

Terrorists Repudiate Their Own Citizenship



Christian Joppke

The recent trend to strip international terrorists of their citizenship raises general questions about the changing nature of terror and of citizenship. Let us start with ‘terror’. In the era of Marxist-inspired violence against the state (or rather ‘capitalism’, of which the state was suspected to be merely a servant), terror was a purely domestic affair, committed by the flower children of the elite, particularly its most educated and morally minded. No one would have fathomed stripping an Ulrike Meinhof or Andreas Baader, leaders of the 1970s’ German Red Army Faction (RAF), of their German citizenship. The current ‘return of banishment’ is a response to an altogether different type of terror, one that transcends borders and is committed by people who explicitly posit themselves outside the political community of the nation-state—allegiance to the community of believers (ummah) cancels out the secular community of citizens, it is even deliberately mobilised against the latter. Only notice the cynical ritual of the Islamic State’s henchmen to have a fellow-national do the mediated head-chopping. By the same token, RAF limited its murderous acts to high-ranking representatives of the ‘system’ (of which ordinary citizens were seen as merely victims who thus stood to be recruited as fellow-fighters). Al Qaeda and its Islamic State sequel seek death for ordinary citizens, whose humanity is denied through being demoted to ‘unbelievers’. Paul Kahn took the ubiquitous threat of terror to be today’s ultimate moment of citizenship, the ‘moment of conscription’.¹

Indeed, Islamic terror is meant to be ‘war’, while RAF aspired to ‘revolution’ – two very different things, with obvious implications for citizenship in the former but not the latter. That terror against citizens should lead to reconsidering the citizen status of its culprits, who proved the ties to their state of citizenship to be at best ‘tactical and cynical’, as Peter Schuck writes in his contribution, seems logical. One is therefore astounded about the measured response by Western states, which have mostly respected the international norm of avoiding statelessness (only lately, in response to the unspeakable

¹ Kahn, P. (2011), *Political Theology*. Ithaca, N.Y.: Cornell University Press, p. 138.

atrocities committed by the fighters of the Islamic State, have there been cracks in this commitment, most notably in Britain). But academics cry out that ‘banishment weakens citizenship’, as Audrey Macklin does. They draw an idyllic and reality-resistant picture of ‘singular and unique’ ties between terrorists and the citizenship they despise; ‘intrinsically grave harm’ is said to be inflicted here, separate even from ‘the harm of statelessness’. Evidently, more sympathy is invested on the culprits than on their victims.

Make no mistake. One should hold no illusion about populist, spin-doctored politicians, from Britain to America, Norway to Italy, who hide their chronic incapacity to lead in our contemporary ‘audience democracies’ behind the sable-rattling ‘security’ and ‘War on Terror’ rhetoric that the people wish to hear.² Macklin has a point when she finds that under the guise of ‘security’ only ‘the discretionary and arbitrary power of the executive’ is increased. Particularly the recent experience in Britain under Tory Home Minister Theresa May, with a rather capricious practice of citizenship stripping for the loosely defined reason of being ‘conducive to the public good’, with sometimes lethal and conspiratorially concocted consequences for the targeted individuals, lends itself to this interpretation. And Peter Spiro is on target that conducting the fight against terrorism on the citizenship front is ‘empty gestures’ and not likely to have much effect – though his proposal of ‘passport revocation and travel bans’ in lieu of denationalisation reads eerily off the mark after the recent tragedy of a would-be jihadist, who had been grounded by the Canadian government exactly in these terms, turning his rage about the passport denial against an innocent guardsman in Ottawa.

The practical question of effectiveness is secondary to the principled question whether citizenship for proven (naturally not just suspected or potential) terrorists who conduct war (in the literal sense) against Western states and their citizens should be unassailable. At heart, the issue is one of ‘loyalty and allegiance’, as the Canadian Immigration Minister, Chris Alexander, defended the 2014 Strengthening Canadian Citizenship Act in parliament. This act, representative of similar bills currently being considered in a number of European states, Australia, and the United States, allows the stripping of citizenship in the cases of treason, spying, taking up arms against the Canadian Forces, and terrorism, even if the latter is committed outside Canada and sentenced by foreign courts, should the action in question constitute a terrorism offence also under Canadian law. The expanded geographic scope for terrorism, which stirred controversy, was

² Manin, B. (1997), *The Principles of Representative Government*. New York: Cambridge University Press, Chapter 6.

clearly dictated by heightened security concerns. But it also recognises the global nature of the new terror and its affront to the secular state and citizenship at large, wherever it may occur; one might read it as a comity of nations response to a global challenge. In any case, it is not just bizarre but self-destructive to measure the 'strength' of citizenship in terrorists' unencumbered possibility to make tactical use of it in their war against the godless state and its unbelieving median citizen.

