Liberalism, Nationalism, and uses of the Word Citizenship: Canadian Discourses

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Abstract

The word citizenship is a keyword in many political debates, as well as legislation and public policy. Citizenship studies scholars debate the meaning, extent and effects of citizenship and these debates have intensified in recent years. This dissertation takes a different approach; it explores how the term citizenship is used in selected discourses. By treating citizenship as a word and examining its uses, rather than treating citizenship as a socially constructed being or concept, the following dissertation departs from much work in contemporary citizenship studies. While many scholars are engaged in debates over what citizenship is or should be, I will argue that if one accepts the precepts of these debates, one mistakenly attributes being to citizenship and thereby reinforce hegemonic uses of this word.

To examine citizenship as a term in influential discourses, I begin with canonical texts of political theory before turning to uses of the word citizenship in selected Canadian discourses: for example, in discourses that speak of "Canadian citizenship," or "Canada as a country of equal citizens." Close readings of discourses that employ the words "citizenship" and "Canada" together reveal how citizenship is frequently enunciated as a political identity; as something a person can gain or be denied; and as related to national "sovereignty." Within this context, the dissertation focuses on three key questions: 1) How do common uses of the term citizenship lead individuals to think about themselves and others as political actors? 2) How do the discourses examined justify the way the label "citizen" is assigned to some, but withheld from others? 3) How do the discourses examined relate "citizenship" to "nation" and to "sovereignty"?

In responding to these questions a specific thesis will be defended; namely, that the discourses examined consistently posit that citizenship is an "artificial" creation (a product of

social action, laws and policy), and that Canadian citizenship is often defined by contrasting it with "naturalized" forms of identity such as race and ethnicity. In making this argument, this dissertation makes a contribution to social and political thought by focusing critical analysis upon the notion that citizenship is an artificial being or construct. To repeat, from the perspective adopted in this dissertation, citizenship is just a word, and when we treat citizenship as artificial we mistakenly attribute existence to citizenship. Adopting the perspective that citizenship is just a word, rather than an artificial being, raises the possibility of attending to how this word is used to shape the way we think of ourselves and others, to introduce categorical divisions into human populations, to authorize distinct legal processes and entitlements for distinctly categorized persons (e.g. citizens and non-citizens), and to present fictions of well-ordered, even sovereign, nation-states. Indeed, the conclusion argues that treating citizenship as a word opens the possibility of asking why citizenship is a central term in contemporary political discourses and whether we really want it to be. Questioning the word citizenship and the consequences of its uses is important because doing so may foster political interventions that attend to what happens to bodies coded as non-citizens, to local communities as opposed to statist projects, and to material realities more than political artifices.

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Introduction

Citizenship status has a profound impact upon individuals' lives. In the categorical terms of the Supreme Court of Canada, the "fundamental principle" governing non-citizens in Canada is that, unlike citizens, "non-citizens do not have an unqualified right to enter or remain in the country" (*Chiarelli v. Canada (Minister of Employment and Immigration)* [1992], 1 S.C.R. 711, 16 Immigration Law Review (2d) 1 [*Chiarelli*] para. 733; see also *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, 1 S.C.R. 350 [*Charkaoui I*], para. 129; Thwaites, 2009). In turn, the excludability of non-citizens opens onto a host of other legal differences between citizens and non-citizens. For example, Chief Justice McLachlin holds that non-citizens' lack of a right to remain in Canada justifies the incarceration of non-citizens in relation to deportation matters (*Charkaoui I* para. 109, 129), that non-citizens' rights to liberty and security of person are not necessarily protected where these rights are infringed upon by deportation (*Medovarski v. Canada (Minister of Citizenship & Immigration),* 2005 SCC 51, 2 S.C.R. 539 [*Medovarski*], para. 46), and that, in exceptional national security cases, it may be constitutional for non-citizens to be deported to face torture by foreign governments (*Suresh v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, 1 S.C.R. 3*, [Suresh],* para. 78).

Consider how such rulings play out in specific cases. In one, a woman is separated from her husband and livelihood by her deportation (*Medovarski*). In others, men spend years in immigration detention, wondering if they will be released or deported to face torture in their home countries (e.g. *Almrei v. Canada (Minister of Citizenship and Immigration), 2005 FC 255, F.C.J. 437 [Almrei 2005a]*; *Charkaoui (Re) 2005, FC 1670, F.C.J. 2038 [Charkaoui 2005]; Jaballah(Re), 2006 FC 346, F.C.J. 404*; *Suresh;* see, generally, Larsen and Piche, 2009).

Following others, Tamil asylum seekers report being tortured or simply disappear when the Canadian Border Services Agency returns them to Sri Lanka.[1] Each of these scenarios is possible because the individuals affected are not citizens. Moreover, these scenarios raise the question of why being labeled a citizen makes the difference between being sheltered or exposed to harm.

This dissertation explores how the term citizenship is used. To do so, Chapter One will analyze canonical texts of political theory. Thereafter, I pragmatically limit myself to exploring the use of the word citizenship in the Canadian context; for example, in discourses that speak of "Canadian citizenship," or "Canada as a country of equal citizens." In other words, I engage in close readings of selected discourses that employ the words "citizenship" and "Canada" together. These readings reveal that such discourses frequently speak of citizenship as 1) a way of thinking of oneself and others; 2) as something a person can gain or be denied; and as 3) related to the "nation" and its supposed "sovereignty." The dissertation consequently asks: 1) How do common uses of the term citizenship lead individuals to think about themselves and others as political actors? 2) How do the discourses examined justify the way the label "citizen" is assigned to some, but withheld or withdrawn from others? 3) How do the discourses examined relate the word "citizenship" to the words "nation" and "sovereignty"?

The dissertation argues that the discourses examined consistently posit that citizenship is an "artificial" creation of law and policy. For example, the Attorney General of Canada writes that "citizenship is entirely a creature of federal statute. In order to be a citizen, a person must [merely] satisfy the applicable statutory requirements" (Attorney General's Factum for *McAteer*

[1] e.g. *B135 v. Canada (Minister of Citizenship and Immigration),* 2013 FC 871, F.C.J. 1033, para. 23, 24; *Canada (Minister of Citizenship and Immigration) v. B272,* 2013 FC 870; F.C.J. 957, para. 35; *Canada (Minister of Citizenship and Immigration v. B451*, 2013 FC 441, F.C.J. 561, para. 38. The case of *B135 v. Canada* reports how Tamil refugees (who the courts designate by alphanumeric codes for confidentiality), and who arrived in Canada aboard the MV Sun Sea, were persecuted when deported to Sri Lanka. "Allegedly, B005's whereabouts is still unknown, or he is being held incommunicado" (para. 23). "As to B016, there is a sworn statement from him that he was beaten and tortured for a year" (para. 24).

v. Canada (Attorney General), 2013 ONSC 5895, O.J. No. 4195, [hereafter *McAteer*], para 8). The Attorney General's comments make citizenship wholly a product (a "creature") of law that has no natural essence, but that is brought into being insofar as it is legally said to exist. I contend that such claims that citizenship is artificial have consequences for the way citizens are taught to think of ourselves and others, the extension and denial of citizenship status to individuals, and to dominant understandings of the nation ("Canada") and its supposed sovereignty.

Methodology

Drawing on Williams (1983), this dissertation treats citizenship as a "keyword" (see also Kennely 2011, p. 339-340). In Williams' vocabulary, a keyword is a word that is both widely used and used to mean many different things. Such a word holds a central place within discourse and animates social actors because of the wide range of ways it is used (Williams 1983, p. 91). That is, contradictory and ambiguous uses of a keyword, and resulting debates over the word's meaning, serve to entrench that keyword within our vocabularies. Therefore, in analyzing keywords, it is necessary to avoid becoming invested in debates over what the word "really means," preferring instead to consider what these debates take for granted and accomplish. From the analytical perspective adopted here, debates over the meaning of a word may enhance the popularity of that word, but will not expose the roots of this popularity or the actual effects of actual uses of the word. Consequently, rather than discuss what citizenship is, or to clarify one singular concept of citizenship, this dissertation aims simply to map some common ways that the term citizenship is used by selected discourses. To do so, I explore citizenship in the particular context of discourses that use the terms citizenship and Canada together. In turn, examining common usages will allow the charting some of the procedural and value-laden "conditions" of

successful speech on citizenship. Such conditions determine what speech acts will be found credible or taken seriously, such that they become consequential (Austin, 1975). They concern who may speak authoritatively on a given topic, the types of evidence that may be presented in support of problematic claims, the rules for evaluating this evidence, as well as axiomatic assumptions and ethical principles (Chatterjee 1997, p. 38). By disclosing the conditions that allow common uses of the term citizenship to become consequential I aim to enable the reader to better understand how discussions of citizenship impact upon our identities, authorize political inclusions and exclusions, and link up with discourses on "the nation" and "sovereignty."

As will be shown, the keyword "citizenship" organizes a network of claims, laws, attitudes, objects and practices that serve to shape the way individuals think and act. For shorthand, what follows will call this network organized around the keyword citizenship the "*dispositif* of citizenship." The term "*dispositif*" is taken from Foucault (1980), who uses it to designate a subject-forming and society-ordering network.[2] *Dispositif* is a perfectly ordinary French word, not one of Foucault's inventions. It indicates an arrangement of elements according to a plan.[3] As such, the word may be used in fashion to refer, say, to an ensemble of clothing and accessories or in military discourse to denote the way units are deployed on a battlefield. Foucault (1980) comments on his use of the word *dispositif* as follows:

> What I'm trying to single out with this term is, first and foremost, a thoroughly heterogeneous set consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions... (p. 194).

[2] "Apparatus" is an accepted English translation (Agamben 2009, Translator's note p. 55), but this translation may draw our attention too much to mechanical and material things. A more appropriate English translation would be "disposition," however, as discussed below, the dissertation uses the word "disposition" to indicate a particular component of the *dispositif* of citizenship.

[3] The word's Latin ancestor is *dispositio* and means arrangement (Lewis 1894, p. 251). *Dispositio* can also mean both "economy" (the arrangement of goods and duties) and "discourse" (understood as an arrangement of arguments) (Agamben 2011, pp. 2, 19).

According to this definition, a *dispositif* is a "heterogeneous set." The *dispositif* of citizenship is the set formed from elements related to each other through uses of the word citizenship; elements such as laws, institutions, hearings, objects such as passports, spaces like airports and voting stations, populist and social scientific arguments, varying legal statuses, and so on.

It is possible to speak of a *dispositif* of citizenship insofar as a network of practices, institutions, concepts, rights and human bodies are ordered and interconnected by way of the term citizenship within both material economies and political discourses. Taking human beings as a focus, one may also speak of the *dispositif* of citizenship as the assignment of varying statuses to human bodies. Some bodies are defined as citizens and others as non-citizens. The two categories of person are then distributed inside and outside the "national territory" according to various laws and policies.

The term *dispositif* is also useful here in that it helps to approach the dissertation's first research question (about how uses of the term citizenship lead individuals to think about themselves and others). As Agamben (2009, p. 15) argues, any *dispositif* shapes the identities, beliefs and attitudes of the human beings it captures. In other words, *dispositifs* produce subjects. *Dispositifs* do not simply control people but actually provide us with our ways of thinking and acting (Agamben, 2009, p. 11; O'Connor, 2002, p. 36-37). This subject-forming function of *dispositifs* is captured nicely by the English word "disposition," which means, according to one definition: "tendency or bent of the mind, *esp.* in relation to moral or social qualities" (Oxford English Dictionary, 2013). In this text, I am going to call the set of subjective attitudes and habits of thought that is part of the *dispositif* of citizenship, the "disposition of citizenship."

Those of us fortunate enough to be granted citizenship in our country of residence enjoy privileged relations to powerful institutions and public resources. Yet, perhaps more importantly,

we are also able to empower ourselves and shape our behaviour with the idea that our disposition to individualism, responsibility, multicultural openness, and whatever else citizenship may be said to entail, exalts us above foreigners, deportees and the hierarchy of resident non-citizens (see also, Darling 2014, p. 77).

Contribution to Political and Social Thought

This dissertation contributes to political and social thought by focusing critical attention on the way the term citizenship is used, and particularly on claims that citizenship is an artificial political identity. While many critical scholars simply accept the claim that citizenship is artificial or constructed, and proceed directly on to discuss ways citizenship may be "remade," I examine what is accomplished by saying that citizenship is an artificial or constructed political identity. By treating citizenship as nothing but a word and examining its uses, rather than treating citizenship as a socially constructed being, my work departs from much contemporary citizenship studies. It seems to me that citizenship studies is largely engaged in debates over what citizenship is or should be. My position is that, if one becomes involved in these debates, one mistakenly attributes being to citizenship and thereby reinforce hegemonic uses of this word.

Theoretical Background

This dissertation is informed by Esposito's work "The Dispositif of the Person" (2012a). Through analysis of theological, legal and bio-political discourses, Esposito theorizes "personhood" as a word that is very similar to citizenship. He writes that uses of the word "person" engender a certain disposition (e.g. self-mastery, accountability), serve to divide living beings into categories (persons and non-persons), and set up a certain relation to government and sovereign power (only persons may participate in government, the sovereign decides who counts as a person, etc.). As such, the *dispositif* of personhood is akin to the *dispositif* of citizenship.

Uses of each word (citizen and person) serve to shape subjects, work to categorize living beings, and articulate discourses of sovereign power.

Esposito's work aims to unsettle what he calls the "ideology of the person," which fosters widespread debates over what a person is or who counts as a person but practically forecloses the possibility of debating whether the term "person" ought to be a central part of theological, political and legal vocabularies. Esposito strives to bring this ideology into question by analyzing the *dispositif* of personhood rather than the meanings of personhood. This dissertation aims to perform the same service as regards citizenship. Just as Esposito suspends questions of what a person is, in order to understand the way the *dispositif* of personhood functions (to categorize human beings as person and non-persons, for example), I aim to understand some of the general functions of the *dispositif* of citizenship.

Analyzing citizenship in the way that Esposito analyzes personhood is especially recommended by Kim's (2000) compelling history of citizenship. Kim argues that, during the early modern period, the division between "natural born subjects" and foreigners gradually replaced the division between free persons and serfs/slaves that animated ancient and medieval European social orders; and thereby made way for the rise of citizenship as a dominant political category.

Kim illustrates that citizenship may in fact be usefully understood as a kind of contemporary moment in the history of the legal classification of types of person. He notes, to begin with, that the thirteenth century Bracton holds that "The primary division in the law of personal status is simply that all men are either free or unfree" (cited in Kim, 2000, p. 1).[4] These words, are "virtually identical" to a definition of the *"summa divisio de iure personarum"*

[4] The online edition of *Bracton*, maintained by the Harvard Law School Library and based on the 1977 translation by Thorne, has "The first and shortest classification of persons is this, that all men are either free or bond" (Bracton, 1977, p. 29).

offered by the second century Roman scholar Gaius, and reproduced in Justinian's *Institutes* (cited in Kim, 2000, p. 2).[5] Kim (2000) speculates that such a division has not vanished but transformed in the modern period. Rather than being a matter of relative legal freedom, the contemporary division of persons is based upon membership in the state (Kim 2000, p. 7-8). Thus, while Gaius and Bracton's earlier treatises on law began by discussing free persons and slaves, Blackstone's *Commentaries*, published about 1765, notes that "The first and most obvious division of the people is into aliens and natural-born subjects" (Blackstone, 1765, p. 354; cited in Kim , 2000. p. 4). In light of this history, and contemporary Canadian discourse, this dissertation understands citizenship a keyword animating a contemporary "division of persons."As also noted by Brubaker (1989) and Wallerstein (2003), the division between citizen and non-citizen has gradually supplanted the historically much more important divisions between nobles and serfs, free men and bondsmen. Yet we should not forget the history that allows laws and discourses on "types" of person to become a discourse on citizens and non-citizens.[6]

The significance of the transition from discourses on free and unfree persons to discourses on citizens and non-citizens may be understood, it will be argued, by focusing critical attention on the notion of citizenship as an artificial construct. Esposito (2012b, pp. 84-87) notes that Hobbes, who still uses the term "person" as the key term of his political vocabulary, exemplifies and exacerbates a crucial shift in conceptions of political subjects. Whereas ancient and medieval conceptions tended to emphasize personhood as an inherent quality of the individual (stemming from divine ordination, their soul or their rational mind), Hobbes describes

[5] Moyle's (1913) translation of the *Institutes* has "In the law of persons, then, the first division is into free men and slaves" (p. 4).

[6] As discussed in Chapter 3, below, and to a lesser extent in Chapter 5, contemporary discourses often separate the free citizens of Western nations from the unfree peoples of other world regions. As such, there is continuity between earlier divisions between free and unfree persons and contemporary divisions between citizens and others. Another work might fruitfully examine how freedom historically came to be seen less as the property of a (more noble) type of person and more as a resource distributed unevenly to nations within a certain geography.

personhood as an artificial legal category taken on by the individual through the social contract (Esposito 2012b, pp. 84-87). As such, Hobbes will be a key resource in the following and much of Chapter One is devoted to his *Leviathan.*

Dissertation Outline

As noted, this dissertation attempts to understand the *dispositif* of citizenship in light of its three research questions and widespread claims that citizenship is an artificial construct. In order to do so, Chapter One explores the emergence of notions of artificial personhood and political identity. The chapter then moves on to undertake a close reading of two important thinkers of political artifice: Hobbes and Kant. In brief, Hobbes and Kant rely upon notions of artificial political community to support a modern liberal logic. In doing so, they respond to religious understandings of mystical community in God that were dominant in their, respective, times. They offer theories of community as no more than a product of political representation. Chapter One argues that understanding the significance of this modern turn to representation is vital for understanding contemporary discussions of citizenship as an artificial identity. I will argue that theories of artificial identity are attractively anti-essentialist, but should not go unquestioned. They establish conditions of speech for talking about citizenship, political inclusion and exclusion, the nation, the state and the scope of sovereign power.

Following Chapter One, I ground my analysis in contemporary political concerns by examining Canadian discourses on citizenship. Drawing on McKay (2000), I understand Canada not as an "essence" or a territory but in relation to a certain historical "project of rule" (2000, p. 620, 621). McKay writes that Canada is "an *extensive* projection of liberal rule across a large territory and an *intensive* process of subjectification, whereby liberal assumptions are

internalized and normalized within the dominion's subjects [read: citizens]" (p. 623).[7] Chapter Two supports McKay's understanding of Canada by highlighting examples of Canadian discourses that are strikingly similar in that they accept the founding assumptions of the Hobbesian and Kantian liberalism examined in Chapter One. In brief, these discourses rely upon the notion that citizenship and the nation are artificial, are therefore able to include all naturally occurring types of subjects and are thus able to smooth over any reason for political conflict.

After making this case, Chapter Two moves on to examine the way the *dispositif* of citizenship in Canada allows for and, indeed, requires some people to be excluded from the citizenship. Since the notion that citizenship is artificial makes claims about the essence of Canadian citizenship problematic, citizenship's partisans rely on the argument that some types of people are not fit for citizenship in order to make citizenship stand out as a unique and valuable identity. In this way, nativist and Eurocentric prejudices (that are officially disavowed within most Canadian discourses on citizenship) animate the *dispositif* of citizenship in a covert fashion. In modern Canadian discourse, the persons to be excluded from citizenship are not said to be directly unfit because of who they are (their race, religion, gender, etc.), but rather on the basis of their supposed dispositions. In this logic, those members of minority groups who are (said to be) willing to bind themselves to an "artificial" citizenship may be included, but those who are perceived to be too attached to a traditional community or fundamentalist political project will be excluded.

Chapters Three through Five then offer three distinct reflections on the way the *dispositif* of citizenship in Canada is bolstered by arbitrary exclusions. Chapter Three examines

[7] Chapter Two critiques McKay modestly by suggesting that in fact "Canada" is only a recent keyword in this liberal project. To say that Canada *is* a specific liberal project still reifies Canada by ascribing it an essence, something McKay himself would rather avoid. Nonetheless, the chapter lends weight to McKay's general analysis of liberal rule.

contemporary police, government and security service publications on political radicalism and violent "extremism." These publications relate to the *dispositif* of citizenship insofar as they consistently define extremism and citizenship as opposed to one another. It demonstrates further that these publications portray political extremism as foreign to Canada, and as a product of minority groups, especially Muslim communities. The central conclusion of this chapter is that these publications present a common way of using the term citizenship to mean domesticity, majoritarianism and status quo political quietism by juxtaposing citizenship to foreignness, minority identities and radical politics; in a way which serves to stigmatize all three.

Chapter Four then examines uses of the word "citizens" to mean a population that a government has a special duty to protect. I critique the claim that authorities have a special duty to protect citizens. The claim that government must protect citizens rests upon the idea that there are differences between citizens and non-citizens, and that these differences entitle citizens to protection. Yet the idea of differences between citizens and non-citizens is unavoidably undermined by the fact that government representatives also decide who will and will not become a citizen. I contend that it is the very making of decisions about who will be allowed to become a citizen that produces the notion that there are differences between citizens and non-citizens.

Chapter Five goes on to examine Canadian immigration law and legal uses of the term citizenship. The Chapter argues that because immigration law subjects non-citizens to different standards of judgment than citizens are subject to, immigration law serves to create a sense that non-citizens are a different kind of person than citizens. Specifically, Chapter Five compares the treatment of citizens accused of terrorism to cases of non-citizens suspected of links to terrorism.

The dissertation concludes that common uses of the word citizenship serve to accomplish

three things: first, to lead those who take on the label "citizen" to think of ourselves as critical individuals, who see through the errors of "naturalized" or "essentialist" politics; second, to justify longstanding racial and Eurocentric exclusions on the new grounds that some people are not properly disposed for citizenship; and third, to lead us to trust in sovereign power as the force that is able to distinguish well-disposed citizens from dangerous others.

In effect, it will be argued, such common uses of the word citizenship rely upon a false reification: namely, a naturalized distinction between A) those modern critical individuals capable of understanding political representation and B) those dangerous others committed to essentialist visions (of community, justice, God, etc). This raises the question of whether there could be a *dispositif* of citizenship "without illusions." I will argue that although this may be possible, the result is a system wherein subjects are shaped through practices of inclusion and exclusion that have no alibi except the desire for order. Rejecting such a system, this dissertation ends with a consideration of how citizenship could be displaced from its central position within contemporary political vocabularies.

The conclusion recalls Hobbes's comment that the state is a "Mortall God" in light of Zizek's theoretical writings on atheism. By comparing the status of citizen (subject to a state) to the status of a religious believer (subject to God), the dissertation suggests that it is possible for the term citizen to lose much of its importance. Just as Zizek's atheist does not debate the questions of what God is or what it means to be a believer, it may be possible to stop taking seriously the question of what citizenship is or means. This perspective is attractive insofar as it avoids a particular risk; to wit, that attempts to alter the meaning of citizenship (to make citizenship more democratic or authentic, for example) will simply reproduce logics of exclusion that one may wish to avoid. In contrast to attempts to "reinvent" citizenship, a strategic "loss of

interest" in citizenship may allow for political interventions that attend to what happens to bodies coded as non-citizens, to local communities as opposed to statist projects, and to material realities more than political artifices.

Chapter One: Liberalism, Nationalism and the Politics of Representation

As noted in the Introduction, citizenship can be seen as less a concept than it is a "keyword" that brings together a network of contradictory ideas, attitudes, objects and practices. I will refer to this network as the *dispositif* of citizenship. This Chapter argues that Hobbes and Kant's discussions of liberal politics exemplify a set of ideas that structure the *dispositif* of citizenship. It will be argued that for both of Hobbes and Kant, the state is an artificial creation, and the well-disposed political subject is a person who embraces the state for its very artificiality. The contemporary notions of the nation-state as an imagined community, and of citizenship as an artificial status, basically mirror this Hobbesian and Kantian position.

Commonplace understandings suggest that a citizen is a member of a state (Isin 2012; Sassen 2002). In Canada, a well-cited judicial expression of this idea is given by Justice Rand, who writes that "citizenship is membership in a state" (*Winner v. S.M.T.* [1951] SCR 887 [*Winner*] p. 918). What then, of the state? Justice Rand explains that "its character is national" (p. 919), and we come up against the hard question of what a nation is. Brubakker (2004) helpfully points out that "nationhood" has been used to mean two very different things. A nation may be said to be an organic unity, arising naturally from (for example) common biology or shared culture. However, a nation may also be said to be a creation of concerted political will and human action. These different understandings of nationalism are usefully glossed under the supposed distinction between "ethnic" and "civic" nationalism.

I suggest that the latter use is dominant in Canada, and that Canada is commonly said to be a civic nation rather than an ethnic nation. My purpose in this chapter is to analyze the logic and conclusions that follow from the idea that the nation-state and its citizens are an artificial

(not to say unreal) result of political will and human actions. A few quotations might help to illustrate this vision of Canada. We might take, for example, the claim that:

> The first and fundamental accomplishment of the constitutional [British North America] Act was the creation of single political organization of subjects of His Majesty within the geographical area of the Dominion [of Canada] the basic postulate of which was the institution of Canadian citizenship (p. 918).

In this quotation Rand J. defines the state as the product of a political and legal, "constitutional," act. In fact, the history is wrong here. The term citizen became a staple of Canadian legal debate only in the 1940s, culminating in Canada's first citizenship act in 1947 (McKay 2000, p. 641). The history making he engages in is nonetheless expressive of contemporary claims that Canada is a nation that was historically created through a formal act, and that consists of citizens.

One reads a very similar claim in Canada's *National Security Policy* (Privy Council Office, 2004), where "Canada" is said to be the result of "the decision to create our country to provide peace, order and good government for Canadians" (p. iii). In this quotation Canada is not presented as a naturally existing thing, but the result of a "decision" – although we are not told who made this decision. Turning to academic discourse, one may consider Gwyn's (1995) influential analysis of Canada as less a "nation-state" than a "state-nation," that is, as a country where the institution of the political state came first and national identity came second (p. 17). Critical, and even subversive as Gwyn's claim might appear, I posit that it actually fits in with a set of dominant claims about Canada as a created rather than a natural being, upon which claims of Canadian uniqueness are based. Indeed, Gwyn asserts Canada's uniqueness by immediately adding that, as a state-nation, "Our state has formed us and has shaped our character in a way that is true of no other people in the world" (1995, p. 17-18). Such claims that Canada is artificial fit together with claims that citizenship is an artificial status. Furthermore, these claims that

nation and citizenship are artificial are not innocently modern or progressive. Instead, they fit into a specific political logic.

Through a return to canonical texts of Hobbes and Kant, this chapter analyzes an influential set of ethical and epistemological assumptions that make it possible to present "artificiality" as a constitutive and desirable feature of the nation and its citizenship. To help contextualize and clarify the relevance of Hobbes and Kant (who speak of polities but not nations, and subjects more than citizens), the Chapter begins by considering Anderson's (2006) and Kantorowicz's (1997) comments on the history of nationalism. Both scholars argue that nationalism arises at a time when theories of artificial representation begin to trouble religious notions of revealed truth. *Leviathan* (1968) and several of Kant's texts present a paradigm for a politics of artifice and representation that sets itself against notions of reality and truth. As such, Hobbes and Kant remain enlightening for thinking about the contemporary *dispositif* of citizenship.

I. Nationalism, Representation and Sovereignty

Benedict Anderson (2006) famously defines nations as "imagined communities" (p. 6). He notes, of course, that all communities are in some sense "imagined" (2006, p. 6). Yet, for Anderson, modern nationalism differs from other understandings of community because it entails the acknowledgment that its community (the nation) is a product of imagination and belief. Anderson theorizes that nationalism arose historically in Europe at a time when belief in revealed truth faltered and sacred doctrines were reconceptualized as representations or products of human artifice. Specifically, he argues that the contemporary nationalist period arises in Europe following the medieval period; when, he says, Catholic Christianity provided a system of universal truths (2006, pp. 14-16). For our purposes, it is not particularly important if Anderson's

history accurately reflects the medieval Christian worldview. Instead, I would draw attention to his underlying theory of representation. For Anderson, medieval people understood their sacred texts as "emanations from reality, not randomly fabricated representations of it" (2006, p. 14). Understanding the difference Anderson posits between what he calls emanations and representations is necessary to grasping his overall approach. For Anderson, an emanation is a direct sign of the way things are, conceptually equivalent to a religious revelation, whereas a representation is a fallible attempt to impose meaning on things.

Anderson argues that (for various historical reasons) religious ideas that were once regarded as revealed truths began to be seen as mere representations that could only be more or less true rather than absolutely true (2006, p. 17). Working from this historical framework, Anderson argues that nationalism arose as an attempt to address desires for unity, transcendence and continuity that were no longer fulfilled by God and His Church (see also Hobsbawm, 1990, p. 166).[8]

As Fitzpatrick (2007) aptly notes, this account holds that nations come to fill the role of God, but are not simply new gods. Nations are "deific substitutes" in a world that has become suspicious of divinities. In place of mystical truth as revealed by God, one has representations – including representations of the nation as a secular transcendence (Fitzpatrick, 2007, p. 162-163). In turn, the modern political subject (the citizen) is imagined as one who knows the difference between representation and revelation. Using Hobbesian terminology, we might say that modern politics moves us from the God who conveys His will by revealed "Signs, and Miracles" (1968, p. 507) to "that great *Leviathan* called a Common-wealth, or State," a "mortall God" created

[8] Hobsbawm (1996) lends his support to Anderson's theory that nationalism arises as a substitute for religious belief (p. 166). He points to the correlation between the rise of Quebec nationalism and the decline of Catholicism in Quebec as confirmation (1996, p. 166). Although, Hobsbawm also notes that Anderson's theory "hardly lends itself to convincing verification or falsification" (1990, p. 166).

through representation and human artifice (1968 pp. 80, 227). The fact that Hobbes's *Leviathan* is able to move seamlessly from theocentric discussions of God to human-centered discussions of the political community suggests parallels in ways of talking about God and the political community that should not be ignored. Anderson calls our attention to a key similarity between God and the nation when he suggests that nationalism is marked by a paradox that also troubles earlier forms of political theology.

The Paradox of Sovereignty

Although Anderson's definition of the nation as an imagined community is well known, it is less common to recall his definition in full. He writes that a nation "is an imagined political community – and imagined as both inherently limited and sovereign" (2006, p. 6). The nation as "inherently limited" corresponds to the idea that the nation encompasses a particular set of people, marked off within territorial borders, and possessing certain institutions, traditions and values. By contrast, the nation as sovereign corresponds to the idea of the nation as an unlimited power that provides law and security for all its subjects, regardless of their particular interests or identities. As Fitzpatrick (2007) writes, there is a structural gap between the nation's "determinate existence" as a limited being and the "illimitable efficacy" that it should possess if it is to be the sovereign source of meaning, law and order (pp. 165, 172).

This problem of a "gap" between limited presence and limitless power links theological and nationalist forms of sovereignty politics. As Kantorowicz (1997, p. 62ff) also points out, the notion of a gap between limitless power and limited existence is evident in monotheistic ideas about God's sovereignty. For dominant forms of monotheism, God must transcend all limits. He is the sovereign Being that encompasses all particular beings. This is what makes God a proper object of worship and the basis of a universalist ethics (Nancy, 2003, p. 39). Yet at the same

time, if God is to have any meaningful effect on our lives, His will must be made present through a particular community of the faithful, acknowledging certain doctrines and certain authentic revelations (Anderson, 2006, p. 23).

Kantorowicz's famous book *The King's Two Bodies* (1997) charts the way this mystical or religious problem enters the political field. For instance, he notes that one encounters the idea of a gap between presence and transcendence within Catholic theories of the Church. Kantorowicz explains that ecclesiastical thinkers adopted the apostle Paul's metaphor of the Christian Church as the "body of Christ" in order to defend the Church's doctrinal unity and transcendence in the face of its empirical diversity and limitations. According to this Pauline analogy, the Church is a single mystical being that exists apart from its particular historical form and individual members, just as Christ was a divine entity who was more than his human body and its parts (Kantorowicz, 1997 pp. 195-198; see also Valverde 2011, p. 957). The significance of Kantorowicz's account of the Church to his history of nationalism becomes clear when he writes that the metaphor of the Church as a body was equally applicable to any "plurality of men living together in a community" (1997, p. 309).

