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***Trop v. Dulles*** (1958) [5 to 4]. In 1944 petitioner was a private in the United States Army serving in French Morocco. On May 22, he escaped from a stockade at Casablanca, where he had been confined following a previous breach of discipline. The next day petitioner and a companion were walking along a road towards Rabat, in the general direction back to Casablanca, when an Army truck approached and stopped. A witness testified that petitioner boarded the truck willingly and that no words were spoken. In Rabat petitioner was turned over to military police. Thus ended petitioner's "desertion." **He had been gone less than a day and had willingly surrendered to an officer on an Army vehicle while he was walking back towards his base.** He testified that at the time he and his companion were picked up by the Army truck, "we had decided to return to the stockade. The going was tough. We had no money to speak of, and at the time we were on foot and we were getting cold and hungry." A general court-martial convicted petitioner of desertion and sentenced him to **three years at hard labor, forfeiture of all pay and allowances and a dishonorable discharge.**

In 1952 petitioner applied for a passport. His application was denied on the ground that under the provisions of Section 401(g) of the Nationality Act of 1940, as amended, he had **lost his citizenship by reason of his conviction and dishonorable discharge for wartime desertion.** In 1955 petitioner commenced this action..., seeking a declaratory judgment that he is a citizen. The Government's motion for summary judgment was granted, and the Court of Appeals for the Second Circuit affirmed...We granted certiorari.

...[T]he statute that decrees the forfeiture of this petitioner's citizenship...was...amended to provide that a convicted deserter would lose his citizenship only if he was dismissed from the service or dishonorably discharged. At the same time it was provided that citizenship **could be regained** if the deserter was restored to active duty in wartime with the permission of the military authorities.

Though these amendments were added to ameliorate the harshness of the statute, their combined effect produces a result that poses far graver problems than the ones that were sought to be solved [because they now give] the military authorities complete discretion to decide who among convicted deserters shall continue to be Americans and who shall be stateless...**the military becomes the arbiter of citizenship**...Though the crime of desertion is one of the most serious in military law, it is by no means a rare event for a soldier to be convicted of this crime. The elements of desertion are simply absence from duty plus the intention not to return. Into this category falls a great range of

conduct, which may be prompted by a variety of motives -- fear, laziness, hysteria or any emotional imbalance...[D]uring World War II,...approximately **21,000** soldiers and airmen were convicted of desertion and given dishonorable discharges...and about **7,000** of these were actually separated from the service and thus rendered stateless when the reviewing authorities refused to remit their dishonorable discharges. Over this group of men [in the Army], enlarged by whatever the corresponding figures may be for the Navy and Marines, the military has been given the power to grant or withhold citizenship...

It is my conviction that citizenship...[cannot be divested by government]. The right may be voluntarily relinquished or abandoned either by express language or by language and conduct that show a renunciation of citizenship.

Under these principles, this petitioner has not lost his citizenship. Desertion in wartime, though it may merit the ultimate penalty, does not necessarily signify allegiance to a foreign state...This soldier committed a crime for which he should be and was punished, but **he did not involve himself in any way with a foreign state**. There was no dilution of his allegiance to this country...

Citizenship is not a license that expires upon misbehavior. The duties of citizenship are numerous, and the discharge of many of these obligations is essential to the security and well-being of the Nation. The citizen who fails to pay his taxes or to abide by the laws safeguarding the integrity of elections deals a dangerous blow to his country. But could a citizen be deprived of his nationality for evading these basic responsibilities of citizenship? In time of war the citizen's duties include not only the military defense of the Nation but also full participation in the manifold activities of the civilian ranks. Failure to perform any of these obligations may cause the Nation serious injury, and, in appropriate circumstances, the punishing power is available to deal with derelictions of duty. **But citizenship is not lost every time a duty of citizenship is shirked. And the deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen's conduct, however reprehensible that conduct may be.** As long as a person does not voluntarily renounce or abandon his citizenship,...I believe his fundamental right of citizenship is secure. On this ground alone the judgment in this case should be reversed...If it is assumed that the power of Congress extends to divestment of citizenship, the problem still remains as to this statute whether denationalization is a cruel and unusual punishment within the meaning of the Eighth Amendment. Since wartime desertion is punishable by death, there can be no argument that the penalty of denationalization is excessive in relation to the gravity of the crime. The question is whether this penalty subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the Eighth Amendment. At the outset, let us put to one side the death penalty as an index of the constitutional limit on punishment. Whatever the arguments may be against capital punishment, both on moral grounds and in terms of accomplishing the purposes of punishment -- and they are forceful -- the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty. But it is equally plain that the existence of the death penalty is not a license to the Government to devise any punishment short of death within the limit of its imagination...**The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.** While the State has the power

to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards...**The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.**

There is certainly room to differ, here, as to proper tools of interpretation. If you recall, I was reluctant (and continue to be so) to use “longstanding tradition” as a reason to “constitutionalize” anything. Here we have something new — “evolving standards of decency that mark the progress of a maturing society.” First, I feel this elusive concept is even more dangerous than falling back on “tradition” alone as a reason for any proposition. Second, Messrs. Madison, Jefferson, et al., may take offence that some of today’s Justices believe that “*We, the People of 2006*” are higher on the food chain than “*They, the People of 1776*” when it comes to “decency.” Is there anyone out there who would be willing to take the position that today’s America is either “more mature” or “more decent” than the America of the Framers? Is there a simple answer to that question?

We believe...that use of denationalization as a punishment is barred by the Eighth Amendment...It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community...[H]e is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights...

The **United Nations' survey** of the nationality laws of 84 nations of the world reveals that only two countries, the Philippines and Turkey, impose denationalization as a penalty for desertion. In this country the Eighth Amendment forbids this to be done...

Are we turning now to UN surveys for help in interpreting the United States Constitution ratified in 1788? When I started this journey almost two years ago, I never dreamed any Justice would look to other nations for help in defining who we are.

The provisions of the Constitution are...vital, living principles that authorize and limit governmental powers in our Nation...In some **81** instances since this Court was established it has determined that congressional action exceeded the bounds of the Constitution. It is so in this case...Reversed.

**CONCURRENCE:** Justice Black/Douglas...Even if citizenship could be involuntarily divested, I do not believe that the power to denationalize may be placed in the hands of military authorities...Nothing in the Constitution or its history lends the slightest support for such military control over the right to be an American citizen...

**DISSENT:**...Justice Frankfurter/Butler/Clark/Harlan...Clearly Congress may deal severely with the problem of desertion from the armed forces in wartime; it is equally clear...that Congress was calling upon its war powers when it made such desertion an act of expatriation...

Congress may well have thought that making loss of citizenship a consequence of wartime desertion would affect the ability of the military authorities to control the forces with which they were expected to fight and win a major world conflict. It is not for us to deny that Congress might reasonably have believed the morale and fighting efficiency of our troops would be impaired if our soldiers knew that their fellows who had abandoned them in their time of greatest need were to remain in the communion of our citizens...

It seems scarcely arguable that loss of citizenship is within the Eighth Amendment's prohibition because disproportionate to an offense that is capital and has been so from the first year of Independence. Is constitutional dialectic so empty of reason that it can be seriously urged that loss of citizenship is a fate worse than death? The seriousness of abandoning one's country when it is in the grip of mortal conflict precludes denial to Congress of the power to terminate citizenship here, unless that power is to be denied to Congress under any circumstance...

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