

# Revocation of Citizenship and Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime

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Over the past decade, the United Kingdom has deprived an increasing number of British subjects of their citizenship. This policy, known as “denaturalization,” has been applied with particular harshness in cases where foreign-born subjects have been accused of terrorist activity. The increase is part of a global trend. In recent years, Canada,<sup>1</sup> Australia,<sup>2</sup>

1. Tom Parry, “Liberals Move to Overhaul Rules on Revoking, Granting Citizenship,” *CBC News*, February 25, 2016, <http://www.cbc.ca/news/politics/john-mccallum-citizenship-act-repeal-bill-1.3463471> (accessed March 7, 2018).

2. Shalailah Medhora, “Law to Strip Dual Nationals of Australian Citizenship set to Pass Parliament,” *The Guardian*, November 10, 2015, <https://www.theguardian.com/australia-news/2015/nov/10/law-to-strip-dual-nationals-of-australian-citizenship-set-to-pass-parliament> (accessed March 7, 2018).

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France,<sup>3</sup> and the Netherlands<sup>4</sup> have either debated or enacted denaturalization statutes. But Britain remains an outlier among Western democracies. Since 2006, the United Kingdom home secretary has revoked the citizenship of at least 373 Britons,<sup>5</sup> of whom at least 53 have had alleged links to terrorism.<sup>6</sup> This is more than the total number of revocations by Canada, France, Australia, and Netherlands combined. These developments are troubling, as the right to be secure in one's citizenship has been a cornerstone of the postwar European liberal political order, and of the international community's commitment to human rights.

Denaturalization was once common in the West. The power to revoke naturalization was first established in the United States by the Naturalization Act of 1906,<sup>7</sup> by legislative enactment in 1915 and 1927 in France,<sup>8</sup> and by the Nationality and Status of Aliens Act (BNSA) of 1914 and 1918 in the United Kingdom.<sup>9</sup> But following the Second World War, the practice effectively disappeared. Judicial rulings significantly restricted the power in France and the United States. Denaturalization disappeared from British law as well, but unlike in other Western countries, it was never abrogated by statute or judicial decree. The Home Office has retained the authority to revoke citizenship continuously from 1914 until the present. Rather, beginning in the middle of the twentieth century, the power simply fell into disuse. Between 1950 and 1970, the home secretary revoked fewer than a dozen certificates of naturalization, compared with several hundred following the First World War. Between 1973 and 2000, the power was not used at all.<sup>10</sup>

3. Kim Willsher, "Hollande Drops Plan to Revoke Citizenship of Dual-National Terrorists," *The Guardian*, March 30, 2016, <https://www.theguardian.com/world/2016/mar/30/francois-hollande-drops-plan-to-revoke-citizenship-of-dual-national-terrorists> (accessed March 7, 2018).

4. Jacob Bojesson, "Netherlands Passes Law to Strip Citizenship from ISIS Fighters," *The Daily Caller*, May 25, 2016, <http://dailycaller.com/2016/05/25/netherlands-passes-law-to-strip-citizenship-from-isis-fighters/> (accessed March 7, 2018).

5. Letter from Home Office, United Kingdom Visas and Immigration, Complex Cases directorate to Conor Anthony Casey (January 21, 2017) (on file with author).

6. Audrey Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien," *Queen's Law Journal* 40 (October 2014): 1–54.

7. Patrick Weil, *The Sovereign Citizen. Denaturalization and the Origins of the American Republic* (Philadelphia: University of Pennsylvania Press, 2012).

8. Patrick Weil, *How To Be French: Nationality in the Making Since 1789* (Raleigh, NC: Duke University Press, 2008), 62.

9. British Nationality and Status of Aliens Act, 8 & 9 Geo. 5, c. 38 (1918), § 7(1) (hereafter BNSA).

10. *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (Norwich, United Kingdom: Home Office, 2002), §2.22.

Because Britain is at the forefront of the current denaturalization movement, the history of this practice—of why it emerged, how it evolved, and why it eventually disappeared—is critical to understanding the challenges posed by its resurgence. How can Britain ensure, as previous generations did, that the power of the Home Office to strip individuals of their citizenship is not abused? Current scholarship on this issue is quite spare. Two scholars who have examined denaturalization have advanced two separate explanations for its decline in the twentieth century. Matthew Gibney has attributed the postwar decline of denaturalization to a combination of factors, including the rise of liberal and humanitarian norms and increased political protections against statelessness.<sup>11</sup> Audrey Macklin has argued that the recent increase in Britain's use of denaturalization is the result of a new, more aggressive legislative mandate for the Home Office, produced by the changing political circumstances of the past two decades.<sup>12</sup> These accounts tend to assume that denaturalization in Britain disappeared largely of its own accord—the victim of changing political attitudes, and an increased skepticism of state infringement on civil liberties following the Second World War. It is only at the dawn of the twenty-first century, with its unprecedented movement of peoples and its renewed focus on national security, that British state has dusted off the long disused power.

This article offers a different explanation for the decline and recent resurgence of denaturalization. It contends that the administrative structure of Britain's early regime ultimately led to its demise. Scholars have not been wrong to claim that denaturalization fell victim to shifting cultural and political attitudes. No one doubts that the Allied powers discovered a new respect for individual rights following the atrocities of the Second World War. But this explanation is also critically incomplete. First, it does not align well with the actual history of denaturalization. An examination of Home Office archives indicates that denaturalization began to decline well before the Allied victory in 1945. As early as the 1930s, the number of citizenship revocations began to drop off precipitously. Second, it fails to provide a mechanism for how this consensus actuated itself within Whitehall. How did aversion to denaturalization actually translate into political action (or inaction)?

This article makes unprecedented use of the Home Office's own archives on denaturalization to propose a novel explanation for its disappearance. In particular, a largely overlooked provision in the BNSA of 1918 required a committee—composed of judges, and completely independent of the

11. Matthew J. Gibney, "A Very Transcendental Power": Denaturalisation and the Liberalisation of Citizenship in the United Kingdom," *Political Studies* 61 (2013): 637–55.

12. Macklin, "Citizenship Revocation."

Home Office—to review the secretary of state’s decisions to deprive citizens of their nationality.<sup>13</sup> Although this committee was initially intended to be little more than an advisory board, over time it grew to wield immense power within the Home Office, and it used this power in myriad ways to constrain and, ultimately, eclipse the home secretary’s denaturalization authority. In effect, it created a system of judicial review for all denaturalization decisions within the Home Office.

This observation is of more than historical interest. In 2002, Parliament significantly altered the structure of Britain’s denaturalization regime by passing the Nationality, Immigration and Asylum Act.<sup>14</sup> Among other changes, this statute replaced the century-old practice of committee-based review with a significantly more deferential form of oversight known as the Special Immigration Appeals Commission (SIAC).<sup>15</sup> Appeals are now often conducted in secret with few procedural protections, and respondents are only allowed to mount limited procedural challenges to a denaturalization decision.<sup>16</sup>

The history of denaturalization demonstrates that an independent and *ex ante* review of the Home Office’s power to revoke citizenship is critical to preventing abuse. Politically accountable institutions are often more sensitive to public demands for safety than to individual rights, especially in times of widespread insecurity. The Home Office demonstrated this fact in the immediate aftermath of the First World War when, under public pressure, it moved to denaturalize hundreds of individuals, often with dubious justification. The committee acted as a check on the home secretary’s potentially unlimited authority. In some high-profile cases, it did this by publicly exposing the shoddiness of the Home Office’s case for revocation, dealing it embarrassing political defeats. But more often, it leveraged its ability to embarrass the Home Office to guide it to a more limited interpretation of its statutory denaturalization powers. Over time, this rights-protective reading of the BNSA became so well established, and the committee’s influence on the Home Office became so strong, that the revocation power effectively ceased to exist.

This history teaches that a society needs more than an abstract appreciation of liberal values, or a nebulous mistrust of excessive political power, to prevent abuses of individual rights. It needs mechanisms for oversight and accountability to enforce those rights in daily practice. The committee served

13. BNSA § 7(3).

14. Nationality, Immigration and Asylum Act (2002), ch. 41.

15. Melanie Gower, Home Office, Home Affairs Section, *The Special Immigration Appeals Commission*, SN/HA/1083 (United Kingdom: Home Office, 2013).

16. House of Commons, Constitutional Affairs Committee, *The Operation of the Special Immigration Appeals Commission (SIAC) and the Use of Special Advocates* (London: House of Commons, 2005).

this role. The present SIAC regime does not. The story of Britain's first denaturalization regime should cause rights advocates to examine more closely the procedural inadequacies of the 2002 Nationality Act.

Part I of this article describes the political background against which the BNSA was drafted, and the Parliamentary debates over the 1918 amendments that eventually led to the creation of the committee. Part II demonstrates how this committee managed to leverage its status as an independent, quasijudicial body to assert ever-greater interpretative authority over the BNSA, ultimately reining in the unilateral power of the home secretary to revoke naturalizations. Finally, Part III demonstrates how the lasting effects of the committee's jurisprudence rendered the denaturalization power inoperative in the years following the Second World War.

## I. The Origins of the Denaturalization

### A. *The Nineteenth Century and the Prelude to Denaturalization*

Throughout the nineteenth century, Parliament had been focused on expanding opportunities for immigration. After a brief period of antiforeign legislation during the Napoleonic Wars, the process for immigrating and naturalizing in Britain was steadily streamlined and rationalized. In 1834, the antiquated process of naturalization by a private act of Parliament was replaced with a simple, uniform system administered by the Home Office.<sup>17</sup> The 1844 Aliens Act amending Britain's naturalization laws<sup>18</sup> and the Naturalisation Act of 1870<sup>19</sup> significantly eased the administrative burdens of applying for citizenship and removed a number of legal disabilities on naturalized subjects, such as restrictions on the ability to hold public office and inherit property.

However, by the early twentieth century this trend began to reverse. Rising geopolitical hostility with powers on the Continent—particularly Germany—and a fear of radical political ideologies imported from abroad led to a popular mistrust of the foreign-born. Hostility to Germans and other Central Europeans manifested itself not only in the press, but in popular novels such as William Le Queux's *The Invasion of 1910*, which depicted a fictional German invasion of the British mainland.<sup>20</sup> Antiforeign feeling was also fueled by a wariness of the country's rapidly

17. Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth, and Modern Britain* (London: Frank Cass, 2003), 53–56.

18. Act of 7 & 8 Vic., c. 66.

19. Act of 33 Vict. c. 14, s. 7.

20. William Le Queux, *The Invasion of 1910* (London: E. Nash, 1906).

increasing Jewish population. Between 1881 and 1914, approximately 150,000 Jews had settled in Britain, primarily from Russia and Eastern Europe, most of whom were poor and uneducated.<sup>21</sup> These changes in turn led to political demands that the liberal immigration policies of the previous century be restricted. The first significant legal manifestation of this trend was the Aliens Act of 1905, which authorized immigration officers to refuse port entry to aliens deemed “undesirable” according to a set of enumerated criteria.<sup>22</sup>

In addition to generalized concerns about increased immigration, the naturalization of immigrants provoked anxieties about the changing nature of British citizenship, and particularly about the prevalence of Britons who held citizenship in other sovereign states. Dual nationality developed in part because many countries refused to recognize the right to renounce one’s native-born citizenship, even by naturalizing elsewhere. As the Home Office noted in 1916, “[t]he rule *nemo potest exuere patriam* was once of widespread, if not universal application. It is still the rule in Russia; it was our rule up to 1870, and in Germany down to the recent Delbrück law in 1913, the acquisition of a foreign nationality was not in itself the cause of the loss of German nationality.”<sup>23</sup> This provoked fear that those who had been afforded the privileges of British citizenship might not be entirely loyal to their adoptive country.

The First World War provided the catalyst for the first significant overhaul of Britain’s immigration and naturalization regime in more than a generation. The Alien Restrictions Act of 1914, which was enacted one day after Britain’s entry into the war, dramatically expanded the power of the home secretary to detain or deport aliens for a wide variety of infractions supposedly related to wartime safety (many of which did not have corollaries that were applicable to native-born Britons). It also empowered the crown, during a state of war or national emergency, to impose restrictions on aliens through Orders of Council.<sup>24</sup>

21. Helena Wray, “The Aliens Act of 1905 and the Immigration Dilemma,” *Journal of Law and Society* 33 (2006): 308.

22. *Ibid.*, 311.

23. “Nationality and Naturalisation: Revocation of Naturalisation Certificates. Proposed modification of Naturalisation Act (1914–1917)” (HO 45/10839/333491) (British National Archives, hereafter BNA). Germany’s Delbrück Law provided for the automatic loss of citizenship by a German who became naturalized elsewhere. However, the law did provide for Germans to retain their German nationality after being naturalized elsewhere if they made a formal application. See Alfred M. Boll, *Multiple Nationality and International Law* (Boston: Martinus Nijhoff, 2007), 187.

24. William Evan Davies, *The English Law Relating to Aliens* (London: Stevens and Sons, Ltd., 1931), 95.

The government used its power under the act to institute antiforeign regulations of unprecedented breadth and severity. It issued orders that, among other things, prevented aliens from landing or embarking, except at certain ports; required certain aliens to reside within designated areas; required certain enemy aliens to leave designated areas altogether; required aliens more than 16 years of age to register with the chief officer of their local police district, and prevented them from leaving without obtaining official permission; and permitted the police to close down clubs or other social halls frequented by aliens.<sup>25</sup> A related law, the Defence of the Realm Act (DORA),<sup>26</sup> permitted the government to institute broad regulations targeting activity that might be perceived as subversive. DORA orders prohibited aliens from engaging in activity as innocuous as owning cinema film or using an alias.<sup>27</sup>

Perhaps most significantly, these laws also permitted the government to summarily imprison or deport foreign-born residents on the thinnest of justifications. Under DORA Regulation 14B, aliens and British subjects of hostile origins could be detained without recourse to normal legal procedures. Between 1914 and 1918, more than 32,000 German, Austrian, and Hungarian civilians were interned in Britain.<sup>28</sup> Following the war, a staggering number of foreign nationals would be deported from Britain. This policy was encouraged by a right-wing press campaign, encapsulated by the *Daily Mail*'s popular xenophobic slogan, "send them all home."<sup>29</sup> By 1919, deportations had reduced Britain's German-born population, by far the most heavily affected, from 57,500 in 1914 to 22,254.<sup>30</sup>

### *B. The British Nationality and Status of Aliens Act of 1914*

It was in this atmosphere of hostility that Parliament enacted the British Nationality and Status of Aliens Act of 1914, which empowered the home secretary for the first time to revoke a legal grant of citizenship as

25. *Ibid.*, 95–96.

26. 4 & 5 Geo., c. 29.

27. Davies, *English Law Relating to Aliens*, 96. Although these measures were initially enacted as emergency powers in response to the exigencies of wartime, many were dramatically expanded by the Alien Restrictions (Amendments) Act of 1919, 9 & 10 Geo 5 c 92 (1919). A number of these measures were consolidated and further expanded after the war by an order of council known as the Aliens Order of 1920. Davies, *English Law Relating to Aliens*, 98.

28. Panikos Panayi, *The Enemy in Our Midst: Germans in Britain During the First World War* (Oxford: Berg, 1991), 154–58.

29. Panikos Panayi, *An Immigration History of Britain* (New York: Routledge, 2009), 214.

30. *Ibid.*

a punitive measure.<sup>31</sup> The 1914 act was relatively limited in scope. It only allowed the secretary of state to void a certificate of naturalization if subjects were found to have committed fraud in their citizenship application.<sup>32</sup> The Liberal Asquith government, which favored the permissive immigration policies of the nineteenth century, had opposed denaturalization altogether. Throughout the war, Asquith refused to use even the restricted power his government did possess. From 1914 to 1918, the Home Office invoked this authority only once, in July of 1918 under the premiership of Lloyd George.<sup>33</sup>

As the war dragged on, the press and Parliament became increasingly hostile to the government's liberal stance on immigration and citizenship. Asquith, however, remained staunchly opposed to expanding denaturalization. In January of 1915, in response to a question in the House of Lords, Home Secretary Reginald McKenna defended the government's objections to strengthening the 1914 law. He noted that empowering the Home Office to revoke certificates of naturalization would raise difficult legal and political questions. "What nationality a man possesses," he explained:

is a question of *status*, and when once it is conferred it is expected by other countries that the country granting it will not capriciously or arbitrarily or hastily withdraw the privileges which have been conceded because that affects others questions. In other words, you have to consider International Law in dealing with this, because it is not a matter of licensing a person, nor even a matter of contract. . .and the power of rendering void the *status* so conferred is a power which certainly ought not to be at the disposal of a Minister or of an Executive, but ought to be in the hands of a Court of Justice of a high order.<sup>34</sup>

McKenna repeated these same objections forcefully throughout 1915 and 1916 in response to questions in the House of Commons and the House of Lords, always invoking the solemn status of citizenship in national

31. The Naturalisation Act of 1870 had provided for automatic loss of citizenship in the case of British-born wives who married foreign nationals, but did not create any other discretionary authority to revoke a person's naturalization. Act of 33 Vict. c. 14, s. 7.

