

Does Dual Citizenship Undermine Loyalty? :
Two Constitutional Conceptions of Loyalty and Critical
Reflections on J.Y. Interpretation No. 768

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Abstract

What would a desirable constitutional conception of loyalty, if ever needed, be? This paper probes the question by examining a less-noticed constitutional case, J.Y. Interpretation No.768 (J.Y. 768), with political theorists' debates about the moral status of loyalty and patriotism. J.Y. 768 upholds a far-reaching ban on people with dual nationality from holding public office because, allegedly, dual nationality would undermine people's loyalty owed to the state. However, the Court's decision fails to explain why dual nationality undermines loyalty, which invites severe criticisms from the dissents.

Two concurring justices offer an intuitive response to the critical question: conflicts of national interests. They suggest that nationals owe their country the moral obligation of loyalty, under which they shall safeguard national interests. Should people with dual nationality be public servants, with dual allegiance, they are likely to run into conflicts of national interests in their public duty, hence facing the risk of disloyalty. However, the conflicts-of-interests argument relies on three strong presumptions. First, people owe their country the political obligation of loyalty. Second, loyalty requires people to favour and prioritise their national interests over those of foreign countries. Third, loyalty is indivisible and exclusive. The argument thus necessitates a thick conception of national loyalty, such as MacIntyre's theory of patriotism which takes national survival as its core.

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However, MacIntyre's patriotism is not a suitable theoretical resource for constitutional reasoning due to its tendency to suppress domestic cultural diversity and ignore international legal order and human rights norms. Alternatively, this paper proposes a republican conception of loyalty, which has constitutional resilience as its core. Republican loyalty demands people's commitment to sustain political freedom and constitutional principles through democratic participation. Dual nationality may bring about a justified concern for holding public office not because of conflicts of national interests but dual nationals' transnational mobility and their ability to relinquish collective political duties and shared consequences.

Keywords: loyalty, patriotism, political obligations, dual nationality, J.Y. Interpretation No. 768, J.Y. Interpretation No. 618, constitutional patriotism, MacIntyre, Habermas