; Preamble to the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, confirmed in the 1963 European Convention on Reduction of Cases of Multiple Nationality—both reiterated the norm of single citizenship—in Kim Barry, "Home and Away: The Construction of Citizenship in an Emigration Context," *New York University Law Review* 81, no. 1 (2006): 11–59, 43 n. 124. Only in 1977 was a European protocol signed accepting plural nationality.

is also related to the new figure of the mobile expat. Lowell's early-nineteenth-century transatlantic freeholder and Root's early-twentieth-century manufacturer's rep have been there all along, but the increased travel of traders has brought new visibility to citizens abroad. As states are increasingly reluctant to lose their citizens, dual citizenship, and what some have called "external citizenship," is clearly no longer grounds for expatriation.⁵⁶

Recent studies of dual citizenship, however, like most of the literature on citizenship, have looked at the issue primarily from the vantage point of countries of immigration, examining how denizens (permanent legal aliens who are eligible for most social rights) have become dual nationals. More work needs to be done on both the perspective of the emigration countries themselves and historical precedent. To what extent has dual citizenship existed *de facto* in the past? A history of dual citizenship needs to go beyond the notion that it is an invention of the late twentieth century; children born abroad to American parents could always be *jus sanguinis* citizens under U.S. law and *jus soli* citizens elsewhere.⁵⁷ It is clear, however, that dual citizenship has taken on new parameters and also is *understood* as new. Perhaps the claim of its novelty is simply a logical corollary to the (however faulty) discourse on the newness of globalization itself. Furthermore, although most of the recent literature has focused on emigration from poor countries to rich ones, the emigration and dual citizenship of the cosmopolitan elite past and present also need more study.⁵⁸ In any case, in this fourth period, in which citizens abroad are seen more often as emissaries than as traitors, involuntary expatriation has legally almost been defined out of existence. People on the move have become fully included in the nation's citizenship once again.

AN ESSAY ON NATURALIZATION AND ALLEGIANCE published in 1816 argued that there was no reason to prohibit expatriation because so few Americans emigrated.⁵⁹ It took a good century for the focus to change from British and other immigrants coming to native-born Americans leaving. The Population Census of the United States made no provisions for counting private U.S. citizens abroad until 1960, and the attempt was then abandoned in 1980 because of the difficulties of getting accurate data. Yet an estimated 789,000 U.S. citizens emigrated between 1918 and 1950, and the Association of American Residents Overseas estimates that there are more than 4 million Americans abroad today.⁶⁰

⁵⁶ Neuman, *Strangers to the Constitution*. On "external citizenship," see Barry, "Home and Away," and Rainer Bauböck, "Towards a Political Theory of Migrant Transnationalism," *International Migration Review* 37, no. 3 (2003): 700–723, 715.

⁵⁷ For example, see cases brought to the State Department's attention in 351.117, RG 59, 1910–1929, 1930–1939.

⁵⁸ E.g., Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Durham, N.C., 1999); Alain Tarrus, *Les Fourmis d'Europe: Migrants riches, migrants pauvres et nouvelles villes internationales* (Paris, 1992); Anne-Catherine Wagner, *Les nouvelles élites de la mondialisation: Une immigration dorée en France* (Paris, 1998).

⁵⁹ Cited in Tsiang, *The Question of Expatriation*, 55.

⁶⁰ There are no requirements for Americans to register overseas, and because of ambivalence or lack of information, the 1960 and 1970 undercount for Americans living in Canada and Mexico alone was estimated at over 90 percent. Prior and subsequent censuses have enumerated U.S. military and civilian

From expatriation to expatriate to expat: how is it that a concept implying the severing of ties with one's place of origin has become a notion linking one to home? One answer involves the successively changing figure of who is taking leave and for what purpose. The United States may have been founded on a notion of the right to leave, leading Albert O. Hirschman to speak of a "national love affair with exit," but attitudes about leave-takers depend on who is doing the exiting, from where, to where, and when.⁶¹ As long as expatriation was meant as welcoming newcomers to the United States, it was an inclusive concept. Once Americans going abroad were contemplated and seemed to be criticizing the U.S. through their marital alliances or critical writings, the concept became more worrisome, and legislators sought to define expatriates through specifically damnable acts. By the late twentieth century, however, as the number of Americans abroad swelled, and businessmen continued to largely outnumber disgruntled writers and escapees from racism, the law followed its citizens—or their businesses—so that even acts that had once seemed imperative causes of citizenship loss, notably naturalization abroad, became redefined as unproblematic.

Another explanation for the malleability of the concept has to do with a language of liberty. The language of expatriation has, with notable exceptions (American women!), been replete with notions of freedom and even happiness. Expatriation has been described as part of "the advance of mankind everywhere toward freedom, and general recognition of the principle that men are not made for governments but governments for men."⁶² Appealing to the reason and justice of civilized nations as against feudal ones, the right of expatriation has been considered indispensable to "the rights of life, liberty and the pursuit of happiness."⁶³ This language was maintained in spite of the fact that for a good part of the twentieth century, the codification of expatriation led not to the liberty of choice but to involuntary expatriation, with worries about everything from American women marrying aliens to American men and women voting abroad. Yet even the expatriation of women was at times justified by the argument that women had, after all, freely chosen their husbands! Although the British seaman was no multinational expat, the two have been linked through a language of liberty, of movement, and of choice of belonging.