32. British Nationality and Status of Aliens Act, 1914, 4 & 5 Geo. V, c. 17. The 1914 act was passed in the first days of the First World War. However, it was the product of a long process that began in 1901 with an "Interdepartmental Committee on Naturalisation Acts," which was established by the Home Office to recommend potential amendments to the 1870 act. Among other changes, it proposed adding a provision that certificates of naturalization should be eligible for revocation if the government determined that they had been obtained through fraud. J. Mervyn Jones, *British Nationality Law-Revised Edition* (Oxford: Clarendon Press, 1956), 78.

33. John Clement Bird, *Control of Civilian Enemy Aliens in Great Britain, 1914-1918* (New York: Garland Publishing, Inc., 1986), 245.

34. HL Deb 06 January 1915 vol. 18 cc. 262-71.



and international law, and the political risks of empowering Whitehall to revoke that status arbitrarily.<sup>35</sup>

But by 1918, Liberal resistance to denaturalization had weakened considerably, and the new coalition government under Lloyd George was more amenable to expanding the Home Office's authority. Throughout the summer of 1918, public pressure had been mounting for a more aggressive denaturalization bill. That year, the prime minister commissioned a study on potential reforms to the status of aliens in Britain. In an unusual move, he did not commission the study from the Cabinet, but rather from a specially appointed committee of MPs in the House of Commons, which was chaired by the Liberal MP Sir Henry Dalziel and included John Butcher, one of the most adamant supporters of harsher restrictions on naturalization.

The final study was published on July 9, 1918. It had an immediate impact on Parliamentary debate, providing even greater momentum for the passage of a harsher citizenship law.<sup>36</sup> The Commons committee made a sweeping set of recommendations touching on internment policy, immigration, and denaturalization.<sup>37</sup> Among its fifteen different proposals was a recommendation that all certificates of naturalization granted to enemy aliens since January 1, 1914, the date of the enactment of the Delbrück Law in Germany, "be referred for review to the Advisory Committee presided over by Mr. Justice Sankey and Mr. Justice Younger and cancelled unless in the opinion of such Committee there

35. For example, on April 27, 1915 Butcher asked the same question and received the same answer by Secretary McKenna. See HC Deb 27 April 1915 vol. 71 cc. 570–1. Another MP, Mr. Booth, asked the same question again on July 26, 1916, and received the same answer from Home Secretary Herbert Samuel. See HC Deb 26 July 1916 vol. 84 cc. 1679–82.

36. The Cabinet was unaware that the report had been commissioned, and had not contributed to it or reviewed it before it was published. During the Cabinet meeting of July 10, 1918, Austen Chamberlain recorded a "respectful protest" against the prime minister's "highly improper" decision to refer "a question of public policy of grave importance" to a committee of the House of Commons "without consultation with the Cabinet." In response to Chamberlain's protest, the prime minister, perhaps referencing the Cabinet's longstanding unwillingness to address the question of foreign-born Britons, noted that there existed "real uneasiness in the public mind" with respect to the status of aliens on British soil, and that although some of this uneasiness had been "intensified by agitation in the press," it nonetheless required a firm political response. Yet even Lloyd George was surprised at the independence that the Commons committee asserted. Apparently, the committee had published its report without consulting with a single Whitehall department, and without even presenting a copy to the prime minister in advance. See Minutes of the Imperial War Cabinet, 10 July, 1918 (CAB 23/7) (BNA).

37. War Cabinet, "Report to the Prime Minister of Sir H. Dalziel's Committee" (July 9, 1918) (CAB 24/57) (BNA).

are national reasons to the contrary.”<sup>38</sup> It also proposed that in the case of enemy aliens who had been naturalized prior to 1914, “where *prima facie* evidence is forthcoming from any responsible person or persons questioning the loyalty or good will of the holder of certificate, the central controlling authority shall refer such case to an Advisory Committee for inquiry and report and where the AC is satisfied that the continuance of a naturalisation certificate is contrary to the public good, such certificate shall be cancelled.”<sup>39</sup>

On July 11, 1918, Home Secretary George Cave announced that a bill, soon to be introduced by the government, would address “all certificates whenever granted, including those granted at any time before the War, and including those granted to aliens who were not enemy aliens.”<sup>40</sup> In all those cases, “when any man comes under suspicion or breaks the law,” he would “be liable to have his certificate reviewed.” He proposed that all certificates granted to enemy aliens should “be reviewed by the Committee, and, if they so advise, they will be revoked.”<sup>41</sup>

### *C. The BNSA Amendments of 1918 and the Creation of the Judicial Committee*

The Home Office submitted its proposed revisions to the BNSA to the House of Commons on July 17, 1918. During the ensuing debate, Conservative MPs introduced a number of amendments that would have even further expanded the circumstances under which the home secretary could invoke the denaturalization power. These included proposals to: revoke all certificates granted to former subjects of states that had declared war on Great Britain;<sup>42</sup> empower the home secretary to denaturalize any naturalized alien who had shown by “overt” act or speech to be “disloyal” to the British government;<sup>43</sup> require the home secretary to denaturalize any person convicted of any crime;<sup>44</sup> denaturalize any person who, since the commencement of the war, was “engaged in a business carried on wholly or mainly in association with subjects of a country which is now our enemy”;<sup>45</sup> denaturalize any person trading or “associated with” blacklisted firms, or any person who was “not friendly” to British economic

38. *Ibid.*

39. *Ibid.*, Recommendation 4.

40. HC Deb 11 July 1918 vol. 108 cc. 522–605.

41. *Ibid.*

42. HC Deb 17 July 1918 vol. 108 c. 1093.

43. *Ibid.*, c. 1104.

44. *Ibid.*, cc. 1111, 1128.

45. *Ibid.*, c. 1113.

interests;<sup>46</sup> denaturalize any person who “by reason of character, action, or mode of living has not shown to be a good citizen”;<sup>47</sup> and denaturalize any person who was originally the subject of a state that did not regard naturalization in Britain as extinguishing that person’s original citizenship.<sup>48</sup>

These proposals reflected a widespread Conservative view that naturalized citizenship should be freely revocable by the crown. Critics of Britain’s liberal naturalization laws frequently argued that citizenship was not a right, but rather a privilege that the state conferred on the assumption that doing so would ultimately benefit the home country. If a grant of citizenship proved to be harmful or merely inconvenient, the government should be free to correct its error through revocation. Basil Peto, in supporting an amendment to denaturalize citizens who had been engaged mainly in commerce with foreign nations, summarized this view, stating that “naturalisation is intended to be a real act, proving that the person who is naturalised is going to throw in his lot not only with the country as a whole, but with the trade and commerce of this country, which, if it is carried on by British citizens, redounds in its aggregate benefit to the people of this country as a nation.”<sup>49</sup> To the extent that a naturalized subject failed to fulfill the duties of loyalty and economic usefulness, the state was under no obligation to maintain that person’s privileged status as a subject to the detriment of native-born Britons.

Liberals opposed expanding the home secretary’s denaturalization power, as they had throughout the war. In their view, citizenship was not a privilege that could be revoked at will, but a contract between the state and its naturalized citizens that conferred benefits and obligations on both. That contract, they argued, could only be revoked under extraordinary circumstances, and even then, only after the affected party had been given a full and fair judicial hearing. Former Home Secretary Herbert Samuel, for example, argued during the Commons debate that “a naturalisation certificate is a very solemn contract between the State on the one hand and the admitted citizen on the other, and both undertake an obligation,” including the obligation by the state to provide adequate procedural protections.<sup>50</sup>

But despite their opposition, by late 1918 it was clear to Liberals that their refusal to expand the denaturalization power was no longer tenable. Conservatives’ demands for enlarging the range of offenses for which

46. *Ibid.*, c. 1117.

47. *Ibid.*, c. 1140.

48. *Ibid.*, c. 1150.

49. *Ibid.*, c. 1114.

50. *Ibid.*, c. 1162.

citizenship could be revoked were broadly popular. Public sentiment had shifted dramatically over the past four years, and it appeared inevitable that the 1918 amendments to the BNSA would significantly extend the Home Office's power. Nearly all of their substantive proposals were incorporated into the final version of the amended 1918 BNSA.

Liberals, therefore, shifted their legislative strategy from opposing the amendments altogether to limiting their effect. To achieve this, they proposed the creation of an independent committee that would review the home secretary's denaturalization orders to ensure that they were consistent with the law. This idea had first been conceived by the Asquith government in 1916, when it recognized that an expanded denaturalization power was likely inevitable. Samuel, then chair of the Aliens Subcommittee of the Reconstruction Committee, had recommended that any expanded law should delegate denaturalization decisions to a tribunal of judges, rather than to the Home Office.<sup>51</sup> This would ensure that the power to revoke citizenship was not abused for political ends. It would also afford the appropriate procedural protections to citizens who were threatened with deprivation. The subcommittee's report emphasized that, notwithstanding any changes to the law, it was "highly desirable that nationality acquired by naturalisation should be, as far as is reasonably possible, equivalent in permanence to nationality acquired by birth."<sup>52</sup>

Throughout the debates in Commons, Liberals insisted that a provision for a judicial committee be included in a final bill. Many MPs shared Samuel's concerns that adequate procedural protections be afforded. For example, Liberal MP Richard Holt objected to the requirement articulated in what became Section 7(2) of the amended bill that aliens prove that their naturalization was in the "public interest." He argued emphatically that a naturalized citizen's rights should not depend on the unilateral demands of a particular minister or of the British electorate. It would, he warned, "subject[] a man to a very serious penalty to take away his right and leave him subject to somebody's discretion. There is no justification for imposing such a penalty on any man unless it can be shown that he himself is or has been party to something wrong."<sup>53</sup>

Conservatives ultimately agreed to include a provision requiring independent review of the home secretary's decisions, in the form of a three-person committee. It would be presided over by a judge who had previously held high judicial office,<sup>54</sup> and would be wholly independent of the

51. Bird, *Control of Civilian Enemy Aliens*, 252–53.

52. *Ibid.*

53. HC Deb 17 July 1918 vol. 108 c. 1126.

54. BNSA § 7(4).

Home Office. Although its recommendations would be purely advisory, in many cases the home secretary would be required to hear the committee's recommendation before rendering a final decision.<sup>55</sup> In other cases, the home secretary, although not required to do so, would be explicitly authorized by the statute to refer a matter for the committee's review.<sup>56</sup>

## **II. The Committee Establishes Itself as the Primary Legal Authority on Denaturalization**

The inclusion of the committee in the final version of the denaturalization bill was necessary for securing the support of Liberal MPs, and for presenting at least a measure of procedural fairness and impartiality to the public. But in 1918, it was still not clear exactly what power the committee had. Section 7 of the amended BNSA required the home secretary to refer some denaturalization cases to the committee automatically, and it permitted certificate holders to appeal to it in others, but none of its recommendations were binding. Nonetheless, the committee was composed of respected judges. Its recommendations carried intellectual and political authority. Over the years, it would exploit its power as an advisory body to pressure the home secretary into limiting the application of the denaturalization power. It would hold hearings and issue opinions, sometimes publicly, interpreting the BNSA to not permit denaturalization in certain circumstances. Although the Home Office had the authority to ignore these recommendations, it understood that overriding the opinions of experienced jurists would appear heavy handed, and could prove politically damaging. As a result, in practice, the Home Office learned to conform its interpretation of the BNSA to the committee's, to avoid a public conflict.

The effect of the committee's aggressive review of denaturalization decisions was dramatic. Even in the early years of the BNSA, when the popular fervor for denaturalization was highest, the committee recommended deprivation in only half of the cases referred to it by the home secretary.<sup>57</sup> In later decades, as the committee's authority became more established, and as it began to exercise its review power more aggressively, the results were even starker. Between 1949 and 1961, only nine naturalized subjects had their certificates revoked, out of 120 cases referred to the Home

55. *Ibid.*

56. BNSA § 7(3).

57. See section II.A.1.

Office.<sup>58</sup> By the mid-1960s, proposed denaturalizations were vanishingly rare, and the last successful revocation prior to 2002 occurred in 1973.<sup>59</sup>

### *A. The Structure of the British Nationality Act of 1918 and the Operation of the Committee*

The 1918 BNSA amendments contained a number of different provisions under which the Home Office could revoke a certificate of denaturalization. The different sections of the statute were governed by different legal standards, and were subject to a number of different procedural requirements. It is, therefore, useful to provide a brief overview of the structure of the act.

#### *1. The automatic review of the naturalizations of citizens of a hostile power*

First, a new Section 3 was added to the Nationality Act, which provided for an automatic review by the committee of any certificate of naturalization that had been granted “during the present war” to anyone who had formerly been a citizen of a hostile power.<sup>60</sup> The committee reviewed naturalizations mainly by evaluating a comprehensive questionnaire filled out by each respondent. Subjects whose naturalizations were reviewed under this provision had the right to legal representation if they desired.<sup>61</sup> Very few certificates had been issued to citizens of hostile powers since August 1914,<sup>62</sup> and of the 207 certificates reviewed under this provision, only 15 were revoked.<sup>63</sup> As the committee observed in its first report to the home secretary, “our decision was often determined, not by anything appearing against the holder of the Certificate, but on the ground of insufficient merits. The great majority of the grantees had well founded claims to exceptional treatment. A certain proportion consisted of persons who, while technically of enemy origin, proved to belong to subject races which by the general course of policy during the war were treated as friendly to the Allies (Alsations, Danes, Armenians and so forth).”<sup>64</sup>

58. *Deprivation of Citizenship*, 4 (n.d.) (ALN 7/10/2) (BNA).

59. *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (Norwich: Home Office, 2002), §2.22.

60. The following are the official dates on which hostile nations declared war with Great Britain: Austria-Hungary, August 1 1914; Germany, August 4, 1914; Ottoman Empire, November 5, 1914; Bulgaria, October 16, 1915.

61. Letter to the Right Honourable The Secretary of State for the Home Department (1919) (HO144-13377) (BNA).

62. For example, from August 4, 1914 to the end of the year, ninety-seven Germans and thirty Austrians were granted certificates. Bird, *Control of Civilian Enemy Aliens*, 239.

63. A total of 178 certificates were continued and fourteen respondents were dead.

64. Letter to the Right Honourable The Secretary of State for the Home Department (1919) (HO144-13377) (BNA).

## 2. Substantive provisions of Section 7 of the amended act

The most important provisions of the BNSA established the power of the home secretary to revoke the citizenship of any naturalized alien at any time for committing a defined set of offenses. The “primary and permanent function of the Committee”<sup>65</sup> was to deal with denaturalizations initiated under these provisions, which were contained in Section 7 of the amended act.

Sections 7(1) and 7(2) together provided seven separate circumstances under which the Home Office could deprive naturalized subjects of their citizenship. Section 7(1) directed the home secretary to revoke certificates when the certificate had been obtained as a result of “false representation or fraud,” or by “concealment of material facts.” It also permitted denaturalization of those subjects who had shown themselves “by act or speech to be disloyal or disaffected to His Majesty.” Section 7(2) directed revocation where the home secretary could prove one of five specified offenses: unlawfully trading or communicating “with the enemy or with the subject of an enemy state” during wartime (Subsection 7(2)(a)), being sentenced to a term of imprisonment of not less than twelve months within five years of the grant of naturalization (Subsection 7(2)(b)), being “not of good character” at the date of naturalization (Subsection 7(2)(c)), being absent from the United Kingdom or its dominions for more than 7 years following the date of naturalization (Subsection 7(2)(d)), or remaining a subject of a nation that was at war with the United Kingdom (Subsection 7(2)(e)). In order to make a deprivation under Section 7(2), the home secretary was required, once he had proven the underlying facts of one of the five enumerated offenses, to further prove that continuance of the certificate of naturalization would be “not conducive to the public good.”

Lastly, Section 7(A) of the act provided that the secretary of state “may by order direct” that the wife and minor children of any person deprived of citizenship under the BNSA lose their citizenship and “thereupon become an alien.” The act required the secretary of state to make an affirmative, additional order to revoke the citizenship of any of a respondent’s family members. Notably, the home secretary was permitted to deprive the wife of the respondent of her citizenship even if she was “at birth a British subject,” although it required him to make the additional finding that, if the wife had been a naturalized subject, she could have been deprived of citizenship independently under one of the subsections of Section 7.<sup>66</sup>

65. *Ibid.*

66. There is no such a limitation to the discretion of the secretary of state with regard to the children. See J. Mervyn Jones, *British Nationality Law and Practice* (Oxford: Clarendon

### *3. The powers of the committee*

Many portions of Section 7 appeared to delegate plenary power to the home secretary to revoke certificates if he determined that a particular provision of the law was applicable. The plain text of both 7(1) and 7(2) directed the home secretary to revoke a certificate in any circumstance in which he was “satisfied” that the statutory criteria for denaturalization had been met. However, under Section 7(3), denaturalization orders were still to be reviewed by outside authorities.<sup>67</sup> That section directed the secretary to notify any person whom he intended to denaturalize under 7(1), or Subsections (a) (for unlawfully trading or communicating “with the enemy or with the subject of an enemy state” during wartime), (c) (for being “not of good character” at the date of naturalization), or (e) (for remaining a subject of a nation that was at war with the United Kingdom) of 7(2), and provide them with an opportunity to seek review by an independent judicial body: either the independent committee established by the Home Office or, at the discretion of the home secretary, the High Court. Section 7(3) left it to the discretion of the home secretary whether or not to refer denaturalizations made under 7(2)(b) (for imprisonment for more than 5 years) or 7(2)(d) (for being of bad character at the time of naturalization) for external review.