The Mystical Body and the Political Body

In Kantorowicz's fascinating account, European jurists who had an interest in supporting territorial sovereigns against the supremacy of the Church began to use the metaphor of the community as a "mystical body" in reference to any "village, city, province, [or] kingdom," and, on a different scale, to any "populus" or "people" (1997, p. 210).[9] Beyond the material city of Bologna, for example, "composed of mutable citizens and perishable buildings" the jurist Baldus

[9] This occurs at what Kantorowicz calls "the very moment when the doctrines of the corporational and organic structure of society [recovered from Plutarch and Aristotle by way of John of Salisbury] began to pervade anew the political thinking in the high and late middle ages" (p. 198).

could speak of an enduring and mystical spirit of Bologna (Kantorowicz, 1997, p. 303).[10] Finally, and crucially, the idea of a community as a mystical body (*corpus mysticum)* began to lose its original sense as it cross-pollinated with the emerging judicial notion of artificial corporate personhood (*persona ficta*) (Kantorowicz, 1997, p. 209). This cross-pollination is in turn a key element in Kantorowicz's theory of representation and the way that contemporary politics comes to treat the state as artificial and as a product of representation. In order to understand the contemporary *dispositif* of citizenship, it is worth considering the notion of artificial corporate personhood and its relation to modern nationalism.

As noted in the introduction, citizenship comes on the historical scene at a time when longstanding legal and political distinctions of person (rooted in discourses of natural and spiritual realities) began to be displaced by ideas of artificial personhood. Pope Innocent IV, a lawyer by trade, is widely credited with inventing the notion of artificial personhood (Koessler 1949, p. 436-439; Maitland 1958, p. xix; Vieira & Runciman, 2008, p. 12). According to Innocent IV, sub-Church groupings such as monasteries and fraternal colleges are fictional persons, that have no existence except insofar as they are represented. In his words, groups are only "names of law" and not realities (Kantorowicz, 1997, p. 305; Gierke, 1958, p. 599). The significance of this notion of the fictionality of groups is that it is precisely the opposite of the notion of the Church as a real, mystical, union of individuals. Kantorowicz's theory holds that discussions of *fictional persons* began to subvert discussions of communities as *mystical bodies*, such that notions of community as a representation began to displace ideas of community as a revealed truth.

[10] Likewise, a Norman writer of the 12th century could distinguish the "bricks" of the "church of Canterbury" from the mystical "See" of the "Church of Canterbury" (p. 57).

Kantorowicz explains that, "chiefly among the lawyers... the notion of *corpus mysticum* began to be used synonymously with *corpus fictum* [fictional body], *corpus imaginatum* [imaginary body], *corpus repraesentatum* [represented body], and the like, that is, as a description of the juristic person or corporation" (1997 p. 209). The notion of a "mystical," but real, transcendent community thereby became intertwined with the notion of a "fictional," "imagined" or "representational" creation of the law. The point is this: like Anderson (2006), Kantorowicz (1997) explains the historical emergence of modern secular politics with reference to conflicts wherein ideas of representation upset notions of revelation. Taken together, Anderson and Kantorowicz argue that modern nationalist politics is founded upon a complicated and incomplete secularization wherein understandings of political community are based upon religious images of transcendence, even as these religious images are increasingly understood as mere representations rather than revealed truths about an essential being.

It is in this epistemic context that Hobbes unleashes his theory, doing away with notions of real and God-given communion by positing that political communities are wholly artificial inventions that exist because they are represented as existing. Kantorowicz's account, in particular, serves to introduce Hobbes's *Leviathan*, a text wherein the metaphor of the political community as a body politic is explicitly joined to the legalistic notion of the political community as an artificial person produced through representation.

II. Hobbes's Political Theory

What follows departs somewhat from a common reading of Hobbes; namely, that people are naturally violent, selfish and require an absolute sovereign to keep them in line. As Martel (2007) argues, Hobbes's work is much more a theory of representational acts, their interpretation and their political consequences than a simple apology for totalitarianism (pp. 14, 36). Hobbes

presents an ahistorical world of distrustful individuals, wherein the state must unite people in the absence of any pre-existing collective identity (Hampton, 2007, p. 479). This is not because he fails to recognize forms of group life that are not based on the state, such as family and religion. Indeed, he states explicitly that his individualist theory of the state of nature is neither a factual nor an historical account (1968, p. 187). Instead, as Esposito (2009, 2010) argues, Hobbes devises his political theory to make the political community supreme over all other forms of group life. By beginning his argument with the assumption that we live in a world of isolated individuals, Hobbes is able to clear the field of competitors to the political community and to theorize political community as a sufficient and exclusive source of unity for individuals.[11]

Taking individualism as his starting point, Hobbes then claims that interactions between isolated individuals are determined by distrust, incessant war and mortal fear (1968, p. 185-186). He concludes that the reasonable thing for individuals to do in this situation is to find a way to make peace (1968, p. 190). This leads him to posit, as a "Law of Nature," "That a man be willing, when others are so too, [to] be contented with so much liberty against other men as he would allow other men against himselfe [*sic*]" (1968, p. 190). The catch here is that peace requires trust. One should only be willing to limit one's liberty in the interests of peace when others are willing to do the same. Otherwise, one must rely on violence. Thus, peace requires us to trust one another when we say we want peace. The central problem of *Leviathan* is consequently the question of when such trust is warranted.

In making the problem of trust central to his political theory, Hobbes grounds his political theory on the unreliability of representations. His world is "a questionable reality, simply

[11] In effect, Hobbes's politics is isomorphic with Protestantism. Just as Protestantism individualizes people by positing a direct relation of faith between each Christian and God (Seligman 1997, p. 47, 79; Turner 2002, p. 267-269), Hobbes posits a direct relation between each individual and their sovereign. Specifically, it will be argued that Hobbes promotes a passive version of protestant individualism, wherein political issues are rendered irrelevant in comparison to individuals' "internal" virtues.

because it is built on images that can be false or deceiving..." (Fiaschi, 2013, pp.36-37). Unlike the medieval believer, described by Anderson, Hobbes does not possess "the firm idea of a well-ordered created world" and instead conceives of the world as, at least in large part, a series of representations created by human imagination (Fiaschi, 2013, pp. 36-37). Strangely, however, Hobbes's rejection of the idea that truths are manifestly revealed or positively observable does not lead him away from ideas of a religious order. Instead, Hobbes's rejection of revelation leads him to give a great deal of consideration to the subject of faith.

In considering the problem of when to trust representations produced by others, Hobbes holds that "the will of another, cannot be understood, but by his own word, or act, or by conjecture" (1968, p. 319) and that we therefore have "*faith"* or "Beleefe [*sic*]" in other people rather than knowledge of them (1968, p. 139). Martel thus rightly points out that, "belief... is the basis of politics for Hobbes" (2007, pp. 54-56). Yet, the notion of belief in others is problematic for Hobbes. According to Hobbes's theory, any trust between isolated individuals is impossible. Once one party fulfills her end of a deal, the other party (having gotten what she wants) will have no reason to fulfill her end (Hobbes 1968, p. 198). In this situation, the first person to believe in a promise of peace merely gives the advantage of striking first to others. Hobbes consequently reasons that there can be no mutual good faith and no peace for individuals without a common political community.[12]

Hobbes goes on to theorize that, where community is absent, there can only be hostility and distrust. In the absence of peace, he writes, "Force, and Fraud, are... the two Cardinall vertues [*sic*]" (1968, p. 188). Without a political community to bind its members to act in good faith, all promises appear as mere ruses designed to give advantage over the gullible and, since

[12] This conclusion prefigures speech act theory, and Austin's (1975) conclusion that performative acts (such as promises) are impossible without collectively recognized procedures. Hobbesian liberalism is a kind of speech act theory *avant la lettre.*

everyone perceives this, no one will accept a promise. On this basis, Hobbes concludes with his well-known argument that because political community is necessary to peace and mutual trust, individuals should join together in a political community.

However, it is too often overlooked that Hobbes also offers shared religious faith as a grounds for mutual trust, and hence peace, that is distinct from political unity. Perhaps this element of Hobbes's theory is overlooked because Hobbes ultimately rejects shared religious faith as a guarantee for peace. Yet, I argue, Hobbes actually bases his theory of political community on the model of shared religious belief.

Hobbes on Shared Religion

Hobbes writes that "all... that can be done between two men not subject to Civill [*sic*] Power, is to put one another to swear by the God he feareth" (1968, p. 200). The reality of the gods involved does not matter. This is immediately made clear by Hobbes's reference to Roman oaths to Jupiter, a "Heathen" god whom he presumably did not believe. Instead, the important thing is that those who swear an oath believe the god they swear by exists and will punish perjury. In other words, as long as people believe in the reality of the gods they swear by, they may believe in one another. However, Hobbes thinks, this swearing is ultimately insufficient to create a lasting peace because of the diversity of gods people may believe in. This diversity of beliefs may itself be a source of conflict and hardly induces peace (1968, pp. 370-371, 500-501). When Hobbes nonetheless goes on to describe the commonwealth as a "mortall God" (1968, p. 227), it is because he aims to institute a secularized political theology wherein the political community is believed in and feared like a god (Negretto, 2001, p. 179). This "mortall God" will be the same for all subjects, and so conflict will be avoided (at least within the state). In effect,

Hobbes attempts to remove the divine from politics by positing the political community as itself an almighty quasi-divinity that will guarantee contracts.

Hobbes suggests that the political community *can* guarantee contracts because of a key difference between an ordinary promise and the social contract. The social contract is made collectively by a multitude of individuals. In Hobbes's words "A *Common-wealth* is said to be *Instituted* when a *Multitude* of men do Agree, and *Covenant, every one, with every one*" to appoint one individual or assembly to represent them (1968, p. 228-229, italics in original). The otherwise discordant multitude of individuals becomes a political community through the act of representing themselves as such. Hobbes writes that, "A Multitude of men, are made *One* Person, when they are by one man, or one [legal] Person, Represented" (1968, p. 220).

Hobbes arrives at his conception of the political community as artificial because he employs the Innocentian doctrine of personhood. As noted above, Innocent IV's doctrine holds that a corporate person exists only insofar as it is represented as existing (Vieira & Runciman, 2008, p. 12). Like Innocent IV, Hobbes recounts that in law a "person" may be anything that is artificially represented as a person; "as well in Tribunalls, as Theaters" (1968, p. 217). Personhood is created by representation, and does not depend upon the qualities of the represented, so that "even inanimate things" such as hospitals and bridges may be legal persons (1968, p. 219). By denying that any qualities are required of the thing to be "personated" in order for that thing to be treated as a person, Hobbes makes personhood wholly a creature of representation. Esposito (2012b) stresses that "the break with the classical tradition could not be starker" (p. 84). By following Innocent IV, Hobbes abandons notions of personhood as "that core of rational will that is implanted by God" in human beings; or of personhood as a divine supplement to bodily life (p. 88). Rather than personhood being something divine or inherent in

certain virtuous human beings, Hobbes makes personhood a political creation. This allows him to explicate a modern theory of political community as such an artificial person.

Hobbes's political community is an artificial person in the sense that it is a creature of law and, more generally, representation. Thus, although he famously adopts the metaphor of the political community as a giant body (*Leviathan*), Hobbes is very far from adopting the notion of a mystical union of individuals that lead medieval theologians to call the Church a *corpus mysticum*. No quality of the multitude or its members allows for the formation of the Hobbesian political community. As discussed further below, he divorces politics from such traditional foundational notions as kinship, ethnicity, divine will and common purposes. This is significant for understanding the *dispositif* of citizenship insofar as Hobbes articulates the logic behind contemporary rejections of essentialism (and related concepts of "traditionalism," "fundamentalism," "ethnic nationalism," and so on) in favor of liberal citizenship. Furthermore, like Hobbes's use of the word person, his use of the term "multitude" sheds light upon his anti-essentialism.

Hobbes on Multitude and Universalism

Hobbes writes that "the Multitude sufficient to confide in for our Security, is not determined *by any certain number*" (1968, p. 222, emphasis added). He also writes that security cannot be achieved by:

> the joining together of a small number of men… because in small numbers, small additions on the one side or the other make the advantage of strength so great, as is sufficient to carry the victory; and therefore gives encouragement to an Invasion (1968, p. 224).

Not only is he worried that a small political community will be too weak to defend itself from external threats, he is also concerned that when the numbers involved in the state's internal politics are small the odds of gaining a victory through civil strife are easily calculated. People

know what "small additions" to their cause will be necessary to gain a majority and this encourages people to use violence and sedition to fulfill their partisan ambitions. This is a state of war and not of peace because the *state of war* "consisteth not in actuall [sic] fighting; but in the known disposition thereto" (Hobbes 1968, p.186). Hobbes's project is to curtail this disposition to fighting, or to inculcate a disposition against fighting, in order to ensure peace. It will be argued in the second chapter that this disposition against fighting is a significant feature of the Canadian *dispositif* of citizenship, but for the moment let us remain with Hobbes's theory of the state founding covenant.

For Hobbes, the multitude's members covenant together to create a political community in which peace and trust are possible. This covenant made by an incalculable multitude is different from a private contract made between a few individuals. When "a multitude" agrees to form a community, each individual will be left with the impression that the indeterminate majority of other parties to the covenant are interested in maintaining conditions of peace and trust. This is eminently not a matter of knowledge, but of belief in the unknown. Whereas our inability to know what others intend leads to distrust and violence in the state of nature, an inability to know the size and limits of the "peaceful" majority in the political community leads to belief in its power and this dissuades us from the use of violence and deception. By introducing the idea of the incalculable multitude, Hobbes is attempting to make the limits of knowledge work for peace rather than against peace. Like the fear of supernatural gods, which Hobbes ultimately rejects as an insufficient guarantee for promises, faith in the political community as a solitary "Mortall God" disposes people to keep the peace.

The founding covenant is thus supposed to be a promise which makes the covenanters (i.e. those who sign onto the covenant) trustworthy *vis a vis* one another by constituting them as

a political community. This is why the commonwealth is truly "artificial" for Hobbes (1968, p. 263). We might call the covenant the "consequential deployment of a tautology" (Derrida, 1986, p. 12). A multitude is performatively declared to desire peace and in turn fear of transgressing the multitude leads each individual to limit their violence. Significantly, this tautological foundation allows Hobbes's commonwealth to forgo any natural foundation in peoples' kinship, culture or other substantive bond (Esposito 2010, p. 14, 27; Prokhovnik, 2008, p. 59). Nor is Hobbes's commonwealth based on a substantive truth claim about what is right or divinely ordained. The commonwealth's only foundation is a belief in the (at least potential) universality of the desire for peace.[13]

This universal desire is necessary to the Hobbesian political community's existence; the common-wealth must be not just large, a "multitude," but indefinitely large. It must have members and potential members beyond count. Fortunately, in Hobbes's logic, the potential universality of the desire for peace renders the political community's potential membership limitless. The political community may continuously include new members, so long as these new members performatively commit to the covenant (Hobbes, 1968, pp. 231-232).

The multitude thus remains the ground of the political community even after the covenant is instituted. Sovereignty, in the sense of limitlessness, rests with the multitude. This is why Hobbes is ultimately neither a democrat nor a monarchist (Martel 2007). For Hobbes, neither the people nor the ruler can be the source of a political community's sovereignty. A great deal of confusion is possible on this point because Hobbes uses the term "the sovereign" to refer to the multitude's representative (that is, the individual ruler or legislative assembly that represents the

[13] Here we may recognize Hobbes's attempt to constitute his commonwealth as a universalist community of faith, akin to the Catholic Church conceived as a "Corporation of the Faithful (*universitatis Fidelium*)" (Gierke, 1958, p. 58). As Latour (1993) writes, Hobbes' political project was to recover Catholic unity without appeal to divine transcendence (p. 19).

political community). Yet, as Prokhovnik (2008) points out, Hobbes's "sovereign" does not possess sovereignty (p. 63; see also Chwaszcza 2012, p. 139). Sovereign transcendence and limitlessness are properties of the multitude. The sovereign (king, assembly, etc.) merely represents limitlessness and transcendence; they are not properties of the sovereign itself.

In Foucault's (2003) words, the Hobbesian sovereign is only "an illusion" (a representation) and "an instrument" rather than the power which founds and maintains a commonwealth (pp. 59, 96; see also Chwaszcza 2012, p. 139). This applies even when the sovereign is the "people" itself, as in popular democracy (Hobbes, 1968, p. 239). Hobbesian logic suggests that, just as a monarch is only a representative, the "people" of a democracy is also only a representative. This means that (unlike, say, Rousseau) Hobbes cannot logically treat "the people" as the origin or substance of a political community. Instead, for Hobbes, the political community's source is the possibility of including those who are not yet included.[14] In turn, while subjects may be apt to doubt a ruler's power or a people's limits, one may always believe in the limitlessness of a political community that continues to draw on a multitude.

This does not mean that representative sovereigns, such as "the people" or a king, are unnecessary. According to the Innocentian doctrine of representation that Hobbes adopts, the political community only exists insofar as it is represented as existing by a sovereign. Nonetheless, such sovereigns matter only as representations, and thus stand for the possibility of founding politics upon indeterminacy and universality. The Hobbesian sovereign represents the possibility of making the incalculable multitude the grounds of political community; and thus rendering political community potentially universal or limitless. The importance of ideas of universality and infinity within Hobbes's discourse are a clue to his reliance on monotheistic

[14] The multitude is not really a "being" for Hobbes. Instead, the term multitude signals everyone who is not yet included in the political community.

religious ideas. In light of this, the following section considers Hobbes's explicit political theology. The contemporary *dispositif* of citizenship's theological underpinnings will be made evident in the process.

Hobbes's Political Theology

Up to this point, this chapter has examined how Hobbes's political theory aims to bypass religion as a ground of community and to institute the political community as a substitute for God. This section examines the theological conceptions of God to which the second half of *Leviathan* is devoted in order to gain further insights into Hobbes's political theory. In his writings on religion, Hobbes is at least partly engaged in a polemic against revelation, and aims to head off any claim to know the truth about God or to possess a political mandate from God. For Hobbes, God exists but cannot be known or truly represented (1968, p. 99, 404, 666). Hobbes writes that, "in the Attributes which we give to God, we are not to consider the signification of Philosophicall [*sic*] Truth; but the signification of Pious Intention, to do him the greatest Honour we are able" (1968, p. 404). He also writes that:

> the nature of God is incomprehensible; this is to say, we understand nothing of what he is, but only that he is; and therefore the Attributes we give him, are not to tell one another, what he is, nor to signifie [*sic*] our opinion of his Nature, but [to signify] our desire to honor him (Hobbes, 1963, p. 430).

In these passages, Hobbes draws a distinction between what speech act theory describes as *performative speech* and *constative speech* (Austin, 1975, pp. 2-5). John L. Austin (1975) coined the terms "performative utterance" and "speech act" to express the idea that speech (or writing) does more than convey information about the world. For example, saying "I name this ship the *Queen Elizabeth*" does not merely convey the name of the ship, it also does the work of naming the ship (provided, of course, that the speaker has the authority to actually name the ship) (Austin 1975, p. 5). Austin calls utterances that alter the world "performative" because they perform an

action (1975, p. 6). By contrast, constative speech aims to convey information. Hobbes is basically a speech act theorist *avant la lettre.*

For Hobbes, the proper relation to God is achieved through performative speech acts. He understands "worship" as speech that performs the act of honoring God and that shows "Pious Intention" (1968, pp. 399-400). The opposite of such pious intention is the belief that we can speak knowingly about God (describe Him or state facts about Him). For Hobbes, this belief that one can know God dishonors God. The presumption of knowledge about God brings God within the sphere of human understanding and treats God like any other knowable thing in the world. This turns God into a particular being, rather than the Sovereign Being that transcends all.

Hobbes insists that we must be able to distinguish the signs by which we represent God from the idea that our representations convey knowledge or truth about God. He dismisses any claims to know God, or any constative speech about God, as "idolatry" (1968, p. 670). In contemporary language, we may say that Hobbes defines idolatry as the idea that the sign conveys the truth of its referent or, worse, the idea that the sign *is* the referent (Martel, 2007, pp. 116-117).

Since Hobbes calls the political community a "Mortall God," we may draw inferences about his politics from his distinction between performative worship and constative idolatry (see also, Martel, 2007, pp. 118-119). For Hobbes, the political community is like God in that it must not be thought of as only another particular being with particular interests (like an individual, a family or a business). Otherwise the political community could not encompass and ensure peace among these particular beings. Instead, Hobbes holds that just as Christians are taught to believe in the infinite and indefinable power of God, citizens must be led to have faith in the infinite and indefinable power of the political community. This requires a "worshipful" attitude that disposes

citizens to performatively honor the political community while remembering to distinguish between representations of the political community (e.g. institutions and symbols, including the sovereign and the people) from the possibility of defining the political community (Martel, 2007, pp. 118-119, 125, 128).

As Turner (2002) notes, Hobbes's covenantal society of citizens is conceptually akin to a Protestant Christian congregation or "confessional association of believing individuals" (p. 261, 263-264). Just as Protestant Christianity posits an entirely individual and "internal" relationship between the believer and God, so Hobbes posits an individual and "internal" relation between the worshipful subject and the political community. Thus we find again that, as noted previously, Hobbes's theory privileges belief over fact. The political community transcends its limits when it is treated as a matter of faith rather than as a knowable thing. Crucially, the citizens need not believe in the universality or sovereignty of the state as a set of representative institutions and authorities (since such things are recognized as works of human artifice) in order to believe that the state represents universality and, in doing so, draws upon the force of an indeterminate (limitless) multitude.

As such, Hobbes's negative theological strategy seems to resolve the paradox of sovereignty. Hobbes allows political community to appear as both limitlessly sovereign (indefinable, and always expandable) and as a specifically limited being (a determinate set of members and representations). Moreover, in Hobbes's representational politics, this semblance of reconciliation between sovereignty and specificity is all that matters. Insofar as the political community is not linked with any substantive definition, but imagined to draw on an incalculable multitude, the political community is believed to possess limitless efficacy. Yet the determinate

existence of the political community (in the form of particular institutions and members) is also recognized.

The Problem of Factions as a Problem of Representation

Insofar as Hobbes holds that representations of the political community cannot be understood as truths about the political community, he rejects any positive or substantive vision of community. For Hobbes, any constative definition of the political community would sever the political community's link to the multitude by setting limits on what kinds of people may join the political community. Hobbes's rejection of constative definition therefore leads him to a disdainful treatment of those who offer substantive visions of political community. He calls groups that define themselves in positive terms "Factions" and writes that when a subgroup of subjects "without authority, consult a part [apart], to contrive the guidance of the rest; This is a Faction, or Conspiracy unlawfull [*sic*]" (1968, p. 286). In part, Hobbes is concerned with foreign agents, and he writes of the danger presented by those that "by Authority from any forraign [sic] Person, unite themselves... for the easier propagation of Doctrines, and for making a party, against the Power of the Common-wealth" (1968, p. 285). Yet, as shown by the mention of doctrine, Hobbes's general concern is, as always, with constative truth claims that might be employed to limit the political community, and to claim or contest sovereignty.

Hobbes writes that, "Factions for Kindred, so also Factions for Government of Religion, as of Papists, Protestants, &c. or of State as Patricians, and Plebians... and of Aristocraticalls and Democraticalls [*sic*]... are unjust, as being contrary to the peace and safety of the people" (1968, p. 287). In this brief list of factions, Hobbes enumerates a list of possible sovereigns. When Hobbes writes of "Factions of Kindred," we might hear foreshadowed the problem of those who make "race" or "nationality" their sovereign concern. When he writes of government of religion,

we easily hear “fundamentalism.” When he mentions patricians and plebs, we might hear a foreshadowing of class struggle and of efforts made to set up either workers or capitalists as the sovereign class. Finally, his reference to aristocrats and democrats suggests the divisive possibility of striving to make “the best” or “the majority” sovereign. These many possible sovereigns become dangerous, Hobbes claims, when they undermine hopes of civil unity and create civil strife. From this, Esposito (2010) detects that Hobbes attempts to “build the new state” on the grounds of individuals’ total “dissociation” from one another (p. 27-28). “The Leviathan-State coincides with the breaking of every communitarian bond, with the squelching of every social relation...” (Esposito, 2010, p. 14). Hobbes thus offers a “depoliticization” of every identity and interest other than membership in the political community, in the hopes that we may thereby “neutralize conflict” (Esposito, 2009, p. 103).

For Hobbes, any definition of the political community as founded on a particular identity, for a substantive religious doctrine or for a specific form of government necessarily ruins belief in the political community’s infinite scope (or capacity to include virtually everyone), and therefore prevents the political community from fulfilling the sovereign function of securing peace between particular interests. For Hobbes, rather than an all encompassing commonwealth linked to an incalculable multitude, the constatively defined community would be only a limited set of interests perpetually drawn into conflict with competing interests. Rather than an artificial god and proper object of faith, one would have a political idol.

Hobbes’s rejection of constative definition also leads him to insist that different forms of government, such as monarchy or republic, are a matter of indifference (1968, p. 227). For him, the form that the government (or “the sovereign”) takes is ultimately unimportant because any government only represents political community and the desire for peace. According to this

logic, to fight over the form government takes is to miss the point of government by idolatrously making the representative more important than, or equivalent to, the represented political community.

Finally, Hobbes's negative theological vision of the political community and the God it is modeled on leads him to place religious doctrine under the power of civil government. Since any religious practice is only a means to honor God (who cannot be known), the relative truth of religious doctrines cannot and should not become a matter of political dispute. There is a proto-liberalism here insofar as the power of religion is undermined for the sake of civil peace. Although church and state are not separated (quite the opposite) the conflict-creating potential of religion is minimized because Hobbes counts whatever practices the government declares to be part of state religion as the appropriate expressions of religious faith. This demotion of doctrine fits within Hobbes's overall strategy, which seeks to head off the divisiveness of doctrinal disputes (Negretto, 2001, p. 183).

In sum, Hobbesian politics is a "theatre" of representations (Foucault, 2003, p. 93). Hobbes posits that uncritical acceptance of representation may easily lead to superstition and purposeless fighting. Against misguided relations to representation, Hobbes holds that the point of politics is to deploy representation "to avoid war" (Foucault, 2003, p. 94). In Vieira and Runciman's terms, Hobbes's theory of representation attempts to make "the most destructive forms of political conflict impossible" by positioning the issue of how to represent the political community "above sides, indeed above politics, understood in any narrow sense" (2008, p. 27). That is, Hobbes understands good politics as the recognition that representation is a means of achieving political unity and peace, such that there can be no legitimate fighting over the form representations take (republican, aristocratic, communist, etc.). In Martel's terms, Hobbes offers

us a politics conceived on the model of critical interpretation (Martel, 2007, pp. 90-91). Good Hobbesian politics is like good reading in that it is able conceptually to separate representations (signs) from what is represented (referents). This is especially the case when the referent is a purportedly sovereign power (be it God or the political community) that is supposed to transcend the limits of the ways it is represented.

In order to demonstrate that the logic of representation that Hobbes develops is not an anomaly, the following section argues that key elements of Hobbes's theory are echoed in Kant's work. Kant is a particularly good comparator for Hobbes because Hobbes and Kant's politics are often taken to be about as different as it is possible for two liberal thinkers to be (Hampton 2007, Kymlicka 1991). For example, Kant founds his political theory on the equal worth of individuals while Hobbes founds his political theory on individuals' equal capacities for violence (Kymlicka, 1991, p. 188). However, Kant and Hobbes offer remarkably similar theories on the specific matter of political representation, and help to elucidate the ideas of political representations and critical individualism that animate the *dispositif* of citizenship. Once it is shown that thinkers as different as Hobbes and Kant share common presuppositions and strategies, it becomes possible to understand these presuppositions and strategies as elements of a common logic that underpins the contemporary uses of the word citizenship.

III. Kant's Liberal Politics of Representation

As discussed above, Hobbes's theory is based on the idea that political communities are formed when a multitude of free individuals choose to unite for their mutual benefit. Individuals do this by representing themselves as a unity. For Hobbes, the political community must represent itself as indefinable, and therefore potentially limitless. With this imagined power, the political community is able to secure peace among competing interests. Significantly, Hobbes's

political community is defined in opposition to "factions" that treat representations (of identity or the divine) as substantive realities. Kant's political thinking is akin to Hobbes's in a number of significant ways.

Like Hobbes, Kant offers an individualist politics. This individualist politics is connected with his understanding of enlightenment. He famously writes that:

> Enlightenment is man's emergence from his self-imposed immaturity. Immaturity is the inability to use one's understanding without guidance from another. This immaturity is self-imposed when its cause lies not in lack of understanding, but in lack of resolve and courage (Kant, 1784/1983a, p. 41).

Note that Kant does not offer the common conception of enlightenment as the dispelling of false beliefs or the achievement of truth. For him, enlightenment is not the possession of correct knowledge but the repeated act of thinking for oneself. Foucault (1984) summarizes Kantian enlightenment "as an attitude... a mode of relating to contemporary reality; a voluntary choice made by certain people; in the end, a way of thinking and feeling" (p.39). In the language of this dissertation, enlightenment is a disposition. Specifically, enlightenment has to do with the individual's relation to representations and, significantly, Kant (1983a) explicates his politics in part through a discussion of religious representations.

For Kant, religious representations serve a pedagogical function but are not simple truths (1983a, p. 43). He tells us that one may endorse the religious symbols employed by one's religious community because "it is not entirely impossible that truth lies hidden in them" (1983a, p. 43). Yet he also tells us that everyone has a responsibility publicly to entertain "carefully considered and well-intentioned thoughts concerning mistaken aspects of" such symbols (1983a, p. 41). According to this argument, our lack of knowledge about truth provides for the continued use of representations (as an imperfect way of seeking truth) while the acknowledgment of a gap

between representation and truth, or the knowledge that representations are not revealed truth itself, provides for questioning.

The point is taken up in more detail in Kant's *Religion within the Bounds of Bare Reason* (1793/2009), where Kant makes a distinction between "*reflecting* faith," that knows its theological doctrines cannot be taken for absolute truths, and "*dogmatic* faith, which proclaims itself to be a knowledge" of the way God and the world really are (pp. 60-61). Kant explains that reflecting faith allows for the exercise of freedom because it recognizes the contingency of given religious ideas and nonetheless chooses to pursue moral community through them (2009, p. 128). Furthermore, for Kant, reflecting faith requires universalism because recognizing that one's own beliefs and practices are contingent opens up the possibility of respecting others' beliefs and practices (pp. 127-128). By contrast, dogmatism is said to be a "slavish faith" wherein the faithful accept what authorities tell them. Worse, dogmatism leads its adherents to attack all difference as heathenism or heresy (Kant 2009, pp. 118- 119; Palmquist, 2009, pp. xxxv-xliii). This distinction between reflection and dogmatism is identical to the distinction Kant draws between enlightenment and immaturity. We thus have an enlightenment/reflection vs. immaturity/dogmatism distinction. Moreover, this distinction maps precisely onto the difference between what Hobbes calls worship (which recognizes the difference between the use of representations and the possession of truth) and idolatry (which mistakes representations for the truth or reality of the represented). Like Hobbesian worship, Kantian enlightenment/reflection means mediating between iconoclastic rejection of all representations and the idolatrous belief that representations are realities or truths in themselves. For Hobbes and Kant, one must performatively use representations, but one should not fall into thinking that they are realities or true revelations of reality.