The declining valence of expatriation and the increasing acceptance of dual citizenship have thus brought us back to what could be called a new form of perpetual membership, albeit in an important reversal of a one-woman, one-country norm. Rather than taking away citizenship from those who have wandered abroad, most countries are increasingly seeking to maintain ties with their absent nationals. Once

federal employees abroad, along with crews of U.S. merchant vessels. The debate over the counting of private citizens abroad continues today. For statistical estimates, see Harley M. Upchurch, *Toward the Study of Communities of Americans Overseas* (Alexandria, Va., 1970), 2; Robert Warren and Ellen Percy Kraly, *The Elusive Exodus: Emigration from the United States* (Washington, D.C., 1985), 5; Karen M. Mills, *Americans Overseas in U.S. Censuses* (Washington, D.C., 1993), 3–4, 43, 45; *AARO News*, no. 136 (June 2006): 4.

⁶¹ Albert O. Hirschman, *Exit, Voice, and Loyalty: Response to Decline in Firms, Organizations, and States* (Cambridge, Mass., 1970), 112.

⁶² Flournoy, "Naturalization and Expatriation," 719.

⁶³ Moore, "The Doctrine of Expatriation," 232; see also 229. Flournoy, "Naturalization and Expatriation," 713.

castigated as an outdated medieval concept, perpetual allegiance has been transformed in an ever more mobile world into modern states' concern with maintaining ties to their citizens however far they may roam. Late-twentieth-century ideas about expatriation have thus returned to a more inclusive understanding of citizenship, making it more and more difficult to dissolve the ties of citizenship, not to mention the taxes, that bind. (The United States has always been one of the few countries in the world to tax citizens on their worldwide income no matter where they reside.) The language of intent assumes perpetual belonging unless there is proof otherwise. Only the occasional business executive contemplates giving up his or her U.S. passport in function of changing tax laws.⁶⁴

However, if the understanding of expatriation has shifted from ingress to egress, the ambiguity of the latter remains. The periodization proposed here offers a way of thinking about changing notions of the nation and who belongs to whom. Yet neither the periodization nor the categories invoked are watertight. There were always precursors and dissenters, cases that whittled away at existing laws. From disapproval of doubly disloyal (in love and money) American-born countesses to dismay over the literary expatriates of the interwar years and then the romanticizing of same, the figure of the expatriate has become transformed today into another, once again romanticized, image, the international globetrotter. Even today, however, the international business expat is not an uncontested figure, as recurrent congressional debates over tax breaks attest.⁶⁵ Americans abroad can be viewed as suspicious characters in hyper-patriotic times.

Expatriation, dual citizenship, and the reconfiguration of the legal contours of citizenship remain a challenge to sovereignty. While many states now claim a firmer grasp on their citizens abroad, they have to admit that other states may do the same. In its 1971 *Operations Instructions and Interpretations*, revised and still in use at the end of the twentieth century, the Immigration and Naturalization Service itself noted that the government continued to place certain, albeit increasingly weak, constraints on an individual's actions abroad: "Despite the accepted principle that expatriation is an inherent right, the law has always imposed certain general restrictions upon loss of nationality, either to protect the interests of the United States, or to render effective the concept that expatriation can only occur as the result of voluntary action."⁶⁶ If the figure of the expat has become uncoupled from the issue of citizenship loss, as the individual's right to choose citizenship(s) has been reaffirmed against the state's power to withdraw same, the decline of involuntary expatriation and the rise of the dual citizen has come to represent an increasingly capacious understanding

⁶⁴ And, perhaps in order to distinguish such cases from the long history of expatriation, another term is being used: "renunciants." Doreen Carvajal, "Citizens Giving Up on U.S.: More Expats Turn In Passports over Taxes," *International Herald Tribune*, December 18, 2006 (the article was published in the same day's issue of the *New York Times* as "Tax Leads Americans Abroad to Renounce U.S."). The *IHT* was, however, obliged to add a clarification in its December 23–24, 2006, edition saying that the December 18 headline had mischaracterized the issue; there is no evidence that more citizens gave up their citizenship in 2006 than before.

⁶⁵ A useful source for these debates is *AARO News*. See also Phyllis Michaux, *The Unknown Ambassadors: A Saga of Citizenship* (Bayside, N.Y., 1996).

⁶⁶ INS, *Operations Instructions and Interpretations*, 349.1(g); Whelan, "Citizenship and the Right to Leave."

of the non-exclusivity of citizenship. It nonetheless remains to be seen how economic ups and downs, tax laws, and the prolonged aftermath of September 11, 2001, will affect subsequent debates about those who have followed their trade and commerce overseas.

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