Thus, revocation of citizenship for naturalized citizens could follow one of three procedural paths. In cases involving fraud or disloyalty, the home secretary had discretionary power over denaturalization procedure. He had no legal obligation to consult the committee regarding his decision unless a specific request was made by the respondent, and was not required to make the additional finding that deprivation would further the “public good.” In the case of Sections 7(2)(b), (d), and (f), the home secretary had formal discretionary power. He was under no legal obligation to consult the committee, but his substantive consideration of cases was constrained by the statutory requirement that he consider the “public good.” Lastly, in the case of Sections 7(2)(a), (c), and (e), the home secretary was both required to refer denaturalization cases to the committee, and required to make his decision with reference to the “public good,” as defined by statute.

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Press, 1947), 116. Unlike Section 7, Section 7A did not require the home secretary to refer a matter to the committee before rendering a decision.

67. Section 7(3) read: “The Secretary of State may, if he thinks fit, before making an order under this section refer the case for such inquiry as is hereinafter specified, and in any case to which sub-section (1) or paragraph (a), (c), or (e) of sub-section (2) of this section applies, the Secretary of State shall, by notice given to or sent to the last-known address of the holder of the certificate, give him an opportunity of claiming that the case be referred for such inquiry, and if the holder so claims in accordance with the notice the Secretary of State shall refer the case for inquiry accordingly.”



But although Section 7(3) defined the circumstances under which outside authorities would review denaturalization decisions, it did not afford those reviews any legal weight. The opinions of courts and the committee were entirely advisory. Under the terms of the statute, the home secretary was free to ignore their recommendations. Moreover, the secretary of state was empowered to write many of the rules governing the conduct of committee inquiries. Nonetheless, the statute did seem to imply that the committee's review of these decisions was a serious matter. In a number of respects, it treated the committee as the equivalent of a judicial court. Under Section 7(4), the secretary was free to choose between referring a case to the committee or to the High Court. Moreover, the statute required the committee to be chaired by a person who had held "high judicial office." It also granted the committee "all such powers, rights, and privileges as are vested in the High Court or in any judge thereof on the occasion of any action," with respect to enforcing the attendance of witnesses, compelling the production of documents, and punishing contempt.

As its records reveal, the committee took this equivalence to heart and began behaving like a court almost as soon as it was established in August of 1918. It recognized that it was overseeing the implementation of what was, in effect, a criminal statute with severe penalties attached to it. For that reason, it took its responsibility seriously. As the committee explained in its first report to the home secretary:

Section 7. . . invests the Committee with a function that is properly described as *judicial*. It requires, not a simple yea or nay to a general question, but reasoned answers to specific questions. It is in substance, though not in form, a penal enactment, inasmuch as the matters which the Committee is required to investigate are in effect offenses to which a severe—and indeed unique—penalty is attached. In these circumstances it was inevitable that proceedings under Section 7 should be conducted with more formality than those conducted under Section 3 [the section of the BNSA requiring administrative review of certificates granted during the war].<sup>68</sup>

The committee's chairmanship was originally held by Justice James Atkin, but he resigned the office on being appointed to the High Court in 1918. He was succeeded by Justice Arthur Salter, a High Court justice who had formerly served as an MP for Basingstoke.<sup>69</sup> Its other members were Viscount Hambleden, a member of the House of Lords, and Judge Radcliffe, KC a county court judge.<sup>70</sup>

68. Draft Report of the Committee to the Home Secretary (1919) (HO 144-13377) (BNA).

69. See Letter to the Right Honourable The Secretary of State for the Home Department (1919) (HO144-13377) (BNA).

70. *Ibid.*

The committee was given considerable discretion in determining how to conduct itself. The home secretary established rules of procedure, but these were “very widely drafted” and imposed few restrictions on how the committee could manage its proceedings.<sup>71</sup> The one substantive requirement imposed by the secretary’s rules was that the committee was not to be bound by the common law rules of evidence. The home secretary expressly permitted the use of evidence, such as hearsay, that was not generally admissible in judicial courts.<sup>72</sup> The committee also usually did not place witnesses under oath. As it explained, “if in the same case some evidence be on oath and some not, the sworn evidence would tend to assume a privileged character, which we conceive to be inconsistent with the spirit of our instructions vis to hold an unrestricted inquiry in which each piece of evidence is to be judged on its intrinsic merits.”<sup>73</sup>

But aside from the exceptions explicitly created by statute or by the home secretary, the committee considered its work to be grounded not in political objectives, but in the rule of law. It explained in its first memorandum to the Home Office that “the Secretary of State’s Rules, while they modify, do not in our view abrogate the general principles of judicial inquiry as understood in this country.”<sup>74</sup> In all cases in which the secretary had not explicitly modified the traditional procedural protections of legal courts, the committee made clear that it would be guided by its judicial experience. And indeed, even where the secretary did modify traditional protections, the committee tended to read those modifications narrowly. For example, although the committee was willing to act on hearsay, unsworn testimony, and other evidence that was not admissible in a court of law, it read its own limitations into this rule. As its memorandum reported, “we have always refused to act on the uncorroborated statement of anonymous informers; or on mere suspicion, however, strong, that falls short of proof in any reasonable sense of the word.”<sup>75</sup>

Likewise, although the committee was empowered to choose whether to sit in public or in camera, its usual practice was to sit in camera. It recognized that this was a deviation from judicial practice, and that critics might urge that “proceedings involving a grave *deminutio canitit* to a British citizen ought to be conducted in open Court.”<sup>76</sup> It maintained, however, that the arrangement was necessary to preserve both national security and, in

71. Draft Report of the Committee (1919) (HO144-13377) (BNA).

72. *Ibid.*

73. *Ibid.*

74. *Ibid.*

75. *Ibid.*

76. *Ibid.*

many cases, the privacy of respondents who were later exonerated.<sup>77</sup> But the rule was not iron clad. In several important instances, the committee did choose to hold open proceedings. These were cases in which the denaturalization at issue had become a matter of intense public debate, and in which the committee reasoned that hearing evidence in open court would reduce, rather than exacerbate, prejudice to the parties involved—and, crucially, force the Home Office to justify spurious charges not only to the committee, but the public.

Even early in its history, the Home Office recognized that it should treat the committee less as a subservient administrative body and more as a judicial entity. Respondents were permitted to be defended by legal counsel, and in an attempt at neutrality, and at replicating a traditional prosecution, the Home Office did not argue its own recommendations before the committee. That role was fulfilled by the treasury solicitor. Each case came before the committee via a letter of reference from the secretary of state outlining the grounds for the potential revocation order, and requesting that the committee investigate and advise. The prosecution of the charge was then taken up by the Treasury Solicitor's Department, who formulated the points of charge (similar to the modern form of indictment), which concisely set out the specific facts that were alleged in support of revocation, in consultation with the Home Office, the police, MI5, and the secretary of the committee.<sup>78</sup> These points of charge were enumerated in a Notice of Revocation Proceedings sent to the individual facing denaturalization.

By the end of the First World War, the Home Office had begun to view the decisions of the committee much as it would a body of common law. During the Imperial Conference of 1923, Sir John Pedder of the Home Office explained to representatives from the Commonwealth nations that “one advantage of [Britain's] system [of denaturalization] was that it led to the growth of a body of uniform practice in the interpretation of the Statute. The record of the experience in the United Kingdom provides guiding material of great value.”<sup>79</sup> The attorney general likewise noted the “complexity of the questions with which the Revocation Committee have to deal, as calling for a high level of judicial capacity, and demanding the application of accumulated precedent.”<sup>80</sup>

77. *Ibid.*

78. Notes on the Practice and Procedure Relating to the Revocation of Certificates of Naturalisation Under Section 7 of the British Nationality and Status of Aliens Act, 1914, §7 (undated) (HO 213/1573) (BNA).

79. Report of the Imperial Conference of 1923, Nationality Committee (HO144-13377) (BNA).

80. *Ibid.*

The Home Office came to regard the committee's legal judgments with enough deference that it began seeking out its recommendations even when it was not required to. This precedent was established in 1918 in the case of Otto Theodore Herhausen, who was the first naturalized subject ever to be threatened with revocation under the disloyalty provision of Section 7(1). The case presented two difficult questions about the meaning of the act. One was procedural. Under Section 7(3), reference of the case to the committee was permissive: certificate holders could request a hearing, but if they did not, the home secretary was not obliged to hold one. Herhausen had not requested a hearing, and the Home Office was, therefore, in the awkward position of either holding one anyway, or making its first deprivation under Section 7(1) without any independent legal opinion. The second question was more substantive. It was not at all clear what it meant to show oneself to be "disaffected or disloyal" to the crown, or what degree of disloyalty was sufficient to merit deprivation of citizenship. No further elaboration was provided by the act.<sup>81</sup>

The Home Office, in consultation with the treasury solicitor, adopted a telling solution to these problems. First, the secretary decided that although "in strictness...reference would not, at the moment, be obligatory," nevertheless, "in cases of doubt," it was his "desire...that the facts should be investigated by the Committee, whether the grantee does or does not choose to come forward prepared to prove the propriety of his conduct."<sup>82</sup> Second, he determined that although "the statute does not contain any provision as to the report of the committee or what is to be done with it," there was "no doubt that the finding will be aye or nay whether the grantee has shown himself by act or speech to be disaffected or disloyal, and the Secretary of State will accept such finding as informing his mind on the question on which he has to be satisfied."<sup>83</sup> Therefore, at least on points of procedure, the Home Office was inclined to seek out the committee's judgment rather than construe its own statutory mandate too broadly.

But despite this early deference, it still was not clear in 1918 what power the committee had to act as a meaningful check on the home secretary's denaturalization authority. The Home Office might be willing to allow the committee to conduct itself like a court, but what if the committee, in its quasijudicial capacity, were to disagree with the home secretary about the proper construction of a provision of the denaturalization law? Or what if it were to find, in a politically important case, that the Home

81. Case of Otto Theodore Herhausen, Proposed Denaturalization (1918) (TS27-1428) (BNA).

82. *Ibid.*

83. *Ibid.*

Office had not met its evidentiary burden? As will be seen in the following section, through a series of deft political maneuvers and rights-protective interpretations of various provisions of Section 7, the committee managed within its first year of operation to establish itself as a fully independent body with the power to override the home secretary in controversial cases.

*B. The Committee Uses Its Political Power to Establish Itself as an Authoritative Judicial Body*

Legally, the committee was an unusual entity. It was relatively common for Parliament to establish semigovernmental committees of citizens and subject matter experts to advise Whitehall on particular areas of policy. In 1918, these included the Consultative Committee of the Board of Education, the Advisory Committee on Health Insurance, and the Consumers Council of the Ministry of Food, among others.<sup>84</sup> But the BNSA committee did not “advise” on broad questions of policy. Rather, it issued advisory opinions in hundreds of individual cases. In this way, it somewhat resembled the boards that were established by the Aliens Act of 1905 and similar acts to hear appeals from immigrants denied entrance to Britain, or ordered to be expelled.<sup>85</sup> The committee issued opinions in most cases only after reviewing evidence, and hearing argument from the treasury solicitor and the party whose citizenship was in jeopardy. Moreover, it based its opinions on its own interpretation of Section 7 of the BNSA, which it often memorialized in written opinions.

In cases in which it felt that the home secretary was abusing his denaturalization authority, the committee had the discretion to hold its hearings in open court, to write legal opinions condemning the Home Office’s interpretation of a particular provision of the Nationality Act, and to recommend publicly against deprivation of citizenship in controversial cases. These decisions could be embarrassing and politically damaging. Whitehall feared accusations that it was acting arbitrarily, and would seek to avoid such imputations, in effect conforming to the legal recommendations of the committee.

The committee began its efforts to rein in the Home Office almost as soon as the amended Nationality Act was passed. In the years during and immediately after the First World War, the Home Office exercised its denaturalization power aggressively. Most of the citizens targeted for

84. Ministry of Reconstruction, “Report of the Machinery of Government Committee,” 1918, 11–12.

85. Cedric H.R. Thornberry, “Dr. Soblen and the Alien Law of the U.K.,” *The International and Comparative Law Quarterly* 12 (1963): 429.

denaturalization in the early years of the BNSA were residents of countries that could be categorized as allied to the Central Powers. From 1918 to the end of 1921, the committee heard a total of 285 cases.<sup>86</sup> The majority of these cases (213) were reviewed automatically by the committee as required by Section 3 of the 1918 Act. Seventy-five of them were referred to the committee by the Home Office under some provision contained in Section 7, of which the committee recommended revocation in thirty-nine.<sup>87</sup> In total, between 1918 and 1921, ninety-seven revocations were decided, of which forty-four were not reviewed by the committee and were directly dealt with by the secretary of state. Over the next decade, between January 1, 1918 and December 31, 1930, 449 revocations would be made. Approximately 220 of the 449 denaturalized individuals were the wives and children of the person being investigated, meaning that there were roughly 229 denaturalization cases undertaken during this period that resulted in the loss of citizenship of one or more individuals.<sup>88</sup>

This push for denaturalization provoked certificate holders to seek refuge in committee hearings. The first respondent to recognize the potential power of these hearings to counteract the aggression of the Home Office was Philip Laszlo de Lombos. Laszlo was a naturalized Hungarian immigrant and a prominent portrait painter, and was married to Lucy Guinness of the wealthy Guinness brewing family. He was interned from 1916 onward on charges of disloyalty. From 1916 through 1919, the press published accusations against him that were, in the words of the *Manchester Guardian*, a “society sensation,”<sup>89</sup> involving charges of treason and claims that he was signaling German ships from his townhome in London.<sup>90</sup> Laszlo’s case emerged at the same time as accusations that Caroline Hanneman, a German immigrant and personal friend of Lady Asquith, was also acting as a German spy. Together, the two cases created a suspicion that hostile Germans had penetrated the highest echelons of British society.

86. Letter to the Right Honourable The Secretary of State for the Home Department (1919) (HO144-13377) (BNA).

87. *Ibid.*

88. List of Persons whose Certificates of Naturalization have been revoked by the Secretary of State for the Home Department under the provisions of the British Nationality and Status of Aliens Act 1914–1922, during the period 1st January, 1918 to 31st December, 1930, HO 213/1573-2 (BNA).

89. “Court Painter Interned: Society Sensation,” *The Manchester Guardian*, September 24, 1917, 6.

90. Phil Tomaselli, *The Spy Who Painted the Queen: The Secret Case Against Philip de Laszlo* (Gloucestershire: The History Press, 2015).

Two Conservatives on the far right wing of the party, MP Horatio Bottomley and MP Noel Pemberton Billing, used the Laszlo and Hanneman cases to impute disloyalty to the government. Bottomley made a show of emphasizing that “Laszlo was personally vouched for by men of high position, and Caroline Hanneman, who lived for six months at 10, Downing Street...was also personally vouched for,” and publicly demanding that the Home Office turn over the names of those who had provided references for them.<sup>91</sup> Pemberton Billing went farther, asserting that “we have Prime Ministers of this country harbouring German spies, not only in their own family, but at their official residence,”<sup>92</sup> and referring to the Home Office as the “Hun Office” for its supposed failure to adequately investigate disloyal foreigners.<sup>93</sup>

The Home Office attempted to deflect these accusations by initiating denaturalization proceedings against Laszlo under the disloyalty provision of Section 7(1). The secretary of state charged that he had, on a number of occasions, expressed sentiments that were critical of Britain and its allies, and that he had intentionally circumvented wartime mail regulations by communicating with and sending money to his family in Hungary.<sup>94</sup> The government’s main evidence appears to have been a series of letters that Laszlo had written to his brother in Hungary, indicating that his primary motivation for seeking naturalization had been the welfare of his children, rather than a genuine desire to become British.<sup>95</sup> Laszlo retained former Attorney General and Home Secretary Sir John Simon to represent him in proceedings before the committee.

Laszlo felt that he stood little chance of proving his innocence in a closed proceeding. Regardless of the outcome, the highly publicized accusations against him were likely to ruin his reputation and career unless they were rebutted in an equally public manner. Simon, therefore, requested an open hearing, in which the Home Office would be required to present all of the evidence against him, and present him with a public opportunity to rebut it. His request to the committee framed the importance of allowing publicity in such cases:

91. HC Deb 15 April 1919 vol. 114 c. 2761. The Home Office never did agree to release the names of Hanneman’s sponsors. See HC Deb 01 May 1919 vol. 115 cc. 306–7.