Like Hobbes, Kant draws a liberal conception of the ideal basis for politics from his understanding of the proper relation to representation and his conception of "mature" individuals as incessant questioners. He explains that an enlightened community cannot exist on the basis of shared purposes because free individuals will disagree on the nature and desirability of any given purpose (Kant 1793/1990, p. 128). For him, "regardless of all empirical ends... men have different views" such that "their wills cannot be brought under any common principle" (1990, p. 128). Indeed, a political community composed of enlightened individuals, who have learned to question all representation, will find it difficult to represent itself as a community. Thus Kant argues that the political community should be premised solely on free individuals' collective decision to form a political community (1990, p. 128). Kant writes that, while every community requires "a union of many individuals for some common end which they all share," the ideal contractual political community will have nothing but its "union as an end" (1990, p. 128).

Kant consequently rejects substantive purposes or shared characteristics as the basis of community in favor of diverse individuals' active participation in a social contract. In turn, the contract is understood as a performative representation of bare unity. Once again, the paradox of sovereignty appears to be resolved by framing the specific the political community as the result of artificial representation rather than as an essence. Limitless efficacy, which allows the political community to unite all individuals, is achieved in principle insofar as every specific purpose or trait is rejected as a ground of community. What matters to Kant, as for Hobbes, is common membership in the community, rather than any positive grounds for membership (e.g. common kinship, race, values, goals).

Kant also contends, like Hobbes, that it does not matter what form government takes (be it enlightened despotism or democracy) so long as we obey existing public authority (Kant

1785/1996, p. 95). Just as Hobbes does, Kant suggests that to challenge the form one's government takes is to miss the point that government exists simply to ensure peace (Kant 1996, p. 95).[15] Finally, Kant is like Hobbes in that he seeks to prevent religious doctrine from having a role in politics. Of course, it may be objected that Kant goes about neutralizing religion by separating church and state rather than by subordinating religion to politics. Kant writes that "A prince who does not find it beneath him... to prescribe nothing, but rather to allow men complete freedom in religious matters... deserves to be praised" (1983a, p. 47). I would nonetheless hazard that Kant endorses religious freedom for the same reason that Hobbes subjects religion to government. Kant and Hobbes each understand religious conflicts as pernicious failures in thinking.

Together, Hobbes and Kant display common ideas that work to emancipate individuals from truth claims and identity positions (in short, from politics) by directly attaching the individual to the contractual political community (Balibar 2004, pp. 158-159). Hobbes and Kant are each concerned with the ethical primacy of the individual, each holds to the idea that a stable political order allows individuals to pursue their own well being, and each holds that political community is a performative construct or artifice rather than a simple fact. Finally, and most importantly, each is concerned that substantive truth claims are dangerous sources of conflict and aims to neutralize truth claims by treating them as mere representations. The following section considers how Hobbes's and Kant's liberal discourse implies a particular vision of the good political subject, as a being disposed to value the sovereign's law as the guarantee of political order. In the following Chapter, I contend that this vision of the political subject lies behind certain contemporary discourses on citizenship.

[15] See Fitzpatrick (2007, pp. 167, 172, 175) for a more fully articulated examination of this aspect of Kant's politics.

IV. Hobbes and Kant's Image of the Subject

Hobbes and Kant's sovereign is a representation that exists to protect the liberty of individuals, and their subject is, in turn, profoundly individualistic. Hobbes's reasonable man values political community as the means to peace, because he believes peace will allow him to securely enjoy the fruits of his industry (1968, pp. 186-190). Above all, Hobbesian man desires the rule of law. Hobbes writes that:

> the finall [*sic*] Cause, End, or Design of men (who naturally love Liberty, and Dominion over others), in the introduction of that restraint [of law] upon themselves... is the foresight of their own preservation, and of a more contented life thereby… (1968, p. 223).

This "more contented life" is not merely a matter of security. Hobbes sought to make law a tool for creating a relatively predictable environment in which individuals could exercise their liberty consequentially over time (Botwinick 1983, pp. 40-47). Law ideally allows the Hobbesian subject to conduct their affairs free from undue fear that forces beyond their knowledge and expectation will ruin their labours.

Much like Hobbes, Kant holds that rational individuals recognize the need for "*coercive public laws*" to ensure that "each [person] can be given what is due to him and secured against attack from any others" (1990, p. 128). For Kant, law is a means for guaranteeing freedom (protecting us from interference from others) and is thus not an impediment to individual liberty (Prokhovnik, 2008, p. 114). Indeed, Kant argues that any rational individual must necessarily desire the rule of law. He consequently understands law as an expression of individual will rather than a limit on freedom (1990, p. 130).

So long as his personal security and his ability to conduct his affairs on predictable legal terms are guaranteed, the ideal subject imagined by Hobbes and Kant is disposed to remain obedient to whatever authorities he finds himself living under. He is not interested in joining any cause or movement. He is above all suspicious of claims to know what must be done. He is an

enlightened "critical" thinker in the sense that he holds any particular doctrine or political system to be a mere representation. In effect, Hobbes and Kant make critical thinking practically synonymous with political quietism.[16] For them, insofar as all social and political orders are mere representations, the existing order is no worse than any others – and is certainly better than the disorder that follows from contesting the existing order. Their ideal subject is thus not going to fight over institutional arrangements or truth claims, and expects the state to act as his representative by defusing radical politics and truth claims before fighting occurs.

Chapter Conclusion

To summarize: this chapter began by analyzing Kantorowicz (1997) and Anderson's (2006) arguments that contemporary politics is distinguished by the conception of representation it deploys. The chapter then took up the work of Hobbes (1968) and Kant (1983a; 1983b; 1990; 1996; 2009) to consider how a certain conception of representation is central to a particular liberal discourse and a certain image of the well-disposed political subject. Both Hobbes and Kant teach their readers to be critical of essentialist truth claims. Each assumes a liberal ethic that takes the individual as the primary unit of politics. Each advocates a quietist relation to political power, based upon the assumption that only the state provides individuals with the stable conditions necessary for a predictable and productive private life. Furthermore, each holds that government exists as a representation of universal politics, and thus forecloses the possibility of fighting to change the form government takes. For Hobbes and Kant, the belief that one has

[16] The word quietism, at first chosen unreflectively, is fortunately well chosen. The organizers of a recent symposium on quietism explain that quietism may be "understood as a philosophy taking peace as its highest value" and which may lead quietists to declare "their preference for peace over every rival value, including truth and justice" (Perl et al 2009, p. 2). Against those engaged in the business of trying to say or find out what really matters or what the world is really like, "The quietist response is to ask whether we really want to hold onto the notion of 'representing what the world is like'" (Perl 2009, p. 5). According to this fruitful explanation, quietism denotes the intersection of a desire for peace at all costs and critical insight into the fact that any representations (of truth, justice and so on) are imperfect.

cause to fight over the way the state is run is the result of an error in thinking. Finally, each resolves the difference between limited representations of the political community and the political community's supposed sovereign universality through the idea that the particular represents the universal, and that representation is necessary because universal sovereignty cannot be known in positive terms.

This last point is of central importance. This chapter has argued that a certain logic appears again and again in European political-theological thought. This logic treats a particular being as either a revelation or a representation of a transcendent Being. One may chart the way this logic plays out in examples of greater and lesser significance, as follows:

Table 1: The Particular as a sign of the Transcendent

Particular being	**Transcendent Being**
Doctrine, prophecy	Unknowable and Almighty God
Catholic institutions and individual Catholics	The Church as a mystical and perpetual community
Historical faiths / religious symbols	Religion / Truth
The sovereign, state, government, people	Political universalism

The strategy of seeing the transcendent behind the particular becomes liberal when thinkers like Hobbes and Kant critically undermine notions of revelation, and begin to posit representations as a necessary but also necessarily inadequate means of addressing transcendent and indefinable Beings. The notion that every truth claim is only a representations serves to entrench liberal ideals insofar as this notion enables human beings to liberate themselves from essentialist and authoritative claims to know what must be done. The brilliance of this liberal discourse as a support for the status quo (and business, politics, or religion as usual) is that it protects existing

representations from contestation.[17] The inadequacy of these representations as representations of universality is acknowledged openly, and so the act of pointing out their inadequacies ceases to have any political force (see also, Zizek, 2008, p. 24-26). Worse yet, any new assertion of political purpose is easily dismissed as just another fallible representation. To put this differently, when notions of revelation are supplanted by notions of representation, one may no longer launch into dissent on the grounds of a new revelation or political vision.

There are several reasons this Chapter has charted the logic whereby representations displace revelations, and the way this displacement helps thinkers like Hobbes and Kant to resolve the paradox of sovereignty (the problem that arises insofar as limited institutions are supposed to be a transcendent source of meaning and order). One reason to chart this logic is to clarify the ideological effects of this logic and the way it disposes subjects to quietism. A second reason to chart this logic is to grasp that there is a common framework within which certain liberal thinkers situate their work, even as they state opposite positions on particular issues. A third reason, perhaps, is to show that the anti-essentialism contemporary liberals prize is not a recent progressive development but was already a founding element in the decidedly absolutist liberalism of Hobbes and Kant. This raises the question of what work contemporary liberal anti-essentialism is really doing in our societies. In other words, a key reason to chart the liberal logic described in this chapter is to better understand contemporary discourse and politics.

Importantly, the ideas of artifice, indefinability and transcendence charted above play out in contemporary claims about Canada and its citizenship. Contemporary discourses on Canada are particularly coy in speaking of Canada's "openness" and "diversity" rather than referring to

[17] "Cynical distance, laughter, irony, are, so to speak, part of the game. The ruling ideology is not meant to be taken seriously or literally" (Zizek, 2008, p. 24).

specific national characteristics (see Dauvergne, 1997, p. 334; Cormack and Cosgrave, 2013, p. 12, 27). For instance, Canada's National Security Plan asserts that,

> Our way of life is based on an openness to ideas and innovations, and to people from every part of the world — a commitment to include every individual and every community in the ongoing project that is Canada - and a steadfast rejection of intolerance, extremism and violence. (Privy Council Office, 2004).

This claim fascinatingly and hyperbolically asserts that Canada is committed to including "every individual and every community." This assertion is possible, I suggest, only in light of the fact that Canada is also said to be an "ongoing project" rather than a definite thing. In this, the quotation pursues what Hobbes would term a "worshipful" perspective toward Canada. Perhaps unsurprisingly, citizenship too may be represented as difficult to define. For instance, the Attorney General's Factum for *McAteer* quotes Paul Martin Senior, an architect of Canada's first (1947) citizenship act, to the effect that citizenship "allows one to enjoy an almost *indefinable* sense of belonging to, contributing to and participating in Canada" (para. 12, emphasis added).

Cormack and Cosgrave (2013) point out that such perspectives, which defer the task of defining Canada and its citizenship, are hardly unique. They write that "Canadians have enthusiastically supported an industry of narratives – books, contests, debates, surveys – that… have characterized Canada, variously, as 'unknown,' 'unfinished,' 'lost,' 'vanishing,' 'mysterious' and 'elusive,' and 'unfounded'" (2013, p. 12). Furthermore, they note that such discourse is not simply open, critical or reflexive but serves particular nationalist and statist interests. Recognizing Canada and as difficult to define invites the performative work of defining Canada (Cormack and Cosgrave 2013, p. 61). If Canada is said to be lost, citizens and government are called on to find it. If Canada is said to be unfinished, citizens and government are required to do the interminable work of finishing it. If Canada is represented as elusive, the work of tracking it and bringing it to presence cannot end. Yet most importantly, when there is

no essence of Canada and its citizenship, there is little firm ground on which to contest the form the political community takes. That is to say that, insofar as Canada is not said to be anything specific, the decisions of representatives of state sovereignty (from border guards to Federal Ministers) become difficult to challenge. In the end, if Canada is understood as a creature of Hobbesian type, and exists because it is represented as existing, then the representative institutions become synonymous with Canada. In Cormack and Cosgrave's words "the state" becomes a "primary signifier of Canadianness" (2013, p. 61).

The point is this: claims that nation and citizenship are hard to define may be used to valorize these things provided that one believes nation and citizenship transcend easy definition (rather than that "Canada" and "citizenship" are simply empty words). In turn, representative practices and institutions become all the more important (they are our only access to the nation and citizenship) and practically unquestionable (for the same reasons). Chapter Two builds on this chapter's analysis of Hobbes and Kant's discourse in order to further analyze the way contemporary discourses that speak of sovereignty, "Canada" and citizenship together.

Chapter Two: Canadian Images of Sovereignty

The previous chapter analyzed Hobbes and Kant to argue that a certain liberal set of ideas is discernible within the work of each and that this set of ideas continues to provide conditions for contemporary discussions of citizenship. Epistemologically, each opposes doctrines of revealed truth and presumes that we only have access to imperfect representations. Ethically, each presumes the primacy of the individual and supposes that only state-imposed peace will secure meaningful liberty for individuals. Strategically, both reconcile the difference between the particularity of the political community and universal sovereignty by positing that the particular is a representation of the universal. In doing so, Hobbes and Kant address what Fitzpatrick calls "the paradox of sovereignty." As a reminder, the paradox of sovereignty is the problem that arises because the being supposed to be sovereign is both limited (a particular being) and supposedly limitless (a universal source of meaning and order). By arguing that the particular is a representation of the universal, Hobbes and Kant reach an apparent resolution of this paradox. Furthermore, both Hobbes and Kant contend that fighting over representations is the result of an error in thinking. For them, the point of representations is to allow individuals to pursue peace, and to fight over representations is to miss this point. In turn, they present an image of the well-disposed subject as a person who is able to "understand" that representations are not realities or truths worth contesting.

As discussed in the introduction, this Chapter contributes to the literature on Canadian "identity" by engaging with McKay's (2000; 2005) thesis that Canada is a project of rule. He writes that, "'Canada' should henceforth denote a historically specific project of rule [to be analyzed], rather than either an essence we must defend or an empty homogenous space we must possess" (2000, p. 620-621). McKay argues that this project of rule is a matter of disposing

subjects towards liberalism (2000, p. 623; 2005, p. 368-369). In effect, I will argue that McKay is correct to a point. From my perspective, the liberal project that plays out above the forty-ninth parallel is larger than McKay implies when he labels this project "Canada."

To show how "Canada" may be understood as a word within a wider liberal project, this chapter demonstrates that the logical structure Hobbes and Kant draw on is also relied upon in discourses about two key images of sovereignty that appear in discourses about Canadian citizenship. These two key images of sovereignty are the "Crown" and "Canada" itself. Examining the way liberal thinking informs these two images of sovereignty is important because it reveals that the contemporary *dispositif* of citizenship is intertwined with a liberal logic that is profoundly depoliticizing. Like the well-disposed Hobbesian or Kantian subject, the well-disposed citizen is able (or, just as truly, conditioned) to understand every call to action as an *a priori* lost cause that can only replace one representation with another.

In order to come to terms with the discourses on the "Crown" and its implications for the *dispositif* of citizenship, I begin with Valverde's helpful analysis of the way the Crown in Canada is understood as a symbol that is "above politics" and thus beyond critique. I then relate Valverde's argument to the *dispositif* of citizenship by examining the recent and artful reasons of Justice Morgan for *McAteer* (*McAteer v. Canada (Attorney General)*, 2013 ONSC 5895, O.J. No. 4195, [hereafter *McAteer*]), a case that concerns the relationship between citizens and the Crown.[18] Fascinatingly, but hardly uniquely, Morgan J. posits that the Crown represents universalism and inclusive politics. As such, he reasons that although the Crown appears as a merely contingent legacy of an undemocratic and colonial past, the Crown actually represents justice and political inclusion. In other words, *McAteer* concerns precisely the paradox of

[18] The appeal of this case (*McAteer v. Canada,* 2014 ONCA 578) upholds Justice Morgan's ruling, but appears to be altogether less artfully reasoned and is, I think, actually incoherent.

sovereignty and the problem that Canada, with its contingent symbols like the crown, is supposed to be able to incorporate all types of subjects. In turn, Morgan J. employs the logic wherein the particular is said to represent the universal in order to resolve this paradox. In doing so, he cogently articulates a vision of the well-disposed citizen as a person who recognizes that the Crown is only a representation, and consequently knows better than to challenge it on the grounds of its particularity. Mogran J.'s ruling may in fact be read as a liberal pedagogy that seeks to enlighten subjects by teaching them how to think of themselves and their sovereign. As such, it lends credence to McKay's thesis that the liberal project is less disciplining and coercive than it is instructive.

The second half of this chapter follows the analysis of discourse on the crown by considering how certain Canadian political theorists discuss "Canada" in a way that bears a family resemblance to the way that Morgan J. discusses the Crown. For authors such as Horowitz (1995), Ignatieff (2001; 2007), and Ajzenstat & Smith (1995), "Canada" is a particular nation-state but represents political universalism. In turn, these authors present images of the well-disposed citizen as a person who embraces Canada as a representation of universalism rather than as a particularistic nation. I conclude by arguing that representing Canada as representative of universalism serves to safeguard Canada from critique. Furthermore, valorizing "our" universalism easily leads to the denigration of "others" who are said to adhere to particular identity positions and political projects.

I. The Crown and Liberal Sovereignty Politics

Valverde (2012) discusses the way recent Canadian jurisprudence holds the Crown to be at once sovereign, symbolic, and "higher than any actually existing government" (pp. 8-9). Indeed, in the words of one Saskatchewan lawyer, the Crown is "beyond persons and beyond

politics" (Arnot, 1996, p. 340, cited in Valverde, 2012, p. 9). In other words, recent jurisprudence frames the Crown in the same way that Hobbes presents the *Leviathan*. This jurisprudence treats the Crown as a transcendent being that incorporates many political actors and interests, and which is not reducible to particular actors and interests. Indeed, according to the doctrine that holds the Crown above persons and politics, it does not matter how particularistic and unjust the laws and governments that act in the name of the Crown are; the Crown itself remains doctrinally beyond reproach as a representative of universalism, justice, rule of law, etc. (Valverde, 2012, p. 7).

The case of *McAteer* offers a striking example of the way the Crown is imagined in relation to notions of nation and citizenship. The case concerns non-citizens who are eligible for citizenship but object to the fact that the Oath of Citizenship, which they are required to take in order to acquire citizenship, includes a pledge of allegiance to Queen Elizabeth II. The Oath reads:

> I swear (*or* affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen. (Citizenship Act R.S.C., 1985, c. C-29, Schedule 1).

For the Applicants, this oath to a hereditary monarch is an undemocratic remnant of a British past. For example, one applicant calls the monarchy a "symbol that we aren't all equal and that some of us have to bow to others for reasons of ancestry alone" (Applicant's Factum, para. 21). Another asserts that the oath "has no place in a democratic, multi-cultural, multi-ethnic, multi-religious society such as Canada" (Applicant's Factum, para. 19).

For the presiding judge, Morgan J., the case is about how the symbolic oath may serve as a contractual basis for a universally inclusive politics. Morgan J. notes that the Applicants challenge the oath's apparent particularity. He paraphrases their argument as follows: "they

surmise that a personal oath to a Monarch of British descent sends a divisive and elitist rather than unifying and all-inclusive message" (*McAteer*, para. 43). As becomes clear in his reasons, the judge shares the Applicants' desire for Canadian politics to be all-inclusive, rather than divisive and elitist. He counters the Applicants' position, however, and asserts that, "Her Majesty the Queen in Right of Canada... as a governing institution, has long been distinguished from Elizabeth R. and her predecessors as individual people" (*McAteer*, para. 60). He thereafter uses "the Crown" as a synonym for the "governing institution" of "Her Majesty the Queen in Right of Canada," (*McAteer*, para. 62ff). The "Crown" is in turn said to represent Canadian sovereignty, "national values" as well as "rule of law, equality, and freedom" (*McAteer*, para. 56, 80-81). In this way, Morgan J. hopes to defeat the idea that modern democracy and the historical Crown are at odds with one another.

In making his arguments, he draws on a complex medieval and early modern political ideology that Kantorowicz (1997) calls the doctrine of the King's two bodies. As noted, Kantorowicz describes how medieval jurists struggled to reconcile the fact that a monarch is a mortal being (prone to error, illness and death) with the idea of the monarch as divinely ordained and infallible (1997, pp. 13ff). The medieval and early modern jurists that Kantorowicz discusses reconciled these contradictory ideas by positing that the monarch possesses two bodies; one the natural body of the king (the living body, small k) and the other the transcendent body of the King (head of the mystical body politic, capital K) (1997, pp. 13ff; see also Valverde 2012). Valverde (2012) stresses that this notion of the King as head of a mystical body politic proved useful in an early modern context because it appropriated the Catholic notion of the Church as a transcendent mystical body to aggrandize the emerging early modern territorial state as a similarly transcendent body. That is, the notion of the body politic served to set up a formal

equivalence between Church and State. In turn, the English monarch (head of the body politic) could stand up to the Pope (head of the mystical Church). The famous frontispiece of *Leviathan* portrays exactly this understanding of the King as head of the body politic. This complex image shows, among other things, a giant King whose enormous crowned head (representing the individual king) sits atop a body politic composed of innumerable smaller individual bodies (the multitude of subjects). However, this image of sovereignty is not merely an appropriation of the Catholic idea of communities as mystical bodies within the political sphere. As discussed in the last chapter, Hobbes's image of the body politic emerged at a historical moment when ideas of mystical realities were increasingly supplanted by logics of representation and of artifice. As discussed below, Morgan J. relies heavily upon the modern idea of representation in his discourse on the Crown.

Figure 1: Frontispiece of Leviathan (Public Domain)

Morgan J. goes out of his way to assert that oaths to the Crown are not a religious phenomenon, in spite of the complex political-theological history of the institution of the Crown. He asserts that "the purpose of the oath in Canada is the strictly secular one of articulating a commitment to the identity and values of the country" (*McAteer* para. 85). According to this assertion, to swear to the Queen is to swear to the Crown and in turn to swear to the identity and values of Canada, which the Crown represents. For Morgan J., the oath has a "salutary effect" as "a vow of commitment to national values at the moment of citizenship." (*McAteer*, para. 80-81). His strategy is close to Hobbes's insofar as it aims to supplant religious notions of community with the idea of the political community as a being brought about by formal acts of commitment. Furthermore, just as Hobbes treats the sovereign as a representation of the political community, Morgan J. posits the Crown as a representation of Canada and its "national values." He gives us a hint of what he thinks these values are when he claims that the Crown "represents egalitarian governance and rule of law" (*McAteer,* para. 65).[19]

The judge goes on to reason that because the Crown stands for such incontestable goods as the nation, equality and rule law, it is a "formal" institution that should be distinguished from and held above "political" government (*McAteer* para. 62). For Morgan J., the Crown is not a partisan institution, because it stands for what is incontestable, and surpasses the partisanship or "politics" of government. In other words, he employs the same strategy Hobbes utilizes to ward off civil strife. For Morgan J., the Crown is not an object of contestation because it stands for incontestable goods.

In considering such rhetoric, one may be sympathetic to the plight of the Applicants in *McAteer*, who object to taking an oath of loyalty to a British woman and find themselves

[19] This formula is strikingly similar to that of the Tudor jurists Kantorowicz cites. For them, in the words of Edward Coke, the "crown was a hieroglyphic of the laws" (*Calvin's Case* 1608 cited in Kantorowicz, 1997, p. 16).

answered with a complex lesson in political hermeneutics. While the Applicants assert that they cannot faithfully swear the oath because they take oaths seriously, Morgan J. asserts that "the Applicants' problem is not so much that they take the oath seriously. Rather, their problem is that they take it literally" (*McAteer*, para. 59, see also 68). For Morgan J., the Applicants' mistake is that they act as if the oath to bear allegiance to Queen Elizabeth II may be taken at its "plain meaning" (*McAteer,* para. 56).

As articulated in Chapter One, Hobbes and Kant base their liberal politics on a rejection of truth claims and skepticism toward representations. In this way, they aim to prevent any political conflict over representations. Morgan J. applies the same maneuver when he accuses the Applicants of "literalism" and posits that the Crown is a benign representation of universalist Canadian values. This strategy deprives the Applicants' attempt to unmask the oath to the Queen as particularistic because this strategy simply denies that the oath means what it says. With this logic in place, everyone who wants to is able to believe that, despite the contingency of Elizabeth Windsor and the hereditary monarchy, or the literal meaning of the oath, these things represent a deeper and sublime commitment to political universality (see also, Zizek 2008. pp. 228ff). The point, as regards the *dispositif* of citizenship, is this: Morgan J. sets up a politics where the ideal citizen is sophisticated enough in his or her powers of interpretation to understand that the Crown (sovereign) is a representation and thus both a matter of indifference and absolutely beyond reproach. He holds that the oath to the Queen is necessary not so much as an affirmation of a particular institution but as a sign that the new citizen can reconcile themselves to a liberal politics that supplants particular causes and realities with universalist representations. This becomes clear when the decision moves on from comments on literalism to offer the Applicants a lesson in national history. In the process, he presents a vision of the ideal citizen as a

sophisticated exegete whose insight into the nature of political representation leads them to political quietism. Moreover, Morgan J. exemplifies the compatibility between early modern liberal conceptions of sovereignty and politics (as expressed in discourse on the Crown) and contemporary liberal nationalism.

The Crown and Canadian Loyalty

Morgan J. begins the history lesson he offers with the comment that "differences of opinion freely expressed are the hallmarks of the Canadian political identity, and have been so since the country's origins" (*McAteer*, para. 73). In order to elaborate upon his notion of Canada's "origins," the judge turns to the period of the American Revolution, and offers a story about why northern North America did not join that revolution. He writes that,

> As historians explain it, the 'loyal' half of the continent [British North America] that received its first constitution in the wake of the American Revolution... was not founded on uncritical acceptance of Empire or loyalty to the Crown... Rather, the loyalists shared with their counterparts to the south the ethos of dissent against authority – albeit democratic rather than revolutionary dissent (*McAteer*, para. 75).

In this short paragraph, we are told that loyalty is compatible with "dissent against authority." What marks the so-called loyalists as loyal is not a lack of dissent but their rejection of revolution. The judge writes that, "what distinguished these proto-Canadians from their southern counterparts was their notion of loyal opposition – i.e. the ability to dissent from within" (*McAteer*, para. 76). In this account, the loyalists' loyalty is not simply to the Crown but to a "not... uncritical" vision of quietist and conflict-free politics: the "proto-Canadians... remained 'loyal' to the concept that loyalty and dissent can live together" (*McAteer*, para. 77).

Significantly, Morgan J. does not ascribe any particular views to the loyalists whom he locates at Canada's origins. Their only characteristic is that they are interested in maintaining

political unity and peace by expressing their dissent "from within." The contemporary relevance of this origin story is explained as follows:

> The nation [Canada] was born in debate rather than revolution... reflecting a commitment to engagement even while disagreeing with each other and with the governing Crown... It is in this light – a heritage of debate and dissent – that one can best understand Canada's tradition of permitting all viewpoints, including advocacy directly contrary to the existing constitutional order" (*McAteer*, para. 79).

For Morgan J., Canada is a country where loyalty forbids revolutionary violence but permits "advocacy" for "all viewpoints," so long as these viewpoints are severed from calls to revolutionary action. Indeed, it seems that this logic allows all viewpoints to be permitted only because revolutionary violence is understood as absolutely beyond the pale. In the Canada that the judge imagines, "engagement" and "disagreement" take the place of ideology and revolution. In turn, citizens are liberal subjects (in the sense defined in the last Chapter) in that they are disposed to question their government but not to resist their sovereign.

The point is this: questioning authority can be a support for the status quo when the questioning ethos becomes synonymous with the idea that any sovereign is a mere representation (Martel, 2007). The idea that every authority is simply a representation or an artifice without a "real" claim to legitimacy allows for a corresponding sense that peace is better than struggles; which can do no more than supplant one (arbitrary) representation with another (arbitrary) representation. Just as Hobbes and Kant's political subjects are supposed to be bound together by a desire for peace and unity, what binds Morgan J.'s citizens together is not any specific ideology or purpose but a sense that unity and peace are best, despite any disagreements. This sense that peace and unity are best is a key part of the contemporary disposition of citizenship, or of the mentality of the well-disposed citizen.

II. Liberal Sovereignty Politics in Canadian Academic Writing

To summarize this Chapter so far, Morgan J.'s reasoning depends upon a liberal logic wherein the paradox of sovereignty is resolved by treating a particular being (the Crown) as a representation of universal and transcendent sovereignty. The Crown is understood as a symbol that unifies people despite their differences and that prevents civil strife. Importantly, this way of seeing the Crown depends upon a logic of representation and this logic need not take "the Crown" as its chosen symbol. The following sections argue that this liberal logic of representation easily takes "the Nation" or "Canada" as its object. By examining Horowitz's (1966/1995) well-known essay on "Conservativism, Liberalism and Socialism in Canada," as well as contemporary celebrations of Canada (Ignatieff, 2001; 2007; Ibbitson 2011; Ajzenstat and Smith 1995), the following sections aim to show that this way of writing about Canada is widespread and should be taken account of in efforts to understand the *dispositif* of citizenship in Canada.

In effect, I suggest that we should take seriously McKay's analysis of the way that "Canada" is associated with a liberal project of rule (and pedagogical efforts to produce liberal subjects). Yet we should also remember that this liberal project is wider than the nationalist project. The Crown occupies the position of sovereign representative of universality as readily as "Canada" precisely because this liberal discourse treats all representations as contingent.[20] McKay is wrong to say that Canada names a specific liberal project of rule. Instead, as discussed below, Canada is a word that has been mobilized within a liberal project of rule. It is nonetheless important, and here McKay is invaluable, to consider the way the word Canada is mobilized within this liberal project.

[20] Thus this discourse protects particular representations (Crown, nation, etc.) from critique. When *all* representations are arbitrary, the grounds for criticizing a particular representation evaporate.

Horowitz – Canadian Liberalism vs. American Liberalism

Like Justice Morgan, Gad Horowitz (1995) aims to frame Canada as a place where unity trumps ideology. Also like Morgan J., Horowitz utilizes a comparison between Canada and the United States to demonstrate Canada's virtues (1995, p. 41). Indeed, Horowitz (1995) argues that Canada is *the* supremely liberal society. He arrives at this conclusion in a curious manner. His text begins by acknowledging that liberalism is the dominant political ideology in countries other than Canada (1995, p. 41). He even contends that liberalism is "the American way of life" (1995, p. 28). Interestingly, for Horowitz, the hegemony of American liberalism is its downfall. He argues that liberalism in the United States has never faced a serious ideological challenge and, as a result, has become uncritical and intolerant of political positions other than liberalism. In other words, Horowitz accuses Americans of being illiberal about liberalism. If pressed to use Kant's terms Horowitz would have to describe the Americans as dogmatic rather than enlightened. In Hobbes's terms he says the Americans make an idol of liberalism.

We may doubt whether this portrayal of the Americans and American liberalism is accurate, but Horowitz is not really interested in the United States. The U.S. merely serves as the backdrop for his picture of Canada. Horowitz argues that Canadian liberalism is the exemplary form of liberal politics because of the presence of non-liberal elements within mainstream Canadian politics (he refers to socialism and "Red Tories") (1995, pp. 28-29). These elements, he claims, have forced Canadians to be "tolerant" in order to maintain our unity (1995, pp. 28-29). Strikingly, Horowitz suggests that even Canadian socialists and conservatives are liberal, in an important sense, because they acknowledge that belief in diverse political ideologies does not foreclose political unity. As such, for him, whichever party is elected to form the government will still be taken to represent Canada. In Kant's terms, Horowitz's Canadians are enlightened

about political representation. In Hobbes's terms, Horowitz's Canadians are "worshipfully" and not "idolatrously" disposed toward their country.

Where Hobbes's politics leads him to suggest that those who would fight for a substantive political purpose are missing the point of politics, and Kant maintains that political maturity requires one to be critical of the symbols by which one represents oneself and one's community, Horowitz continues the pattern by contending that Liberals remains liberal only to the extent that they recognize that they cannot annihilate other ideological positions (such as socialism and conservatism). Instead, liberals succeed by subsuming other ideologies – for instance, by getting Socialists and Conservatives to uphold liberal ideals of tolerance and debate.