For calibrating banishment, next to taking into account the changing nature of terror, one also needs to recognise the changing nature of citizenship in a globalising world. Whoever has reflected for a second on the colossal injustice inflicted on the vast majority of mankind by being born into the 'wrong' kind of state that cannot guarantee its 'citizens' physical safety and the elementary means of survival³, must be irritated to see citizenship depicted as something that an individual should never be able to lose, however randomly it had been assigned to her in the first place, and however much a particular individual has done to undermine or even destroy this very citizenship (and the state that guarantees it). Audrey Macklin sees the danger of banishment in 'making legal citizenship contingent on performance'. 'Performance' strikes me as a rather vague and anodyne term for the behaviour in question. It is one thing to make citizenship acquisition contingent on virtuous behaviour, which could never be exacted on born citizens (as Britain entertained for a while in its 'probationary' or 'earned' citizenship scheme that was never implemented); it is quite another to make a declared war against the secular state and its citizens a ground for renunciation. As much as one should eschew virtuous citizenship from a liberal perspective, one should welcome, even require the withdrawing of citizenship from someone to whom it is at best a tactical weapon.

It may warm the heart to elevate citizenship to a 'right to have rights', enunciated by US Supreme Court Chief Justice Earl Warren in a different time and context (voting in foreign elections⁴ and desertion during World II⁵, in both cases without any third-party harm inflicted and at best a vague and constructed violation of allegiance). The gospel of citizenship stripping as 'cruel punishment', pronounced in *Trop v. Dulles* (1958), needs reconsideration in the age of global terror. And the accompanying formula of citizenship as a 'right to have rights' obscures that persons without states

³ See Shachar, A. (2009), *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge, Mass.: Harvard University Press.

⁴ *Perez v. Brownell*, 356 U.S. 54 (1958).

⁵ *Trop v. Dulles*, 356 U.S. 86 (1958).

or citizenship are no longer the ‘scum of the earth’ they may have been in the late 1940s, when Hannah Arendt wrote the *Origins of Totalitarianism*. But most importantly, the formula ‘rights to have rights’ dodges the fact that, indeed, citizenship in a globalising world is increasingly ‘privilege’ and ‘contract’. It is a privilege if one considers the mentioned exclusion from a lucrative OECD-state citizenship of most of mankind (that has to make do with less than US\$ 2 per day). And it is a contract by definition for the ever growing number of immigrants who are not born with it but seek it out for their own benefit. In the post-feudal world, most states allow the possibility to renounce one’s citizenship—this was the point of departure of ‘democratic’ America from ‘monarchical’ Britain. But then it is not outlandish (or illiberal) to concede the converse capacity to states to rid themselves even of born citizens who have despised or patently abused their citizenship through their actions (and why stop at the threshold of statelessness?).

Macklin claims that banishment is ‘both superfluous and anachronistic’ because states now have ‘criminal justice systems’ at their disposal to ‘rehabilitate and reintegrate wrongdoers within the state’. This claim is misleading and paternalistic. International terrorists are not criminals but warriors—they don’t want to be ‘reintegrated’. The liberal state should acknowledge their claim, eye to eye, by taking away from them what they have factually renounced and even wish to destroy. Canadian minister Chris Alexander is right: ‘They (terrorists) will have, in effect, withdrawn their allegiance to Canada by their very actions.’ Peter Spiro lawyerly ups the ante by arguing that there could not be a ‘shift of loyalty’ on the part of Islamic terrorists because ‘there is no citizenship in the Islamic State’. Does he want to wait until they have acquired a seat in the United Nations?

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