92. HC Deb 15 April 1919 vol. 114 c. 2786.

93. “Downing Street Myth: Baseless Attack on Mr. Asquith: The Hanneman Case,” *The Manchester Guardian*, May 7, 1919, 6.

94. Transcripts of Hearing in the Case of Alexius Laszlo de Lombo, June 4, 1919 (TS27-69) (BNA).

95. Decision of the Committee in the Case of Philip Alexius Laszlo de Lombos, 1919 (TS27-69) (BNA).

[T]his is a case which has been publicly discussed in both Houses of Parliament; prominent members have taken part in the debates; Mr. de Laszlo's name and supposed conduct have been specifically referred to in terms which cast the very gravest reflection upon him; and the public has drawn the conclusion that he is nothing less than a traitor. This Parliamentary discussion has given the matter, of course, world-wide publicity. The dreadful impression thus created has been so widely and publicly made that Mr. de Laszlo can only clear himself by an equally public investigation in a Court of Justice. He has nothing to conceal, and invites the most open and complete enquiry.<sup>96</sup>

The Home Office did not agree to a public trial in a Court of Justice, but, perhaps sensing the risk of insisting on a secret trial after making such public accusations, did consent to an open hearing before the committee.

The result was a political embarrassment for the government. The Home Office and the treasury solicitor failed to put forward convincing evidence of Laszlo's alleged disloyalty. The hearing drew a number of prominent witnesses and considerable press attention. Ultimately, the committee recommended against deprivation after only fifteen minutes of deliberation.<sup>97</sup> Moreover, it included in its report, which was delivered publicly by the head of the committee over 1 hour and 15 minutes, a rebuke to the Home Office. "The withdrawal of a Certificate of Naturalisation from a man is a serious and permanent matter," the report concluded "and in considering a question of that kind, especially when public danger no longer exists, the person who is threatened with loss of his citizenship is entitled to ask that the matters relied upon against him shall be definitely stated and in substance definitely proved as charges."<sup>98</sup> The government had not met its evidentiary burden, and was served with a damaging public reversal. As the *Guardian* summarized, "the Committee had carefully considered. . .270 printed pages of letters, and it was impossible to imagine anything more innocent than the correspondence."<sup>99</sup>

The Laszlo case established the significance of the committee in several ways: It framed the stakes of denaturalization proceedings, and the severity of the potential harm to certificate holders; it established the committee as an independent body capable of resisting the political pressure of the Home Office; and, perhaps most importantly, it solidified the power of the committee to dispense political punishment to the Home Office when, in its

96. Transcripts of Hearing in the Case of Alexius Laszlo de Lombo, June 4, 1919 (TS27-69) (BNA).

97. "Mr. De Laszlo to Remain Naturalised," *The Manchester Guardian*, June 28, 1919, 9.

98. Transcripts of Hearing in the Case of Alexius Laszlo de Lombo, June 4, 1919 (TS27-69) (BNA).

99. "Mr. De Laszlo to Remain Naturalised," *The Manchester Guardian*, June 28, 1919, 9.



opinion, attempts at revocation transgressed the appropriate boundaries of the BNSA.

But just as the committee was capable of inflicting political embarrassment in cases in which it disagreed with the Home Office, it was also capable of providing political validation in cases in which it agreed. The most important example of the latter dynamic was the highly publicized case against Sir Edgar Speyer. Speyer was a wealthy German Jew, and a partner in his father's financial firm, Speyer Brothers, who had become a member of the Privy Council in 1909.<sup>100</sup> After the outbreak of war, Speyer became a target of suspicion and was accused of treason in the British press, putatively based on his firm's relationships with German banks. His children were forced to withdraw from school, and his wife was expelled from a number of social organizations as a result of the public campaign against him.<sup>101</sup> The political fight over Speyer's loyalty lasted for several years. In 1915, under increasing public pressure, Speyer attempted to resign the Privy Council, but Prime Minister Asquith refused. "I have known you long and well enough," Asquith replied to Speyer in an open letter, "to estimate at their true value these baseless and malignant imputations upon your loyalty to the British Crown."<sup>102</sup> However, as the war dragged on, and as the Asquith government began to lose support, the Speyer affair became more damaging. Conservative MPs used it to simultaneously attack the loyalty of the government and the wisdom of its wartime security policies. The *Guardian* later noted that the scandal over Speyer's presence in the Privy Council had been one of the motivating factors in the passage of the 1918 BNSA Amendments.<sup>103</sup>

Speyer's was the only case of denaturalization that attracted more public attention than Laszlo's, and the Home Office was fully aware of the need to secure a victory before the committee. The home secretary began strategizing shortly after the passage of the amended Nationality Act. Minutes from October of 1918 record the Home Office's wary observation that Speyer's was "a very difficult and important [case]" that was "likely. . .to be fought hard."<sup>104</sup> A memorandum to Sir Eric Drummond in the Foreign Office sought his help in gathering evidence from abroad, noting that "it is

100. "Sir Edgar Speyer: Name Struck Off Privy Council List: Naturalisation Order Revoked," *The Manchester Guardian*, December 14, 1921, 7.

101. Edward Frederic Benson, *As We Are: A Modern Revue* (London: Longman, Green & Co., 1932), 249.

102. "Sir Edgar Speyer: Name Struck Off Privy Council List: Naturalisation Order Revoked," *The Manchester Guardian*, December 14, 1921, 7.

103. "Our London Correspondence: The Case of Sir Edgar Speyer," *The Manchester Guardian*, December 14, 1921, 6.

104. Minutes, Home Office, October 31, 1918 (B11925/18) (BNA).

desirable in Sir Edgar Speyer's case to obtain all the available evidence for the guidance of the Committee."<sup>105</sup> In contrast to its less diligent work on the Laszlo case, at Speyer's hearing the treasury solicitor and the Home Office presented carefully compiled details of Speyer's alleged trading with the Central Powers during the war, and his attempts to evade the British censors. It was rewarded with a favorable ruling from the committee, reported in the *London Gazette*.<sup>106</sup> The report reprinted the Home Office's evidence in great detail, and the findings were circulated by much of the national press.<sup>107</sup> Although the *Guardian* denounced the Home Office's accusations against Speyer as unfounded,<sup>108</sup> Parliament and much of the public were satisfied that the secretary had adequately proven his case.

Most naturalized subjects were not prominent public figures as Laszlo or Speyer were, and the actual public hearing of cases was exceedingly rare. Home Office memoranda note that the committee consistently advocated for more publicity in denaturalization hearings, either in the form of public access to the hearings themselves, as had been done in Laszlo's case, or at the very least in the form of the publication of the committee's reports, as had been done in Speyer's. But the only other case before the end of the Second World War in which the committee appears to have publicly announced its findings was in the case of Hugo Friedberger, who in 1942 was threatened with denaturalization after failing to report £93,000 in income in violation of the Defence Finance Regulations.<sup>109</sup> In Friedberger's case, the committee again dealt the Home Office a public defeat by declining to find that Friedberger's failure to report income, after 41 years of lawful residence in the United Kingdom, constituted behavior that was sufficiently "disloyal" to merit denaturalization.<sup>110</sup> Although nearly all cases were heard in camera under the 1918 Act, after the Second World War, the Home Office would eventually relent

105. Letter to Sir Eric Drummond, September 17, 1918 (BNA).

106. "British Nationality and Status of Aliens Acts, 1914 and 1918: In the Matter of Sir Edgar Speyer," *The London Gazette*, No. 32547, December 13, 1921.

107. *The Times* of London published an extensive review of the evidence presented to the Committee. "Speyer Report Revelations: Disaffected and Disloyal: Trading with the Enemy," *The Times*, January 7, 1922, 5; see also "Disloyal!" *Daily Mail* (Hull, England), December 14, 1921, 7; "The Degradation of Sir E. Speyer," *Nottingham Evening Post*, December 14, 1921, 1.

108. See, for example, "British Partners on Sir E. Speyer's Record," *The Manchester Guardian*, January 7, 1922, 10.

109. "Friedberger's Case: Naturalisation Stands," *The Manchester Guardian*, April 9, 1942, 7.

110. *Ibid.*

and allow cases to be heard by default in open court. In 1947, the committee stressed again “the desirability of hearing cases in public unless there are good reasons to the contrary.”<sup>111</sup> Later that year, it again “expressed doubt as to whether sufficient publicity was given to decisions in the revocation cases,” and “doubted whether the brief, official announcement in the London Gazette was sufficient to bring notice to naturalised persons of their obligations and the conduct which is expected of them.”<sup>112</sup> But even though in the interwar period actual public hearings were rare, the public stature of the committee, and its capacity to cause embarrassment to the Home Office by opposing its decisions, had an important impact on the conduct of revocation proceedings. Indeed, by the middle of the 1920s, the home secretary often chose to dismiss cases where the committee’s approval was doubtful, rather than submit them and risk being overruled.<sup>113</sup>

### *C. The Committee Uses Its Power to Protect the Rights of Naturalized Subjects*

The Home Office frequently brought cases to the committee that did not have a clear resolution under the text of Section 7. Sections 7(1), 7(2), and 7(3) all contained key phrases whose meaning was not readily apparent. The definitions of “disloyalty” and “disaffection” in Section 7(1) had been points of contention during legislative debates, and the final statutory text provided no further guidance on their meaning. Likewise, the definitions of “fraud” and “material misrepresentation” were open to debate.

In Section 7(2), a number of questions would emerge as to the meaning of the specific offenses defined in Subsections (a) through (e). Even more contentious was the meaning of the phrase “not conducive to the public good,” which was the statutory language that governed denaturalization under any subsection of Section 7(2). If these provisions were interpreted in ways that expanded the Home Office’s authority to revoke certificates—for example, by lowering the burden of proof for the crown in satisfying a particular statutory requirement, raising procedural bars to mounting a defense, or expanding the range of circumstances under which a certificate could be revoked—the result might have been an arbitrary denaturalization regime, in which the secretary of state possessed near plenary power to deprive citizens of their nationality for minor infractions.

111. Notes on the Practice and Procedure Relating to the Revocation of Certificates of Naturalisation Under Section 7 of the British Nationality and Status of Aliens Act, 1914, §7 (n.d.) (HO 213/1573) (BNA).

112. *Ibid.*

113. *Ibid.*

The committee consistently rejected invitations to expand the discretionary power of the Home Office in such ways. In a number of important decisions, the committee gave rights-protective interpretations to many of the phrases that Parliament had left ambiguous. These interpretations combined to significantly constrain the power of the home secretary to revoke certificates. The committee, staffed by experienced jurists, began to require the crown to meet the same substantive burdens, and to observe the same procedural requirements, which it would be required to honor in a court of law.

*1. The committee's influence on the interpretation of Section 7(2)*

One of the most important interpretative maneuvers of the early committee was its rights-protective reading of the phrase “not conducive to the public good,” found at the end of Section 7(2) of the amended Nationality Act of 1918. This phrase was one of the most critical in the language of the new statute, because it defined the substantive showing that the crown was required to make before it could denaturalize a British citizen under any subsection of Section 7(2). The requirement was an important gatekeeper. The vast majority of denaturalizations between 1918 and 1948 were made under one of these subsections, and as a result, the treasury solicitor was required to establish that deprivation of a certificate would serve the public good in a significant number of cases. However, the clause was vague, and its interpretation proved “a matter of some difficulty” to the Home Office and the committee.<sup>114</sup> Its wording was ambiguous on several important points. As an initial matter, it was not clear whether the committee was intended to advise on the question of the public good at all. Section 7 (3), which governed the circumstances under which cases were referred to the committee, only stated that the secretary was required to refer cases arising under “sub-section (1) or paragraph (a), (c), or (e) of sub-section (2)” of the act. Because the “public good” requirement was actually in the main text of Section 7(2), and not in the text of any of the subsections, it was arguable that the Home Office was not required to submit questions of the public good to the committee.

The treasury solicitor appears to have suggested that the statute only required the committee to determine whether factual predicates of Subsections (a) through (e) had been established, and that once one of those elements was proven it was entirely within the discretion of the secretary of state to determine the question of the public good. The committee

114. Section 7(E) of the British Nationality and Status of Aliens Act, 1914 (as amended) Regarding the Continuance of a Certificate of Naturalisation and the Public Good (HO144-13377) (BNA).

rejected this argument in one of its first communications with the Home Office. Although the committee noted in its memorandum that “the matter is by no means free from doubt,” it maintained that it did have the authority to define the “public good,” and “accordingly [would] advise on this vague and difficult question.”<sup>115</sup> It simultaneously began including, in its rulings on cases arising under Section 7(2), advice on whether or not the public good requirement had been met, effectively leveraging its position to expand its scope of review.

The phrase presented a number of substantive difficulties as well. Although “all the other matters that the Secretary of State and the Committee are required to take into account are concrete and precise and envisage primarily the individual concerned,” the concluding words of Section 7(2) “leave this concrete ground and enter the vague and debatable region of ‘the public good’ and what is ‘not conducive’ thereto.”<sup>116</sup> In particular, the statute left two crucial questions unanswered. First, what did it mean for continuation of a certificate to be “not conducive to the public good”? Second, who bore the burden of proof: the respondent, or the crown? If it was unclear as to whether deprivation would serve the public good, would the default position be to retain the respondent’s certificate, or to revoke it?

These questions had two possible answers. One, urged by the treasury solicitor in a series of early cases before the committee, would have interpreted the phrase “not conducive to the public” to mean that “for the certificate to be revocable it must be shown in each case that the continuance of the certificate does not confer some public advantage which would be lost by the revocation.”<sup>117</sup> The other possible answer was that revocation would occur only if the crown could produce “evidence that the continuance of the certificate is in some definite way detrimental to public advantage.”<sup>118</sup> In other words, in order to revoke a certificate, it would have to be shown that not only had respondents violated one of the subsections of 7 (2), but also that if they retained their certificate, the British public would suffer as a result.

The committee recognized that choosing the interpretation urged by the treasury solicitor would have yielded a harsh result. In the vast majority of cases, those threatened with revocation were from modest backgrounds and

115. Letter to the Right Honourable The Secretary of State for the Home Department (HO144-13377) (BNA).

116. British Nationality & Status of Aliens Acts 1914 & 1918 (HO144-13377) (BNA).

117. Section 7(E) of the British Nationality and Status of Aliens Act, 1914 (as amended) Regarding the Continuance of a Certificate of Naturalisation and the Public Good (HO144-13377) (BNA).

118. *Ibid.*

practiced ordinary trades. As the Home Office observed in a memorandum summarizing the work of the committee, it was “obvious” that cases in which an affirmative benefit were conferred by a person’s citizenship “must be rare. . .and if the discretion conferred on the Committee by the subsection were limited to them it would be inoperative in the common cases where there is no positive evidence one way or another.”