There is a clever nationalist strategy at work in Horowitz's discourse on liberalism. By defining Canadian liberalism against what he defines as the illiberal liberalism of America, Horowitz represents Canada as both specifically liberal (in comparison to the US) and as a universalist liberal nation unencumbered by ideological dogmatisms (tolerant of diverse politics). As such, Horowitz achieves an apparent resolution to the paradox of the nation as both a specific being and a limitless sovereign. Ignatieff's *Human Rights as Politics and Idolatry* (2001) and *The Rights Revolution* (2007) offer further examples of the way universalism and particularism is brought together in nationalist discourses by claiming that the particular represents the universal.

Ignatieff – Canada's Minimalist Universalism vs. the Idolatry of Foundational Beliefs

This section examines Ignatieff's texts to provide a further example of the way the liberal logic discussed above can be applied to "Canada." Like Hobbes and Kant, Ignatieff holds that what binds a community of free actors together is a contract of mutual respect for the rule of law (2007, pp. 14, 124-125). He writes that Canada is "a national community held together by the rights framework," and that "the *sine qua non* of unity, civility and social order is equal

protection under the law" (2007, pp. 128, 131). Ignatieff elaborates that equal legal protections are the basis for a possible "minimalist universalism" able to accommodate all particularities. Law serves Ignatieff as a transcendent reference point (the rule of law) from which the nation's universality may be inferred. Furthermore, for Ignatieff, this universal law sets Canada apart from other human groupings. Like Hobbes, Ignatieff sets his liberal politics against "religions, family structures, authoritarian states, and tribes" (2001, p. 68). In the place of these groupings Ignatieff posits human rights as a way of combating our "natural particularism" (2001, p. 79) or the idea that "the only people we should care about are people like us" (2007, p. 40).

Significantly, Ignatieff does not attempt to found his arguments for rights on sure foundations. He offers no claims about the sacredness of human life or basic human rights. For him, to make rights the basis of "a creed or a metaphysics" would be to invite the sort of intolerance he hopes that rights discourse will ward off (2001, p. 53). Like Hobbes, Ignatieff is explicitly worried about fundamental truth claims as threatening sources of conflict. He writes that, "foundational beliefs of all kinds have been a long-standing menace to the human rights of ordinary individuals" (2001, p. 86).

Following Hobbes without citation, Ignatieff employs the religious concept of idolatry as a metaphor for infatuation with our ideals and a "mythic warning" against pride, contempt for others and "human fallibility" (2001, p. 87-88). Relying on this metaphor of idolatry, he embraces the early modern distinction between representations and revelations discussed in the last chapter. Ignatieff holds that although we need not reject the particularity of our various beliefs and traditions, which may be valuable as limited representations, we should not treat our beliefs and traditions as truths about reality (revelations). In other words, Ignatieff would like us to be critical of our beliefs and traditions.

In addition to using the logic employed by Hobbes and Kant, Ignatieff's thinking is close to Morgan J.'s insofar as he presents a vision of Canada as a place where differences are reconciled through representations of unity and disavowal of conflict. His definition of "idolatry" is roughly similar to Morgan J.'s definition of "literalism." The problem with idolatry, according to Ignatieff, and literalism, according to Morgan J., is that literalists and idolaters are in danger of taking representations too seriously – as if representation are or should be truths about reality. In the liberal logic that Morgan J. and Ignatieff employ, "idolatry" and "literalism" stand for a failure to understand that we live in a world of representations rather than revealed truths, and that representations are tools for political community rather than a basis for violent division. Against this failure, and again like Hobbes and Kant, Ignatieff holds that the ideal political community must disavow substantive commonalities or shared purposes. He claims that "human rights can be compatible with a wide variety of ways of living only if the universalism implied is self-consciously minimalist" (2001, p. 56). According to Ignatieff, such minimalism is good insofar as it minimizes the grounds for conflict. Nonetheless, despite the seeming universality of his embrace of human rights, he offers a proudly nationalist discourse.

Ignatieff tells us that Canada is a particular place that is particularly close to realizing universalism. He writes that:

> As Canadians, we have managed to create a single political community of equal citizens out of Aboriginal peoples, Francophones, Anlgophones and all the people like me whose families came here as emigrants from other countries. Out of different languages, traditions and cultures, we have forged a political system that holds us together and keeps us talking through our differences (2007, p. vii).

According to this quotation, citizenship is "forged" or made, rather than inherent in human beings. Furthermore, citizenship is said to be the basis of peace and unity despite "real" differences of language, culture and place of origin. For Ignatieff, citizenship in a common political community "keeps us talking" so that, as Morgan J. also asserts, endless debate takes

the place of civil strife. Ignatieff goes on to say that all Canadians possess a "shared identity as citizens of one nation", despite the "private matter" of group difference (2007, p. 64).[21]

Ignatieff then concludes that relative to the rest of the world "Canada has shown the way: maintaining freedom among people who value their differences yet desire to live as equals in a political community..." (2007, pp. viii-ix, 128, 131). Ignatieff even claims that Canada's "vocation in the world is to help other countries deepen and develop their citizenship as we have deepened and developed our own" (2007, p. viii-ix). He thereby presents Canada as the special place where the possibilities of minimalist universalism and ideal citizenship are realized.

Like Horowitz's discourses, Ignatieff's discourse suggests that Canada transcends its limits through liberal universalism, even while holding that Canada's specificity lies in the fact of Canada's advanced liberalism. To put this differently, Ignatieff posits a Canadian *dispositif* of citizenship that places artificial citizenship above naturalized differences, and suggests that the Canadian citizen's disposition to question the "idols" of identity, belief and tradition is a unique virtue. In effect, Ignatieff wants Canadian citizenship to be a product and agent of enlightenment, which dispels the false consciousness of naive believers. In their place, he posits a pragmatic rights-based universalism and an artificial nation-state able to unite across difference.

Other Canadian writers also pursue the strategies outlined above. These strategies are 1) privileging citizenship over group difference, and 2) presenting Canada as transcendently sovereign by treating Canada as representative of universalism. Examining a few such Canadian writers reveals that the liberal logic examined so far is not unique to Morgan J., Horowitz and Ignatieff.

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[21] Ignatieff also writes that "the unity and coherence of the liberal society are not threatened because we come from a thousand different traditions, worship different gods, eat different foods, [or] live in different sections of town" because "We are... a national community held together by the rights framework" and "rights, not roots, are what will hold us together in the future" (2007, p. 141, 128, 130).

For example, John Ibbitson (2011) calls Canada "the world's first post-national state" and asserts that Canada has a "culture of accommodation." For Ibbitson, the idea of Canada as "post-national" is linked directly to the notion that Canada has no content of its own, but is simply "accommodating." Ibbitson claims that Canada transcends nationalism because it has shed any particularity that would prevent it from accommodating difference. Note, however, that despite Ibbitson's claims of post-nationalism, his discourse is paradoxically still a nationalist discourse that asserts the virtues of Canada, its culture and its institutions. Political scientists Janet Ajzenstat and Peter Smith produce much the same account as Ibbitson. They strikingly assert that Canada's lack of uniqueness is the secret of Canada's particular identity.

They write that "there are no uniquely Canadian attitudes and beliefs" and that "from the perspective of liberal constitutionalism [this] is something to be grateful for" (Ajzenstat & Smith, 1995, p. 270). Yet, unable to give up on Canadian specificity, Ajzenstat and Smith immediately contend that "constitutional liberalism... lies at the heart of the Canadian way of life" (Ajzenstat & Smith, 1995, p. 270). In denying that there are Canadian attitudes or beliefs and nonetheless writing about the Canadian way of life, Ajzenstat and Smith exemplify a discourse wherein the absence of substantive identity ("uniquely Canadian attitudes and beliefs") is treated as the distinctive feature that grants Canada specificity ("the Canadian way of life"). Curiously their work suggests that the ideal Canadian is one who lacks attitudes and beliefs that would make them uniquely Canadian.

To take another example, Michael Adams (1997) writes that:

> Canadians feel *strongly* about their *weak* attachments to Canada, its political institutions and their fellow citizens. In other words, they feel strongly about the right to live in a society that allows its citizens to be detached from ideology and critical of organizations, and not to feel obliged to be jingoistic or sentimentally patriotic. Canadians' *lack* of nationalism is, in many ways, a distinguishing feature of the country (p. 171).

In this quotation, the ability to be "critical" and "free of ideology" is said to set Canadians apart from the inhabitants of countries of "sentimental patriotism."

I cite these examples to make the following point: just as Hobbes and Kant argue that sovereignty can only be represented negatively, so too do Horowitz's "tolerant" liberalism, Ignatieff's "minimalist universalism," Ajzenstat and Smith's "constitutional liberalism," Ibbitson's "post-national... culture of accommodation" and Adams' claim that Canadians are unique for their lack of nationalism, work to define Canada negatively. These Canadian writers attempt to resolve the clash between universal sovereignty (efficacy/inclusivity) and determinate existence by positing liberal universality as Canada's particularity. In other words, they say what Canada is not (not intolerant, not particularistic, not ideological) in order to sustain their faith in Canada's transcendence and universal virtues. Like the Crown, "Canada" becomes incontestable insofar as it is made to represent universalism. According to this perspective, the well-disposed Canadian citizen is a person who understands Canada as the particular place where universalism takes precedence. Such a citizen will consequently refuse to embrace an essentialist or fundamentalist position.

To recap, this chapter argues that Canadian liberal discourses are akin to early modern liberal absolutist discourses on sovereignty. In both discourses on the Crown and on Canada, a sovereign X is valued not as a particular reality but as a particular representation of and means to political universalism and peaceful coexistence. I have stressed the way that the idea of "the Crown" and "Canada" as representations of universality protect such objects from challenge. When the liberal logic and project of rule described in this dissertation are taken for granted, anyone who challenges Canada or the Crown can always be made to appear as a "literalist" (or, in Hobbes's early modern terms, an "idolater") who is unable to understand that "the Crown"

and "Canada" are representations of universalist political community and its unquestionable values (rule of law, tolerance, peace, etc). By contrast, the well-disposed citizen will not challenge the Crown or Canada, because this citizen is stripped of the "illusions" of literal truths about identity or fundamental beliefs about politics. In effect, the discourses examined in this chapter aim to inculcate a certain form of mental life in political subjects. This form of mental life is that of the critical individual, who has been liberated or has liberated themselves from all particular political visions and communities.

III. Problems of Negative Definition

This section explores the negative effects of the liberal logic and project of rule described in this chapter, as they strip notions of Canada and being Canadian of defining content. As Keohane (1997) observes, the "moral commitment required of Canadians…" seems to be "not to pretend that we are 'positively,' 'essentially' Canadian" (p. 15). Yet Keohane also reminds us that, although denial of essential identity may be framed as an opening onto universality, Canadians' denial of essence is also a source of anxiety about what it means to be Canadian (1997, p. 15). Canadian national identity may come to appear "abstract, empty and unpalatable" precisely because it is not positively defined (Bannerji, 2000, p. 98; see also Keohane, 1997; Thobani, 2007, p. 18).[22] Thus, Ignatieff finds himself bemoaning "the woeful inadequacy of our language of identity" at the same time he privileges Canada's minimalist rights culture (2007, pp. 13-14). Meanwhile, McKay (2000) complains of social scientists' treating Canada as an "empty

[22] The problematic vagueness of nationalist ideas has also been commented on more generally. Hobsbawm (1990) writes that it is nationalist ideology's "vagueness and lack of programmatic content" that allows diverse people to assent to it (p. 169). Anderson simply notes that ideas about nations tend to be curiously "empty" (2006, p. 5) while Fitzpatrick (1995b) similarly comments on the "vacuity" of nationalism (pp. 8, 12).

lot" without specificity (p. 618). The problem these scholars encounter is that a default or rejection of substantive definition cannot truly distinguish Canada.

This is especially so because, as Fitzpatrick (1995b) points out, offering a negative definition of the nation is not a uniquely Canadian phenomenon. Fitzpatrick reports that for Durkheim, "cosmopolitanism was a trait of the French mind" while Hume approvingly claimed that "the English, of any people in the universe, have the least of a national character; unless this very singularity pass for such" (1995b, p. 9). We might add to this series Volpp's (2007) analysis of the way American nationalism is sometimes premised on the claim that "intolerance is un-American" (p. 600; see also W. Brown 2006). This gives us three examples of nations other than Canada being defined in terms of their openness and transcendence of particularity (the cosmopolitan French, the characterless English, and the tolerant Americans). Given that negative definitions of nations are not unique to any specific Western country, Fitzpatrick argues that representing ourselves as universalist and free by refusing to offer substantive versions of identity is a central practice in what calls itself "the West" (1995b, p. 12; see also Brubaker 2004, p. 133).

Furthermore, psychoanalytic theories suggest that even essentialist communities will be confronted by the impossibility of providing a satisfactorily substantive or positive definition of themselves. As such, Keohane comments that a lack of positive meaning cannot separate Canada from other imagined communities because this lack is shared by Canada and everyone else (1997, p. 13, 18). Thus, instead of pursuing the specificity of Canada it is much more interesting to question how a sense of Canada's uniqueness is maintained in the face of the emptiness of discourses on Canada. Keohane suggests that we should examine how understandings of Canada emerge in relation to what is understood as different from Canada. In his words, "Canada is

realized by its reflection from otherness..." (1997, p. 17). Similarly, Thobani writes that "narratives of Canadian nationhood" define Canadians in relation to those who are not Canadian (2007, p. 5; see also, Bannerji, 2000, p. 108). Fitzpatrick is more critical of the way the nation is constituted in relation to otherness and draws our attention to the acts and hierarchies of exclusion which make national identity possible (Fitzpatrick, 1995b, pp. 10-12). I would add that looking into the way that assertions of Canadian identity are supported requires examining how the claims of liberal universalism (that are central to Canadian nationalist discourse, and the *dispositif* of citizenship in Canada) are grounded on discourses that frame "others" as essentialist, uncritical, literalist, and so on.

If we review some of the liberal thinkers discussed so far in this dissertation, we find that they define their position against putatively illiberal others. Hobbes's advocacy of a political community without essence makes him extraordinarily critical of substantive versions of community. As such, the Hobbesian political community is not only defined against the state of nature but also against factions of "idolaters" who attempt to found community on kinship, class, or doctrine and who supposedly cannot separate representations from realities.[23] Hobbes was especially suspicious of Catholicism, which he understood as an idolatrous faction. Put simply, *Leviathan* is a typical English Reformation polemic against the Catholic Church. For Hobbes, the Catholic belief that their Church represents God's will on earth is a dangerous source of political violence which could lead Catholics to contest the political community's universality in the name of their particular doctrines (1968, p. 633). Kant similarly dismisses anyone who "dogmatically" claims to possess truth.

[23] The same discourse played out historically in Canada, where Catholicism was also frequently labeled idolatry and presented as a threat to the nation (Miller, 1993, p. 33ff). In a passage that might have been Hobbes's own, a late 19th century *Toronto Daily Mail* editorial accused the Catholic Church of being "a conspiracy which everywhere employs the particularism of small races against the modern state" (cited in Miller, 1993, p. 38).

Likewise, in Canadian nationalist discourses, Morgan J. rejects literalists; Horowitz employs the "illiberal liberals" of the United States as Canada's constitutive other; and Ignatieff tells us that any foundational beliefs, and thus any fundamentalist believers, are a threat to human rights (2001, pp. 68, 86). Note that in each of these cases, these exclusions turn on the supposedly dangerous inner dispositions of those the author criticizes. Within a liberal logic and the contemporary *dispositif* of citizenship in Canada, what makes the other problematic is the other's certainty that they possess the truth, rather than the actual content of the other's beliefs or the other's way of life.

The political consequences of this rejection of "naively believing others" should be examined. At one point, Morgan J. perceptively writes that, "one simply cannot have citizens without non-citizens, or members of the state without non-members" (*McAteer* para. 106). Yet citizenship itself has no "content" that could ground exclusions. Citizenship is supposed to be a matter of artificial identity and of seeing through essentialist truth claims. As such, it is necessary to focus on excluding "particularistic" persons who are not properly disposed for citizenship. As Thobani points out, attempts to exclude particularistic others can even serve as symbolic "proof" of a national commitment to universality (2007, p. 5).

Once again, Hobbes's theory is illustrative. The claim that the particularist Catholic must be suppressed both mars and supports Hobbes's claim to universalism. To a contemporary Western liberal, Hobbes's anti-papal bombast is most likely to appear as an example of particularist prejudice. Yet, for Hobbes, the suppression of those who believe that their particular way is best (the Catholics) is simply an extension of political universalism. According to the liberal logic described in this dissertation, factions simply cannot be allowed to assert their doctrinal superiority without threatening the political community with civil war.

A number of critical race theorists suggest that Canadian practices of exclusion are based on a similar strategy of asserting Canadian universalism by rejecting people who are said to be too particularistic (Bannerji 2000, McKay 2000, Thobani 2007, Razack 2008). The following chapter examines how, today, "Muslims ... frequently serve as the example of choice in discussions of the limits of liberalism" (Abu-Laban, 2002, p. 466). Specifically, Chapter Three considers discourses surrounding the figure of the "Islamic extremist" as a dominant example of unacceptable particularism in contemporary Canadian discourse. I suggest that, just as Hobbes employs Catholicism as a straw opponent against which to define his universalist politics against, much contemporary Canadian discourse reifies the "Islamic extremist" as a figure to define Canadian citizenship against. Put differently, the next chapter argues that "extremism" is presented as a disposition that is the opposite of the disposition of citizenship. More generally, the next chapter draws upon critical race theory and critiques of orientalism to argue that the Canadian *dispositif* of citizenship is largely supported by Eurocentric ideas and cultural prejudices.

Chapter Three: The Figure of the Extremist

The previous chapter referred to the arguments of scholars such as Dhamoon and Abu-Laban (2009), Keohane (1997), and Thobani (2007), who argue that Canadian identity gains specificity only when it is defined in contrast to other social identities. Being Canadian appears to be a uniquely universal political identity only insofar as other forms of belonging and politics are framed as limited and particularistic. Thus, for example, Ignatieff portrays religious and ethnic communities as particularistic threats to individual rights and world peace, and as radically unlike liberal Canada (2001, p. 68).

Following from the argument that liberal nationalism and universalist citizenship require exclusions, this chapter considers the discursive figure of "the extremist" as a defining contrast to the figure of the citizen. I aim to explain how the word extremism is used in contemporary national security discourses to indicate a disposition opposed to the disposition of citizenship. In order to do this, the chapter analyzes policy documents released by Citizenship and Immigration Canada (CIC), Public Safety Canada (PSC), the Royal Canadian Mounted Police (RCMP), the Canadian Association of Chiefs of Police (CACP) and the Integrated Terrorism Assessment Centre (ITAC).

The present chapter contends that, just as liberal nationalists define Canada against other nations and groups, liberal nationalists define Canadian citizenship as consequential and valuable by holding that some people are unfit for citizenship. The chapter supports this argument by considering how a number of contemporary Canadian public policy documents and reports frame "Islamic extremists" as the primary threat to Canadian national security (Canadian Association of Chiefs of Police, 2008, p. 2; Public Safety Canada, 2011, p. 4; Senate, 2011, p. 9; Smith, 2009a, p. 3; 2009b, p. 13).

As will be discussed below, the term extremism is used to indicate the belief that non-state violence and unlawful action are legitimate means of achieving political ends (e.g. Kenney 2009). As such, the term extremism may be applied to many political actors, and not just Islamists (see Monahan and Walber 2013, pp. 134, 144). Given this general concern about extremism, it may appear that when authorities discuss Islamic extremism as the primary threat to Canada, they are really only concerned about extremism, rather than religion. Yet, the documents examined below consistently and explicitly link extremism with Islam, and also reference "non-Western" ways of life more generally (e.g. Sloan, 2007; Smith, 2009a, p. 7). The assumption underlying these texts seems to be that the members of certain cultural or religious groups are especially disposed to extremism and violence.

The central argument of this chapter is that by linking extremism to Islam, to non-Western cultures, and to foreignness, liberal nationalist discourses constitute the figure of the extremist as quintessentially a non-citizen and as "not Canadian." In turn, this othering of extremism serves two functions. First, the othering of extremism provides bounds to Canadian identity in a way that "universally inclusive" citizenship cannot. Second, discourse on foreign extremism provides a ready-made way of "othering" political dissent. Calling radical dissenters extremists serves to set them up as outside the bounds of legitimate public discourse.

To contextualize this chapter, it bears noting that Canadian efforts to counter extremism have yielded highly problematic results. The O'Connor Commission reports that the infamous deportation of Canadian citizen Maher Arar to Syria (via the US) resulted in part from his being erroneously characterized as an "Islamic Extremist" by Canadian authorities communicating with their American counterparts (2006, p. 62). The Iaccobucci Commission makes similar findings in regards to Canadian authorities' mischaracterization of three other Canadian citizens

who were detained and tortured abroad (2008, pp. 111, 195, 260, 346). A number of controversial immigration cases also hinge on the characterization of the affected non-citizens as Islamic extremists or as involved with Islamic extremism (e.g. *Almrei (Re), 2009 FC 1263, F.C.J. 1579 [Almrei 2009]; Harkat(Re),* 2010 FC 1241, F.C.J. 1426 [*Harkat 2010a*]; *Ikhlef(Re)* 2002 FCT 263, F.C.J. 352; *Jaballah (Re,)* 2010 FC 507, F.C.J. 614; *Mahjoub(Re)* 2011 FC 506, F.C.J. 936). Meanwhile, the UN's Independent Expert on Minority Issues reports that many Muslim Canadians believe they are discriminated against in Canada due to stereotypes about "Muslim extremism" (United Nations, 2010, para. 24, 54). Finally, concerns with extremism have influenced the trials of Canadians charged with terrorism offences. For example, in the case of *R. v. Khalid* (2009 O.J. 3513, CanLII 44274 (S.C.J.) [*R. v. Khalid*]) the prosecution presented evidence that the defendant Khalid held Islamic extremist beliefs as evidence of Khalid's subjective intent to cause death and serious bodily harm (para. 106-108). In sentencing, Canadian judges have taken the view that criminal offenders driven by extremism may not be amenable to rehabilitation and must therefore be incapacitated through lengthy incarceration (*R. v. Khawaja,* 2010 OJ 5471, ONCA 862 *[Khawaja 2010]* para. 242; *R. v. Namouh,* 2010 QJ 1158, QCCJ 943*,* para. 64, 87).

This chapter consists of seven parts. Part I discusses the way Canadian policy documents consistently link Islam to extremism. Part II shows that national security documents present extremism as a foreign import to Canada. Part III then discusses how selected national security texts frame extremism as a product of minority groups and as a cultural phenomenon. Part III goes on to discuss the way that the notion of extremism as "cultural" fits within a wider political orientalism by examining Huntington's (1993) "Clash of Civilizations" discourse. Part IV explores how concern with culture leads authorities to focus on minority groups and,

furthermore, to portray extremism as a group phenomenon rather than an individual one. Part V argues that discourses about extremism construct extremism as a disposition that is the opposite of the liberal disposition of the well-disposed citizenship. Thereafter, Part VI brings the arguments developed in the preceding sections together to discuss the political functions of talk about extremism within the *dispositif* of citizenship in Canada. Part VII concludes the chapter by discussing ways to contest discourses on extremism.

I. Extremism is Consistently Framed as Linked to Islam

Canada's *Counter-Terrorism Strategy* states that "Violent Islamist extremism is the leading threat to Canada's national security" (Public Safety Canada, 2011, p. 4). Likewise, an RCMP report titled *Radicalization: A Guide for the Perplexed* (Smith, 2009a) [hereafter, the RCMP *Guide*] contends that "In a contemporary context, radicalization is most often discussed with reference to young Muslims who are influenced, to one degree or another, by Islamist thought" (p. 2).[24] Both the RCMP *Guide* and a second RCMP report on terrorism also assert that, "Virtually all of the planned or actual terrorist attacks in Western Europe and North America since 9/11 have been carried out by young Muslims" (Smith, 2009a, p. 3; 2009b, p. 13).

We may criticize this focus on Islam in at least two significant ways. First, one might criticize the idea that Muslims commit terrorism by pointing out that there is no special link between Islam and terror. Members of other groups also commit terrorism, without the whole group being treated as a source of terrorism (Volpp 2002, p. 1584). One may also note that

[24] It may help the reader understand the references to radicalization in the quote above to know that the C*ounter-Terrorism Strategy* posits a continuum leading from what it refers to as "radicalization" to extremism and then on to terrorism. The *Counter-Terrorism Strategy* holds that "Radicalization, which is the precursor to violent extremism, is a process by which individuals are introduced to an overtly ideological message and belief system that encourages movement from moderate, mainstream beliefs towards extremist views" (Public Safety Canada, 2011, para. 14). The strategy is reproducing a definition found in the RCMP *Guide* (Smith, 2009a, p. 1). This definition is also employed by the Canadian Association of Chiefs of Police (CACP) in a discussion paper titled "Building Community Resilience to Violent Ideologies" (CACP, 2008, p. 5).

liberal concerns with Islamic extremism are self-serving for Western liberals (Zizek, 2008, p. 49). This chapter is primarily concerned with exposing the self serving function of liberal citizens' concerns with Islamist extremism.

To begin with, it is worth asking what "Islamic extremism" means in Canadian public discourses. In *Harkat(Re), 2010 FC 1241, F.C.J. 1426* [*Harkat 2010a*] the Canadian Security Intelligence Service (CSIS) defines Islamic extremism as referring "To individuals who, through an extreme interpretation of Islamic principles, espouse the use of serious violence in order to achieve an ideological, religious or political objective" (para.105). The reference to an "ideological, religious or political objective" in this definition closely mirrors the understanding of terrorism expressed in *The Criminal Code of Canada* (R.S.C., 1985, c. C-46). The so-called "motive clause" of the *Criminal Code's* definition of terrorism specifies that violent and threatening acts will only count as terrorism if committed "for a political, religious or ideological purpose, objective or cause" (s. 83.01(1)). In the words of one judge:

> Parliament has determined that motivation for the conduct described in the definition [of terrorism] is a central feature of that which distinguishes terrorism from other crimes. On this view, terrorism is only properly described and labeled for criminal law purposes... [when a political, religious and ideological purpose motivates violence] (*Khawaja 2010*, para. 93).

Note that both the CSIS definition of extremism and the *Criminal Code* definition of terrorism define extremism and terrorism in terms of subjective attachment to something beyond individual purposes or emotions as reasons for violence. Terrorism is a matter of disposition. To be clear, a person who attacks a crowd with a rifle will not count as a terrorist within Canadian law if their goal is purposeless slaughter or some private end (e.g. escaping a crime scene). To establish a charge of terrorism, prosecutors would have to show that the attacker conducted their act in the name of some overarching political, religious or ideological purpose. Note too that, according to the definitions of extremism and terrorism articulated respectively by CSIS and the

Criminal Code, the difference between extremism and terrorism is only that the extremist supports violence in an abstract way while the terrorist carries out or plans specific violent acts.

In keeping with this idea of extremism as the motivator for terrorism, the RCMP *Guide* frames extremism as the "ideological mindset that supports and nurtures political violence" (Smith, 2009a). Extremism is thus to be understood as an inner disposition which accompanies outward acts of terrorism. Indeed, because of the inclusion of the motive clause within the *Criminal Code*, no one can be a terrorist within the meaning of Canadian criminal law without also being found to be an extremist (a person who embraces non-state violence for political, religious or ideological purposes). Insofar as Canadian law defines terrorism as essentially a matter of motivation or extremist disposition, Canadian authorities work to counter extremism as a way of combating terrorism.

II. Extremism is Presented as Foreign

In addition to demonstrating concern with Islam, Canadian documents express a concern with foreignness as a source of extremism. For example, Canada's *Counter-Terrorism Strategy* argues that security organizations should primarily be concerned about "*foreign-based* Sunni Islamic extremism" (Public Safety Canada, 2011, p. 7, emphasis added). This phrase serves to link Islam to both extremism and foreignness. Similarly, reflecting a general concern with foreign threats to the nation, the *Counter-Terrorism Strategy* highlights Canadian efforts to criminalize "foreign influenced and terrorist influenced threats or violence" (Public Safety Canada, 2011, p. 34). This formula brings together foreign and terrorist influenced threats, without telling the reader whether to distinguish foreign threats from terrorist threats. Moreover, although threats and violence are already illegal under Canada's *Criminal Code*, the *Counter-Terrorism Strategy* highlights the fact that Canadian law specifically criminalizes threats and

violence that originate outside of Canada – under provisions of the *Security of Information Act* (Public Safety Canada, 2011, p. 34).

In considering such persistent concerns with foreign threats, one might also take note of Public Safety Canada backed research into "risk assessment protocols," intended to help authorities judge an individual's level of extremism or disposition to terrorism (Pressman, 2009, 2012). The author of these risk assessment tools, Elaine Pressman, writes that extremism is most likely to occur when:

> Some immigrants resist participation in the democratic process of host societies for ideological reasons and... are able to live and work in one country and remain psychologically attached to another country. They may live in one political system and yet adhere to political and ideological perspectives that are incompatible in fundamental ways (2009, p. 9).

Despite noting that "the relationship between extremism and trans-nationality" has not been "adequately explored," Pressman surmises that trans-national migration leads to extremism when transnational migrants' values and ideologies cannot be reconciled with those of the host nation (2009, p. 9). Pressman assumes that foreign "origins" often lead to hostility to the (host) nation, while conjecturing that the combination of foreignness and hostility to the host nation may yield extremism. In doing so, she discursively links extremism to foreignness.

The other side of Canada's concern with foreign extremism is that Canadian documents tend to downplay the issue of "domestic extremism" carried out by non-immigrant Canadians. Canada's *National Security Policy* (Privy Council Office, 2004) largely writes off the problem of domestic radicalization when it notes that "domestic extremism" is "not very prevalent in Canada" (p. 6). The later *Counter-Terrorism Strategy* (Public Safety Canada, 2011) is less ready to dismiss the idea of "domestic extremism" but claims that "domestic issue-based groups," such as radical environmentalists and anti-capitalists, engage primarily in "low-level violence" – apparently in contrast to the high-level violence of foreign extremists (p. 9). These texts create

and rely upon a productive exclusion that animates the *dispositif* of citizenship. Insofar as extremism is excluded as foreign, a lack of extremism (or a benign political disposition) may be inferred to be a quality of domestic citizens. Linking extremism to foreignness also links extremism to minority groups within Canada insofar as members of minority groups are commonly and erroneously understood to be recent immigrants to Canada or are stereotyped as perpetual foreigners (Arat-Koc, 2005, p. 33; Bannerji, 2002, 42-45; Bhadi, 2008, p. 81; Harder, 2012, p. 296). The following section sets out to show that concern with minority groups is commonplace within Canadian national security policy documents, and that this concern with minority groups fits within the liberal logic and project of rule discussed in Chapters One and Two. It will argue that, insofar as members of minority groups are understood to be, and presented as, "culturally determined" beings (W. Brown, 2006, p. 151; Bannerji, 2000, pp. 45, 96; Thobani, 2007, p. 148) they are understood as improperly disposed for citizenship and as a threat to liberal order.

III. Extremism is Presented as Linked to Minority Groups and "Culture"

Fear of minority identity politics is evident in the RCMP *Guide* (Smith, 2009a). When considering the causes of extremism, the *Guide* frets that "largely immeasurable social, political and religious motivations may trump mere citizenship" (Smith, 2009a, p. 6). In order to make this claim, the *Guide* relies on the idea that citizenship is opposed to, at least some, other grounds of identity. Moreover, calling citizenship "mere citizenship" suggests that citizenship is too bare or formal a ground for identity when compared to social, political and religious attachments.

