Taking Away Citizenship: Lessons from the British Advisory Committee

Author : Allison Brownell Tirres

Date : January 15, 2019

Patrick Weil and Nicholas Handler, Revocation of Citizenship and the Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime, 36 **Law & Hist. Rev.** 295 (2018).

Since 2006, the United Kingdom has denaturalized more than 350 of its citizens. This represents an increase of almost four-hundred percent from the prior *five* decades. The United Kingdom is an outlier in this respect. Other countries have instituted denaturalization proceedings in recent years, but no western nation has done so at the rate of the British Home Office.[1] How do we explain this precipitous increase in revocations of citizenship in the past decade? In their remarkable recent article, Patrick Weil and Nicholas Handler argue that a pivotal–and much overlooked–change was Parliament's passage of a law in 2002 that abolished an advisory committee, established in 1918, that had effectively curtailed abuses of power by the government. The advisory committee was composed of persons with judicial experience, including members of the House of Lords, but it was not empowered as a court. Because of this committee, Britain saw a decrease in citizenship revocations between World Wars I and II, unlike in other countries in the west where they increased precipitously in this period. After World War II, the committee was an effective bulwark against Cold War-era attacks on the foreign-born.

What is most remarkable is that this highly influential committee was never formally empowered with the final say. The Home Secretary, who oversees the Home Office, could always overrule the committee's decisions. How could an advisory committee with little formal legal power nevertheless have such a dramatic impact? The answer, according to the authors, lies in the way that the committee used a combination of rule of law norms, public shaming, and courageous speech to push back against politically-motivated attacks on the foreign-born. Weil and Handler use close and thorough readings of a trove of archival material to explain how the committee "effectively leveraged its 'advisory' role into one of de facto appellate review" (P. 354). Once the committee was disbanded in 2002, this important review power more or less disappeared.[2] Like many things in life, we may only be aware of how important this kind of review is now that it is gone.

The British Parliament first granted the Home Office the denaturalization power in 1914, in the British Nationality and Status of Aliens Act. (This was twelve years after the United States created the power by statute in the Naturalization Act of 1906.[3]) In 1918, through a legislative compromise, liberal members of parliament managed to insert into an amended version of the Act a check on the denaturalization power in the form of an advisory committee. On paper, the three-person committee had very little power. It was to be chaired by a person who had held "high judicial office" in the past, and it had the power to subpoena witnesses and compel the production of documents, but it was not required to hold hearings or issue public opinions. In its first incarnation, the committee was composed of a judge of the King's Bench, who served as chair, a member of the House of Lords, and a county court judge. The Home Secretary was not required to solicit the committee's opinion unless the denaturalization petition was based on one of three of the seven possible grounds for denaturalization. So, for example, the Secretary was obligated to refer cases to the committee if the citizen was accused of trading with the enemy during wartime but not if the citizen was accused of fraud or disloyalty. Even in those cases where the Secretary was required to refer a case, he was not required to follow the committee's decision. The committee also served a more general advisory role, since the Secretary could solicit the committee's opinion on a case even if he was not required to do so.

It did not take long for the committee to establish itself as an important bulwark against potential abuses of power by politicians. As the authors note, the committee "began behaving like a court" shortly after its formation despite the fact

that it was not a court (P. 311). An important early case was that of Philip Laszlo de Lombos, a Hungarian-born painter and husband of Lucy Guinness, a Guinness brewing company heir. Laszlo had been accused in press accounts of spying for Germany and was interned beginning in 1916. The Home Office began denaturalization proceedings in 1919, claiming that Laszlo had been disloyal to the Crown. Laszlo's attorney wisely used a provision in the 1918 Act that allowed respondents to request a hearing before the advisory committee. The attorney also requested that the hearing be public. What resulted was an embarrassment for home office personnel, who had clearly relied on shoddy evidence in the attempt to denaturalize Laszlo. The committee chair issued a public opinion that chastised the Home Office for its lack of evidence and reasserted the importance of procedural protections for those facing revocation of citizenship. Even though the Secretary was not required to follow the committee's decision, he did so in this case, withdrawing the charges against Laszlo.

The committee sometimes agreed with the Home Office, issuing opinions that approved of denaturalization in some cases. Weil and Handler show how these approvals contributed to the committee's power as well. Endorsement proved as effective as humiliation. As the authors note, "[j]ust as the committee was capable of inflicting political embarrassment in cases in which it disagreed . . . , it was also capable of providing political validation in cases in which it agreed" (P. 319). Over time, the Home Office internalized the values and norms of the committee, trying to bring cases that would win committee approval rather than disapprobation.

In addition to influencing outcomes for individuals, the committee also shaped interpretations of key words and phrases in the Nationality Act, including the terms "fraud," "disloyalty," and "public good." This power was especially important in the Cold War era, when the Home Secretary was under pressure to use the denaturalization power aggressively against those with perceived subversive ideologies. The committee effectively pushed back against broad or retroactive interpretations of disloyalty. Through a series of opinions, the committee made it clear that denaturalization had to be based on something more than indirect acts or statements by the citizen; instead, the Home Office had to show that the accused had expressed actual malice toward the Crown, proven through harmful words or acts.

How did the committee members themselves escape political pressures of the day and age? After all, simply being on the judiciary does not insulate one from ideological pressure or wartime paranoia. Weil and Handler do not address this question directly; in fact, there is little here about the biographies of committee members themselves or about the process or procedure for appointing them. But their general answer seems to be one of the triumph of rule of law norms over political expediency. Members were generally committed to judicial principles of procedural regularity, due process, and independent review. They put these principles into effect even though not required to do so by the 1918 Act. As a result, the Home Office acted in accordance with these norms, and in so doing brought fewer denaturalization cases. Those cases that the office did bring were backed by stronger evidence and were better aligned with the substantive grounds in the statute.

The history recounted here is a striking example of the power of rule of law norms in the political process, and hence this article will be important for scholars of not only of legal history but also of politics and administration. It is also, of course, highly relevant to contemporary studies of citizenship and immigration law. It is remarkable that such a "subtle shift in institutional design," as the authors aptly call it, could have such a lasting impact on the lives of so many individuals (P. 353). Those of us who are concerned about the rights of the foreign-born and about abuses of power by politicians would do well to think about the lessons of this particular history.

1. The Trump administration may be trying to catch up, as discussed in this NPR interview with historian Mae Ngai.
2. As the authors note, the 2002 bill did provide for judicial review but through a much more restrictive and less accessible system (Pp. 351-52).
3. For an excellent treatment of denaturalization in the United States, *see* Patrick Weil, The Sovereign Citizen: Denaturalization and the Origins of the American Republic (2013).

Cite as: Allison Brownell Tirres, *Taking Away Citizenship: Lessons from the British Advisory Committee*, JOTWELL (January 15, 2019) (reviewing Patrick Weil and Nicholas Handler, *Revocation of Citizenship and the Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime*, 36 **Law & Hist. Rev.** 295 (2018)), https://legalhist.jotwell.com/taking-away-citizenship-lessons-from-the-british-advisory-committee/.