To the committee, such a demanding standard was not consistent with the intent of Parliament. In some early cases, the committee had intimated that it might accept the Home Office’s reading of the statute, requiring that a respondent prove some exceptional contribution to British society. In the case of G.C.H. Wichmann, for example, the committee refused to recommend denaturalization on the ground that doing so would be harmful to the public good. Wichmann had been found to have traded with Germany during the war. But, because his firm was a “going concern,” the committee held that the public good would be harmed by revoking his certificate. It noted that the business was “likely to regain its former position. . .and it is largely dependent on Wichmann’s management,” and that therefore the nation’s economic interests might be harmed by interfering with its management.<sup>119</sup>

But when the treasury solicitor urged the same construction more aggressively in a later case, involving an immigrant named Jacob Fabian, the committee definitively rejected it. Fabian did not dispute that he had been absent from the dominions for a period of more than 7 years, in violation of Section 7(2)(e). The only question at issue was whether deprivation of his citizenship would serve the “public good.” The Treasury had not introduced any evidence to suggest that a continuation of Fabian’s certificate would harm the public welfare. Instead, it urged the same rule it had urged in Wichmann’s case: that the burden under Section 7(2) rested on the respondent to prove that his citizenship provided some public advantage. In Fabian’s case, rather than avoiding the question as it had in Wichmann’s, the committee rejected the Treasury’s position outright, stating that: “In our opinion the statute imposes on those who suggest the revocation of the certificate under Sec. 7(2) the onus of showing that the continuance of the certificate is not conducive to the public good. In the present case we do not think the absence in itself any ground for holding that the continuance of the certificate is not conducive to the public good.”<sup>120</sup>

119. Letter to the Right Honourable The Secretary of State for the Home Department (HO144-13377) (BNA).

120. British Nationality & Status of Aliens Acts 1914 & 1918 (HO144-13377) (BNA). Moreover, the committee indicated that the harm to the public good had to be attributable to the respondent him- or herself. It appears that in papers filed with the committee, the Treasury suggested that Fabian’s “son, a person of no nationality, was of bad character

This rule was bolstered by several other opinions. The committee directly cited its Fabian decision as controlling precedent in a case called *Brassert*. In a case called *Behr*, the committee held that respondent's citizenship should not be revoked simply on the grounds that the continuance of the certificate was "not inconsistent with the public good." Likewise, in the case of a naturalized citizen named Job, the committee specifically stated that "it was admitted by counsel for the Treasury *that there was no evidence* that the continuance of the certificate is not conducive to the public good," and denied the revocation.<sup>121</sup> As the Home Office later recorded, "it is clear from the Committee's report in the case of Fabian that they expect some circumstances to be brought to their notice which establish that balance of public advantage is in favour of the revocation of the Certificate, and that they also consider that the onus of the showing that such circumstances exist, lies on the Crown."<sup>122</sup>

a. The specific subsections of Section 7(2)

In addition to its interpretation of the "public good" requirement of Section 7(2), the committee also resolved minor ambiguities in several of 7(2)'s specific subsections in ways that rendered denaturalization more difficult for the Home Office. In the years immediately following the end of the First World War, many attempts were made under Section 7(2)(f) to denaturalize immigrants who remained dual citizens of countries comprising the former Central Powers. Under the wording of 7(2)(f), a citizen could lose naturalization if that person remained "according to the law of a state at war with His Majesty a subject of that state." It was not clear from the language of this provision whether "remains. . .at war" implied that individuals could only be denaturalized if they remained subjects of a state currently at war with Britain, or whether they could be denaturalized under 7(2)(f) if they remained subjects of a state that had ever been at war Britain. The latter construction would have radically expanded the power of the Home Office to denaturalize foreign-born Britons. The secretary of state could revoke the certificate of a dual Austrian citizen, simply because that person

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and that if the father's certificate were revoked the authorities would have an opportunity of deporting the son." Although the committee did not directly address the question of whether this alone could satisfy the section's "public good" requirement, the Home Office recorded in a later memorandum that "the language of their report suggests that they would be disinclined to take so wide a view of the circumstances." *Ibid.*

121. *Ibid.*

122. Section 7(E) of the British Nationality and Status of Aliens Act, 1914 (as amended) Regarding the Continuance of a Certificate of Naturalisation and the Public Good (HO144-13377) (BNA).

remained a citizen of an “enemy” state even years after peace had been concluded.

The committee chose the more restrictive interpretation of this provision. “At first glance,” it conceded, “it might be thought that such is the effect of the words, and that any naturalized person who has retained allegiance to a state that at any time since the grant of the Certificate has been in a state of war with His Majesty continue indefinitely under a liability to have his certificate revoked.”<sup>123</sup> Yet it maintained that the word “‘remains,’ being in the present tense, is not apt for the expression of such an intention.”<sup>124</sup> Because it felt “bound to construe the statute strictly,” the committee concluded that “in our view paragraph (e) can apply only to a person who at the date of reference to the Committee is a subject of a state that is at that same date at war with His Majesty.”<sup>125</sup> It established this interpretation as controlling precedent in the case of Count Seilern-Aspang, a naturalized Austrian who had retained his Austro-Hungarian citizenship at the outbreak of the First World War.<sup>126</sup>

The committee exercised its interpretative authority to restrict the scope of various subsections of 7(2) in other subtle ways as well. For example, it held that in order to denaturalize a citizen under Section 7(2)(b), which provided for deprivation when a subject had been imprisoned for 12 or more months, the act only applied to prison terms of more than 12 months, and that the secretary could not aggregate shorter terms to denaturalize citizens for a series of petty offenses.<sup>127</sup> Likewise, by the late 1950s, the Home Office had developed a policy, based on committee precedent, that naturalized subjects could reside abroad for extended periods of time, as long as they maintained business or personal contact with

123. Draft Report of the Committee (HO144-13377) (BNA).

124. *Ibid.*

125. *Ibid.*

126. *Ibid.*

127. Home Office, *Deprivation of Citizenship of the United Kingdom and Colonies: A Digest of Home Office Practices*, §4(d)(1) (1961) (HO 213-1575) (BNA). Section 7(2)(b) was one of the subsections of the act that did not require committee review. When questions of statutory interpretation arose—such as whether shorter prison terms could be aggregated to meet the twelve-month threshold—the home secretary could in his discretion refer the question to the committee. But where a conviction was for more than twelve consecutive months, simple documentary proof of the sentence was required. Because these cases were purely administrative, the secretary did not bother to refer them for review. See Notes on the Practice and Procedure Relating to the Revocation of Certificates of Naturalisation Under Section 7 of the British Nationality and Status of Aliens Act, 1914, §5 & app. 15 (HO 213/1573)(BNA). After Britain became a signatory to the United Nations Convention on Statelessness, it abolished denaturalization for criminal convictions through a 1964 amendment to the law. See British Nationality (no. 2) Act 1964.



Britons on the mainland, without running afoul of Section 7(2), which permitted denaturalization when a subject had been absent from the United Kingdom for 7 years or more. As Sir Leslie Brass noted, it was unlikely that a deprivation under this Section based merely on a prolonged absence from Britain would meet the requirements of the act. Rather, some “additional factor” beyond residence abroad was required to justify deprivation.<sup>128</sup>

## *2. The committee's influence on the interpretation of Section 7(1)*

Section 7(1) of the Nationality Act of 1918 provided two circumstances under which certificates of naturalization could be revoked: disloyalty or disaffection to the Crown, as shown by act or speech, and fraud or concealment of material facts during the application for citizenship. Both terms were only vaguely defined by the 1918 statute.

### *a. Fraud*

Section 7(1) authorized the home secretary to make a revocation order in cases in which a respondent had acquired his citizenship by “fraud or misrepresentation” during the application process. Yet it was not clear what constituted “fraud” or “misrepresentation.” If a respondent had lied about, or merely failed to disclose, some fact during the naturalization process, would that alone serve as a basis for denaturalization, even if the fact itself was of little importance? Or must the misrepresentation have been serious enough that it materially altered the initial decision of whether or not to grant naturalization? And even if the misrepresentation did need to be material, who had the authority to determine what misrepresentations did or did not influence the decision to grant naturalization?

Here again the Home Office and the treasury solicitor argued for an expansive reading of the denaturalization power. The Home Office insisted that any misrepresentation of fact in the naturalization process, even a minor one, could serve as a ground for denaturalization. Moreover, the Home Office argued that even if the statute were read only to apply to “material” misrepresentations, only the Home Office could determine which representations did or did not have an effect on the outcome of a naturalization decision. In effect, both of these arguments would have given the Home Secretary plenary power to revoke a certificate based on even innocent misrepresentations made during the application process.

The committee initially deferred to this aggressive reading of the statute. In two decisions in the 1920s, it advised in favor of revocation despite the fact that neither subject had intentionally concealed information from the

128. *Ibid.*

naturalization authorities. In the case of Erny Herman Ford, the committee construed the act literally to require deprivation of citizenship when the subject had provided false information to the Home Office because that person had honestly misunderstood the questions being asked.<sup>129</sup> Soon after, in the case of Moise Mazza, the committee recommended in favor of denaturalization on the grounds that Mazza had failed to report to the Home Office during his application that he had previously obtained a separate certificate of citizenship some years earlier, a fact that did not even necessarily preclude him from receiving a second certificate by the terms of the statute.<sup>130</sup>

However, later the committee began to interpret the same provision more restrictively. In 1932, for example, the Home Office attempted to revoke the certificate of Samuel Wickoff, who had falsely claimed that the woman he was living with at the time of his naturalization was his wife.<sup>131</sup> The committee recommended against denaturalization despite the fact that the Home Office had proven definitively that Wickoff had lied during his application for naturalization. In Wickoff's case, the committee created a new rule, not found in the text of the statute. It held that the Home Office could not prove that naturalization had been granted *as a result of* the misrepresentation at issue. Because the Home Office had failed to establish that it would have refused to grant Wickoff naturalization *but for* his dishonesty, that dishonesty could not be used as grounds for revoking the naturalization. The secretary abided by the recommendation, but angrily opposed the legal rule it created, protesting that "only the authority in which the discretion to grant naturalisation rests"—that is, the Home Office—"can express an opinion whether a particular misstatement or concealment cannot have had a decisive influence on the decision to grant naturalisation."<sup>132</sup>

#### b. Disloyalty

The clause of Section 7(1) that permitted the home secretary to revoke a certificate in instances in which holders had shown themselves "by act or speech to be disloyal or disaffected" to the crown was the portion of the Nationality Act with the greatest potential for political manipulation.

129. Home Office Practice in Regard to Revocation of Certificates of Naturalization Under Sections 7 and 7A of the British Nationality and Status of Aliens Act, 1914, as Amended in 1918 (1926), 5 (HO 213-1575) (BNA).

130. *Ibid.*

131. Notes on the Practice and Procedure Relating to the Revocation of Certificates of Naturalisation Under Section 7 of the British Nationality and Status of Aliens Act, 1914, App. 12 (1960) (HO 213/1573) (BNA).

132. *Ibid.*, § 3.

The statute provided no guidance on what it meant for subjects to “show” themselves to be “disloyal or disaffected.” It did not differentiate between potentially disloyal acts, and potentially “disloyal” thoughts or speech, nor did it provide any means of distinguishing between illicit “disloyalty” and permissible political dissent. The possibility of abuse was clear. The committee’s jurisprudence on the meaning of the disloyalty provision of Section 7(1), which formed the basis for many of its most controversial denaturalization decisions, played a crucial role in limiting the potentially boundless discretion of the home secretary.

The committee indicated in its first memorandum to the home secretary that it would be hesitant to recognize his authority to revoke a person’s citizenship merely for engaging in political advocacy. “The charges of disloyalty and disaffection,” the committee wrote in summarizing the first few months of its activity “have been the most difficult, as they have been the most numerous, of our enquiries. The idea of a penalty for disloyalty, as distinguished from treason, we believe, novel. Naturalisation is allowed in this country on a few years residence, and it is hard to imagine a more difficult position than that of the naturalised alien [asked to choose between his adoptive country] and the land of his birth. It is not an easy task to gauge the standard of loyalty which may fairly be required of a man so placed.”<sup>133</sup> The committee noted that it had refused to “condemn for mere lack of enthusiasm. But we have never tolerated a negative or neutral attitude and we have advised revocation in every case in which we have found a failure to prefer the British cause.”<sup>134</sup>

Laszlo’s case, which played a crucial role in establishing the committee’s interpretative authority over the meaning of the Nationality Act’s denaturalization amendments, also served as a warning that the home secretary’s authority to revoke certificates for disloyalty was not unlimited. Laszlo had been charged with two separate offenses that the Home Office contended together constituted disloyalty within the meaning of Section 7(1).

The first set of charges alleged that Laszlo had, on various occasions, expressed views that were critical of the British government, the British war effort, and Britain’s wartime allies. One of several witnesses to provide testimony against Laszlo to the Home Office was the Count de Soissons, who sat for a portrait by Laszlo in 1915. The count recalled that “[w]e got on fairly well at first as he talked to me a great deal about Hungary. Unfortunately, one day he embarked on British politics and that proved rather disastrous. I never heard anything like his shock, the way he

133. Letter to the Right Honourable The Secretary of State for the Home Department (HO144-13377) (BNA).

134. *Ibid.*

dared to criticize nearly everything in this country, and he himself had only just become a naturalised subject. There were moments when I felt I could not stand it any longer, and even now I feel that the right thing for me to have done would have been to have got up and left him.”<sup>135</sup> Laszlo reportedly “[o]ne day he told me how he hated the Servians and that he sincerely hoped they would soon be wiped off the earth,” and “professed the greatest admiration for the ‘divine William’ [Kaiser Wilhelm] and all his accomplishments.”<sup>136</sup> When the count expressed “strong dissent from all his views in regard to the Emperor,” Laszlo allegedly “exclaimed: ‘Well anyhow that is what I think and you will probably tell everyone that I am a pro-German.’”<sup>137</sup> In addition, the treasury solicitor called into question the sincerity of Laszlo’s desire to become a British subject. In particular, he produced a letter written by Laszlo to his brother in Hungary, “in the course of which he stated, in effect, that he had become naturalised here for the sake of his sons, and that it had cost him some mental struggle to do so.”<sup>138</sup>

The second set of charges accused Laszlo of circumventing wartime regulations by sending letters and money to his family in Hungary through a carrier in neutral Holland, thereby avoiding British mail censors. Even more damagingly, according to police reports submitted to the committee, Laszlo had apparently provided assistance to a fellow Hungarian who had escaped from British internment and was seeking help in hiding from the authorities.<sup>139</sup> Laszlo disputed that he was unsupportive of the British war effort, claiming that he had purchased £33,000 in war bonds, and lent another £4,500 to the Treasury, in addition to volunteering for the Red Cross. He conceded that he had violated wartime mail regulations. But he claimed that he had not known that his communications with his family were illegal, and that, once he had been informed that they were not permitted under wartime regulations, he had immediately ceased sending them.<sup>140</sup>

Lastly, in response to the charge of aiding an escaped prisoner, Laszlo admitted that he had provided the man in question with money and advice on where to hide, but claimed that doing so was not indicative of disloyalty. Laszlo claimed the escapee had appeared at his home unexpectedly,

135. Testimony of Count de Soissons in the Case of Philip Alexius Laszlo de Lombos, 1919 (TS27-69) (BNA).

136. *Ibid.*

137. *Ibid.*

138. Decision of the Committee in the Case of Philip Alexius Laszlo de Lombos, 1919 (TS27-69) (BNA).

139. *Ibid.*

140. *Ibid.*

afraid and desperate, and that he, Laszlo, had taken pity on him.<sup>141</sup> But he added that after further reflection, he regretted his decision and reported the incident to the police later that night. This, he conceded, was a spontaneous and misguided act of sympathy, but not an act of disloyalty. "I admit that I have made mistakes," he wrote, "but I have indeed borne a heavy penalty for such mistakes, but my conscience is clear that I have never acted disloyally to the country of my adoption."<sup>142</sup>

The committee unanimously rejected each of the government's accusations of disloyalty in its final decision. It began by rejecting the notion that Laszlo's words and opinions, as recounted by the various witnesses against him, constituted disloyalty within the meaning of the Nationality Act. Indeed, far from holding Laszlo's foreign origins against him, the committee used the fact of Laszlo's Hungarian birth as evidence that his sympathy for the Hungarian cause did *not* constitute disloyalty. Laszlo had good reason to write to his family emphasizing how difficult it had been for him to take British citizenship. He had become a citizen on the outbreak of war, at a time of crisis for the Hungarian government. The committee concluded that "[t]here were, as was not unnatural, attacks made upon Mr. Laszlo in the Hungarian papers, because it would appear to anyone who did not know all the facts, that an eminent citizen of that country had deserted his country on the eve of war, and he wrote an entirely private letter to his brother defending himself against those attacks, stating that he had done it for the sake of his sons, and that it had cost some mental struggle. In our view there is nothing disloyal or discreditable in that."<sup>143</sup>

More generally, the committee added, the mere fact that Laszlo regretted the loss of his Hungarian citizenship did not prove disloyalty. "On the contrary," the decision concluded, "we think that a man who could give up his citizenship in his native country without some pang would not be of much use as a citizen of this or any other country."<sup>144</sup> This was a position that the committee had taken previously. As it had written in its first memorandum to the home secretary, "[t]o expect from [a naturalized subject] the eager and wholehearted desire for the defeat of the enemy which is natural to the British born would be to make an impossible demand on human nature."<sup>145</sup>

141. *Ibid.*

142. Statement of Philip Alexius Laszlo de Lombos before the Committee, 1919 (TS27-69) (BNA).

143. Decision of the Committee in the Case of Philip Alexius Laszlo de Lombos, 1919 (TS27-69) (BNA).

144. *Ibid.*

145. Letter to the Right Honourable The Secretary of State for the Home Department (HO144-13377) (BNA).

On the more serious charges of circumventing wartime regulations, the committee likewise found in Laszlo's favor. Even conceding that Laszlo had violated, in some cases knowingly, wartime regulations, the committee insisted that this alone was not sufficient to prove "disloyalty," as distinct from mere poor judgment or even criminality. On the issue of violating wartime mail regulations, the relevant question, the committee concluded, was not whether Laszlo had violated wartime regulations, but why he had violated them. That question, the committee wrote, "depends entirely upon the motive with which the payments were made. If his motive was to weaken this country, to assist Hungary against this country, or to help his relatives to fight against this country, any motive of that kind, then his conduct would have been disloyal to this country, and to the King of this country."<sup>146</sup> But, the committee concluded,

We have been told by evidence that that was not his motive. We are mainly guided in considering what his motive was by the terms of these letters, which came into existence long before anybody thought of any trouble about it, and those letters, as we think, show, and show conclusively, that the motive, and the sole motive, with which those payments continued to be made was family affection, and that there was no thought or idea in the mind of Mr. Laszlo of any international effect, or anything of the kind, but that his motives were purely affectionate and personal.<sup>147</sup>

With respect to the charge of aiding an escaped prisoner, the committee conceded that Laszlo's actions were not only misguided, but also criminal, and were knowingly detrimental to Britain's conduct of the war. But, it concluded, even this, without more, did not suffice to prove disloyalty. The committee conceded that Laszlo's actions were "a very serious breach of the law and of the duties of a citizen."<sup>148</sup> Nonetheless, it continued, this duty was "a very stern and distasteful duty." The committee was swayed by the fact that Laszlo had made "a pretty prompt amendment and complete reparation" by quickly changing his mind and informing the authorities of what he had done."<sup>149</sup> The committee applied the same standard for disloyalty here as it had in analyzing Laszlo's violation of the mail censorship regulations. The relevant question under Section 7(1) was not whether Laszlo had violated the law. "It is to be pointed out," the committee wrote, "that crime, to use the strongest word, breach of the law, is one thing and disloyalty another. They are entirely different things. A man

146. Decision of the Committee in the Case of Philip Alexius Laszlo de Lombos, 1919 (TS27-69) (BNA).

147. *Ibid.*

148. *Ibid.*

149. *Ibid.*

who breaks the law of this country is not by any means necessarily disloyal, although of course, he fails in the complete discharge of his duties as a citizen.”<sup>150</sup> Rather, the relevant question was whether Laszlo had done so with the intent to harm British interests. “Now, does this conduct,” the committee asked, “which was a breach of the law, show that he was disaffected and disloyal to the King and this country? Once more that depends upon the motive with which he helped the man.”<sup>151</sup> The committee held again that Laszlo’s “conduct was not actuated by hostility to this country or in favour of enemies of this country,” but rather by pity for a fellow countryman.<sup>152</sup> The Laszlo decision thus set a demanding standard for the Home Office and treasury solicitor to prove disloyalty within the meaning of Section 7(1). Criticism of government policy and even overt sympathy for Britain’s wartime enemies were not necessarily sufficient to constitute disloyalty under the statute. Even willful violations of wartime regulations appeared to be insufficient on their own to establish a violation.