Kymlicka (2010) also suggests that citizenship is at odds with other grounds of identity. Writing for Citizenship and Immigration Canada, he presents citizenship as a sort of inoculation against particularistic politics (pp. 14-15). For him, citizenship is a status that will lead people to

identify with the nation and prevent them from pursuing forms of identity politics opposed to national interests (2010, pp. 14-15). The point is this: whether lawful citizenship is read as a corrective for particularistic identity politics (Kymlicka 2010) or particularistic politics are understood to undermine citizenship (Smith 2009a), discourses on citizenship express a suspicion that some people may privilege their ethnicity, religion, culture or social group over their membership in the liberal nation-state (see also, Thobani 2007, p. 14).

This suspicion is manifest in a speech titled *Good Citizenship: The Duty to Integrate* (2009) given by former Citizenship and Immigration Minister Kenney. This text is worth considering insofar as it shows that suspicion of culture readily becomes suspicion of non-Western minorities. Kenney tells his audience that Canadians must not forget our "British liberal imperial… tradition of pluralism" because this is "the backdrop" that has made Canada a successful multicultural country. He then asserts that Canadians should focus on "those things that unite us... in particular, on the political values that are grounded in our history, the values of liberal democracy rooted in British Parliamentary democracy." Kenney goes on to say that "our immigration program, our citizenship program, our multiculturalism program must increasingly focus on integration, on the successful and rapid integration of newcomers to Canadian society." For Kenney, the integration of newcomers is necessary as a way to ensure that new immigrants "will not end up being stuck in any kind of cultural enclave." He then concludes that, by seeking to prevent the formation of "cultural enclaves," Canada is effectively working to prevent "radicalization."

By presenting the problem of "cultural enclaves" so soon after describing the problem of Canadians forgetting our "British liberal imperial" tradition, Kenney implies that the problem with enclaves is, at least in part, that they may cut individuals off from that British tradition. As

such, it is clear that he does not view Canadians who identify with British values of liberalism and the British colonial project as stuck in a cultural enclave. Instead, it is only Canadians who do not identify with this tradition who might be referred to as forming cultural enclaves. By going on to raise the issue of radicalization, Kenney suggests that it is "cultural enclaves" that produce extremism. He vaguely reminds his audience of certain (unspecified) terrorist attacks in Europe and then concludes that, "We cannot ignore what kind of consequences there are to allowing small minorities of extremists from whatever background to depart from the broad consensus of liberal democratic values and to embrace extremism." Kenney's reference to "small minorities of extremists" invokes, by simple word association, the idea that minorities and extremism go together – especially within the context of Kenney's comments on non-British cultural enclaves.

Like Kenney, the RCMP *Guide* also concerns itself with culture, and claims that police must come to understand "the cultural roots of extremism" (Smith, 2009a, p. 13). In this quotation, the metaphor of "roots" suggests that extremism grows from culture. A second, RCMP document suggests that extremism is a "cultural and emotional phenomenon" (2009b, p. 12). For its part, the *Counter-Terrorism Strategy* contends that "ethno-cultural" communities are especially susceptible to radicalization (Public Safety Canada, 2011, p. 34). As a further recent example, a Senate (2011, p. 12) report on the danger terrorism poses to Canada claims that "socio-cultural factors" produce extremism, and explains that socio-cultural factors include religion and ideology.

The focus on culture, ethnicity and religion these documents exemplify serves to conflate culture, ethnicity and religion. This conflation is in keeping with "Clash of civilizations" discourse (Lewis 1990; Huntington 1993) that gained popularity in Canada and elsewhere

following 9/11 (Arat-Koç, 2005). This discourse stresses culture as *the* primary reason for political conflicts. Examining the clash of civilizations thesis will help to explain much of the concern with culture evident in Canadian national security documents, and to demonstrate that the *dispositif* of citizenship is both animated by and serves to ground a prevailing political orientalism (Isin 2005).

The Clash of Civilizations Thesis and Political Orientalism

The idea of a "Clash of Civilizations" was first put forward by Lewis (1990), and made famous by Huntington (1993). [25] Lewis argues that a single conflict has been raging between Islam and "the West" for fourteen centuries and that this conflict is a clash between civilizations (Lewis, 1990, p. 3). According to Lewis, this clash began between Islam and Christianity and then carried on between Islam and the liberal secularism that, Lewis argues, grows out of Christianity (1990, p. 2). Lewis contends that the imperial successes of the West and the current globalization of Western values is anathema to the "classical Islamic view, to which many Muslims are beginning to return" (1990, p. 3). As such, he writes, we are now experiencing "no less than a clash of civilizations—the perhaps irrational but surely historic reaction of an ancient rival against our Judeo-Christian heritage, our secular present, and the worldwide expansion of both" (Lewis, 1990, p. 11). For Lewis, the Muslim man is subject to "the outbreak of rage against these alien, infidel, and incomprehensible forces that had subverted his dominance" and this rage draws "its strength from ancient beliefs and loyalties" (Lewis, 1990, p. 4). This view is both simplistic and fatalistic in contending that an anti-Western reaction by Muslims "was inevitable" and Lewis is frankly disparaging in his portrayal of Muslims as "perhaps irrational,"

[25] Huntington eventually expanded his 1993 essay on the clash of civilizations to book length. However, Said (1998) helpfully suggests that critics focus on the article, on the grounds that it is the more lucid and better supported version of Huntington's argument (p. 2).

but certainly defeated, rage-filled and uncomprehending (1990, p. 4). We may also note that when Lewis presents Muslims as given to ancient hatreds and a "classical Islamic view" he presents Muslims as linked to the past. By contrast, the West is presented as having advanced into a "secular present." As such, Lewis relies on a common stereotype about Muslims as "insufficiently modern" compared to westerners (Razack, 2008, p. 18-19).

This stereotype is furthered by Huntington (1993), who takes up Lewis's simplistic history and generalizes the clash of civilizations thesis to describe divisions between "the West" and a number of other rather arbitrarily demarcated "civilizations." He provides the following list: "Western, Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox, Latin American and possibly African" civilizations (1993, p. 25). For Huntington, this unsystematic mixture of geographic, religious, and, national labels may be subsumed under the sign of culture. He tells us that in the Post-Cold War world "the Velvet Curtain of culture has replaced the Iron Curtain of ideology as the most significant dividing line" (1993, p. 31).

Thus, instead of Lewis's clash between Islam and Euro-Christianity, Huntington posits a wider conflict between the West and the cultures of the rest of the world. For him "Western ideas of individualism, liberalism, constitutionalism, human rights, equality, liberty, rule of law, [and] democracy... often have little resonance in Islamic, Confucian, Japanese, Hindu, Buddhist or Orthodox cultures" (1993, p. 40). Huntington goes on to opine that "the very notion that there could be a 'universal civilization' is a Western idea [that is] directly at odds with the particularism of most Asian societies" (1993, p. 41). Alongside this general disparagement of all non-Westerners, Huntington reiterates Lewis's concern with Islam. Huntington argues that Muslim majority countries are a special source of conflict in world politics and claims that "the crescent-shaped Islamic bloc, from the bulge of Africa to central Asia, has bloody borders"

(1993, p. 34). Similar worries about the role of Islam in world politics are expressed by Ignatieff (2001), who contends that "In Islamic eyes, universalizing [liberal] rights discourse implies a sovereign and discrete individual which is blasphemous from the perspective of the Koran" (p. 60). Ignatieff is confident enough about his assertion that universalist rights and Islam are incompatible that he does not feel compelled to offer any evidence for this assertion.

One might have expected a more nuanced treatment of Islam from a committed Canadian pluralist. Yet, in fact, concerns about Islam are rather pronounced within Canadian multicultural writings. For instance, in his much lauded "Politics of Recognition," Charles Taylor (1994) sets up Islam as an example of a culture that liberal multiculturalism is unable to incorporate. He writes that "For mainstream Islam, there is no question of separating politics and religion the way we have come to expect in a Western liberal society" (p,. 62). As such, says Taylor, we must recognize that "Liberalism is not a possible meeting ground for all cultures..." but "quite incompatible" with some cultures (Taylor, 1994, p. 62). When Taylor goes on to assert that liberalism is a "fighting creed," the close proximity of this claim to his assertion that liberalism is incompatible with Islam may be read as suggesting that Islam is what liberals are supposed to be fighting (1994, p. 62).

Curiously, multicultural liberals like Taylor and Ignatieff are united with conservative liberals (such as Kenney, discussed above) in viewing Islam as a problem. As Chow (2002) observes, western liberal progressives and liberal conservatives maintain the same *cultural* boundaries (p. 29).[26] Each group deploys what Isin (2002, 2005) calls political orientalism. This is a practice that distinguishes between the well-disposed citizens of Western liberal democracies

[26] Indeed, insofar as Taylor argues that liberalism is an "organic outgrowth of Christianity" (1994, p. 62), and Kenney (2009) links liberalism to British tradition, these thinkers are alike in positing that liberalism's universalism has a particular history – and in using this particular history in order to draw boundaries around putatively universal tolerance.

and the dangerous group-based particularism of persons from other world regions. As Isin (2005) demonstrates, political orientalism is a widespread discourse that hinges on the ideological assumption that the individualism necessary to citizenship, and to a direct contractual relationship to one's political community, was only developed in the West. Other world regions are said to remain mired in tribal and despotic forms of association that oppress the individual (Isin 2005, p. 31). This discourse has little to do with the actual forms of associational life found in non-Western polities (Isin 2005). Instead, political orientalism is the result of the West defining itself in contrast to other world regions (Isin, 2002, p. 125). In other words, the West has constituted itself largely by presenting non-Westerners as "unable to invent" citizenship (Isin, 2005, p. 31). Such political orientalism is evident in Canadian policy documents.

For example, we may consider a report released by Canada's Integrated Terrorist Assessment Centre (or ITAC - an analytic institution made up of representatives from Canada's major intelligence and law enforcement services). The ITAC report (Sloan 2007) contends that extremism results from traditional societies "based on... ethnicity and kinship" (Sloan, 2007, p. 3). These societies are said to "lend themselves to the creation of in-groups" that regard "all out-group members [as] potential enemies..." (Sloan, 2007, p. 4). The ITAC report then translates the temporal division that it sets up between traditional and modern societies into a spatial division. Traditional societies are said to dominate "most of Africa, the Middle East, and South Asia" (Sloan, 2007, p. 4). Thereafter, with tradition firmly located in the "East," the report is able to contrast Eastern traditional societies with "Western cultures" that are said to promote "the liberal values of individualism, universalism, tolerance, equity, the rule of law and democracy" (Sloan, 2007, p. 3).

As Brubaker (2004) writes, such clash of civilizations thinking creates a simplistic dichotomy insofar as it maps universalism, modernity, tolerance, and civility onto the West, while locating particularism, violence, passion and ancient hatreds in the rest of the world (p. 133). This dichotomous mapping is problematic insofar as it acts as though "the historical cultures of humanity can be divided into two main groups, the one assumed to be universalistic and progressive, the other supposed irremediably particularistic" (Balibar, 1991, p. 25). Of course, if citizenship is truly artificial then we might understand this simplistic dichotomization as part of the artifice that makes up the *dispositif* of citizenship. Furthermore, once extremism is defined as cultural and linked to "non-Western cultures," which are said to oppose individualism, extremism is readily understood as a group phenomenon rather than as an individual phenomenon.

IV. Extremism is Presented as Group-based

The Canadian Association of Chiefs of Police (CACP) offers a "discussion paper" on extremism titled "Building Community Resilience to Violent Ideologies" (CACP, 2008, p. 5). This paper articulates a plan for counter-extremist efforts that will not focus on the individual alone but on whole communities. Indeed, the CACP paper refers explicitly to "target communities" and explains that, although radicalism is not limited to any one group, "the radicalization issue is certainly more critical in some communities than in others" (CACP, 2008, pp. 13-14).

The RCMP *Guide* makes a similar argument in a section called "Sensitive Communities" (Smith, 2009a, p. 9), which, tellingly, deals solely with Canada's Muslim communities. Moreover, the RCMP *Guide* explicitly presents groups, and not individuals, as the loci of extremism. For instance, the RCMP *Guide* asserts that social bonds "can accelerate the

radicalization process, encouraging people to adopt attitudes or to take action as a group that they might not consider as individuals" (Smith, 2009a, p. 6). The RCMP *Guide* then goes on to report that "family ties... can be critical" in radicalization and that "The role of family ties can be extended to include a whole range of social networks" such as "school," "neighborhood" and attachment to "spiritual leaders" (Smith, 2009a, p. 7). Note here, that this discourse reproduces precisely the political orientalist concern with "tribalism" (family ties, kinship) that Isin notes (2005). Furthermore, in concerning itself with social networks and family ties, the *Guide* draws on terrorism "expert" Marc Sageman (2008).[27] Sageman claims that terrorism tends to be planned by groups rather than individuals and that when anyone turns to extremism they do so through "a collective decision, not an individual one" (2008, p. 69).

The understanding of radicalization to extremism as a collective rather than individual phenomenon is in keeping with the fact that, as noted in Chapter One, liberalism understands group mentalities (or collective representations of identity and truth) as sources of political violence. As Volpp (2007) writes, liberals tend to fear that "an attachment to culture" will "inhibit one's ability to function as a citizen…" while "loyalties based upon community ties," may come into conflict with a person's "ability to follow the rule of law" (p. 579).

In the Canadian context, Pressman's work on indicators of extremism (discussed above) is especially noteworthy for its concern that group loyalties may lead to violence. For Pressman and Flock (2012), "commitment to [a] group" or to a "group ideology" is a sign that an individual is an extremist (p. 245). As in Hobbes's discourse, group identity, or "faction," is read as a challenge and threat to universalist political community.

Problematically, such liberal concern with group identity draws attention to minorities who (from a mainstream perspective) may appear to possess strong communal bonds or

[27] The *Guide* cites Sageman's 2008 book *Leaderless Jihad* in another context (Smith 2009, p. 16).

distinctive cultural practices in comparison to those of the majority population (Perry 2001, p. 60; Volpp 2007, pp. 596-597). As an example of this focus on minorities one might consider Sageman's "'halal' theory of terrorism." Sageman claims that when Muslims:

> get together to prepare and eat meals, or simply go to a halal restaurant... they talk about shared interests and traditions and reinforce common values... they stress their commonality and in the process create a micro-culture... they form strong cliques that continue to radicalize over time (2008, p. 68).

This "theory" assumes that whenever Muslims get together they begin to form an exclusive group or "micro-culture" and that their even talking about traditions or common values is a step on the path of radicalization. Moreover, when Sageman claims that these groups will "continue to radicalize" he falsely implies that Muslim groups are *always already* radical. The bias of Sageman's discourse becomes more readily apparent if we ask whether his argument that shared meals "continue" radicalization could be convincingly applied to white Anglo-Canadian families or social groups. It seems to me that the answer is definitively no. Only when groups (such as Muslim communities) are already suspected of extremism, can their collective social activities be read as a source of radicalization. As discussed in the following section, suspicions of Islam, foreignness and culture are especially pernicious given current links between discourses on culture and race thinking (Balibar, 1991; 2004, p. 224; Bannerji, 2000, p. 96; Motha, 2007, p. 140, Park 2013). The following subsection attempts to map these links in order to argue that culture serves as a cipher or stand-in for race within liberal nationalist discourse.

Culture and Race Thinking

A number of critical scholars argue that cultural difference is a gentrified contemporary version of the racial prejudices that bolstered Eurocentric nationalist discourses throughout the twentieth century (Balibar, 1991; 2004b, p. 224; Bannerji, 2000, p. 96; Motha, 2007, p. 140; St. Denis and Schick, 2003, pp. 61-63). Balibar (1991), for instance, finds significant lines of

continuity between the problematization of minority cultures and biologically-based racism. He contends that liberal suspicion of minority cultures is like biological racism insofar as it entrenches a sense of an occidental identity that needs to be protected from threatening others (1991, p. 17-18). Yet we must also consider how a turn to culture complicates simplistic racist discourses (St. Denis and Schick, 2003, pp. 61-63). Talking of culture allows one to avoid naming race as a reason for suspicion/exclusion and thus to disavow the charge of racism (Schick and St. Denis, 2003, pp. 61-63; see also Haque, 2010, p. 82) even as one continues to discriminate against the groups that have traditionally been the targets of racist prejudice.

Indeed, this maneuver is further complicated because western liberals tend to assert that they are not defined by culture, while members of other groups are (W. Brown 2006; Perry 2001; Schick and St. Denis, 2003), rather than making the argument that Western culture is superior to other cultures (the way white supremacists may assert the superiority of phenotypical whiteness). In Perry's (2001) terms, western liberalism rejects culture (and fails to recognize itself as culture) insofar as culture is understood as something that determines individuals' choices, actions and identities (p. 62). As such, westerners get to assert the value of their universalist liberal individualism against the supposed group-based determinism of non-westerners whose primary attachment is (said to be) to their cultures. Moreover, when westerners are regarded as culture-free or freed from culture, all those who stand out from the western norm may appear as "cultural beings" (Perry, 2001, pp. 60-61).

This dichotomy between free western liberals and cultural others becomes a practical support for racism insofar as "western" identity is popularly equated with being white. In this light, Bannerji (2000, pp. 44-45, 108) and Thobani (2007, pp. 145, 148) argue that Western discourses frequently frame visible minorities as if they are defined by their ethnic and cultural

communities in a way that whites are not (see also W. Brown, 2006, pp. 151, 185; Brubaker, 2004, p. 133; Motha, 2009, p. 229; Perry, 2001, p. 60; Razack, 2008, p. 33). When contrasted with such culturally determined beings, "culturelessness" or freedom from culture then emerges as a mark of white superiority. Through discourses about culture, white and western subjects gain the ability to present themselves as those with the first-best claim to individualism and to the free, critical thought privileged and demanded by commonplace discourses on citizenship (Perry 2001, p. 59; Mills 2008, p. 1382).[28] The point is that the *dispositif* of citizenship is intertwined with discourses about culture which allow for the denigration of precisely the same groups traditionally denigrated by racist discourses, to the benefit of white and western subjects.

V. The Supposed Opposition between Liberal and Extremist Dispositions

Assuming a difference between the self-determination of the individualistic liberal citizen (commonly understood to be white and western) and the group-based determinism of others (commonly understood to be non-Western and non-white) is a strategy of power that emerges through and informs commonplace ways of speaking of citizenship. Furthermore, the *dispositif* of citizenship links social identity with desirable and undesirable "forms of consciousness" (da Silva, 2001, p. 422). The liberal distinction between individuals disposed to think for themselves and people subject to group mentalities is easily treated as a difference between "racial," "ethnic" and "cultural" groups (da Silva, 2001, p. 429). Liberal and extremist "mindsets" may thus come to be considered as characteristics that distinguish persons from different backgrounds.

[28] Bannerji argues further that contemporary liberal multiculturalism continues the heritage of colonial racism by privileging white subjects as the ideal multicultural citizens (2000, p. 94ff). She contends that while liberal multiculturalism confers a unifying transcendence on Canadian identity (Bannerji, 2000, p. 94ff), "culture" is readily identified with foreignness and "visible" minorities. As such, suspicion falls on supposedly "monocultural" minority communities as potential threats to multicultural national unity (see also Thobani, 2007, pp. 156-157).

Importantly, however, a discourse focused on types of mental life and culture does not necessarily denigrate the elements of minority identities, such as theological beliefs, phenotype, or language. Instead, the subjectivity of the other is called into question at a fundamental level. Discourses on mindset suggest that it is not cultural difference in itself (in the sense of differences in practice, dress, or religious beliefs) that is the problem with others – but the way the others' culture leads them to think (collectively, dogmatically, oppressively) that is the problem. Suspicion arises that non-Western cultures and spaces produce people incapable of consequentially exercising individuality. As Motha points out, in the last decade, Muslims in particular have been presented as "a near perfect contrast to the free, autonomous, self-legislating liberal subject" (Motha, 2009, p. 230). In turn, Islam is often presented as a religion "devoid of 'skepticism, doubt, or rebellion'" (Motha, 2009, p. 231; see also Dhamoon and Abu-Laban 2009, p. 180; Haque 2010, p. 80; Razack 2008). In such discourse, neither the doctrines of Islam nor Muslim practices are held to be offensive in themselves. Instead, Muslims are faulted for their supposed collective failure to exercise individual judgment in relation to their religion. Like Hobbes and Kant, discussed in Chapter One, contemporary liberal discourses accuses "others" of a failure to develop or exercise their critical capacity and then reject these others for this supposed failure (W. Brown 2006).

Pressman's work for Public Safety Canada (PSC) provides a Canadian example. She does not claim that specific foreign values or customs are incompatible with Canadian society. Indeed, Pressman leaves "the boundaries of acceptable attitudes and practices to the jurisprudence system" (2007, p. 9). The problem with foreign cultures, according to her logic, is really their extremism, or tendency "to exhibit dogmatism, ideological rigidity, and a simplistic and utopian view of the world" creating "an exaggerated sense of morality which requires them to act

(sometimes with violence) against anyone who does not comply with their rigid and uncompromising moral judgment system" (2007, p. 12). Pressman is clearly drawing upon liberal concerns about the political effects of foundational or unquestioned representations of truth.

As a further example, the RCMP *Guide* problematizes Islam in much the same terms as Pressman problematizes foreign cultures. Although the RCMP *Guide* declines to frame Islamic beliefs or practices as threats to Canada, it presents Islam as a problem because of an alleged tendency for dangerous extremism to arise within Islam. The *Guide* contends that Islam is valued in multicultural Canada, but argues that Muslim communities are susceptible to "extremist ideology" (Smith, 2009a, p. 2-3). For instance, the RCMP *Guide* argues that many Muslims are disposed to the "message that the world is fundamentally 'at war' with Islam" and calls this message a "'one size fits all explanation' — that drives terrorism the world over" (Smith 2009a, p. 8).[29] The characterization of the Islamist clash of civilizations message as a "one size fits all explanation" indicates a sense that this message is closed to modification or reinterpretation, and that its adherents will continue to support it regardless of circumstances and evidence. Moreover, the characterization of radical Islamic discourse as a "single narrative," gives us the impression that we are dealing with an orthodoxy that permits no alternative stories or critical interpretations. Reflecting a liberal concern with the impact of fundamental truth claims on individual agency, the RCMP holds that the Islamist narrative may become "all-consuming" for its adherents (2009a, p. 9).

The notion that the Islamic extremist message is problematic because it is a foundational truth is also apparent when the RCMP *Guide* claims that the key to defeating extremism is the

[29] The *Counter-Terrorism Strategy* likewise writes of "the single narrative that Islam is under attack by the West" (Public Safety Canada, 2011, p. 7). Ironically, Islamic extremism is accused of dogmatically adopting the clash of civilizations thesis that drives the national security discourses considered in this chapter.

deployment of "'alternative narratives' designed to subvert extremist messaging" (Smith, 2009a). Nothing is said about what the content of these alternative messages should be. As such, the RCMP appears unconcerned with the contents of the messages, so long as these messages are designed to counter extremist messaging. The RCMP makes it appear that it is not concerned about a clash between ideologies or worldviews, but with opposing extremism through the liberal practice of acknowledging diverse truth claims (alternative messages). All political positions are thereby subordinated to the question of whether these positions are correlated with an acceptable liberal disposition or an unacceptable extremist disposition.

This lack of concern with the content of counter-extremist messages is evident in the RCMP *Guide's* praise for "Muslim commentators like [Canadian author] Raheel Raza [who] emphasize the need for Muslims both to speak out and to take action to ensure that terrorism, extremism and anti-Western propaganda are eliminated from Muslim discourse." The *Guide* explains that:

> The critical consideration is *not so much what Ms. Raza says* — reasoned, compassionate and very much a product of the Canadian "multiculturalist" environment — but rather *the manner in which this diverges from other forms of Islamic discourse* (Smith, 2009b, p. 10, emphasis added).

In this quotation, the content of Raza's discourse ("what Ms. Raza says") is subordinated to the question of whether her discourse expresses a "reasoned," "multiculturalist" disposition and departure from "other forms of Islamic discourse." What Raza says does not matter, so long as what is said counters extremism.[30] The quote implies that these other forms of Islamic discourse

[30] Another significant aspect of this quote is that Raza's "reasoned" and "compassionate" departure from extremism is said to be a product of the Canadian environment. Thus, the RCMP document suggests that expressions of reason and compassion by a Muslim are a result of that Muslim's exposure to Western ideals – rather than as arising out of Islam itself. As Razack (2008, p. 49) points out, such discourse posits a difference between the "good Muslim" who is Westernized and the "bad Muslim" who remains bound by the particularism of their foreign culture. In turn, the task of separating good and bad other is problematically assigned to state agents such as police and security organizations.

are extremist. By doing so, the quote suggests that there are no political options other than liberalism (or reasoned, compassionate Canadian multiculturalism) and extremism.

The point is this: in contemporary liberal discourses, evaluations of danger do not necessarily operate at the level of the substance or contents of identity positions and worldviews but instead fret over extremist dispositions and singular truth claims. In turn, minority groups are thought to be especially disposed to extremism. Unlike westerners said to embrace critical individualism and liberal tolerance, other groups are held to be prey to single narratives and thus to foster extremist dispositions.

To recap, this chapter has argued that Canadian national security discourse defines extremism as a disposition or mindset that is opposed to the disposition of citizenship. By relying upon a wider liberal logic and project of rule, as well as discourses of political orientalism, Canadian national security documents link extremism to Islam, foreignness, culture, group-based determinism and violence. The result is to frame "foreign" minorities as problematically given to extremism; thereby valorizing "domestic," white and Western subjects as those with the best claim to liberal citizenship.

Where liberalism is said to be Western (Lewis, Huntington, Taylor) or even specifically British (Kenney), extremism is discursively linked to "eastern" ways of life, and especially to Islam.[31] Where liberalism is said to be domestic, extremism is presented as a foreign import to Canada. Where liberalism is purportedly universal, extremism is supposed to arise from particular cultures. While the liberal citizen is supposed to exercise critical individual judgment, the extremist is thought to be over-determined by culture (or by religion, community and ethnicity, all of which are subsumed under the sign of culture). In aggregate, the result is a false

[31] Since Islam is an Abrahamic faith, like Christianity and Judaism, it seems to me that a case could be made that Islam is itself western, but rather than risk digression this dissertation will not make this argument, and instead contents itself with analyzing the effects of the popular idea that Islam is non-western.

set of associations between extremism, foreignness, group-based determinism and non-Western identities (Arat-Koç, 2005, p. 44; Bannerji, 2000; Thobani, 2007, p. 16). This set of associations works by opposition to produce an equally false set of associations between "Being Canadian," western identity and liberal universalism (Thobani 2007, pp. 4, 13). The following section considers the effects of these sets of associations. I argue that discourse on extremism has two effects. First, it helps to resolve the paradoxical notion that Canada is open to all but bounded by particular exclusions. Second, it serves to discipline subjects by othering dissent.

VI. Effects of Discourse on Extremism

A significant consequence of discourses on extremism is that they allow Canadian liberal nationalists to assert two contradictory things at once. First, liberal nationalists get to claim to be universally inclusive by asserting that Canada welcomes persons of all backgrounds– so long as they adopt a liberal disposition. Second, liberal nationalists maintain a sense of Canada's uniqueness and liberal virtue by contending that extremism most frequently arises from foreign spaces and non-western cultures.

I propose to call this double move, in which Canada claims to be at once all embracing and exclusive, the "liberal dodge." In keeping with official notions of liberal openness, contemporary Canadian discourses argue that there is no race, culture or identity that is incompatible with the disposition of Canadian citizenship. Instead, it is "extremism," understood as a dangerous collective mindset or disposition, that is said to be incompatible with Canadian citizenship. Yet, insofar as certain minority cultures and foreign spaces are said to produce extremism (while the West supposedly does not), Canadian discourses draw a line between liberal multicultural Canada (and its citizens) and other world regions (and their peoples).

It seems to me that the liberal dodge may be understood as an effort to resolve the paradox of sovereignty, and as a key element of the contemporary *dispositif* of citizenship. Canadian discourses present Canadian citizenship as a sovereign form of political belonging that is able to include all types of people. However, Canadian citizenship is also presented as unique insofar as it is distinguished from other forms of belonging/subjectivity.

Furthermore, through the discourse on extremism examined in this chapter, white and western subjects readily appear as well-disposed liberal citizens, while others are suspected of lacking the individuality necessary to citizenship. The emptiness of citizenship as a purely artificial construct, and the difficulties of telling those who are correctly disposed critical individuals from those who are not, are thus covered over by the incorporation of orientalist ideas within the *dispositif* of citizenship.

Furthermore, these ideas contribute to the subject forming effect of the *dispositif* of citizenship. Whites and westerners are disciplined by the idea that radical dissent and collective politics are something that denigrated others engage in, while visible minorities and non-Western subjects are disciplined by an injunction to prove that they are Westernized liberals, who are fit for citizenship and who have overcome the putative particularism of their type. Within this *dispositif*, the options are to present oneself as a quietist citizen or to risk being counted as an extremist subject unfit for participation in the liberal political community. This is a second important effect of exclusive and xenophobic discourses on extremism; they allow dissenting politics to be treated as foreign and thus illegitimate.

For example, Kenney (2012) disparages the Canadian migrant rights organization *No One is Illegal* by contending that the organization "is not simply another noisy activist group. They are hard-line, anti-Canadian extremists." The implication of Kenney's comment is that because

No One is Illegal is an "extremist group" the ideas promoted by members of the group should not count. As Kenney says elsewhere, extremist views are not to be treated "as a legitimate contribution to public discourse" (Kenney, 2009). Kenney's treatment of *No One is Illegal* fits within the pattern mapped by Monahan and Walby (2013), who report that, over the last several years, CSIS has begun discussing "activist groups, indigenous groups, environmentalists and others who are publicly critical of government policy" in the same terms in which they discuss international Islamic extremist networks (p. 134). In other words, talk of extremism is here used as a way of framing those whose substantive political projects conflict with dominant interests as analogous to threatening foreigners, as illberal extremists, and thus as outside the bounds of legitimate public debate. Nonetheless, what is important to remember is that the discourse on extremism as foreign came first, and that when talk of extremism is taken up to disparage dissent it is effective in part because it frames dissenters as symbolically foreign. Those framed this way may easily slide into simply asserting that they are "domestic" citizens and so not equivalent to foreign terrorists. Yet claiming domesticity will not deprive discourse on extremism of its power. Instead one might more effectively challenge discourse on extremism by undermining its operative claims; notably, that extremism is a disposition that authorities are able to detect, and which has been "discovered" to be associated with foreignness and specific groups.

VII. Contesting Discourses on Extremism

It seems to me that the distinction between the dispositions of the free individual citizen and dangerous group-determined extremist is more a performative fiction than a factual difference. As Derrida (2010) writes, the distinction between one's own critical individual freedom and others' determinism is a self-defeating fiction, insofar as it is asserted in a mechanically self-serving (i.e. deterministic) way (pp. 118-119). This performative fiction is the

product of biased ways of interpreting actions and motivations (W. Brown 2006, pp. 150-153). For example, Volpp (2002) points out that when people like Timothy McVeigh commit acts of terrorism this does not create a discourse about dangerous westerners or a threatening western culture (p. 1584). McVeigh is treated as a deranged individual, who exercised his freedom to do wrong, rather than as a representative of a class of western terrorists or dangerous tendencies within western culture. By contrast, every act of terrorism by a Muslim seems to provoke Westerners to speculate on the nature of Islam and the potentials for illiberal violence it harbours (Volpp 2002, p. 1584-1585).

In other words, in the discourses examined, whatever whites, westerners, and liberal citizens do is readily interpreted as the expression of their individual wills, while whatever racialized or dissenting subjects do may be read as a result of their oppressive religion, ideology, culture and community (2006 pp. 153-154). Thus, as discussed above, authorities may regard Muslims who get together for dinner as extremists-in-formation, while mainstream westerners who get together for dinner are unlikely to draw the attention of authorities. Likewise, a liberal citizen's praise of national law is likely to be read as an example of critical individual judgment, while an activist's condemnation of the same system of law is readily framed as an expression of ideology. A politics that is faithful to the emancipatory promise of critique would seek to expose this double standard that reads some subjects as free liberal individuals and others as extremists prey to dangerous group-based determinism.

