

THE “DARKER SIDE” TO DUAL CITIZENSHIP

A central thrust to Peter Schuck’s argument that it should be easier to deny citizens of judicial due process is that there are so many dual citizens. And dual citizenship, he says, has a darker side.

Dual citizenship has proliferated as easier travel and cosmopolitan mobility have fostered international relationships, which lead to more naturalizations and more marriages between people of different nationalities, who in turn can often transmit their different citizenships to their U.S.-born children. Government policies, both here and abroad, have also increased dual citizenship, mostly for good reasons. Traditionally, the State Department opposed dual citizenship out of concern about conflicted loyalties, military service requirements, diplomatic protection burdens and the like. Today the government no longer resists it, recognizing the legitimate causes of dual citizenship, the practical obstacles to preventing it and the fact that, in practice, it causes little harm.

But there remains a darker side to dual citizenship: Some citizens who spend most of their lives abroad now have only notional ties to the United States rather than a genuine communal or emotional connection. Al Qaeda will surely focus recruitment efforts on this group, even though only a few will turn on their country.

Which brings us to the case of Awlaki, a dual citizen of the United States and Yemen. The government claimed there was

hard, actionable intelligence that he had plotted to kill Americans, and that he was our citizen in name only. He refused to return to the U.S. and could not be captured for interrogation and trial without putting troops on the ground and in danger (and perhaps not even then).

Does the Constitution really require that he receive the judicial process owed to a citizen who lives in our society and is charged with a serious crime? I think not.

I'm a dual citizen, having gotten Irish citizenship through my spouse. Does that mean I should forgo judicial process because I'm a suspect Irish terrorist? Was Peter King? Are Israeli-American dual citizens – a pretty common dual citizenship – suspect of being terrorists as well?

Of course, Schock doesn't actually connect dual citizenship with increased likelihood that person will declare himself an enemy of the state (he even suggests that native-born Nidal Hasan was just dual-citizens Awlaki's cat's paw, all the evidence in the Webster report notwithstanding). He just uses it – and the prospect of all these dark scary people wandering around with US passports – to invoke fear before he proposes limiting due process to citizens.

Maybe his fear is what has led him, in the very same piece, to be so confused. He applauds our rigid treason laws, a stance utterly at odds with his suggestion suspect dual citizens should get different judicial due process.

The court has also held that the government may not take away one's citizenship against one's will, regardless of one's actions, except for treason, which the Constitution properly makes hard to prove if, like Awlaki, you

are not under a U.S. court's jurisdiction.

How do you applaud the necessity of a court judgement, with rules about the standard of evidence, before someone gets labeled a traitor, and at the same time suggest that citizens (he really doesn't limit it to dual citizens) should not have judicial process before they're killed?

Apparently we now have Yale law professors so terrified by dual citizens he has decided American citizens – dual citizen or not – should have a lower standard of due process to be killed than to retain their citizenship.