But although Laszlo’s case made clear that accusations of disloyalty did not provide a *carte blanche* for the Home Office to revoke the certificates of foreign-born Britons for political reasons, it also did not provide meaningful guidance as to what did and did not constitute disloyalty within the meaning of the act. Despite the rights-protective language of the Laszlo decision, early cases were on the whole very deferential to Home Office accusations of disloyalty. The Laszlo case was unique in many ways. It concerned a prominent subject, and had generated substantial negative attention both in Parliament and the press before it was taken up by either the Home Office or the committee. For that reason, the committee may have perceived a risk in the Laszlo case that the denaturalization power was liable to be used as a weapon by political actors or as an instrument of populist attacks. By contrast, in the case of Speyer, the committee unanimously accepted the treasury solicitor’s argument that Lord Speyer had shown himself disloyal to the crown.

Indeed, in many early cases, the committee was willing to accept surprisingly harsh arguments from the Treasury as to what constituted disloyalty. Soon after beginning hearings under Section 7, the committee had held that the “test of disloyalty within the meaning of the statute is the person’s state of mind,” which was to be determined by external evidence.<sup>153</sup> But in many other decisions, the committee accepted much less damning

150. *Ibid.*

151. *Ibid.*

152. *Ibid.*

153. Instructions to Counsel to Advise on the Revocation of Certificate of Naturalization and to Settle Points of Charge; Case of Count Demetrio Sassfield Salazar (TS27-1429) (BNA).

evidence than was presented in Laszlo's case. In the years after the war, the committee dealt harshly with naturalized citizens of German origin, many of whom appeared to have done nothing more than have the misfortune of being trapped abroad at the outbreak of the war. Ernest Sturzenegger, for example, was a dual Swiss–English citizen who had travelled to Germany during the war to visit his aging parents. He was interned there as a suspected English spy, later released and, by virtue of his Swiss citizenship, sent to Switzerland, where he found work as a banker. He returned to work for a stock brokerage in England in 1926. The committee held in favor of denaturalization, finding that “in taking advantage of his Swiss nationality in the way in which he did to travel through Holland and Germany, and that in continuing voluntarily to live in Germany and to work for two years in a German Bank,” Sturzenegger had violated Section 7(1).<sup>154</sup> Indeed, the committee found in favor of denaturalization despite the fact that it had no evidence that Sturzenegger had acted to harm British interests. The committee also unanimously approved the denaturalization of Paul Joseph Ferdinand Rohleder, who had returned to Germany from Britain in 1909 to seek work. He had been interned as an English citizen at the outbreak of the war, and in an attempt to escape imprisonment had joined the German Army. The committee held that “in adopting German nationality in 1914 in order to secure his release from internment he was guilty of disloyalty to His Majesty and we do not think that it is conducive to the public good that his naturalization certificate should be continued.”<sup>155</sup>

Some cases concerned behavior that, although eccentric, hardly satisfied the demanding standard the committee adhered to in Laszlo's case. Lawrence Klindt Kentwell, for example, was a naturalized British citizen residing in Shanghai and practicing law. After being disbarred for “unprofessional conduct,” Kentwell apparently “harboured a sense of grievance,” under the influence of which he had “heaped abuse upon [the judge who ordered him disbarred] and British officials generally,” and “from time to time,” had “purported to renounce British nationality and to assume citizenship of his ‘Motherland, the Republic of China.’” In addition, he had written “numerous verbose letters” that were “addressed during the past five years to various persons (including Mr. Baldwin, the late Prime Minister; Sir Miles Lampson, British Minister to China; and Sir Sydney Barton, Consul-General at Shanghai).” These transgressions were enough to leave the committee “in no doubt about the disloyalty of his sentiments.”<sup>156</sup>

154. Case of Ernest Sturzenegger, May 3, 1927 (TS27-1429) (BNA).

155. Case of Paul Joseph Ferdinand Rohleder, May 3, 1927 (TS27-1429) (BNA).

156. Matter of Lawrence Klindt Kentwell, June 17, 1931 (TS27-1429) (BNA).



It would only be in the aftermath of the Second World War that the committee, confronted with a number of new cases that raised novel questions about the meaning of “disloyalty,” would finally articulate a definite legal standard for adjudicating denaturalizations under this provision.

### III. After the Second World War: The Committee Reinforces Its Standing Before and After the BNSA of 1948

#### A. The Postwar Years

During the First World War, the cases that arose under the statute’s “disloyalty” provision mostly raised questions of national loyalty. The committee was asked to decide whether a naturalized immigrant, such as Laszlo, was sufficiently loyal to the British crown, or whether he retained too strong an affection for some other sovereignty. But the supranational ideologies of the 1930s and the 1940s challenged this older understanding of disloyalty. Now, the committee was faced with the prospect of adjudicating cases of which it could be argued that a person’s political commitments—to fascism, to communism—rendered them disloyal.

In 1948, as the British Empire began to dissolve, Parliament enacted a revised British Nationality Act.<sup>157</sup> The 1948 act remade British citizenship law in a number of ways. The act eliminated the provision of the 1914 act that allowed a wife and minor children to be deprived of their citizenship based on the denaturalization of the person to whom they were married.<sup>158</sup> And although the denaturalization provisions of the 1948 BNSA were largely the same as those of the 1918 act, it was clear that in the postwar world, citizenship law would be forced to contend with a different set of political concerns than it had in the 1920s and 1930s. The committee and the Home Office were therefore faced with the question of whether they would continue to uphold the protective jurisprudence that had evolved within the framework of the previous BNSA, or whether they would abandon it in favor of a more aggressive denaturalization power that was equipped to deal with new military and ideological threats.

As this section will demonstrate, the committee chose to maintain, and indeed strengthen, the liberal protections it had created before the war. The early postwar years presented the committee with some of the most important cases in its history, and in those cases it consistently refused to permit

157. British Nationality Act of 1948, 11 & 12 Geo. 6 c. 56 (1948).

158. British Nationality Act, 1948, 11 & 12 Geo. c. 56, s. 20. See also M. Page Baldwin, “Subject to Empire: Married Women and the British Nationality and Status of Aliens Act,” *Journal of British Studies* 40 (2001): 522–56.

an expansion of the home secretary's denaturalization power, either under the law's disloyalty section or any other.

*1. Bode: A Nazi case defines the period*

This trend began in the immediate aftermath of the war with a case that was decided under Section 7(1) of the 1918 act, but that laid the groundwork for the committee's jurisprudence on the issue of disloyalty for the next several decades. In the case of Otto Bernhard Bode, the committee finally adopted a clear standard that unequivocally narrowed the power of the secretary of state to revoke certificates under 7(1)'s disloyalty provisions. Bode was a German by birth who applied for naturalization as a British subject in 1933. His application was approved, and he swore the oath of allegiance in May 1933. Under circumstances that were contested at his hearing, he then swore a new oath of allegiance to Germany in 1933, reaffirming his German citizenship. In 1934, he joined the Nazi Party. Bode maintained that his reapplication for German citizenship had been initiated on his behalf by the German government, and that he had been assured that the application did not conflict with British law. He claimed that he had only joined the Nazi Party in order to continue professional correspondence with colleagues and institutions in Germany, and that he had never harbored pro-Nazi sentiments. Whatever his reasons, Bode established at his hearing that he had renounced his Nazi Party membership by 1939. The Home Office initiated denaturalization proceedings against him at the end of the war, but the committee ultimately recommended against denaturalization, finding that the treasury solicitor had not proven that Bode had shown himself disloyal.<sup>159</sup>

The Bode case was unusual in some respects. First, as in the Laszlo case several decades earlier, it rejected a recommendation for denaturalization that the Home Office had considered relatively safe. The Home Office had established that Bode had regained German citizenship and sworn an oath of allegiance to Hitler. Laszlo's case notwithstanding, the committee had recommended in favor of denaturalization in many cases in the 1920s for considerably less than this. Second, and perhaps more surprising, the case produced a split decision, an exceedingly rare result in committee practice. A two-person majority on the committee, consisting of the chairpersons at the time, Justice H. Wynn-Parry, and Lady Simon of Wythenshawe, found that the crown had not met its evidentiary burden.<sup>160</sup>

159. Dissenting Report by Lord Munster in the Case of Otto Bernhard Bode (TS27-1429) (BNA).

160. *Ibid.*

A minority report, written by Lord Munster, claimed that Bode had shown himself disloyal within the meaning of the statute.<sup>161</sup>

The difficulty of the case, both the majority and the minority agreed, was that the crown had produced no direct evidence of disloyalty by Bode. The Home Office indeed appears to have admitted that it had no direct evidence; it argued instead that the committee could infer disloyalty based on Bode's political affiliations. Bode had done nothing to harm British interests, and indeed had not even expressed anti-British sentiments. He had merely expressed allegiance to a nation that held interests adverse to Britain's. As the majority summarized critically, "the Crown brought forward for our consideration a number of points none of which, as the Attorney-General frankly agreed, taken by itself, necessarily constituted disloyalty. He relied upon their cumulative effect."<sup>162</sup>

Moreover, all of the activities for which Bode was charged with disloyalty had occurred during peacetime. He had renounced his membership in the Nazi Party on the outbreak of war, and the Home Office never alleged that he had aided Britain's enemies during wartime. As the majority wrote in its opinion, "one of the chief difficulties which we have felt in the matter has been that we have had to consider his acts in relation to a period during the whole of which this country and Germany were at peace; during a period when the Nazi party was a legal body under German law and therefore could not be regarded in any respects as illegal under English law and during a period which ended not merely with the outbreak of war but with the internment of Respondent."<sup>163</sup> For the majority, this argument proved too much. Although the committee had traditionally given a fairly wide berth to the Home Office to prove disloyalty, "in previous cases the Committee has had to consider the acts of the respondent in question during a time of war and therefore in circumstances which have made it much easier to come to a decision than is possible in the present case."<sup>164</sup> The committee had never been asked to infer a respondent's unspoken political opinion from circumstantial evidence, and then to deprive that person of citizenship on that basis alone. Perhaps, as it had years earlier with the Laszlo case, the committee used the Bode case as an opportunity to make clear in the aftermath of a world war that the denaturalization law could not be used as a cudgel against foreigners or the holders of unpopular political views. Although disloyalty was "primarily a state of mind which

161. *Ibid.*

162. Report by Chairman and Lady Simon in the Case of Otto Bernhard Bode (TS27-1429) (BNA).

163. *Ibid.*

164. *Ibid.*

may be manifested by acts equivocal or unequivocal,” in cases in which the “person whose state of mind is being investigated by reference to his acts” genuinely believed him- or herself to be a dual-national, and therefore subject to conflicting loyalties, “much stronger proof” was needed that respondents had indeed attempted to divest themselves of British citizenship, or had acted disloyally to the crown.<sup>165</sup>

For his part, Lord Munster, in his minority opinion, “fully shared” the majority’s “sense of difficulty” in reaching a conclusion in the case.<sup>166</sup> As he acknowledged, “the existence of a disloyal state of mind...is an inference from conduct which is never lightly to be drawn at any time or in any circumstance.”<sup>167</sup> Moreover, “the very greatest care must be taken to avoid improperly colouring, under the influence of subsequent events, the inference legitimately to be drawn from conduct.”<sup>168</sup> But, Lord Munster took issue with the restrictive definition of disloyalty adopted by the majority. Disloyalty, he argued, need not be limited to active hostility to the British interests. Loyalty should be defined, under the Nationality Act, as “continuous fidelity to the Crown and therefore a continuous state of mind of faithfulness to the obligation of an oath of allegiance.”<sup>169</sup> Disloyalty could be defined merely as the absence of this continuous fidelity. A “disloyal state of mind may be shown where a person acquires British nationality and swears allegiance to the British Crown and by his conduct shows either that the acquisition of British nationality was predominantly to serve his own interests or convenience with no corresponding sense of duty to the Crown.”<sup>170</sup>

Indeed, even naturalized subjects who acted in apparent loyalty to the crown, he argued, should not be safe from probing inquiries into their political loyalties. It was not, he wrote, “conclusive proof of loyalty at any one period of time that the Respondent either previously or subsequently has conducted himself in apparent or real harmony with the obligations of his oath of allegiance; but where disloyalty is charged as an inference from conduct over a period of time it is most proper and necessary to consider the charge in light of all the evidence, favourable and unfavourable to the Respondent, relating to his conduct during that period.”<sup>171</sup> This objection was particularly revealing of the true stakes in the Bode case. In effect,

165. *Ibid.*

166. Dissenting Report by Lord Munster in the Case of Otto Bernhard Bode (TS27-1429) (BNA).

167. *Ibid.*

168. *Ibid.*

169. *Ibid.*

170. *Ibid.*

171. *Ibid.*

the majority argued, much as the committee had in Laszlo's case, that to be actionable under Section 7(1), a disloyal state of mind had to be proven by disloyal acts that were harmful to British interests. Although disloyalty was a state of mind, the state of mind itself would be insufficient to revoke a certificate. It was precisely this rule that Munster objected to. In his view, evidence of disloyal opinions, even if they were entirely unaccompanied by disloyal acts, could justify a revocation.

The importance of the Bode case was threefold. First, it established a much more demanding evidentiary standard than had been in place previously. In effect, the majority of the committee in the Bode case held that circumstantial evidence was not sufficient to find disloyalty. A 1961 Home Office summary on the secretary's denaturalization powers explicitly cited the Bode case in noting that "[t]he problems of assembling sufficient evidence of disloyalty or disaffection to be adduced before the Committee is often difficult. The matter may well be one in which there is room for considerable difference of opinion." As the minority report in Bode's case had highlighted, "cases where evidence of disloyalty takes the form of remarks by the person concerned are approached with extreme caution."<sup>172</sup> Therefore, the secretary was advised that "great caution must be exercised in accepting allegations of disloyalty made on the strength of mere words unsupported by course of conduct. It has been the practice of the Committee to require fairly strict proof (a) that disloyal words were spoken and (b) that the words did in fact represent disloyal statements."<sup>173</sup>

Second, the majority opinion created a higher standard for what actually constituted disloyalty. It was not enough to demonstrate that a respondent had behaved in ways that were inconsistent with total loyalty to the crown. The fact that Bode was not a paragon of British patriotism did not suffice to revoke his citizenship. Instead, the committee held that the secretary of state must show that Bode had, by his words or deeds, attempted to harm the reputation or interests of the British crown. This was a significant change in the jurisprudence of the committee. Previously, actions that were merely inconsistent with perfect loyalty had been found sufficient to support a revocation order. Here, the committee appeared to require actual malice toward Britain on the part of the respondent, accompanied by harmful words or acts.

Third, the Bode case established that the committee could set precedent even when it was not unanimous. So strong was the Home Office's desire

172. Home Office, *Deprivation of Citizenship of the United Kingdom and Colonies: A Digest of Home Office Practices*, §4(b)(1) (1961) (HO 213-1575) (BNA).