To come to a conclusion, this chapter argues that the word citizenship is commonly used to indicate a disposition and identity that is defined against extremist dispositions and particularistic identities, which are themselves supported by and partially constitutive of wider orientalist discourses that privilege white and western subjects. The chapter has attempted to

unpack how these discourses rely upon spurious assumptions and double standards in order performatively to entrench a false distinction between well disposed citizens and dangerous others. The following two chapters aim to expose particular artifices whereby the distinction between well-disposed citizens and dangerous others are reified. These artifices include discourses that attribute government the duty and the capacity to protect citizens by keeping the ill-disposed at bay beyond the borders (Chapter Four) and the distinct standards of immigration law, which make comparatively easy to "find" non-citizens to be dangerous extremists (Chapter Five).

Chapter Four: The Protector State

This chapter considers discourses that ascribe the Canadian state the role of determining which persons are properly disposed to be citizens. It asks how these discourses produce an image of the Canadian state as the protector of citizens as well as how these discourses work to link claims about protecting citizens to claims about the need to police Canada's borders. The argument will be made that discourses on the protector-state serve to naturalize the distinction between well-disposed Canadian citizens and threatening foreigners, as analyzed in Chapter Three, by treating the state as a power that is able to sort the two groups. In light of this, the chapter asks how understandings of government, state and citizenship change when we treat the categories of citizens and others as performative constructs rather than obvious and incontestable divisions within humanity. The argument is made in three parts.

Part I begins by discussing widespread and authoritative claims that the government must protect the citizenry, and may do so at the expense of non-citizens. Parliamentary debate and court rulings on a controversial immigration security measure, the "security certificate," will be examined to illustrate discourses that elaborate visions of the protector-state that polices borders. These discourses will be contrasted with assertions about the value of newcomers to Canadian society.

Part II argues that the paradoxically inclusive and exclusive elements of Canadian discourse on non-citizens may be understood with reference to Hobbes. Within Hobbesian politics, the foreigner presents a problem because he or she is both 1) a potential subject who might be included in the political community and 2) a potential threat to be destroyed as an enemy. Honig's (1998) exploration of the way liberal democracies treat immigrants as both resources for the nation and as potential threats to the nation helps to explain the contemporary

importance of this Hobbesian problem. Drawing on Honig, Part II concludes by examining discourses on the oath of citizenship in order to show that the liberal logic described in this dissertation renders the position of the newcomer constitutively ambiguous. Insofar as liberal logic make citizenship contingent upon an internal disposition and subjective political commitment, liberal logic deprives us of any criteria that would make it possible to know whether or not the newcomer truly belongs. The newcomer may always be interpreted, with equal validity, as either a good new citizen or a dangerous outsider.

Part III argues that the ambiguity of the newcomer's status is key to liberal images of the state as a power that polices borders. In order to make this argument, Part III analyzes parliamentary and judicial discourses that posit that it is government's role to distinguish potential citizens from friendly aliens and dangerous foreigners. By bracketing the conventional notion that some non-citizens are good candidates for naturalization and others are not, Part III asks how the sorting of non-citizens works to produce images of the Canadian state. I argue that the sorting work that Canadian authorities conduct at the borders is not the result of the state's power to distinguish between types of person, but actually operates to present the state as a power able to carry out this sorting work. In turn, the *dispositif* of citizenship is bolstered by discourses on the protector-state, which allow people to delegate the task of separating fellows from dangerous others to government authorities.

I. Discourse on Protecting Citizens

A number of prominent Canadian speakers and texts contend that the government must protect the citizenry. Former Minister of Public Safety Stockwell Day asserts that securing the citizenry is "Any government's first responsibility" (House of Commons Debates, 142, 041 (January 31, 2007) at 1335-1340). *Canada's Counter-Terrorism Strategy* (Public Safety Canada,

2011) likewise posits that "The first priority of the Government of Canada is to protect Canada and the safety and security of Canadians" (p. 4). The Liberal authored *National Security Policy* (Privy Council Office, 2004) holds that, "There can be no greater role, no more important obligation for a government, than the protection and safety of its citizens" (p. vii). A similar commitment to citizens informs the *Immigration and Refugee Protection Act* which, despite its name, states that one of its primary purposes is "to protect the health and safety of Canadians" (3(1)(h)), while making no commitment at all to the health and safety of non-citizens.

As evident in the above examples, politicians, policy documents and law present the idea that government must protect citizens as a fundamental tenet of Canadian politics. Indeed, these legal and political assertions treat the protection of citizens as the incontestable ground of any Canadian politics. In doing so, these texts work to frame Canada's government as a certain kind of actor, one which has the responsibility to protect citizens above all else. This image of the Canadian government is in keeping with Hobbes's liberalism. Hobbes holds that "The office of the Soveraign [sic]… consisteth in the end, for which he was trusted with the Soveraign Power, namely the procuration of *the safety of the people*" (1968, p. 376).

Reassuring as such discourse might be on one level, it raises serious questions about the status of those who are not counted among the citizenry or the people. Hobbes provides a striking contrast to the protection owed to the people in his discussion of the status of the foreigner. Hobbes holds that "the Infliction of what evil soever, on an Innocent man, that is not a Subject, if it be for the benefit of the Common-wealth, and without violation of any former Covenant, is no breach of the Law" (1968, p. 360). According to this argument, there is no limit on what may be done to those who are not subject to the state, for the good of the state. I believe this way of thinking is also an element of contemporary Canadian discourse. A key ruling on a

controversial immigration security measure known as the security certificate (*Charkaoui v. Canada (Citizenship and Immigration),* 2007 SCC 9, 1 S.C.R. 350 [*Charkaoui I*]) provides an example.

The security certificate is a measure employed by the Government of Canada to remove specified non-citizens from the country. Under the *Immigration and Refugee Protection Act* (IRPA s. 33-37, 77-78) the executive issues security certificates when intelligence services present "reasonable grounds to believe" a non-citizen has been engaged, is engaged or will engage in terrorism, espionage, human rights violations or serious criminality. In a number of cases the affected non-citizens are detained for years pending judicial review of their certificates, decisions on the feasibility of deportation and the conclusion of appeals (Larsen & Piche, 2009). The legislation on security certificates includes a range of controversial elements including a low standard of evidence, the fact intelligence relied on by the courts is not always fully disclosed to the non-citizen accused of posing a security threat, and the fact that the standard of proof required of the accusers is very low (Bell 2006; Razack 2008; Roach 2008; Thwaites 2014).

In *Charkaoui I* the Supreme Court reviewed a set of constitutional challenges to the security certificate process. Among the contested issues was the fact that security certificates target non-citizens specifically. This was alleged to deprive non-citizens of their section 15 *Charter* right to equal treatment before the law (*Charkaoui I* para. 129). However, the Court took the conventional position that, "One of the most fundamental responsibilities of a government is to ensure the security of its citizens" (*Charkaoui I* para. 1) and found further that immigration security measures targeting non-citizens are a valid means to protect citizens (para. 129).

The Court went on to argue that s. 6 of the *Charter* guarantees the right to enter and remain in Canada only to citizens and so "specifically allows for differential treatment of citizens

and non-citizens in deportation matters" (*Charkaoui I* para. 129, see also Thwaites 2009; 2014). Although the author of the ruling, Chief Justice McLachlin, appears to merely apply the *Charter,* she is engaged in performative work when she concludes that "A deportation scheme that applies to non-citizens, but not to citizens, does not, for that reason alone violate" non-citizens' right to equality before the law (*Charkaoui I* para. 129).[32]

In the Supreme Court's discourse, the fact that non-citizens lack a right to be in Canada makes possible unique national security measures solely applicable to non-citizens. The question of whether non-citizens present a unique or serious threat (that warrants unique and especially harsh national security measures), is left by the wayside. Instead, non-citizens' rights are understood as a potential obstacle to tackling security issues, and the idea of a government mandate to provide security for citizens (before considering the rights of others) is assumed.

Of course, not everyone is so comfortable with the idea of protecting the citizenry at the expense of non-citizens as Chief Justice McLachlin. In the wake of *Charkaoui I,* New Democratic Party Members of Parliament argued that, at least in an immigrant-seeking and multicultural country like Canada, targeting non-citizens compromises the citizenry. For instance, MP Comartin asserts that:

> I have talked with people from the Muslim community and to some degree the Sikh community. They are feeling most vulnerable because their family and friends are still newcomers to this country and could still be subject to one of these certificates (House of Commons Debates, 142, 044 (February 5, 2008) para. 2030).

Although this quotation relies on the common ideological claim that adherents to non-Western religions are "newcomers" to Canada, the more interesting argument here is that many, perhaps most, non-citizens in Canada are on their way to becoming citizens. The complaint that

[32] Such utterances take on a life of their own as they are taken up by other actors. For instance, Razack (2010) quotes a CSIS employee who relies on such rulings to argue that "aliens have lesser rights than citizens" (cited in Razack, 2010, p. 91).

"newcomers" are "still" potential targets of security certificates suggests that this vulnerability is temporary – likely to be erased when these newcomers gain their citizenship. As such, Comartin suggests that the difference between citizens and non-citizens is more a matter of time, and of an artificial legal status, than of kind. Comartin thus raises the possibility that the "people" government owes protection to is wider than the formal citizenry.

Similarly, while the ruling Conservatives hold to the argument that citizens' security is paramount, they are like Comartin in that they are keen to separate their concern with citizens' security from the idea that all non-citizens are problematic. For instance, Day remarks that "The vast majority of [immigrants] contribute in a very positive way... They bring their skills, values, beliefs, hopes and dreams for the future. Our country is strengthened by that and made a better place" (House of Commons Debates, 142, 041 (January 31, 2008) para. 1335). This comment suggests that non-citizens' differences are to be embraced. In turn, this embrace of non-citizens' differences raises the question of why the state ought to privilege its citizens over non-citizens. If non-citizens' differences are valued, what is the difference between citizens and non-citizens? A tension arises between Canada's purported openness and the treatment of citizens' security as an absolute value.

The point is this: authoritative speakers simply assert government's obligation to protect citizens, and imply a corresponding disregard for noncitizens. Yet, paradoxically, they do this even as they affirm Canada's welcoming attitude toward non-citizens and deny that there are any substantive differences between human beings from Canada and other human beings. In this context, no explicit argument is forthcoming to justify privileging the security of the citizenry over the rights of others. This is especially and vexingly the case in those legislative debates and

Supreme Court rulings where the researcher hopes to find such an explicit argument. Further analysis of Hobbes's sovereignty politics helps to shed light on this paradox.

II. Hobbesian Liberalism and the Problem of Inclusion/Exclusion

Hobbes posits that simple membership in a political community gives people a reason to live peacefully in that community. Therefore, no one needs to be excluded simply by virtue of their identity (1968, p. 210). Moreover, since Hobbes also argues that to prolong a state of conflict unnecessarily "is a signe of an aversion to Peace," excluding others when they could be included appears to undermine the founding Hobbesian notion that every political community exists to secure peace (1968, p. 210). It would seem that the Hobbesian political community ought to include outsiders whenever possible rather than continuing to relate to them as potential enemies. Like Canadian discourses, Hobbes's discourse is thus paradoxically marked by both a drive to inclusivity and a near total disregard for the welfare of outsiders. In order to resolve this paradox, it is necessary for Hobbes to find some grounds for distinction between insiders and outsiders.

He does so through his discussion of the promise-breaker. Hobbes writes that the one "that breaketh his covenant... cannot be received into any Society, that unite themselves for peace and defense… all men that contribute not to his destruction, forbear him only out of ignorance of what is good for themselves" (1968, p. 205). Hobbes's harsh injunction against the promise breaker is not explained simply by the fact that the promise breaker does immediate harm through their betrayals (e.g. hurt feelings, lost profits) but because betrayal undermines the very idea that promises bind us (Felman, 2003, pp. 18-19). The promise breaker thus frames trust as groundless and redefines the powerful fiction of the social contract as a simple falsehood. As

will be shown below, a very similar concern with falsehood animates discourses surrounding citizenship within contemporary Canada.

As argued in previous chapters, both Hobbesian discourse and the contemporary *dispositif* of citizenship in Canada make inclusion and exclusion a matter of possessing a citizenly disposition. Insofar as dispositions are understood as "inner" phenomena, false self-representations become problematic. In effect, false representations show that we cannot really know that our fellows speak in good faith when they claim they are disposed to think and act as benign citizens.

The following subsection examines recent comments on the oath of citizenship in order to show that Canadian discourse evokes Hobbes's concern with self-representations and individuals inner dispositions. Furthermore, these comments on the oath display the anxiety over dispositions, internal commitments and acts produced by the *dispositif* of citizenship, as the *dispositif* attempts to link artificial citizenship to certain ways of thinking and specific "internal" commitments. The result of making internal commitments the basis of inclusion and exclusion is to remove any clear and verifiable grounds that would allow one to decide who should be included in and excluded from the political community, or who possesses the correct disposition for citizenship.

The Oath of Citizenship

The importance of the idea that citizens are contractually bound to the state is evident from the fact that Canada requires new citizens to take the oath of citizenship and commit themselves to the nation-state through this formal speech act. As also discussed in Chapter Two, the ritual of the oath may appear as a formality at the end of a long selection process, but it is given significance by many. As framed by former Citizenship and Immigration Minister Kenney:

> Taking the oath is a fundamental step in the life of a new Canadian. It's really the moment when the person makes a commitment to the Canadian family, promises to obey the laws of our country, to respect our traditions, and to be loyal to our head of state and to our country (Kenney, 2011).

In such discourse, what distinguishes a citizen from a non-citizen is imagined as a matter of a promise, and commitment, rather than culture, ethnicity or biography.

Honig emphasizes the significance of such a citizenship oath and ceremony as an attempt to legitimate liberal democracy. She points out that, because most citizens are born to that status, immigrants are the only ones who really consent to life in the nation-state. They are thus "the sole bearers of a consent that is the phantom ground of... liberal democracy" (Honig, 1998, p. 2). In other words, "immigrants reperform the social contract by naturalizing to citizenship" (Honig, 1998, p. 13). Through their oath "the gap of consent is [symbolically] filled" for everyone (Honig, 1998, p. 13). That is, the successful immigrants' oath of citizenship symbolizes the fact the liberal polity is, ideally, a community of individual common consent and not of common blood, culture or creed (Honig, 1998, p. 13). Just as importantly, the naturalization of diverse immigrants "demonstrates" liberal citizenship's supposed ability to provide a unifying identity for "everyone" regardless of background, race or religion (Fitzpatrick 1995a, p. xiv; Balibar 2004, pp. 158-159).

Yet citizenship's value is also reinforced by the iconic image of the bad immigrant, who threatens to abuse liberal openness (Honig 1998, pp. 13-14; see also, Bannerji 2000, p. 95; Dauvergne 1997, p. 337; Thobani 2007, p. 10, 27). The close association between claims of openness and assertions of exclusivity is evident in Kenney's comments on the "Protecting Canada's Immigration System Act," which heightens penalties for international human trafficking and shortens refugee determination timelines (Citizenship and Immigration Canada 2012b). Kenney asserts that Canada's immigration system is "generous" and that the new rules

send “a clear message that our doors are open.” However, Kenney immediately adds, the doors are open only “to those who play by the rules.” He claims that, “we will crack down on those who... threaten the integrity of our borders” (CIC 2012b). With such paradoxical assertions in mind, Honig theorizes that understandings of immigrants as a resource for the nation are deeply intertwined with understandings of immigrants as a threat to the nation (1998, p. 16). In her words:

> the iconic good immigrant who upholds... liberal democracy is not accidentally or coincidentally partnered with the iconic bad immigrant who threatens to tear it down...the undecidability of foreignness-the depiction of foreigners as good and bad for the nation-is part of the logic of liberal, national consent (1998, p. 16)

The undecidable status of immigrants, described by Honig, is closely linked to Hobbes’s problem of the promise-breaker. One cannot know whether the other really commits themselves to the nation-state. It is always possible that the new citizen will merely feign commitment. Insofar as commitment is supposed to be expressed through the oath, “liberals who want immigrants to help solve liberal democracy’s legitimation problem are pressed... to distinguish between sincere and fraudulent speech acts” (Honig 1998, p. 14). Yet, Honig notes, it is impossible to distinguish between a sincere and a fraudulent speech act (1998, p. 14). Nothing inherent in any speech act allows one to say for certain whether it is sincere or not (Derrida 1977, p 68; 2000, pp. 16, 27-29; Fish 1980, pp. 103-104). This is so because sincerity is not a matter of the speaker’s inner world and intentions, but must be judged by others – and judgment is itself a performative speech act (Austin 1972, p. 141; Felman 2003, pp. 13-14; Fish 1980, p. 216). In other words, sincerity is not a simple reality that is either there or not there “behind” a speech act. Instead, sincerity is assigned to a speaker performatively through (often unequal) negotiations between speakers. The sincerity of any speech act is thus “undecidable” in the sense

that every speech act always retains the possibility of being judged sincere or insincere. In turn, every speaker retains the possibility of being judged to be disposed to sincerity or to insincerity.

Honig argues that in practice liberal democracies attempt to resolve this difficulty by designating some immigrants as insincere (as fraudulent, citizens-of-convenience, etc.) and others as sincerely committed new citizens. This sorting work is performative insofar as sincerity is not the sort of thing that can be factually discerned. Honig's work gives us a new way of evaluating arguments for exclusion that are based on the alleged dishonesty of particular immigrants. This is especially important in light of the fact that claims about immigrant dishonesty have given rise to efforts to strip citizenship from those said to have gained it fraudulently. As Kenney reports:

> When I became Minister of Citizenship three years ago, I was very concerned when I found out that some people had not met the requirements of citizenship and did not really value their Canadian citizenship. Obviously, I'm referring to a small minority—not to the vast majority who respect our laws and meet the requirements of citizenship (Kenney, 2011).

Kenney asserts elsewhere that, "We are defending the interests of these law-abiding new citizens by taking action against the small number of those who seek to cheapen the value of Canadian citizenship by acquiring it illicitly" (Citizenship and Immigration Canada, 2011).

In these short quotes, we find Kenney expressing the inclusive and exclusive aspects of liberal politics in almost the same breath. The new Canadians who "do not really value their Canadian citizenship" are set up as opposites to "the vast majority" of desirable immigrants. "Law-abiding new citizens" are contrasted to the "small number" who break laws and fake requirements to become Canadian citizens. Kenney succinctly links claims of national openness to exclusionary efforts when he says "Canadians are generous and welcoming people, but they have no tolerance for criminals and fraudsters" (Citizenship and Immigration Canada, 2012b), and again, when he holds that "Canadians take great pride in the generosity and compassion of

our immigration and refugee programs. But they have no tolerance for those who abuse our generosity and seek to take unfair advantage of our country" (Citizenship and Immigration Canada, 2012a).

Kenney's discourse is sophisticated in that it presents the immigration fraudster as a threat to the notion of citizenship itself, as one who "cheapens" citizenship by disconnecting it from commitment to the nation and national law. Like the Hobbesian promise-breaker, the fraudulent immigrant who violates immigration laws to become a citizen (and dishonestly conceals this violation) symbolically undermines the notion that citizens are basically trustworthy and law-abiding (and may consequently trust each other when they mutually profess to form a national community under the rule of law). The idea of the nation as a contractual community of citizens, who express their desire for peaceful coexistence through their commitment to the state and its laws, is brought into doubt by any disingenuous entrant into the social contract. Yet, one can never truly tell if an entrant is disingenuous. Even where one catches another person making a false statement, that statement may be made in error. Nothing forces one to infer dishonest intentions or a bad disposition from a false statement.

Moreover, a single act of dishonesty, fraud or law-breaking hardly constitutes an individual as essentially dishonest or unlawful. For Hobbes, this leads to confusion about the status of the promise-breaker. Immediately after asserting that the promise-breaker should be destroyed, Hobbes claims that "a Righteous man, does not lose that title by one or a few unjust actions" (1968, p. 206). This raises the undecidable question of how many times a person has to break a promise before they become a promise-breaker. In this way, Hobbes removes any grounds for distinguishing those who are to be trusted from those who are not. An individual's past actions are not a simple guide to their inner disposition.

In turn, if it is not really possible to tell the honest and trustworthy from the dishonest and dangerous, then it seems to me that the contrast between virtuous new citizens and supposedly dishonest others that Kenney sets up must have a purpose other than keeping the insincere out of the country. As noted in Chapter One, the liberal logic described in this dissertation necessitates the incorporation of outsiders into the political community as a way of affirming the community's transcendent universalism. Yet there must also be exclusion, otherwise it would become impossible for people to believe in the fiction of the citizenry as a body of uniquely well-disposed individuals. In other words, if everyone were admitted to citizenship, the fiction of a unique citizenry would be impossible to sustain. Meanwhile, because citizens-by-birth remain citizens whatever they do (under current Canadian laws), the rejection of "fraudulent" new citizens provides one of few opportunities to reinforce the notion that sincere commitment and lawfulness are conditions of belonging to the Canadian community. In this way discussions of well and ill-disposed new citizens function constitutively to produce a sense that there is a difference between "sincere," "lawful" citizens and "fraudulent," dangerous others. Furthermore, insofar as we assume that well-disposed and ill-disposed persons can and should be sorted at the borders, we are easily led to understand government as a sovereign power that is capable of sorting citizens and friendly aliens from dangerous and dishonest others.

III. The Sorting State

If the purpose of inclusion and exclusion is a matter of performatively demonstrating that the "right" sort of people are being included and excluded, we might suspect that inclusion/exclusion will have the same symbolic force whether or not the "right" people are accepted and rejected. Indeed, because liberal social contract theory makes inclusion and exclusion matters of individuals' "internal" dispositions rather than a matter of objective facts

about people, there is no such thing as the "right" kinds of people for inclusion and exclusion. Inclusion and exclusion "work" in a liberal society when citizens are able to believe that they can trust one another and that the untrustworthy are generally being kept from acquiring citizenship. Whether citizens adopt this belief or not comes down to faith in authorities.

The particular brilliance of liberal discourse is that by making belonging a matter of disposition (critical individualism, commitment, trustworthiness, etc) rather than ascribed identity, characteristics like phenotype or religious practice are ostensibly marginalized as grounds of exclusion. Yet, equally, insofar as inclusion and exclusion are based on beliefs about outsiders' inner dispositions rather than factual knowledge, welcoming and banishment must remain at the discretion of decision makers (e.g. Ministers' delegates, judges and immigration board members). Within the liberal discourse that posits the state as the sovereign protector of citizens, citizens are called upon to trust in state representatives as the ones who have the ability and mandate to decide who is fit to enter the political community and who is not.

Yet what should not be forgotten is that, by the tenets of liberal theory itself, the liberal citizenry is an artifice and not a reality. Immigration board members and judges cannot truly be said to separate committed new citizens from untrustworthy outsiders. As Derrida (2000) argues, trustworthiness, credibility and loyalty are always performatively attributed to the other rather than discovered in them (pp. 40, 75). What this means is that trustworthiness, commitment and so on are not simply "inner" dimensions of people but products of social relations.

Therefore, this chapter has argued that authorities create the categories of trustworthy, desirable new citizens and threatening, disingenuous, outsiders through acts of placing individuals into each category. The work judges and the Immigration and Refugee Board members do in sorting claimants to citizenship serves to maintain 1) the basic liberal fiction that

insiders are trustworthy and committed in comparison to untrustworthy and dangerous outsiders, as well as 2) the liberal notion that the state exists to protect virtuous citizens and 3) that state representatives actually can protect citizens by keeping certain types of people out of the country.

As long as the fiction of a difference between benign citizens and dangerous others persists, there is little room to contest authorities' decisions on which particular outsiders ought to be excluded from the political community. Nor is there much room to challenge the idea that citizens' welfare can and should be pursued at the expense of non-citizens. What may be done is to challenge the basic premise of a difference between insiders and outsiders by seeing this premise as an artefact of the work that authorities do at the border. As such, the ideas of citizens as special objects of protection and of the state as capable protector might be recognized as performative fictions. This argument sets the stage for Chapter Five, which considers how the nuances of immigration security law serve to present the non-citizens subject to it as different kinds of subjects than liberal citizens. The point once again will be to show that the difference between citizens and non-citizens is a performative construct entrenched by particular artifices.

Chapter Five: Non-Citizens before the Law

"The best criterion by which to decide whether someone has been forced outside the pale of the law is to ask if he would benefit by committing a crime. If a small burglary is likely to improve his legal position…" - Arendt (1962, p. 287).

In her *Origins of Totalitarianism*, Hannah Arendt observes that it is often better to be a criminal than an unwanted non-citizen. She observes that distinct legal regimes operate relative to citizens and others. This chapter builds upon Arendt's work by first drawing on contemporary citizenship scholars (Lacey 2001a; 2001b; 2007; 2011; Zedner 2010; 2013) to argue that conventional uses of the term citizen (to mean a responsible individual and community member) lead to understandings of non-citizens as irresponsible outsiders. This in turn leads to the creation of different legal regimes for citizens and others; notably, criminal law for citizens and immigration law for non-citizens. The chapter thereafter examines legal cases involving citizens and non-citizens accused of terrorism in order to argue that these distinct legal regimes offer distinct conditions of accountability to citizens and others. These distinct legal regimes thereby tautologically reify the distinction between citizens and others from which they derive.

Unlike non-citizens, the accused criminal is generally recognized as a part of the political community they reside in (Zedner, 2010; 2013, pp. 40-41). In Arendt's words, the criminal inhabits "a framework where one is judged by one's actions" (1962, p. 296). Even the convicted criminal who suffers a punishment suffers as a member of society who has "done something wrong," and normally has some possibility of rehabilitation. By contrast, the unwanted non-citizen is not part of the political community they struggle to survive in. Unlike the criminal

judged by their actions, Arendt holds, the non-citizen is judged in terms of their status or by the type of being that authorities believe them to be.

In considering these issues, Arendt notes a strange fact. Insofar as the criminal law is set up to deal with community members, the unwanted non-citizen can gain a degree of recognition by becoming a subject of criminal law. She writes that the unwanted non-citizen "who was in jail yesterday because of his mere presence" in the national territory "may become almost a full-fledged citizen because of a little theft. Even if he is penniless he can now get a lawyer, complain about his jailers, and he will be listened to respectfully" (1962, p. 287-288). The non-citizen "who had no rights whatsoever and lived under threat of deportation, or who was dispatched without sentence and without trial to some kind of internment" will become "important enough to be informed of all the details of the law under which he will be tried" if he can only gain access to the penal system rather than the immigration system (1962, p. 287-288).

Arendt's observations fit the contemporary situation in Canada, as evidenced by several court cases examined below; particularly, the case of Hassan Almrei. Almrei is a Syrian national who spent seven years in Canadian immigration detention because he was accused of being an Islamic extremist (*Almrei (Re), 2009 FC 1263, F.C.J. 1579 [Almrei 2009]*). Authorities highlighted a number of facts about Almrei to support their conclusion. In his youth, he had gone to Afghanistan to fight the Soviets in the Afghan-Soviet war (*Almrei 2009* para. 222); his father was a member of a banned organization in Syria called the Muslim Brotherhood (para. 122); Almrei himself is a devout Muslim (para. 506); and, most significantly, he procured a false passport for an associate after coming to Canada (para. 122). This last fact was held to be particularly relevant because terrorists are said to routinely rely on false passports (*Almrei 2009* para. 122). Many of us might be surprised that Almrei was never charged for his criminal act of

procuring a false passport. Convention leads us to expect that authorities will lay charges when a crime is detected, at least in cases where the criminal actor is held to be a threat to society (as in Almrei's case). In this case, however, the authorities declined to charge Almrei. In the end, Almrei himself asked to be charged. Through charges, Almrei hoped to escape from the harsh consequences of being dealt with under immigration security law. If Almrei had been charged, he would have been "entitled to all of the procedural due process rights available in the criminal justice system" (*Almrei 2009* para. 493). He would have had a trial, the state would have been required to prove him guilty beyond a reasonable doubt, and, if found guilty, he would have faced a determinate sentence rather than his indefinite immigration detention.[33]

In response to Almrei's request, the presiding judge issued a revealing ruling. Justice Mosley writes that under Canadian law "there is no right to be charged with a criminal offense" (*Almrei 2009* para. 497). The fact that it is necessary to deny anyone a right to be charged with a crime demonstrates the contemporary relevance of Arendt's comments. There are worse measures at the state's disposal than criminal charges. This chapter builds on Arendt's insight that the different social positions of the criminal and the non-citizen are largely products of the different legal regimes they are subject to. These different legal regimes are in turn justified by distinct uses of the term citizenship. To illustrate this, four distinctive features of immigration security law will be considered and related to discourses on citizenship. These four distinctive features of immigration security law are:

1) The fact that immigration security law accords non-citizens no benefit of the doubt (IRPA, s. 33)

[33] If incarcerated under criminal law, rather than immigration law, Almrei would also have gained the ability to "complain about his jailers" (Arendt, 1962, p. 287-288) to either the Ontario Correctional Ombudsman or the Federal Correctional Investigator, who are responsible for provincial and federal prisoners (respectively), but who have no power to address the concerns of immigration detainees, even when they are incarcerated in provincial or federal correctional facilities (Larsen and Piche 2009, p. 223-224).

2) The fact that immigration security law has a preventative focus (IRPA, 33-37), and thus prompts authorities to consider whether an accused non-citizen is a dangerous "type" of subject (Razack 2008, 2010)

3) The fact that immigration security law sets a low standard of proof for authorities (IRPA, ss. 83(1)(h)), 170(g)(h), 173(c)(d)), and

4) The fact that immigration security law acts against individuals on the basis of the groups they are said to belong to (IRPA s. 34(1)(f))

These features of immigration security law are significant because they depart from conventional liberal democratic norms of criminal justice, such as the presumption of innocence (*Charter* 11(d)), concern with subjective guilt (see, *R. v. Ruzic,* 2001 SCC 24, 1 S.C.R. 687 *[R. v. Ruzic]*), and, especially, the imperfectly realized ideal of punishing people for what they do rather than who they are (see *R. v. Handy,* 2002 SCC 56, 2 S.C.R. 908 *[R. v. Handy];*Nowlin 2004).

This chapter holds that, if one is concerned with the well-being of individuals (as opposed to maintaining fictions about responsible citizens, dangerous others and a government able to separate the two), the treatment of non-citizens under immigration law should be brought into line with the standards of criminal law. The argument unfolds in six parts. Part I discusses the way contemporary criminal law treats accused individuals as free and responsible moral subjects. It draws on Lacey (2001a; 2001b; 2007; 2011) and Zedner (2010, 2013) to speculate upon why criminal law treats its subjects in this way. In short, I argue that contemporary criminal law is attached to and reinforces liberal democratic uses of the term citizenship. Part II then considers the first three distinctive features of immigration security law noted above. In turn, Part III takes up Almrei's case, and the way immigration law's specific features enabled Almrei to be deprived of his liberties because of the kind of person authorities believed him to be. I cite two cases involving citizens, those of Momin Khawaja and Abousifan Abdelrazik, to show that judges dealing with those labeled citizens adhere to the norms of criminal justice and rule out the

logics of accusation used to impugn Almrei's character. Part IV argues that immigration law is especially problematic insofar as it targets people on the basis of the groups they are said to belong to. Part V then discusses the implications of the way immigration law frames its subjects for thinking about areas of law outside formal immigration proceedings, where notions of citizenship and disposition play a significant role (e.g., anti-terrorism legislation, youth justice and dangerous offender laws). Together, these chapter sections show that the *dispositif* of citizenship is entrenched by and within law. I argue further that the presumption that different types of person require different regimes of law results in laws that work to produce the notion that there *are* different types of subjects. In this way, the distinction between good citizens and dangerous others comes to be taken for granted.

