

## Should Those Who Attack the Nation Have an Absolute Right to Remain Its Citizens?



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Audrey Macklin's call for the banishment of banishment is eloquent and persuasive on many points. She is surely right that particular denationalisation regimes may suffer from a variety of fatal defects. The standards for revocation may be too vague to constrain official discretion or to provide adequate notice to the citizen concerning what conduct will risk revocation. Most important, the grounds for revocation must be limited to only the most extreme, unmitigated attacks on the nation's security, attacks that are consistent only with a desire to bring the nation to ruin. This conduct must be scrupulously-defined and highly specific conduct; mere malignant thoughts will not suffice. Revocation cannot be permitted to lead to statelessness and thus a loss of the 'meta-right' (as Macklin puts it) to have rights, especially the right to the territorial presence that in turn confers a broad panoply of liberal rights. The procedures for revocation must be robust in all respects, including of course the right to be actually or virtually present rather than having to contest the government's action *ex post* and from exile. The government's burden and standard of proof must be exceedingly demanding, perhaps even the proof beyond a reasonable doubt required for criminal convictions.

But even these extraordinarily demanding and rare preconditions are irrelevant to Macklin; she is utterly categorical in her rejection of the very notion of denationalisation. She would preclude denationalisation even if these (and other) strict conditions were met; indeed, no protections for the individual citizen – or for the threatened nation – would suffice. Here is where we disagree. I see no reason in logic or justice why a state should be powerless to protect itself and its people from imminent, existential threats (suitably defined) from an individual who has launched a dangerous attack (suitably defined and rigorously proved) on itself and its people, whose interests both international law and domestic politics obligates it to promote. And I see no reason in logic or justice why that state cannot defend itself and its people against such an attack by, among other things, severing

the attacker's connection to a state with which he is manifestly at war, thereby making it much more difficult for him to succeed in that war. Should the individual's interest in maintaining that connection, which (by my definition, embedded in the preconditions listed above) can only be tactical and cynical, utterly and categorically outweigh the nation's interest in protecting those for whom it bears a sacred trust? This question, I submit, answers itself – and the answer is grounded not merely in a utilitarian balancing but in a deontological principle: the nation's fundamental duty to protect its people.

I also have some reservations about a few of Macklin's other, less fundamental arguments. First, she claims that denationalisation weakens citizenship by eliminating its security and thus rendering it a form of mere legal residence. I don't understand her logic. Am I less secure in my citizenship if I know that the state may execute me or imprison me for life if I murder a fellow citizen? I suppose that I am less secure, but that insecurity is warranted and I can easily avoid it. Moreover, there is a sense in which denationalising one who has demonstrably satisfied the exceedingly demanding conditions for revocation that I have specified does, contrary to Macklin's claim, strengthen citizenship by reaffirming the conditions on which it is based.

Second, she categorically condemns revocation in part because it categorically denies the individual the opportunity to rehabilitate himself. We should and ordinarily do protect a wrongdoer's opportunity to rehabilitate himself, but there are many situations in which we don't. An employer who catches an employee embezzling from the company may fire him without giving him an opportunity to rehabilitate himself there; if he wishes to rehabilitate himself, he will have to do so elsewhere, on his own time. When we sentence a murderer to life imprisonment without parole, we are denying him the right to regain his freedom through rehabilitation.

Third, it is true that denationalising a dual citizen would still leave him with a state while denationalising a mono citizen would not. But so long as we do not allow revocations that would render one stateless, this particular inequality between categories of citizens is hardly one that should trouble us – any more than we should be troubled that a dual citizen has an additional passport and can vote in an additional polity.

Finally, Macklin states that there is no evidence that denationalisation will deter a would-be terrorist if other, more conventional counter-terrorism measures fail to do so. I agree, but so what? Deterrence may be an important reason to punish wrongdoers but it is by no means the only reason to do so.

If we are justified in punishing them, that justification is not nullified by a claim that the punishment will not deter others. And if more conventional measures are indeed effective in eliminating threats, they should of course be our first and perhaps final resort. In such situations, denationalisation may well be a superfluous, unnecessary remedy. But this is a question of policy and prudence, not of moral principle.

Macklin is certainly right to worry about the possible abuses of denationalisation. The history of political banishment is hardly reassuring on this point. But a liberal constitutional regime can control such abuses by scrupulously controlling the state's exercise of this power through a variety of familiar institutions and practices. These include a careful definition and exacting limitation of the grounds for revocation; demanding procedural and evidentiary requirements before such a power can be exercised; a right to legal counsel; and an independent judiciary accustomed to challenging state power in the name of protecting individual rights. We have entrusted our precious liberties to the faithful working through of these institutions and practices. Some of these liberties are even more precious than our right to retain our citizenship when we have knowingly acted in horrendous ways that make it justifiable, under the safeguards I have described, for the state to declare that status forfeited.

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