173. *Ibid.*

for the committee's agreement before revoking a certificate that in practice the secretary feared to act even when the committee was divided on a revocation, with some members in support and others opposed. Sir Alexander Maxwell advised the home secretary in 1947 that "when two members of the Committee decide that the allegations have been proved and the third reports them as not proved," it "would be open to the Secretary of State to give the holder the benefit of the doubt and refrain from revoking his certificate. To take the reverse course and to revoke his certificate when two members of the Committee (including the Chairman—a High Court judge) report that the charges have not been proved. . . would. . . be inconsistent with the intention of the Act and extremely difficult to defend."<sup>174</sup> Likewise, Sir Leslie Brass, a legal adviser to the Home Office, noted in a separate memorandum that "if the Committee is not unanimous. . . a majority recommendation against deprivation should be accepted and that a minority recommendation against deprivation should sometimes not be rejected. Thus if in England the High Court judge was the minority and considered the facts not established, it might be right to accept his view; sometimes too it might be well to give the naturalised British subject the benefit of the doubt."<sup>175</sup>

This desire for unanimity was consistent with the Home Office's deference to committee decisions generally, a policy that had become firmly entrenched by the end of the Second World War. A Home Office legal adviser noted in 1952 that the secretary "should not refer cases" to the committee "unless there is a good chance of a favorable result."<sup>176</sup> A 1960 Home Office memorandum summarized the de facto policy of the office, recording that "although the Secretary of State was not bound by statute to act on the findings of the Committee, their recommendations were, in practice, always accepted. Even if the decision of the Committee was considered to be mistaken, it was, nevertheless, acted upon."<sup>177</sup>

## 2. Section 20 of the BNSA of 1948

The denaturalization provisions of the 1948 law contained very few deviations from the amended 1918 act. The committee remained intact, and

174. Home Office, *Notes on the Practice and Procedure Relating to the Revocation of Certificates of Naturalisation Under Section 7 of the British Nationality and Status of Aliens Act, 1914*, § 8 (1960) (HO 213/1573) (BNA).

175. Home Office, *Deprivation of Citizenship of the United Kingdom and Colonies: A Digest of Home Office Practices* (1961) (HO 213-1575) (BNA).

176. *Ibid.*

177. Home Office, *Notes on the Practice and Procedure Relating to the Revocation of Certificates of Naturalisation Under Section 7 of the British Nationality and Status of Aliens Act, 1914*, § 8 (1960) (HO 213/1573) (BNA).

retained its traditional position as an advisory body on denaturalizations that required the exercise of official discretion. As a general matter, when interpreting the grounds for denaturalization under the 1948 Nationality Act, the Home Office simply referred directly to the committee's jurisprudence under the 1918 act. Shortly after the enactment of the new statute, Home Secretary James Chuter Ede commissioned the Home Office to produce a memorandum summarizing the committee's legal precedents. For almost every provision of the 1948 act, the Home Office merely imported its practice under the analogous provision of the old statute.

The Home Office remained hesitant to denaturalize anyone—or to even initiate a proceeding—without assurance that they would receive the endorsement of the committee. A 1961 report on denaturalization procedures warned that “clearly an estimation of the reaction of the Committee is necessary where there are difficulties of presentation and of admissibility of evidence. . . . If the case is one in which it seems clear that the Committee would probably recommend against deprivation the possibility is that the Home Office would in any event decide against deprivation on the merits of the case if there was no hearing.”<sup>178</sup> Moreover, the Home Office was at pains to emphasize the independence and impartiality of the committee in the postwar era. Following the enactment of the 1948 law, the Home Office expanded the committee from three members to five in order to accommodate the various constituencies it felt required representation. The committee was chaired by Justice Henry Wynn-Parry, who had sat on it before the 1948 revisions. In addition, its members included Liberal, Conservative, and Labor representatives. As the lord chancellor's office had felt it would be “unwise” to have no women and no nonlegal members, Dame C.V. Wedgwood, the popular historian and deputy editor of the periodical “Time and Tide,” was appointed as a fifth committee member.<sup>179</sup>

The trend of incorporating prior Home Office practice, and applying it more conservatively than in the past, was followed for every provision in the 1948 act. However, the provision in Section 20(5) of the new act, corresponding to Section 7(1) under the old act, which permitted denaturalization in cases of fraud or disloyalty or disaffection, bears special attention. In the late 1940s and early 1950s, Britain was struck with a series of espionage scandals that made international headlines and precipitated domestic political crises. Throughout the early Cold War, it was discovered that a number of British subjects had provided sensitive national security

178. Home Office, *Deprivation of Citizenship of the United Kingdom and Colonies: A Digest of Home Office Practices*, §3(a) (1961) (HO 213-1575) (BNA).

179. *Ibid.*, §2(a).

information to the Soviet government during and, in some cases, after the end of the Second World War. Many of those accused of espionage were native-born Britons, including Kim Philby, Guy Burgess, and Alan Nunn May. However, others were foreign-born, naturalized British subjects. The most notorious of these were Klaus Fuchs and Bruno Pontecorvo, both of whom had been accused (and, in the case of Fuchs, convicted) of providing details of Britain's nuclear program to the Soviets. Both Fuchs and Pontecorvo would ultimately have their citizenship revoked under the 1948 act. Indeed, Fuchs's revocation hearing was one of the first cases brought under the new law.

These cases, backgrounded against increasing tensions with the Soviet government, could have provided the fuel for an aggressive denaturalization campaign against Communist sympathizers or Britons naturalized from now-Communist dominated countries. Certainly public fear and resentment of Germans and other immigrants from Central Power countries had created such demands during and after the First World War. Indeed, on the fringes of Parliament, demands of this kind were made during the early Cold War. One MP called for the creation of a committee of "Un-British Activities" in Parliament, similar to the notorious committees established in the United States Congress, to investigate disloyalty.<sup>180</sup> Yet the Home Office, guided by the precedents created by the committee in the previous decades, made no such attempt under the 1948 law.

## *B. The Committee's Jurisprudence*

### *1. Disloyalty*

After Bode's case, in only five other cases did the Home Office refer a disloyalty claim to the committee, and in all but two, the committee recommended not to deprive the respondent of citizenship for disloyalty, although in some it recommended affirming the revocation on other, less controversial grounds. The first proposed denaturalization referred to the committee under the 1948 act was that of Fuchs. Fuchs was a naturalized citizen of German origin who had worked on nuclear research at Harwell and had exchanged papers with members of the Manhattan Project. MI5 had discovered that Fuchs, a longtime communist, had secretly shared a substantial amount of classified atomic research with the Soviet government throughout the war.<sup>181</sup> He was ultimately discovered through FBI

180. Peter Hennessy and Gail Brownfeld, "Britain's Cold War Security Purge: The Origins of Positive Vetting," *The Historical Journal* 25 (1982): 965–74.

181. Ferenc Morton Szasz, *British Scientists and the Manhattan Project: The Los Alamos Years* (New York: Macmillan, 1992), 82–83.



interceptions of encrypted Soviet communications, convicted of violating the Official Secrets Act, and sentenced to fourteen years in prison, of which he served nine. The Crown Prosecutor, Attorney General Hartley Shawcross, also represented the crown before the committee at Fuchs's denaturalization hearing.<sup>182</sup>

The committee had never had any difficulty approving of denaturalization in cases in which the respondent had unquestionably been guilty of espionage. Prior to Fuchs, the most prominent respondent to lose her naturalization for espionage activity was Anna Wolkoff, who became infamous for stealing classified British intelligence and communicating it to the Nazis, and who in 1940 was convicted of violating the Official Secrets Act and sentenced to ten years in prison.<sup>183</sup> After an inquiry by the committee, the home secretary revoked Wolkoff's naturalization in August 1943.<sup>184</sup> There were other, lesser-known spies whose citizenship had been revoked, such as Alfred Delbosque, a paid spy for the German Army during the First World War who had fled Britain in 1914.<sup>185</sup> Disagreements between the Home Office and the committee had always centered on difficult cases, in which respondents had been accused of disloyalty without ever having acted against the interests of the crown. Cases that bordered on treason were mostly uncontroversial.

Fuchs had been convicted of orchestrating one of the most damaging national security breaches in Britain's history. As the committee wrote in its report, "that the respondent was guilty of disloyalty towards His Majesty for a considerable period is of course not open to any doubt. Cases may occur where disloyalty proved against a respondent may be shown to consist of a single act or a series of acts involving only a short period and the respondent in question has truly repented and may be trusted for the future." Fuchs did not attend his denaturalization hearing, but did submit a letter arguing against the revocation of his citizenship. In it, he claimed that although he had been a spy, his espionage activities had ceased in 1949, and that he had made a "complete confession" to the authorities without any "relevant promise" of leniency or "any relevant threat." He urged that these facts, and the fact that he had since cooperated

182. "Fuchs's British Citizenship: Committee to Decide," *The Manchester Guardian*, December 21, 1950, 4.

183. Instructions to Settle Points of Charge and Advise on Evidence in the Matter of Anna Wolkoff, 1943 (TS27-1429) (BNA).

184. "News in Brief," *The Times*, August 18, 1943, 2; "Anna Wolkoff: Naturalisation Revoked," *The Manchester Guardian*, August 18, 1943, 6.

185. Case of Alfred Delbosque, May 1, 1924 (TS27-1429) (BNA).

loyally with MI5 and the FBI, were “of great value in a plea in mitigation.”<sup>186</sup>

The Home Office chose not to make an affirmative argument to the committee in favor of denaturalization, but rather stated that it was “a matter for the Committee to decide in their great experience.”<sup>187</sup> However, Sir Hartley Shawcross, who presented the facts to the committee, did feel compelled to note that Fuchs’s letter reflected “a curious characteristic of those queer psychological processes which some of the adherents of the Communist party seem to go through,” and should not necessarily militate in favor of him keeping his citizenship.<sup>188</sup> The committee agreed, concluding that “in the present case. . . it is our unanimous view that the respondent’s statement discloses a mind which can only be described as a highly dangerous one,” which “in our view could not possibly be trusted.”<sup>189</sup> Even assuming that Fuchs “has feelings of loyalty towards the Crown, as to which we remain in some doubt,” the committee’s opinion explained, “we feel that there is no reasonable certainty that these feelings of loyalty will persist. It is just as likely and in our view probably more likely that the communist philosophy, in which the respondent is so steeped, will again assert its ascendancy and submerge the feelings of loyalty toward the Crown, which he at present professes.”<sup>190</sup> Fuchs was deprived on his citizenship on February 12, 1951.<sup>191</sup>

But the committee’s decision in Fuchs’s case was notable for the extent to which it emphasized that the substantive and procedural protections established by its predecessor under the 1918 law had not been abrogated by the passage of the 1948 statute. Indeed, the committee’s report noted that it would not use the internationally notorious case of Fuchs to effect any meaningful expansion of the home secretary’s power to denaturalize for disloyalty. The committee stated, for example, that under the 1948 act, the burden of proving charges against a citizen remained with the crown, and was not “thrown upon the respondent.”<sup>192</sup> The committee also used the case to make another exception to its general policy of hearing cases in camera. It noted in its decision that it had heard the case in “open Court, as we take the view that in proceedings of this nature the rule obtaining in the Courts should apply, namely that cases should be

186. “Fuchs’s British Citizenship: Committee to Decide,” *The Manchester Guardian*, December 21, 1950, 4.

187. *Ibid.*

188. *Ibid.*

189. Decision in the Case of Klaus Emil Fuchs, 1951 (TS27-1429) (BNA).

190. *Ibid.*

191. “Fuchs Deprived of Citizenship,” *The Manchester Guardian*, February 24, 1951, 2.

192. Decision in the Case of Klaus Emil Fuchs, 1951 (TS27-1429) (BNA).

heard in open Court unless good ground is shown for holding them in camera; and as the Attorney-General did not ask that this case be heard in camera.”<sup>193</sup>

The case of Pontecorvo, the only other naturalized citizen whose certificate was ever revoked for disloyalty under the 1948 act, appeared to be similarly limited to its facts. Like Fuchs, Pontecorvo was a nuclear scientist and a committed communist who had provided atomic secrets to the Soviets. Unlike Fuchs, Pontecorvo had been able to escape Britain in 1950, and had fled to Moscow. British intelligence was unsure of his whereabouts until 1955, when he began publishing pro-Soviet articles in *Pravda*. It was only when these articles became known in Britain that the Home Office decided to initiate proceedings against him.<sup>194</sup> Pontecorvo did not return to Britain to prepare a defense. Indeed, in a letter addressed to the home secretary, he insisted that he had not shown “any element of disloyalty or bad feelings to the British people,” but stated that he did not care what action was taken against him, as he intended to remain a citizen of the Soviet Union.<sup>195</sup> Because Pontecorvo declined to contest his denaturalization, the home secretary revoked his citizenship without referring the matter to the committee.<sup>196</sup>

Rather than expanding the home secretary’s power, these cases appeared to confirm what the committee had intimated in its decision on Bode: that denaturalization for disloyalty was appropriate only when a subject had committed acts amounting to treason. Indeed, later cases indicated that the Home Office had become extremely cautious about pursuing disloyalty charges, even in cases that did involve potential acts of treason. The Home Office’s hesitancy to abuse its power was illustrated in advice it provided to the Colonial Office in 1954 regarding the political activity of Greek Cypriots.<sup>197</sup> In January 1954, the Colonial Office, on behalf of Office of the Governor of Cyprus, had written to ask about the possibility of denaturalizing Dr. Theodore Dervis, who was naturalized in 1932 and later became the Mayor of Nicosia and the editor of a paper known as *Ethnos* that advocated for “enosis,” or unification, of Cyprus with Greece. Dervis had been harshly critical of British policy in Cyprus, and had used his newspaper to stoke nationalist resentment against British presence on the island, referring

193. *Ibid.*

194. See *Cases Considered Under Section 20(3)(a) of the British Nationality Act, 1948 (Disloyalty and Disaffection)* (HO213-1573) (BNA).

195. “Dr. Pontecorvo No Longer British,” *The Manchester Guardian*, May 27, 1955, 7.

196. See *Cases Considered Under Section 20(3)(a) of the British Nationality Act, 1948 (Disloyalty and Disaffection)* (HO213-1573) (BNA).

197. Cyprus was formally annexed to the British Empire in 1914, following Turkey’s entry into the First World War. It was granted independence by referendum in 1960.

in some instances to the Island's "British conquerors."<sup>198</sup> The Colonial Office also noted that "Dervis himself has made many utterances in favour of Enosis and refused to put his name to the Proclamation of the Queen's Association when invited by the Governor to do so."<sup>199</sup>

Cyprus had criminal statutes governing sedition, but the government had not been confident that Dervis's advocacy was extreme enough to secure a criminal conviction. The governor had asked whether he might use the revocation power—as he was authorized to in territory under his jurisdiction—either to denaturalize Dervis, or to threaten him and others with denaturalization as punishment for their advocacy. Cyprus was not bound by Home Office precedent, which applied only in the United Kingdom, but the Cyprus government had little experience with the Nationality Act, and had therefore asked the Home Office for guidance based on its own precedents and political experience. The governor had taken the position that "this sort of behavior might well establish a prima facie case for setting in motion the machinery, provided in Section 20 of the British Nationality Act, for depriving of his nationality any citizen of the United Kingdom and Colonies who is a naturalised person and has shown himself by act or speech to be disloyal or disaffected towards Her Majesty."<sup>200</sup>

The Home Office urged the Colonial Office to adopt many of the procedural protections that the committee had read into the Nationality Act. In its official reply, it emphasized the legal and political importance of establishing an independent judicial committee to hear denaturalization cases, and noted that reference to a committee had always been the means of adjudicating denaturalization disputes in the United Kingdom.<sup>201</sup> It further noted that "[t]he governor would not of course be bound to follow the advice of the Committee, although in the United Kingdom it has been the practice of the Secretary of State to do so. If a Committee appointed in the United Kingdom were not unanimous the Secretary of State would on past experience tend to accept a majority recommendation against deprivation, and even a minority against deprivation might not in certain circumstances be rejected."<sup>202</sup> In internal memoranda, Home Office personnel were more blunt. G.V. Hart noted that:

198. Home Office Official Reply to Colonial Office (Letter from I. Roy, April 28, 1954) (HO213-2241) (BNA).

199. Letter from Colonial Office to Home Office re: Denaturalization of Dr. Theodore Dervis, January 1954 (HO213-2241) (BNA).