I. Conventional Norms of Criminal Justice and Ideas of Citizenship

Dominant normative accounts of contemporary criminal law hold to the idea that free individuals make choices, are generally responsible for these choices, and deserve punishment when they choose to violate the law (Vandervort 1987, pp. 205-206; Lacey 2001a, pp. 350-351). Brown (2013) explains that "criminal legal doctrine constructs a free-willed, intentional, rational, choosing, responsible, individual subject: a subject morally suitable for punishment" (p. 615). In Waller and Williams (2001) terms, "almost the whole of our system of substantive criminal law is based upon the view that a human being is a rational creature, free to choose how to act, and deserving of punishment if she or he chooses to act immorally or wickedly" (p. 258). Finally, in the words of Justice Lebel of the Supreme Court of Canada,

> The treatment of criminal offenders as rational, and choosing agents is a fundamental organizing principle of our criminal law. Its importance is reflected not only in the requirement that an act must be voluntary, but also in the condition that a wrongful act must be intentional to ground a conviction... the requirement of a guilty mind is rooted in respect for individual autonomy and free will and the importance of those values to a free and democratic society (*R. v. Ruzic* para. 45).

Lebel J.'s reference to democratic society is significant. Medieval and early modern common law did not focus upon individual freedom, choices or subjective intent to commit specific acts. Lacey (2001a; 2001b; 2007; 2011) explains that, until well into the eighteenth century, common law criminal trials focused upon the accused individual's character and decided an individual's guilt largely by assessing the individual's social position and biography. She writes that the outcomes of trials were determined by "evidence which was predominantly concerned with the defendant's reputation and character in the local community" (2001a, pp. 361-363). While an individual might be held responsible under this system, she was primarily responsible for her "character" or "the disposition manifested in her conduct," rather than for a specific criminal act. Indeed, where the accused was not directly perceived committing the crime at hand, evidence of her character and disposition could be used to attribute the crime to her (Lacey, 2001a, p. 357). Responsibility, in the modern sense of responsibility for a choice to commit a specific crime, "was either assumed or irrelevant" (Lacey 2001a, p. 358).

For Lacey, such character judgments differ markedly from contemporary judgments of subjective guilt, which, she argues, focus upon whether the accused is guilty in the sense of having knowingly decided to commit a crime (2001b, p. 255). In the dominant contemporary view, we are not responsible "for who we are, or for our social status, but-on a quasi-contractual basis-for the specific acts which we (choose to) do or (in limited circumstances) refrain from doing" (Lacey 2001b, p. 255; see also Lacey 2011, p. 155). Lacey argues that this notion of subjective criminal responsibility has gained normative (if not factual) prevalence over character-based judgments in large part due to "the emergence of a conception of increasingly egalitarian citizenship throughout the nineteenth century" (2001a, p. 362; see also Lacey 2011, p. 155). Indeed, she argues further that practices of judging intentions and subjective responsibility,

rather than status or character, arise alongside "a cluster of values associated with political liberalism" (2001a, p. 353). These include the development of "Enlightenment" ideas of "understanding and self control" as "cognitive and volitional capacities" and the emergence of "democratic political structures" (2001b, p. 251). Lacey then draws the striking conclusion that contemporary criminal law is in a significant sense *for citizens*, who are understood as enlightened moral subjects and as autonomous, rational actors (2001a, p. 357).

Zedner (2010; 2013) makes a similar argument. She points out that, in contemporary western societies, a dominant idea of law holds that law is the contractual creation of a community of free and responsible citizens (2010, p. 399). The citizen is presumed to be responsive to the community's laws because they help to create these laws and derive the benefits of security and orderliness from them (Zedner 2010, p. 399-400; 2013, p. 52).

What of the non-citizen? Zedner explains that "the grounding of criminal law and punishment in the person of the citizen" and "on the idea that citizens are responsible agents," means that "the very basis for criminal responsibility is attenuated in the case of the non-citizen" (Zedner 2013, pp. 41, 52). Indeed, Zedner suggests that attaching criminal law to notions of responsible citizenship leads to understanding "non-citizens as untrustworthy and unworthy... of the full protections ordinarily accorded by the criminal law" (2013, p. 52). In sum, Lacey and Zedner are like Arendt in that each argues that regimes of law are determined by understandings of the types of subjects they are to be applied to (see also Nowlin 2004, Vandervort 1987). As shown below, norms of justice are very different where the accused is labelled a citizen. When the term citizen is used in a conventional way, to mean a responsible individual and community member, those who are not citizens are readily understood as neither community members nor responsible individuals. In turn, legal regimes for citizens and others may diverge from one

another. The discussion below aims to show how distinct legal regimes for citizens and others set up distinct conditions of speech for citizens and others; such that it is much harder for non-citizens to successfully present themselves as responsible individuals than it is for citizens to do so. In this way distinct legal regimes for citizens and others tautologically produce the difference between citizens and others on which they are supposedly based.

To recap, contemporary criminal law frames its subjects as individual citizens who are to be held subjectively responsible for specific acts. Earlier common law systems did not. Moreover, and importantly for this chapter, contemporary immigration law does not consider its subjects as responsible individual actors. Recognizing this helps us to understand an additional way in which the *dispositif* of citizenship works to entrench a division between well-disposed citizens and dangerous others.

Subjects outside the law

Butler (2004) offers brief and provocative insights into the way distinct regimes of law frame their subjects as distinct types of being. She discusses the "irregular combatants" held by the United States as part of the "War on Terror," (who are, importantly, all non-citizens relative to the U.S.). Butler writes that, in Guantanamo, these people "were rendered faceless and abject, likened to caged and restrained animals" under the assumption that "if not restrained, they would kill" (2004, p. 73). In this situation, the detainees were treated as if they were "not like other humans who enter into war, not 'punishable' by law, but deserving of immediate and sustained forcible detention" (2004, p. 73). Butler argues that the idea of the detainee as a "dangerous animal" or a "pure killing machine" authorizes the suspension of the regular criminal trial process. This is because, logically, "If they are pure killing machines, then they are not humans with cognitive functions entitled to trials, to due process, to knowing and understanding the

charge against them" (2004, p. 74). The detainee is framed as outside the law and as a kind of non-person without a capacity or right to speak for themselves (or to account for their actions and intentions).

Rather than arguing that the treatment detainees receive is illegal, unjust or inhumane, Butler aims to unmask the performative tautology that makes this treatment possible. She surmises that insofar as the detainee is not understood as a moral subject "like us," the detainee is denied a trial and full legal protections. Yet it is precisely the criminal trial and the procedural protections it entails that accord individuals the opportunity to present themselves as moral subjects. As such, Butler argues that the assumption that the dangerous other is not a moral subject entitled to a trial is possible because, without a trial, the detainee *cannot represent themselves* as a moral subject entitled to a trial. Butler thus concludes that we should not understand different legal regimes as necessary for dealing with different "types" of subjects (such as citizens and dangerous non-citizens), but recognize that, by subjecting individuals to different legal regimes, we "produce and reproduce [kinds of] subjects" (Butler 2004, p. 52). The following section demonstrates the applicability of Butler's theory to the Canadian context and the issue of citizenship.

II. Immigration Law, Criminal Law and Uses of the word Citizenship

No Benefit of the Doubt

In Canada's Parliament, NDP members have questioned the use of immigration law as a way to handle security concerns. They assert that immigration security cases frequently involve accusing a non-citizen of serious criminal behavior, with the consequence of long term detention or worse (e.g. deportation to torture overseas), but unjustly deny the accused non-citizen the protections which are guaranteed to individuals who are charged under criminal law (House of

Commons Debates, 142, 041 (January 31, 2008) para. 1334ff). MP Siksay asks, "If we believe that these people are this kind of serious criminal [i.e. a terrorist], why are we not taking every possible measure to prosecute them criminally, to convict them and to incarcerate them here in Canada?" (para. 1355).

The ruling Conservatives, supported by the Liberals, respond by asserting that immigration law is an appropriate means of pursuing national security because it allows for actions that criminal law generally does not, such as preventive detention. Former Public Safety Minister Stockwell Day argues that:

> There is a difference between criminal proceedings and immigration proceedings. In a criminal proceeding, a person has broken the law and proceedings start so that can be proven in a court of law. The person can be not just charged but convicted... for punitive reasons and for rehabilitative reasons. That is entirely different from an immigration review process, which is done simply to determine and protect the safety and security of our citizens (House of Commons Debates, 142, 041 (January 31, 2008) at 1335).

Two claims are present but underdeveloped in Day's comment. One is the claim that the non-citizens who are deemed dangerous have not necessarily broken any laws. The second is the idea that non-citizens should not be presumed innocent or benign. Day's Parliamentary Secretary Ed Komarnicki explains to the Commons that, "there is a difference between a criminal act... and someone who is not yet in that stage who will be a potential danger" (House of Commons Debates, 142, 019 (November 19, 2007) at 1330). As such, Komarnicki holds, immigration laws are necessary.

Day goes on to ask his NDP counterpart, as if incredulous, "Is the honourable member saying to give the benefit of the doubt to somebody [who is] a possible imminent danger[?]" (House of Commons Debates, 142, 041 (January 31, 2008), para. 1355). In speaking of the "benefit of the doubt" Day alludes to the constitutional guarantee that a person charged under criminal law will be presumed innocent until proven guilty (*Charter* 11(d)). Importantly,

however, the *Charter* only guarantees the right to be presumed innocent to those charged with a criminal offense. Consequently, authorities are not obliged to presume innocence when they act against non-citizens under immigration law.[34] By raising this point, Day signals the fact that immigration security measures aim to take control of a non-citizen before they do any harm. He describes non-citizens as "a possible imminent danger." Non-citizens are not given the "benefit of the doubt" in the legal sense of the presumption of innocence. Just as importantly, they are not given the benefit of the doubt in the sense that they are not trusted to behave in a benign manner.

The "benefit of the doubt" thus appears as a key difference between citizens and non-citizens. The citizen is given the benefit of the doubt in the general sense that they are not ordinarily scrutinized as a possible threat to the nation. According to a commonplace understanding, the state will incarcerate a citizen only when that citizen is suspected of having broken the law. Moreover, even if a citizen is detained preventively (e.g. pending trial) they are sheltered by the presumption of innocence until proven guilty and may expect release from state power unless a prosecutor proves a criminal case against them beyond a reasonable doubt.[35] On the other hand, belief that a non-citizen threatens the nation is in certain instances sufficient reason to incarcerate or deport them (IRPA ss. 33, 77-78). As such, immigration law reifies the *dispositif* of citizenship and creates a situation wherein citizens are given the benefit of the doubt, while non-citizens are much more readily subject to suspicion. Examining further elements of immigration law makes this clearer.

Preventive Focus

[34] Indeed, innocence is not at issue, because immigration security proceedings are concerned with things an individual might do, and not whether the individual is guilty or innocent of specific past acts.
[35] Again, provided that the individual is found to be sane. An analysis of the similarities between mental health detention laws and immigration detention laws would be fascinating, but I cannot attempt it here.

The IRPA specifies that it is not merely the acts that a non-citizen has committed that may render that non-citizen inadmissible to Canada. "Facts" to be considered by immigration decision makers include events that "have occurred, are occurring or may occur" (s. 33). Note the curious way that possible events (that "may occur," but that also may never occur) are treated as "facts." The courts, for their parts, construe the notion of possibility very broadly. In dealing with the question of whether a non-citizen poses a "danger to the security of Canada" the Supreme Court finds that authorities must determine whether the individual's presence in Canada creates a "real possibility of adverse effect to Canada" (*Suresh* para. 88). This "real possibility of adverse effect" is distinguished from a direct, "specific" and definable threat (*Suresh* para. 88). In other words, under Canadian immigration law, authorities need not demonstrate that Canada faces a determinate threat (such as a terrorist plot, or individuals preparing explosives) in order to act preventively against non-citizens. Ministers and judges are asked to reify "possibilities" of harm as "real possibilities" that require action in the present. Yet as Massumi (2005) writes, a possibility is "nothing *yet*" (p. 35). In discussing possibilities we enter the realm of performative narrative, as stories about future possibilities are treated as realities that demand an immediate response (Anderson 2010, p. 2). Moreover, to posit knowledge of what an individual might do is to assert power over them by authoring a consequential account about them. Ministers and intelligence analysts author narratives of danger and state power through the accusations they level against specific non-citizens.

In turn, the accused non-citizen must counter the notion that they present a threat. The non-citizen faces the sovereign fiction of the state by presenting their own stories, as they engage in a process of autobiography, authoring narratives about their "motives," commitments and possible future actions before state authorities. The crucial question is whether the state narrative

of the non-citizen as a threat or the non-citizen's narrative of benign intentions will be upheld by arbitrators such as Federal Court judges. In this context it is essential to ask how immigration law is legally structured to allow for each account. Following Becker (1967), one must ask what "hierarchy of credibility" is institutionalized in immigration security law. The standard and burden of proof each party faces are key considerations.

Distinct Standard and Burden of Proof

Non-citizens may be arrested and detained if there are "reasonable grounds to believe" they belong to certain proscribed classes of persons (e.g. members of terrorist organizations) or pose a threat to national security or any person's safety (IRPA ss. 55, 81). This "reasonable grounds to believe" standard falls somewhere between "mere suspicion" and proof on a "balance of probabilities" or proof of what is likely (*Charkaoui 2005a* para. 30). Needless to say, the standard of reasonable grounds to believe requires the accusing party to meet "a much lower threshold [of proof] than the criminal standard of 'beyond a reasonable doubt'" (*Chiau v. Canada (Minister of Citizenship and Immigration),* 1998 2 F.C. 642 (T.D.), F.C.J. 131 [*Chiau*], para. 27; see also *Almrei 2009* para. 89; *Harkat(Re),* 2010 FC 1241, F.C.J. 1426 [*Harkat 2010a*], para. 63).

In turn, once an accusation is made, the accused non-citizen is burdened with the task of proving they are not a threat. As explained in the security certificate case of *Harkat* 2010b (Harkat(Re), 2010 FC 1242, F.C.J. 1427 [*Harkat 2010b*]): "Initially, the burden of proof is on the Ministers. Then, depending on the Ministerial evidence presented, that burden might shift" such that it becomes the accused non-citizen's responsibility to disprove the Ministers' case (para. 190). Non-citizens may thus find themselves faced with prestigious, well-staffed and well-funded state institutions committed to the narrative that they are a threat to Canada. Yet non-

citizens are bereft of the legal presumption of innocence that helps to rebalance proceedings in favour of the accused individual in a criminal trial. Non-citizens are set the task of demonstrating that it is unreasonable to believe that they are the sort of person the Minister says they are. Yet in these proceedings, all credibility rests with the Minister, who offers an account of the non-citizen as one who is dangerous, not entitled to the benefit of the doubt and thus not to be believed. A circular logic operates as follows:

1) The accused is a dangerous outsider who cannot be trusted to remain in Canada.
2) The accused cannot be trusted when they say they are not dangerous.

The prejudicial effect of this logic is clear in Almrei's case.

III. The Case of Hassan Almrei

Almrei was incarcerated as a security threat under immigration law in 2001 (*Almrei(Re),* 2001 F.C.J. 1772, 2001 FCT 1288 [*Almrei 2001*]). The Minister of Citizenship and Immigration and the Minister of Public Safety alleged that Almrei was a member of an "Islamic Extremist Network" which poses a threat to Canada. In 2009, following orders for the disclosure of all CSIS information pertaining to Almrei to the Federal Court (as directed in *Charkaoui v. Canada,* 2008 SCC 38, 2 S.C.R. 326 [*Charkaoui II*]), Justice Mosley found that CSIS withheld evidence that worked in Almrei's favour from the Court. Mosley J. subsequently wrote that CSIS and the Ministers "were in breach of their duty of candour to the Court" (*Almrei 2009,* para. 503).

Such a case reminds us why the burden of proof does not fall on the accused in criminal proceedings. State representatives are well-equipped to defend their narratives of crime, danger and what must be done about them. While there is an expectation that authorities will act in good faith (*Almrei 2009* para. 500), this expectation may be subverted. Authorities may work toward proving a case rather than determining whether their case is sound (Ericson and Baranek, 1982).

This is a main reason for the existence of procedural protections within criminal law, and Almrei's case demonstrates the serious problems that can occur when these procedural protections are lacking (as under immigration law).

We may examine Almrei's case to trace the ways that immigration security law's preventive focus and low standard of proof worked in conjunction to authorize a series of other departures from the standards of criminal law. First, we should note that the IRPA specifically authorizes judges to consider any evidence they find credible "even if it is inadmissible in a Court of law" (IRPA 83 s. (1)(h)). One reason for the admission of normally inadmissible evidence is that the preventive focus of immigration security law requires the introduction of intelligence into the courts. [36] As discussed in the following section, character-evidence is a particularly problematic form of intelligence employed in immigration security cases, and one which would generally be ruled out of criminal proceedings.

Character-Evidence

In the criminal case of *R. v. Handy* Justice Binnie writes that "Nobody is charged with having a 'general' disposition or propensity for theft or violence or whatever" (para. 31). In a criminal trial, the accused is not supposed to be convicted based on "moral prejudice" or because the jury is convinced that the accused is a "bad person" (*R. v. Handy* para. 31). Binnie J. frames the refusal to convict based on character as a matter of recognizing the accused individual's freedom (para. 35). He writes that:

> While juries in fourteenth century England were expected to determine facts based on their personal knowledge of the character of the participants, it is now said that to infer guilt from a

[36] Roach (2010) posits a difference between intelligence (potentially true but unreliable or prejudicial forms of information) and evidence (forms information suitable for presentation in a criminal court), but suggests that this division is being eroded within the contemporary legal landscape. For the purposes of this chapter, it is important to note that because immigration security law has a preventive focus, intelligence is admitted as evidence in immigration hearings.

> knowledge of the mere character of the accused is a 'forbidden type of reasoning' (*R. v. Handy*, para. 35, citations omitted)

For Binnie J., contemporary criminal law is bound to treat an accused individual as a moral agent who might be innocent of the criminal act they are accused of, regardless of whether they are socially discredited as a "bad person." This makes sense in light of Lacey's argument that contemporary criminal law emerges alongside notions of citizens as responsible individuals who choose to commit or refrain from specific acts; rather than as subjects disposed to behave in certain ways (2001a; 2001b; 2011). Indeed, Binnie J. himself makes the connection to theories of agency when he explains that character-based judgments must be ruled out because people can "change their ways... they are not robotic" (R. v. Handy, para. 35). For him, it seems that the notion of the accused as an individual endowed with agency "forbids" judgments based on the purported character of the accused.

We may observe that a very different logic plays out in Almrei's case. As a non-citizen, Almrei is not presumed to be a free agent, but instead treated as a dangerous type of being whose future actions must be predicted and prevented by authorities. As noted above, Almrei faced the allegation that he was a member of an "International Islamic extremist network." Called to account for his biography and the allegation that he was in a position to further Islamic terrorism in Canada or abroad, Almrei stressed that the mere fact that he *could* aid terrorists did not mean that he *would* aid terrorists. For example, at one point, Almrei's counsel asserted that, "the closest [Almrei's accusers] come to making a specific allegation against him is to say that if he were released he could engage in activities in aid of Al Qaeda or related groups" (*Almrei v. Canada,* 2005 FC 1645, F.C.J. 1994 [*Almrei 2005b*],para. 297). Almrei argued in turn that the mere fact that he could aid Al Qaeda "is irrelevant if the Court is satisfied... that he has *no intention*" of aiding Al Qaeda (*Almrei 2005b* para. 321, emphasis added).

The Ministers' counter-assertion sidelined Almrei's intentions in order to focus on international terrorism and the possible role Almrei could play in it, were he so inclined. For instance, the Ministers relied on the testimony of a CSIS agent who argued that:

> The Al Qaeda network will continue to seek to acquire false documentation to facilitate its worldwide operations and Mr. Almrei continues to pose a threat to the security of Canada because of his participation in document forgery... Mr. Almrei's release would place him in a position to re-establish his associations and activities concerning false documentation in support of individuals like himself who support the extremist ideals of Osama bin Laden (*Almrei 2005b* para. 306).

Note that this testimony assumes that Almrei is an extremist and a person who is likely to support other extremists. Rather than focus on what Almrei intended to do, the Ministers focused on what he could do (acquire false passports for terrorists) and inferred the likelihood that he would do it from his alleged social type. The Ministers then went on to accuse Almrei of having "totally failed to provide any evidence or submissions which address the threat posed by Osama bin Laden, Al Qaeda, or the Osama bin Laden network" (*Almrei 2005b* para. 301). The Ministers simply ignored Almrei's claims that he was not linked to Al Qaeda and had nothing but benign intentions. It seems that Almrei was called on to answer for Al Qaeda and extremism in general, rather than for his own intentions and commitments.

Indeed the Ministers went well beyond concerning themselves with Almrei and asserted that they had "provided credible and salient evidence demonstrating that extremist individuals who support the extremist ideals espoused by Osama bin Laden continue to pose a clear and present threat to Canada and the international community of nations" (*Almrei 2005b* para. 301). The Ministers buttressed this assertion through discussions of persons and events unrelated to Almrei. For instance, they contended that, "Canadians Al-Jiddi and Boussora (individuals who support the extremist ideals espoused by Osama bin Laden) have eluded capture by law enforcement officials and are still prepared to participate in jihad against the west" as well as that

"individuals who support the extremist ideals espoused by Osama bin Laden have committed tragic terrorist acts in Russia, Spain, Pakistan, Iraq, Qatar, and Saudi Arabia that have resulted in numerous civilian casualties and fatalities" (*Almrei 2005b* para. 301).

What are we to make of the invocation of Al-Jiddi and Boussora, who Almrei is never accused of having known let alone conspired with, as part of the case made against Almrei? Why should overseas terrorist acts that Almrei is in no way held responsible for be mentioned in hearings on the danger he allegedly poses to Canada? Almrei was left to complain that he was not in a position to counter assessments of the danger Al Qaeda poses or to answer for people he does not know, but that he should not have to because this organization and these people have nothing to do with him (*Almrei, 2005b,* para. 321). As Razack explains, Almrei was targeted and condemned on the basis of his character or the profile he fit (2008, p. 26). The following sections discuss how Almrei's character was evaluated in terms of his alleged beliefs and associations.

Beliefs

In 2001, Almrei was detained because Justice Tremblay-Lamer found that "confidential information... strongly supports the view that Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist ideals espoused by Osama Bin Laden" (*Almrei 2001* para. 31). In 2009, Almrei was released when Justice Mosley found no evidence that Almrei had ever committed himself to Al Qaeda's ideology (*Almrei 2009*). Citizens are not normally subject to such interrogations of belief. Justice Rutherford's comments in the terrorism trial of Canadian citizen Momin Khawaja (*R. v. Khawaja 2008 OJ 4244, 238 CCC (3d) 114* [*R. v. Khawaja 2008*], para. 77-78) demonstrate the very different way beliefs are treated in criminal cases. Rutherford J. writes that:

> Toppling existing governments by the use of violent Jihad... may be someone's vision, his grand idea and ideal. It does not follow however, that all those who share that vision or ideal

> necessarily implicate and incriminate each other with any criminal step any one of them may take in furtherance of that vision... Ideas, ideals or ideologies have been protected in free societies (R. v. *Khawaja 2008* para. 78).

In this quotation Rutherford J. explicitly rejects the kind of character-based approach exercised by the Ministers against Almrei. According to Rutherford J., criminal law proceedings forbid treating individuals who share the same beliefs as responsible for one another's actions. Rutherford J. adds that criminal law comes into force against an individual only when that individual "embarks on a criminal plan of action, specific intended conduct, an actual purpose or design to carry the idea into action" (*R. v. Khawaja 2008* para. 78). Rutherford J. thus distinguishes between a criminal plan, which is punishable as an act (the act of planning), and beliefs, which are outside the purview of criminal law. From Rutherford J.'s perspective, as a judge presiding over the criminal trial of a citizen, "devotion to violent Jihad" is not only legal but is specifically protected by laws guaranteeing freedom of belief (*R. v. Khawaja 2008* para. 78). This view is directly opposed to that animating immigration security law, which, as noted above, focuses on whether individual non-citizens pose a "possibility of adverse effect to Canada" and does not require authorities to prove that an accused non-citizen has any plans to do harm.

In sum, citizens are allowed their beliefs so long as their conduct remains within the bounds of criminal law. I would suggest that this is essential to treating the citizen as a responsible subject, endowed with the capacity to choose their actions. When the citizen is understood as a responsible subject there is no necessary causal link between the adoption of a belief and engaging in criminal action. Indeed, the citizen is attributed an inner depth that leaves their actions and future undetermined, solely dependent on their volition.

Such a recognition of individual will is rejected under immigration law insofar as immigration law allows for non-citizens' beliefs to be read as signs of danger. This is strikingly

evident in Almrei's case, where efforts were made to establish that Almrei supports Islamic extremism and evidence was presented as to the danger Islamic extremists, in general, pose to Canada. Based on the authorities' assessment of his beliefs, Almrei was said to be like other extremists who have committed terrorist acts. Therefore, the Minister's argued, Almrei had to be treated as a threat to national security. In turn, authorities assessed Almrei's beliefs largely on the basis of who he associated with. As shown below, by examining the case of Abousifan Abdelrazik (*Abdelrazik v. Canada (Minister of Foreign Affairs),* 2009 FC 580, F.C.J. 656 [*Abdelrazik v. Canada*]), judgments of an individual in terms of their associations are apt to be rejected where citizens are concerned.

Associations

Authorities argued that Almrei's devotion to violent Jihad was evident in light of his association with two men, Anti-Russian fighter Ibn Khattab and Afghan "warlord" turned politician Abdul Sayyaf (*Almrei 2005b* para. 322, 360-361). In 2005, Justice Layden-Stevenson concluded that Sayyaf and Khattab were part of the Al Qaeda network, such that it was reasonable to believe that Almrei was also linked to Al Qaeda (*Almrei 2005b* para. 382). In 2009 hearings, Justice Mosley devoted much time to considering the nature of Almrei's association with Sayyaf and Khattab, and whether these individuals may be construed as members of Al Qaeda or as affiliated with Al Qaeda. Mosley J. notes that "The main thrust of the Ministers' case during the public hearings was on Almrei's support for jihad, his experiences in Afghanistan and Tajikistan, contact with Abdul Rasul Sayyaf and support for Ibn Khattab" (*Almrei 2009* para. 443). In contrast to earlier judges, Mosley J. rules that neither Sayyaf nor Khattab are affiliated with Al Qaeda, such that Almrei's associations with them could not be held against him (*Almrei 2009* para. 453, 361). For the purposes of this chapter, it does not really matter whether Sayyaf

and Khattab are in fact properly characterized as terrorists, extremists, or affiliated with Al Qaeda. The point is that in these hearings Almrei was called into question and treated as a danger on the basis of who he knows. Reading Almrei's character from his associations in this way neglects his individuality, and problematically assumes that he is like the people he knows.

I would point out how differently things play out in the case of *Abdelrazik v. Canada.* Abdelrazik is a Canadian citizen who was accused of links to terrorist groups and placed on a United Nations terrorist watch list in 2006 (*Abdelrazik v. Canada*, para. 23).[37] The effect of being listed, in 2008, was to strand Abdelrazik in Sudan where he lived for several years "in the Canadian Embassy ... fearing possible detention and torture [by Sudanese authorities] should he leave this sanctuary" (*Abdelrazik v. Canada,* para. 1). Passport Canada and the Minister of Foreign Affairs refused to issue Abdelrazik travel documents that would allow him to return to Canada (*Abdelrazik v. Canada,* para. 36, 40). Abdelrazik then appealed these decisions to the Federal Court, where representatives of the Minister of Foreign Affairs argued that Abdelrazik could not be repatriated because the United Nations Security Council had placed him on a terrorist watch list and resolved that no state may facilitate the transport of listed individuals (*Abdelrazik v. Canada*, para. 3). The authorities claimed further that Abdelrazik belonged on the terrorist watch list because he knew Ahmed Ressam (convicted of a terrorist plot in the United States) and Canadian permanent resident Adil Charkaoui (*Abdelrazik v. Canada,* para. 11, 53). Charkaoui was, like Almrei, subject to an immigration security certificate in Canada.[38] For the authorities, these associations provided grounds for believing that Abdelrazik was an extremist and a security threat who should not be repatriated. By contrast Justice Zinn stresses Abdelrazik's Canadian citizenship and rules that, however "foolish" his choice of associates may

[37] He was removed from the list in 2011 (Koring 2011).
[38] Until that certificate was declared void by the Federal Court (*Charkaoui(Re),* 2009 FC 1030, F.C.J. No. 1208)

be, he nonetheless possessed a *Charter* right to re-enter Canada (para. 11). Zinn J.'s comments are particularly telling in light of the way that immigration law allows non-citizens to be sanctioned on the basis of assessments of their associations. Zinn J. writes that "Charter rights are not dependent on the wisdom of the choices Canadians make, nor their moral character or political beliefs. Foolish persons have no lesser rights under the Charter than those who... are considered to be morally and politically upstanding" (*Abdelrazik v. Canada*, para. 11). In other words, the kinds of character judgments considered under immigration law are unacceptable where the rights of citizens are concerned. This too makes sense in light of Lacey's argument that citizens are understood to be responsible individual agents, while others are not. Zinn J. concludes that associations cannot lawfully be held against Abdelrazik and his comments are worth quoting at length. He writes that:

> It is said that one is known by the company one keeps; however, Mr. Abdelrazik has never been charged with any criminal offence, terrorism-related or otherwise, in Canada or elsewhere in the world. There is no evidence in the record before this Court on which one could reasonably conclude that Mr. Abdelrazik has any connection to terrorism or terrorists, other than his association with … two individuals [Ressam and Charkaoui] (*Abdelrazik ,* para. 53).

Zinn J. goes on to lambast the notion that Abdelrazik should be categorized as a person associated with terrorism. Zinn J. comments that:

> it is difficult to see what information any petitioner could provide ... to prove that he or she is not associated with Al-Qaida. One cannot prove that fairies and goblins do not exist any more than Mr. Abdelrazik or any other person can prove that they are not an Al-Qaida associate (*Abdelrazik* , para. 53).[39]

Zinn J.'s reference to fairies and goblins suggests that what the accused faces, when their associations are held against them, are not proofs of contestable facts (e.g. the accused committed act A on date B) but fables about the kind of being the accused is purported to be. The

[39] Zinn J.'s reference to "fairies and goblins" are in keeping with the philosophical idea that power and identity are produced through performative narratives (Butler, 2004, 2005; Derrida, 2010).

following section considers how such fables are constructed with reference to the groups non-citizens are judged to belong to.

Extra-National forms of Belonging

In order to stress that immigration security law is concerned with assessing the type of individual a non-citizen is, and not their choices and intentions, we may note that non-citizens may be sanctioned on the basis of their belonging to proscribed groups. Under immigration law, non-citizens are legally inadmissible if they are found to be members of terrorist organizations (IRPA s. 34(1)(f)). In order to understand why this is significant, the legal definition of membership needs to be explored.

The working definition of membership relied on in Canadian immigration cases, as set out in *Harkat 2010a*, is that terrorist networks are informal and "do not issue membership cards" (para. 85). Instead, it is "the belief in a cause and the actions of individuals in relation to that cause with the recognition of leaders that establish informal membership" (para. 85; see also Aiken, 2001, p. 15; Macklin, 2001, p. 393). In other words, authorities and judges determine membership status by examining accused non-citizens' beliefs and associations.

This focus on membership is another major difference between immigration and criminal law. We read in *Khawaja 2010* (*R. v. Khawaja*, 2010 OJ 5471, ONCA 862 [*Khawaja 2010*]) that "The *Criminal Code* does not criminalize terrorist activity *per se* and does not make membership in a terrorist group a crime" (para. 6). Macklin (2001) speculates that this is because "in the '*Charter* proofing*'* of Bill C-86 [the *Anti-Terrorism Act*] the government recognized that prohibiting membership [in certain groups] would likely violate freedom of association... at least where the rights of *citizens* were at stake" (p. 393). A more sociological explanation would consider the very different understandings of subjects animating criminal and immigration law.