200. *Ibid.*

201. Unlike the Home Office, the Colonial Office was not required to establish a committee to review denaturalizations.

202. Home Office Official Reply to Colonial Office (Letter from I. Roy, April 28, 1954) (HO213-2241) (BNA).

With regard to (ii), section 20(3)(a), read with Section 22, provides that the governor may deprive a citizen of the United Kingdom and Colonies who is a naturalised person of his citizenship 'if he is satisfied that that citizen has shown himself by act or speech to be disloyal or disaffected towards His Majesty.' There seem to be some suggestions in the file (unless I have misunderstood them) that under that subsection what is disloyalty depends on the opinion of the governor. It seems to me that this is wrong and that the governor should not say: 'In my opinion disloyalty means this or that.' But 'I consider as a matter of law that this or that is (or is not) what disloyalty in the sense that Parliament intended.' Thus the terms of the warning which the governor of Cyprus has suggested issuing... seem to me to go too far...<sup>203</sup>

On the substantive merits of the disloyalty question, the Home Office, drawing on the Bode case, was careful to emphasize that differing from the position of the British government was not in itself tantamount to disloyalty. Sir Leslie Brass concluded in a memorandum that "[m]ere advocacy and support of enosis should not, I think, be regarded as disloyal in the circumstances prevailing in Cyprus. . . . In law I think that Dr. Dervis may by his intemperate campaign have exceeded what is legitimate for a loyal person, but in arriving at an opinion regard must be had to his whole conduct."<sup>204</sup> Hart emphasized that Dervis's political views, although inconvenient for the crown, were not unusual, and that it would be politically difficult for the Colonial Office to punish them too aggressively. "I do not think it right to say that merely to support enosis can amount to disloyalty," he concluded. "Very few people nowadays would say that it is necessarily disloyal to maintain that any single part of the Commonwealth should be transferred to a foreign country or itself become a foreign county. On the other hand it seems certainly arguable that support for enosis may sometimes amount to disloyalty. The question seems to depend on the circumstances."<sup>205</sup> Such views reflected the Home Office's wariness of using the denaturalization power as a political weapon, particularly against a prominent public figure.

## 2. *Fraud*

The "fraud and misrepresentation" provision of the amended Nationality Act continued to be used sparingly, as it had been under Section 7(1) of

203. Memorandum of G.V. Hart in response to Colonial Office inquiry, writing to Mr. Roy (HO213-2241) (BNA).

204. Leslie Brass memorandum in response to Colonial Office inquiry, April 6, 1954 (HO213-2241) (BNA).

205. Memorandum of G.V. Hart in response to Colonial Office inquiry, writing to Mr. Roy at the Home Office (HO213-2241) (BNA).

the 1918 act. In most substantive respects, the committee reconstituted under the 1948 act merely followed the jurisprudence of its predecessor, and indeed by the late 1940s the Home Office had so fully internalized the principle that the committee was the final legal authority on denaturalization that it declined to bring prosecutions in cases in which it was unlikely that the committee would approve of a deprivation under its own precedents. The Home Office retained the high evidentiary standard established before the war, requiring the crown to prove that “facts suppressed or misrepresented would undoubtedly have led to refusal of naturalisation,” and that it would be “reasonable to suppose that the applicant was aware that disclosure of the true position would have prejudiced his case.”<sup>206</sup>

These cases were heavily fact dependent, and the Home Office had difficulty discerning what the committee’s reaction to any given case would be based on its pre-1948 decisions. However, as a digest of committee precedent concluded in 1961, “the most that perhaps can be said is that although the Home Office appears to be empowered to do so it would be unlikely to initiate deprivation proceedings if there was a false representation that was innocent.”<sup>207</sup> A review of the cases summarized in Home Office files confirms this observation. Only two of the eighty-six cases that the committee heard under the fraud provision in the postwar years resulted in denaturalization.<sup>208</sup> In one case that is representative of many dozens brought on similar facts, the committee recommended against denaturalizing a naturalized Hungarian named Lajos Szutor. Szutor had claimed in his application to be married to one woman, named Elisabeth Brevak, while failing to disclose that he had already been legally married to another. The committee found that “although Szutor did make false representation and conceal material fact when he applied for naturalization, the nature of his offense was not sufficiently grave to make it clear that he had obtained his C/N by reason of his action. Held that there was no prima facie case for action under Section 20(2) of the Act.”<sup>209</sup> Even in cases of more unusual, and more incriminating facts, the Home Office was hesitant to refer cases to the committee. In the case of Israel Wortman, for example, the Home Office determined that it had little

206. Home Office, *Deprivation of Citizenship of the United Kingdom and Colonies: A Digest of Home Office Practices*, §4(a)(i) (1961) (HO 213-1575) (BNA).

207. *Ibid.*

208. *Cases Considered under Section 20(2) of the British Nationality Act, 1948 (Registration or Naturalization Obtained by Means of Fraud, False Representation, or Concealment of Any Material Fact)* (HO213-1573) (BNA).

209. “Case of Lajos Szutor (Entry No. 70),” *Cases Considered Under Section 20(2) of the British Nationality Act, 1948* (HO213-1573-3) (BNA).

chance of succeeding before the committee on its charges of fraud, despite the fact that it “appeared to be beyond doubt that at the time of his naturalization Wortman had been aware” of the fact that his brother had entered the country illegally, and had concealed his knowledge of his brother’s means of entry and of his whereabouts.<sup>210</sup>

However, the interpretation of the fraud and disloyalty provisions did change under the 1948 act in one small but significant way. As the committee raised the substantive and procedural hurdles that the treasury solicitor was required to clear in order to deprive subjects of their naturalization for disloyalty, the fraud provision offered an alternative ground for denaturalizing respondents who had committed acts that bordered on treasonous. This strategy was employed in the cases of Karl Strauss and Anthony Raidl. Strauss and Raidl were naturalized British subjects who had secretly sold classified information to the Czecho-Slovak government. The Home Office, advised by Sir Leslie Brass, made an inventive use of the “material concealment” requirement of Section 20(2). The Treasury successfully argued that because Strauss and Raidl were paid for their espionage, they had committed fraud during their applications by failing to disclose all of their sources of income. The committee was convinced that, as the relevant source of income was the Czecho-Slovak government, concealment of this fact had a material effect on their applications for citizenship.<sup>211</sup>

The Strauss and Raidl cases illustrate how difficult it had become for Home Office to make deprivations for disloyalty. This creative use of the fraud provision was in fact relatively rare. Even in cases touching on criminal conduct or national security threats, the committee’s standards for proving fraud were still so demanding that “no action to deprive a person of his citizenship under the [fraud] subsection would be contemplated unless the facts suppressed or misrepresented would undoubtedly have led to refusal of naturalization, and unless it is reasonable to suppose that the applicant was aware that disclosure of the true position would have prejudiced his case.”<sup>212</sup> They were exceptional cases in that regard. The average docket of cases presented to the committee—which, largely because of the Home Office’s internalization of the committee’s jurisprudence, had decreased significantly since the 1920s—still revealed a deep

210. “Case of Israel Wortman (Entry No. 28),” *Cases Considered Under Section 20(2) of the British Nationality Act, 1948* (HO213-1573-3)(BNA).

211. Home Office, *Deprivation of Citizenship of the United Kingdom and Colonies: A Digest of Home Office Practices*, §4(a)(i) (1961) (HO 213-1575) (BNA).

212. *Ibid.*

unwillingness to authorize denaturalization in all but the most egregious cases of fraud.

### *C. The Disappearance and Resurgence of Denaturalization*

Following the espionage cases of the 1950s, the denaturalization power rapidly fell into disuse. Indeed, by the end of the Second World War this process was already well under way. Between 1949 and 1961, only nine naturalized subjects had their certificates revoked by order of the secretary of state, out of 120 cases referred to the Home Office.<sup>213</sup> The Home Office only pursued denaturalization in response to particularly egregious offenses. For example, it successfully sought the denaturalization of Hans Gunther Beschorner, a schoolteacher who had repeatedly molested his students and served eighteen months in prison for sexual assault.<sup>214</sup> It likewise successfully revoked the citizenship of Fredrick Charles Menzinger, “a plausible rascal with a substantial record of dishonesty,” who had been charged with multiple counts of fraud, had fled to Austria, and did not bother to appear at his own revocation hearing.<sup>215</sup> By the mid-1950s, the Home Office rarely pursued even egregious cases. The initiation of denaturalization had become so rare that the committee hardly met. In a 1958 letter from the Home Office, Viscount Klimir noted that the committee did not “meet at all frequently,” and had not met once since 1953.<sup>216</sup> The power of the Home Office to denaturalize citizens was, by the 1960s, subject to such significant legal restraints that it had effectively ceased to exist. The last time a British subject was deprived of British citizenship prior to 2002 was in 1973.<sup>217</sup>

From the 1960s to 2002, British law governing the deprivation of citizenship remained largely unchanged. In 1961, Britain became a signatory to the United Nations Convention on the Reduction of Statelessness, and in 1964, Parliament amended the BNSA of 1948 to comply with Britain’s obligations under the convention.<sup>218</sup> The resulting amendments repealed the Home Office’s power under Section 20(3)(c) of the 1948 BNSA to revoke citizenship on the basis of a criminal conviction, as well as the authority under Section 20(4) to revoke the citizenship of naturalized

213. *Deprivation of Citizenship*, 4 (n.d.) (ALN 7/10/2) (BNA).

214. Case of Hans Gunther Stephan Beschorner (1953) (TS27-1429) (BNA).

215. Case of Frederick Charles Menzinger, January 13, 1954 (TS27-1429) (BNA).

216. Letter from Viscount Kilmir, January 29, 1958 (LCO2-6367) (BNA).

217. *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (Norwich: Home Office, 2002), §2.22.

218. British Nationality (no. 2) Act 1964.



persons who had lived abroad for a period of 7 years or more.<sup>219</sup> Britain's denaturalization regime was recodified as Section 40 of the British Nationality Act of 1981.<sup>220</sup> That act left the substantive provisions of the 1948 act essentially unchanged, and retained the requirement that the home secretary consult a judicial committee before finalizing a deprivation order.<sup>221</sup>

Only in the past decade has denaturalization again become politically relevant. This resurgence has coincided with Parliament's dismantling of the committee-based procedural protections that were first enacted in 1918. This change is largely the result of the 2002 Nationality, Immigration and Asylum Act, which substantially amended the 1981 Nationality Act.<sup>222</sup> This act had two effects. First, it broadened the discretion of the home secretary to deprive Britons of their citizenship. The law retained the home secretary's authority to denaturalize when a citizen had obtained naturalization by means of "fraud," "false representation," or "concealment of material fact."<sup>223</sup> But it considerably expanded the discretion of the secretary of state to denaturalize on the basis of a citizen's prior bad acts. Whereas previous nationality acts had enumerated specific conduct for which a person could lose citizenship, the 2002 act simply empowered the secretary to revoke citizenship whenever he or she determined it to be "conducive to the public good."<sup>224</sup> This discretion was broadened even further by the Immigration Act of 2014, which permitted the secretary of state to revoke citizenship whenever he or she was satisfied that "the person has done anything seriously prejudicial to the vital interests" of the United Kingdom or its overseas territories.<sup>225</sup> The 2002 amendments also extended the reach of revocation of citizenship to apply to native-born Britons, in addition to naturalized citizens.<sup>226</sup>

Second, and perhaps more damagingly, the law essentially eliminated meaningful outside review of the home secretary's decisions. The old committee procedure that had been in place since 1918—and that had come to act as a significant check on the home secretary's otherwise unfettered

219. *Ibid.*

220. British Nationality Act of 1981, ch. 61.

221. *Ibid.*, § 40(6).

222. Nationality, Immigration and Asylum Act 2002, ch. 41.

223. *Ibid.*, § 4 (amending the British Nationality Act of 1981, ch. 61, § 40[3]).

224. *Ibid.*, § 4 (amending the British Nationality Act of 1981, ch. 61, § 40[2]).

225. Immigration Act of 2014, ch. 22, § 66 (amending the British Nationality Act of 1981, ch. 61, § 40[2]).

226. Melanie Gower, *Deprivation of British Citizenship and Withdrawal of Passport Facilities*, SN/HA/6820 (United Kingdom: House of Commons: Home Affairs Section, 2015).

discretion—was abandoned and replaced with a complex new appellate system. Although the new law did permit appeals, unlike under the BNSA and subsequent acts, the Home Secretary was not required to consult with any outside body before making a revocation decision. As a result, even when review by an arbitrator was available in theory, it was often not available in practice. Many deprivations of citizenship since 2002 have been made while the interested party was abroad, and the deprivation has prevented many respondents from returning to Britain to initiate the review process.<sup>227</sup>

Moreover, even when an appellant has been able to challenge the home secretary's decision, the process available has been substantially more restrictive. The secretary of state has wide discretion to circumvent the normal review process for an appeal of any decision that was taken “wholly or partly in reliance on information which in [the Home Secretary's] opinion should not be made public,” either “in the interests of national security,” “in the interests of the relationship between the United Kingdom and another country,” or “otherwise in the public interest.”<sup>228</sup> These appeals are diverted to the Special Immigration Appeals Commission (SIAC), a panel whose proceedings and opinions are largely secret.<sup>229</sup> Under SIAC, the Home Office is permitted to rely on “closed” material that is provided to the court, and to a special advocate appointed to act on behalf of appellants, but not the appellants themselves.<sup>230</sup> The party facing revocation is excluded from any proceedings touching on secret evidence, and many of SIAC's final opinions are often highly redacted.<sup>231</sup> As a result, Britons have been “deprived of their citizenship and had their passports revoked without ever seeing the evidence against them, or having their cases against them heard by a court.”<sup>232</sup>

The effect of these changes has been dramatic. After lying dormant for decades, between 2006 and September of 2016, 373 Britons were stripped of their citizenship.<sup>233</sup> Of these, very few have successfully appealed their

227. *Ibid.*

228. Nationality, Immigration and Asylum Act 2002, ch. 41, §4 (amending the British Nationality Act of 1981, ch. 61, § 40[2]).

229. Immigration Act of 2014, ch. 22, § 66 (amending the British Nationality Act of 1981, ch. 61, § 40A[6]).

230. Gower, *Deprivation of British Citizenship and Withdrawal of Passport Facilities*.

231. Chris Woods and Oliver Wright, “Calls for Rethink on Law That Allows Home Secretary to Revoke British Citizenship,” *Bureau of Investigative Journalism*, February 28, 2013, <https://www.thebureauinvestigates.com/2013/02/28/calls-for-rethink-on-law-that-allows-home-secretary-to-revoke-british-citizenship/> (accessed March 5, 2018).

232. *Ibid.*

233. Letter from Home Office, United Kingdom Visas and Immigration, Complex Cases directorate to Conor Anthony Casey, January 21, 2017 (on file with author).

deprivations to SIAC, and two of those appeals have succeeded on the relatively straightforward legal ground that deprivation would leave them stateless.<sup>234</sup> The secretive and restrictive SIAC appeals process bears little resemblance to the relatively transparent process of committee appeals under the BNSA, in which cases could be heard in open court, and in which deprivation orders were routinely challenged on a variety of evidentiary and statutory grounds.

#### IV. Conclusion

The right to be secure in one's citizenship has been a key component of the liberal political order for more than half a century. The willingness of some governments, and of the United Kingdom in particular, to undermine this right represents a threat to individual liberty. But the history of Britain's denaturalization regime demonstrates that this danger has been successfully overcome before. While many observers assume that the social and political conditions that have inspired the resurgence of denaturalization are unique to the early twenty-first century, history demonstrates otherwise. Britain's first denaturalization regime did not decline because it existed in a society where hostility to the foreign-born was less prevalent, or where foreign threats to national security were less pressing. The Britain of 1914 or 1948 confronted political concerns comparable to those of today.

The power of the Home Secretary to revoke citizenship was ultimately restrained not by a seismic change in public opinion or in the geopolitical landscape, but by a subtle innovation in institutional design. The most important difference between the denaturalization regime established by the BNSA of 1914 and 1918, and the regime established by the Nationality, Immigration and Asylum Act of 2002, is the presence in the former of meaningful judicial review, which preceded Home Secretary's decision. The judges responsible for reviewing denaturalization decisions of the Home Office were insulated from the pressure of Parliament and the scrutiny of the press in a way that the Secretary of State was not. Moreover, they were trained in a system of law that prioritized the protection of individual rights over political expediency. The independence of the committee, and the gravity with which it viewed its responsibility, led it to consistently challenge the Home Office's aggressive interpretation of

234. Caroline Sawyer and Helena Wray, "Country Report: United Kingdom," *European Union Democracy Observatory on Citizenship*, December 2014, p. 17, [http://cadmus.eui.eu/bitstream/handle/1814/33839/EUDO-CIT\\_2014\\_01\\_UK.pdf](http://cadmus.eui.eu/bitstream/handle/1814/33839/EUDO-CIT_2014_01_UK.pdf) (accessed March 5, 2018).

denaturalization provisions of the BNSA. And through its strategic use of public hearings and published opinions, the committee effectively leveraged its “advisory” role into one of de facto appellate review.

It was this oversight, informed by a rights-protective understanding of the common law, that first limited and ultimately extinguished the Home Office’s denaturalization power. It is unsurprising that the resurgence of denaturalization has coincided with the elimination of the committee, and its replacement with the deferential SIAC regime. Political figures, particularly those who govern in times of unusual political distress, cannot be expected to preserve individual rights in the face of extraordinary public pressure. This is traditionally the role of judges. The Liberals who insisted on inserting a provision for independent review into the BNSA of 1918 understood this. As western societies confront the resurgence of denaturalization, the history of the BNSA serves as a useful reminder of the important role that judicial review can play in preserving individual rights.