Insofar as criminal law considers the individual as a responsible person endowed with rational and volitional capacities, some proof of moral culpability must be offered. Thus in *Khawaja 2012* (*R. v. Khawaja,* 2012 SCC 69, S.C.J. 69 [*Khawaja 2012*]) we read that under the terms of criminal law, an act "only constitutes 'terrorist activity' if it is accompanied by the requisite mental state" (para. 25). The prosecution must "prove a level of subjective guilty knowledge or *mens rea* on the part of a party charged with a terrorism offence, sufficient to justify moral blameworthiness justifying a criminal conviction" (*R. v. Khawaja 2008,* para. 81). None of this holds when non-citizens are accused of links to terrorism and brought before the courts to be judged as examples of undesirable and dangerous types.

IV. Citizens and Non-citizens before the Law

The Courts have repeatedly justified the treatment of non-citizens sanctioned under immigration law by referring to the special purposes of immigration law. For instance, in *Ahani* (*Ahani v. Canada (Minister of Citizenship & Immigration)*, 1996, 201 N.R. 233, 119 F.T.R. 80 [*Ahani*]) we read that the "principles and policies underlying both contexts are obviously totally different, and the standards of procedural safeguards required to satisfy the Charter must necessarily differ" (para. 4).

> In a criminal law context, we have an individual charged with breaking the criminal law of the land who faces punishment if the state succeeds in overcoming his presumption of innocence. In [the immigration security context], we have an alien who may lose the qualified right to stay in Canada... (*Ahani* para. 4).

Justice Marceau notes that accusations against non-citizens often have "the immediate unfortunate effect of leading to the arrest and detention of the person concerned, a fate normally reserved to criminals" (*Ahani* para. 4). Nonetheless, Marceau J. argues that standards of justice for immigration law cannot be drawn from comparisons with criminal law. For Marceau J., when a non-citizen is detained, the detention "is principally a means of providing preventive protection

to the Canadian public" and "not imposed as a punishment" (*Ahani* para. 4). Similarly, in *Charkaoui II* we read that:

> the proceeding in which the Federal Court determines whether a[n immigration] security certificate is reasonable takes place in a context different from that of a criminal trial. No charges are laid against the person named in the certificate. Instead, the ministers seek to expel [a non-citizen] from Canada on grounds of prevention or public safety (para. 50).

The fundamental difference in law is the difference between a citizen subject to the expectation of imprisonment only as punishment and the non-citizen subject to preventive measures.[40] Contrary to Marceau J.'s assertion that the principles underlying criminal and immigration security law are "totally different" it seems to me that each regime of law is concerned with safeguarding the rights and security of citizens. It is the responsible citizen as a moral subject who is the ideal subject of criminal law, and whose ability to be recognized as a responsible individual is buttressed by the provisions of criminal law. This is why "subjective guilt" must be proven in the case of the citizen. The citizen must not only have done wrong but done so intentionally. This is not the case with the non-citizen judged as a potentially dangerous being from which citizens must be protected.

There is thus a legally constructed difference between the non-citizen subject to immigration law and the ideal citizen subject imagined within criminal law. This difference allows non-citizens to be subject to procedures and modes of evaluation that have been rejected as regards citizens. As Macklin writes, "laws that arouse deep concerns about civil liberties where citizens are concerned are standard fare in the immigration context" (2001, p. 393). However, what is at stake in systems of law for citizens and others is not just a matter of civil liberties, but of how law performatively frames its subjects. Insofar as immigration security cases

[40] See Dayan (2011) on the way that authorities may impose harsh treatments on individuals for administrative and security reasons, so long as these treatments are not intended as punishments (and are thus not subject to review on grounds of proportionality) (p. 187).

are focused on danger rather than on specific acts, they eschew any concern with moral culpability. Examinations of non-citizens' wills, choices or intentions are thus practically irrelevant. Immigration security law's preventive focus makes it unnecessary to consider whether the non-citizen accused of posing a danger to Canada is actually *intent* on harming Canada. Furthermore, insofar as non-citizens are denied a trial, non-citizens subject to immigration security measures are denied the opportunity to show that they are the kind of moral subject who should be accorded the benefit of the doubt.

In other words, the division between criminal law for moral subjects and immigration security law for dangerous others works performatively to entrench the fiction of a difference between citizens and non-citizens. Citizens are granted the benefit of the doubt and the presumption that they are be benign, responsible and trustworthy. By contrast, insofar as immigration security law concerns itself with whether particular non-citizens fit within categories of dangerous types (e.g. extremists) non-citizens are framed as potentially dangerous beings rather than moral subjects. In the result, notions of subjective guilt or innocence become simply irrelevant in the context of immigration proceedings. As Arendt explains, the "complete lack of [legal and moral] responsibility" attributed to non-citizens is both the mark of and reason for the non-citizen's exclusion from the political community and the normal order of law (1962, p. 295). The non-citizen's problem "is not that they are not equal before the law" but that the law does not exist for their sake (Arendt 1962, p. 295). Even the convicted criminal is in a better position than the non-citizen, because the convict is still a subject of law rather than a body that authorities simply seeks to control or get rid of.

This difference between the fate of the criminal and the non-citizen is particularly clear when we consider that the convict has the prospect of rehabilitation. While a non-citizen found to

be inadmissible to Canada faces indefinite detention or deportation, the criminal remains a person who is responsible for what she has done. She thus retains the potential to regain some standing within the political community. For example, in the case of Saad Gaya, a terrorism trial involving one of the Toronto 18, Justice Durno considered the possibility of rehabilitating Gaya in light of Gaya's acknowledgment of his guilt and signs of remorse (*R. v. Gaya* 2010 OJ 185, ONSC 434 [*R. v. Gaya*], para. 51, 62, 67, 71). Durno J. places particular emphasis on Gaya's testimony and writes that Gaya "said that he was ashamed of his actions and took full responsibility for them [and] apologized for his irrational, shameful crime" (*R. v. Gaya,* para. 68). Durno J. consequently finds Gaya to be "genuinely remorseful" (*R. v. Gaya,* para. 68) and concludes that **"**with counseling the offender can be rehabilitated and become a law abiding member of society… [He] is not a continuing danger to the public" (*R. v. Gaya,* para. 113, 133). I cite this case in order to show that a citizen tried criminally retains the possibility of demonstrating themselves to be a reformed or reformable person bound by the moral commitments of the community - even after admitting such serious wrongdoing as engaging in a terrorist plot. By contrast, rehabilitative concerns are simply irrelevant in immigration hearings related to national security. A non-citizen who admits to having engaged in acts of terrorism is simply inadmissible to Canada, regardless of their remorse. Much as preventive logics sideline considerations of non-citizens' intentions, the fact that rehabilitation is not a concern in immigration proceedings sidelines non-citizens' agency.

Immigration Law and Race Thinking

Framing non-citizens as beings whose intentions and individuality do not matter is particularly problematic in light of the way that prejudicial discourses frame minoritized subjects as beings whose lives are determined by their social type rather than their individual intentions

(Bannerji, 2000, pp. 44-45; W. Brown, 2006, pp. 151-153, 170-171; 108; Perry, 2001, pp. 60-61; Thobani, 2007, pp. 145, 148; Volpp 2007, p. 579). Chapter Three discussed the way that Canadian discourses consistently present extremism as foreign, "cultural" (read: ethnic, social and/or religious) and group-based. The chapter argued further that prevalent discourses reify an "us vs. 'them" dichotomy in which white, Western, and individualistic citizens are set apart from denigrated others who are presented as constitutively foreign and as overdetermined by their cultures and communities.

We may note that because extremist views and membership in terrorist organizations are explicitly penalized under immigration law, and not criminal law, extremism and problematic groups are framed as foreign phenomena from the outset, before any ruling is made. Furthermore, immigration law is set up in a way that leads authorities to investigate non-citizens' biographies, beliefs, associations and characters in order to assess their social type. In turn, as shown in Chapter Three, a concern with social types necessarily leads authorities to focus on minority groups, whose members stand out as peculiar types of being when assessed against Western norms (Volpp, 2007, pp. 596-597), and whose members figure within dominant discourses as culturally determined beings rather than as free individuals (Perry, 2001, pp. 60-61; Thobani, 2007, pp. 156-157; Razack 2008, p. 33). The examinations of individuals' associations and group belonging (that are often determinative in immigration cases) fit neatly with such conceptions of minoritized subjects as beings lacking individuality or as beings whose individuality does not matter as much as their type. Thus Razack (2010) writes that immigration law "invites, and even mandates, that security and immigration officials find recourse... in assumptions about the nature of people and places" and so invites racial and orientalist profiling (p. 90). The point is this: by neglecting subjects' wills and intentions immigration law furthers

the kind of thinking that frames certain types of being as lacking in autonomy, as determined by their group or type, and as such improperly disposed for citizenship.

V. Implications

This chapter has argued that different regimes of law constitute their subjects differently. The normative criminal law imagines its subjects as citizens and constitutes its subjects as responsible, accountable beings through measures such as the presumption of innocence, a focus on subjective guilt and a focus on rehabilitation. By contrast, immigration law does not treat its subjects as moral beings whose choices and intentions matter. Instead accused non-citizens are assessed as an example of a type, and this type is determined by examining individual non-citizens' biographies, their alleged beliefs and their associates. In this way distinct regimes of law for citizens and others reify the division between citizens and non-citizens on which these regimes are supposedly based. Insofar as we forget that the distinction between citizens and others is a product of law, and then use this distinction to justify the existence of distinct regimes of law for citizens and non-citizens, we are engaged in tautological reasoning.

Bringing the treatment of non-citizens into line with that accorded to citizens under criminal law may redress these problems. Recognizing this possibility, Cole (2007) lauds the British ruling of *A (FC) and others (FC) v. Secretary of State for the Home Department ([2004] UKHL 56 [A. v. Home Department]*, because it rules that non-citizens and citizens must be treated equivalently in national security cases. In that case, a majority of the Law Lords struck down a British immigration security measure. The Lords reasoned that citizenship status is not a relevant consideration when assessing the degree of danger to society that an individual presents. The majority of Lords found that UK nationals and non-citizens could each pose a threat to the United Kingdom, such that there is no difference between the two groups from the perspective of

national security. Given the similarity between citizens and non-citizens, the Lords ruled further that the fact that only non-citizens were subject to detention and deportation on national security grounds constituted unjust discrimination against non-citizens (*A. v. Home Department,* para. 53-54). To put this differently, the Lords reasoned that, because citizens and non-citizens could each engage in terrorism, the two groups could not be treated differently by special immigration security provisions (see, generally, Thwaites 2014). This case demonstrates that it is possible to reason differently about the legal treatment non-citizens are entitled to than Canada's courts have reasoned.

However, there are reasons to be cautious about the results of *A v. Home Department*. In consequence of the Lords' ruling, the British Parliament introduced a system of "control orders" that allowed authorities to impose conditions such as long term house arrest upon any person, without the need to prove criminal guilt or intent (Lacey 2011, pp. 164-165; Zedner 2010, p. 395). This regime has now been reformulated as a system of, slightly less onerous, Terrorism Prevention and Investigation Measures or TPIMs (Thwaites, 2014, p. 207ff). Since this system is applicable to citizens and non-citizens alike, it renders the two groups formally equal for national security purposes by subjecting citizens to the kind of preventive measures that were formerly reserved for non-citizens.

In light of such developments a number of scholars raise concerns about the extent to which preventive and character-based measures are being introduced within criminal law (Lacey 2007; 2011; Zedner 2010; Zedner 2013). Examples include dangerous offender, sex offender, and anti-terrorism legislation (Lacey 2011, p. 161-165; Zedner 2010, p. 395-396).[41] This has led Lacey to worry that legislators are increasingly transforming law into simple "police power" that

[41] Character evaluations and concerns with prevention are also likely to inform large numbers of pre and post-trial decisions involving bail, prosecution and probation (Lacey 2011, pp. 168-169).

"treats its objects as dangers to be managed, as distinct from...subjects invested with rights" (p. 168). Similarly, Brown suggests that legislators are increasingly creating laws meant to deal with members of designated populations "requiring regulation in their own or society's interests" rather than with responsible individuals (D. Brown 2013, p. 615).

Immigration measures often serve as the template and source for such laws when they are introduced within criminal law (Cole 2007, p. 2544; Zedner 2010, 2013). For example, Macklin (2001) convincingly argues that Canada's *Anti-Terrorism Act* (S.C. 2001, c. 41) is largely modeled on the counter terrorism measures that were introduced into Canadian immigration law a decade earlier. According to Macklin, the *Anti-Terrorism Act* entails a focus on the accused individual's social type because the *Anti-Terrorism Act* is modeled on character-based immigration law (2001, p. 393). Similarly, McGarrity (2012) reports that Australian control order laws, which are modeled on British control order legislation and so descended from immigration laws, have now been normalized to the point that they are being employed against domestic organized crime. Considering similar cases, Zedner contends that "policies directed first against immigrants... have come to be applied equally to those who are cast as 'irregular citizens' within society" (2010, p. 389). "Delinquent" youth, sexual offenders, violent offenders, and suspect terrorists all "occupy liminal spaces at the margins of civil society and [under various legal regimes] are consigned to a probationary or provisional status akin to that imposed upon immigrants and asylum seekers" (Zedner, 2010, p. 389).

Any rise or resurgence of character-based measures within the criminal law is particularly troublesome because it raises the possibility that prejudices, notions of citizenship/foreignness, and discourses about those who are or are not "real" citizens may become even more consequential than under current legal arrangements (Zedner 2010, p. 385). The point is this:

examination of the way immigration law frames its subjects opens up questions about the way law frames its subjects more generally – and raises concerns about how ideas of citizenship, responsibility and belonging inform legal processes beyond immigration law. From a practical point of view, it seems that those who desire an egalitarian politics should oppose any move toward character-based and preventive measures, rather than simply arguing that non-citizens should be made formally equal to citizens. Demanding formal equality for non-citizens raises the possibility of citizens being treated in the same ways as non-citizens.

Conclusion

To conclude, this chapter has argued that immigration law's exceptional features serve to present non-citizens as different types of subjects from citizens. Far from being a regime of law required to handle difference, immigration law is a difference producing system. It entrenches the *dispositif* of citizenship in Canada by enacting a distinction between free individual citizens, who must be judged in terms of their subjective guilt or innocence, and non-citizens who are judged in terms of their social type as inferred from examinations of their communities, alleged beliefs, associates and so forth. In the final section, the chapter has suggested that we should oppose the treatment non-citizens receive under the provisions of immigration law and demand that they be treated through individualizing and responsibilizing legal practices that are on par with those enshrined in criminal law. We should not simply demand formal equality between citizens and non-citizens, as this may lead to a kind of legal "race to the bottom." Such a race to the bottom would be particularly troubling insofar as it would allow prejudices about what types of people are well-disposed citizens and what types are not to operate even more determinatively than is presently the case. By contrast, calling for non-citizens to be entitled to the same benefit of the doubt and procedural protections as citizens seems to be more thoughtful (in that it does

not treat the legal difference between citizens and non-citizens as a simple reality) and more egalitarian than current practices. Furthermore, calling for non-citizens to be judged as responsible individuals rather than dangerous types could be an important counter-movement against what some scholars (e.g. D. Brown, 2013; Lacey, 2011; Zedner, 2010) see as an emerging preference for character-based and preventive logics among many contemporary legislators and authorities.

Dissertation Conclusion

This dissertation describes a *dispositif* of citizenship that at first seems paradoxical. Within this *dispositif,* citizenship is frequently said to be an artificial or created identity category, and yet the *dispositif* functions through an assumption that there is a real difference in disposition between citizens and others. The coexistence of the paradoxical beliefs (that citizenship is a constructed identity *and* entails a real difference in people's dispositions) rests upon an overarching liberal logic. I have argued that this logic is simultaneously a theory of representation. That is, the liberal logic described in this dissertation does not merely function through representations, but as a theory of representation. To summarize what has been said in earlier chapters, this liberal theory holds that representations produce political communities (such as nations) and identities (like citizenship).

This theory in turn forms the basis for positing a nuanced difference between citizens and others. Those who are able to "understand" that citizenship and other identities are products of representation are deemed to be well-disposed for citizenship. The well-disposed citizen is supposed to understand that representations are 1) always arbitrary, 2) serve as means to peaceful coexistence, and thus 3) cannot logically form the basis for conflict. I have argued that this political logic is liberal in that it serves to liberate individuals from every political vision or call to action. Within the *dispositif* of citizenship described in this dissertation, well-disposed citizens stand in contrast to those labeled extremists, essentialists or fundamentalists; who supposedly mistake representations (of identity, truth, and so on) for simple realities.

Yet there is a wrinkle in the smooth fabric of the liberal logic. No definitive content can be assigned to citizenship and nation without ruining the illusion of their transcendence. It is therefore necessary to shore up the idea of a well-disposed citizenry by pointing to the example

of ill-disposed others. Chapters Three through Five demonstrate the way that the *dispositif* of citizenship described in this dissertation works to single out certain groups and persons as ill-disposed by: 1) employing longstanding distinctions between the "west" and the rest, domestic and foreign, white and non-white (Chapter 3); 2) uncritically employing a fiction of sovereign state institutions able to separate the well-disposed from the ill-disposed (Chapter 4); and 3) enshrining provisions that lead authorities to consider non-citizens as dangerous "types" within immigration law (Chapter 5).

Chapter Three shows that the *dispositif* of citizenship relies upon distinctions of race, place of birth, religion, and culture. Importantly, those who author and authorize such distinctions no longer say that all members of certain racial groups will think and act in a certain (undesirable) way, but instead shift onto the terrain of probability, and maintain that certain cultural groups tend to produce people who think and act a certain way. Those who rely on and sustain such distinctions suggest that some groups are given to illiberalism, to dominating their members and to producing dangerous extremism. As such, the *dispositif* of citizenship described in this dissertation maintains the fiction that (although the liberal nation-state is able to include everyone, regardless of their identity position) some types of people are improperly disposed for citizenship. Chapter Three suggests, as a practical step toward displacing the term citizenship from its determinative role within contemporary discourses, that we begin to renounce or see through the self-serving fiction of a difference between us (responsible, domestic, majoritarian, free, citizens) and them (unfree, dangerous, minor, foreign) together with the prejudicial ways of viewing self and others this fiction relies upon.

Chapter Four takes aim at a further prop for liberal logic and the *dispositif* of citizenship: discourses on government's responsibility to protect citizens. These discourses hold that

government must protect citizens, even while maintaining the liberal notion that no essential difference between persons can form the basis for decisions on political inclusion and exclusion. In order to resolve this paradox and explain why citizens should be owed special protection, these discourses rely on the idea that some people are not properly disposed for citizenship. Making political inclusion and exclusion turn on "internal" properties of individuals (such as commitment, integrity and so on) functions brilliantly to maintain the illusion of a difference between those chosen to be citizens and those who are rejected, because these "internal" properties are not verifiable. Indeed, speech act theory suggests that inner dispositions are not simple properties of individuals but are performatively attributed to persons. Nonetheless, insofar as we defer the task of separating good citizens from dangerous others to government, most of us never have to come up against the arbitrariness of divisions between citizens and others. Chapter Four suggests, as a step toward disrupting the contemporary *dispositif* of citizenship, that we recognize the power dynamics through which inner dispositions are attributed to persons. In turn, we may become critical of the notion that government is able to separate the well-disposed from the ill disposed. We might then recognize that statist practices of ordering populations create categories of person (rather than categorizing persons who are really different from one another).

Finally, Chapter Five critiqued the existence of special regimes of laws for non-citizens and the way immigration security law creates a situation where selected foreigners are readily distinguished from citizens and found to be the kinds of dangerously disposed beings that must be kept out of the country. The chapter advocated that non-citizens should be subject to the same benefit of the doubt and procedural protections citizens are subject to when called before the law. It seems to me that the more citizens and non-citizens come to be subject to the same legal

conditions of accountability, the less the distinction between citizens and non-citizens will be understood as a meaningful difference.

The point of the dissertation thus far can be summarized as follows: prejudices, legal regimes and the myth that the government has the sovereign power to appropriately sort human beings work together to allow people to believe in citizenship and in differences in disposition between citizens and others. Given the way that the *dispositif* of citizenship described in this dissertation functions as an arbitrary mechanism of inclusion, exclusion and generalized social control, one may desire to challenge this *dispositif* and the liberal logic it relies upon. Critiquing the fictions, prejudices and double-standards that the *dispositif* of citizenship relies on (such as liberal logic as discussed in Chapters One and Two, political orientalism as discussed in Chapter Three, notions of inner dispositions and governmental power as discussed in Chapter Four, and distinct legal regimes as discussed in Chapter Five) are everyday strategies for challenging this *dispositif*. Taken together, these strategies may lead to a gradual undermining of the *dispositif* of citizenship such that its harshest consequences for individuals and groups become less pronounced. Yet this does not answer the question of what kind of politics displacing the term citizenship from its central position in contemporary political discourses may lead to. This dissertation has yet to indicate what inchoate ethics grounds the desire to challenge the *dispositif* of citizenship.

In the following pages, I consider ideas that challenge key elements of the *dispositif* of citizenship in order to elaborate a political thinking distinct from that which animates citizenship. A brief encounter with Spinoza's thought serves to demonstrate the possibility of rejecting the notion that there are real difference in disposition between citizens and others. Thereafter, I consider critical contemporary citizenship studies scholars who challenge notions of the nation

and the state but maintain the word citizenship as a key part of their political vocabulary. For reasons discussed below, I argue that neither recognizing that citizenly dispositions are performed (rather than real) nor seeking to liberate talk of citizenship from nationalism provide for satisfactory political paradigms. Thereafter, I suggest that Weil and Zizek (an unlikely pairing) open up the possibility of suspending the functioning of the *dispositif* of citizenship and foster political interventions that attend to human lives and possibilities rather than statist artifices.

I. Spinoza: A dispositif that fully embraces performativity

Spinoza (1951) provides a point of contrast to the liberal (and basically Hobbesian) logic that animates the *dispositif* of citizenship. He may be read as a thinker who owes much to Hobbes but who takes Hobbes's thought on the artificiality of political community further than Hobbes himself did. Spinoza's thought is important in the context of this dissertation because, as I will argue, it rejects the difference between the well-disposed and ill-disposed that remains central for the contemporary *dispositif* of citizenship. Unlike many, Spinoza recognizes dispositions as attributed to individuals rather than inherent in individuals.

Like Hobbes, as discussed in Chapter One, Spinoza contends that a political community must be perceived to be exceedingly large and powerful in order to serve as a guarantor of civil peace (1951, p. 325). He thus follows Hobbes in holding that potentially infinite expansion is necessary to any political community's existence. A community that cannot incorporate new members will quickly be recognized as limited in its power (1951, p. 336). Yet Spinoza differs from Hobbes in his understanding of who may be admitted into the political community. Where Hobbes is concerned that the untrustworthy and dangerous must be kept out, lest they spoil belief in the virtues of citizens, Spinoza argues that every effort should be made to admit as many

people as possible to the community, because belonging quickly renders foreigners indistinguishable from citizens (1951, p. 351). He writes that "no harm" will come to the political community "even though the captains [authorities], for a bribe, admit a foreigner in the number of their citizens" in violation of the laws (1951, p. 325). "On the contrary, means should be devised for more easily increasing the number of citizens, and producing a large confluence of men" (1951, p. 325). In other words, Spinoza reads illegal entry into the political community as beneficial to that community, because it increases the citizenry and the corresponding sense of the political community's power to expand and include. If we extend Spinoza's argument, it amounts to taking the performativity of political community seriously. Spinoza's position is radical in that it rejects the notion that only properly disposed individuals should be admitted to citizenship, because dispositions are formed rather than innate in individuals.

When Spinoza also argues that "deeds only" should be "made the basis of punishment" and that "words" and "opinions" should never be sanctioned (1951, p. 5-6), he provides a striking contrast to the contemporary *dispositif* of citizenship. However, he is not a modern civil libertarian. Instead, Spinoza's argument that only deeds should be punished follows directly from his taking performativity seriously. For Spinoza, what people do matters, and criminal actions should be punished, but law and government get things hopelessly backward when they attempt to discover and police persons' inner dispositions.

Spinoza's work suggests that, rather than judging whether a person is trustworthy or not, free or prey to seditious beliefs, or well or dangerously disposed, law and government should focus on creating conditions for actions beneficial to the political community. To relate this more directly to contemporary concerns in Canada, Spinoza's work suggests that, rather than hunting for fraudulent and extremist non-citizens, authorities should work to regularize and provide

opportunities to non-citizens, such that Canada's population grows and people have more reason to act like well-disposed (loyal, law-abiding) citizens. Fraudulent and violent practices would still occur, but they would be of less significance without state representatives treating dishonesty and extremism as a bright dividing line between citizens and non-citizens. Spinoza's political theory is attractive because it reminds us what liberalism too readily forgets, namely, that dispositions are not inherent in individuals.

Nonetheless, one might object that a politics that remembers that dispositions are attributed rather than inherent may remain committed to statist practices of shaping subjects through inclusion and exclusion. In effect, what my short engagement with Spinoza seems to show is that recognizing the performativity of political identity is not enough to undermine the performance, and may instead lead to a kind of statism "without illusions." This disillusioned statism would be, I suggest, a situation where human beings are selected for inclusion and exclusion with no alibi except the naked desire for order. I can imagine a neo-conservative rhetoric that might say, "yes, person's dispositions are constituted through practices of judgment, inclusion and exclusion. We will nonetheless practice judgment, inclusion and exclusion in order to achieve social order and of produce well-disposed subjects."

I do not know that there is anything factually or strategically wrong with such a neo-conservative position. If one is amendable to a totalizing, statist politics, where individuals are cultivated or discarded without the alibi of differences in their identities and dispositions, then one may embrace a kind of demystified *dispositif* of citizenship. Yet contemporary thinkers raise the important question of whether politics is possible without an identitarian and exclusive logic, or without creating disposable and sheltered classes of person (e.g. Nancy and Esposito, 2010). For instance, in a dialogue with Jean-Luc Nancy, Esposito calls for a politics that will "allow

space for existence in all its infinite fragments of sense" (Nancy and Esposito, 2010, p. 82). For him, this would be "a politics not of the cause (of the means *and* of the goal) but of the thing [being]" (Nancy and Esposito, 2010, p. 84). In relation to citizenship and the context in which this word is used, Esposito might disavow politics dependent upon goals like "national unity," peace and order, while simultaneously rejecting means like nationalism, categories based on citizenship status and fictions of sovereign power. Instead, it seems to me that Esposito would offer a politics that gives space to beings in all their diversity, including living beings such as ourselves, without valorizing those who are classed as citizens (or potential citizens) over those who are not. Following his lead, this chapter goes on to explore alternate ways of thinking about the *dispositif* of citizenship. I turn next to contemporary citizenship studies scholars who provide a point of contrast to statist politics. These scholars attempt to challenge notions of the nation and the state while maintaining the word citizenship as a key part of their political vocabulary.

II. Cosmopolitan and Activist Citizenship?

Recent citizenship studies have laudably analyzed the way citizenship status functions as a mechanism of exclusion that determines who will be taken seriously as a political subject (e.g. Isin 2002; Nyers 2010). Yet, despite showing the oppressive function of uses of the word "citizen," citizenship studies scholars seem to be generally unwilling to give up the term citizenship.[42] It seems to me that this is because, in Nyers' (2010) words, "historically citizenship has been the identity through which claims to political being are enacted" (p. 129).

The desire to continue this historical privilege of citizenship has led citizenship studies scholars to attempt to redeem or repurpose the word citizenship by appending adjectives to it. For instance such scholars may speak of "cosmopolitan citizenship" (e.g. Linklater, 2007) and

[42] A noteworthy exception is Lopez Petit (2011), who has the originality to ask "Why is this word [citizen]... still in use?" (p.1).

"activist citizenship" (e.g. Isin 2008, p. 24). Yet it seems to me that what is reinforced by talk of cosmopolitan citizenship and activist citizenship is continued reliance upon rather standard uses of the word citizen. Isin (2008) writes, for example, that the fact that "citizenship and the political are related concepts does not require elaboration" (p. 34). This claim presents a traditional use of the word citizenship, to mean "being political," as unquestionable common-sense. By doing so Isin assumes that there is a proper concept of citizenship, rather than uses of the keyword citizenship.

A practical problem with using citizen as a synonym for "political subject" is that it does not actually question the idea that in order to be recognized as valued political actor one needs to be a citizen. When Isin argues that refugees who protest unjust deportation regimes are engaged in "acts of citizenship" the word citizen is being used in a traditional sense - to indicate being a political subject (2008, p. 18). The same is true when Isin goes on to write that citizenship studies should focus "on those moments when, regardless of status and substance, subjects constitute themselves as citizens" through their political actions (2008, p. 38).

It seems to me problematic to insist that when a refugee or stateless person engages in politics they are "constituting themselves" as a citizen. Indeed, saying that stateless persons are acting like or becoming citizens when they engage in politics reinforces the very privileging of citizenship that put stateless persons in the position of being compelled (to a much greater extent than most of us) to engage with political realities. A similar critique may be leveled at talk of cosmopolitan citizenship, which may give up the claim that being a citizen means belonging to a particular nation or state, but repeats the traditional claim that to be valued as a political actor it is necessary to be a citizen.

The point is this: talk of activist citizenship, cosmopolitan citizenship and the like are in danger of reproducing uses of the term citizenship as an exclusionary mechanism by uncritically relying upon the notion that some people are political subjects and some are not. Isin demonstrates this danger well. He writes that his theory of acts of citizenship allows one to distinguish "activist citizens," who engage in novel forms of political action, from formal "citizens who act out already written scripts" (2008, p. 24). For instance, scripts provided by nationalist discourse. By setting up this division, Isin reproduces precisely the same division that traditionally serves to valorize active citizens through the denigration of passive subjects. He does this despite having cogently critiqued, in earlier work, the way discourses on citizenship are intricately bound up with the false orientalist distinction between the free and self-legislating citizens of the west and the collectively determined peoples of other world regions (e.g. Isin 2002).

To continue to valorize some persons as active and denigrate others as passive in the way Isin does lays the groundwork for a politics of exclusion that may give little importance nationality and legal status but that need not be any more emancipatory than nationalist and legalistic discourses on citizenship. Moreover, the valorization of activist citizenship fails to consider how some persons come to be understood as heroic political actors and others as passive victims - of their culture, religion, group or whatever (Hutchings 2004, p. 13). As such, it seems to me that although we may admire political actions that eschew concern with nationalism and legal citizenship status, it is not advisable to continue to employ the word citizenship. One might rather say, as Derrida once did, that:

> "If I feel in solidarity today with this particular Algerian who is caught between the F.I.S. and the Algerian state, or this particular Croat, Serbian, or Bosnian, or this particular South African, this particular Russian or Ukrainian, or whoever—it is not a feeling of one citizen toward another, it is not a feeling peculiar to a citizen of the world, as if we are all potential or imaginary citizens of a great state [. . .] What binds me to them—and this is the point... is a

> protest against citizenship, a protest against membership in a political configuration as such" (Derrida 1994, pp. 47-48).

What Derrida may be announcing here, in his claim of a "protest against citizenship as such" and his rejection of the cosmopolitan "great state," is a rejection of the way political universalism always entails a logic of exclusion and of the way the term citizenship is used to cut a divide between valued political actors and human beings who are devalued as passive subjects. Yet how might we protest against citizenship or contest the *dispositif* of citizenship? Simone Weil (1986), as interpreted by Esposito (2012b), opens up a possible line of thought.

III. Weil: Rejecting any division of persons

Weil (1986, 2002) argues against the notion that human beings may be legitimately divided into social categories and therefore treated differently. For Weil, an alternative to the *dispositif* of citizenship would be an impersonal ethics that rejects every difference of status. She expresses a radical and bodily materialism when she writes that pursuing justice means answering the impersonal "cry against being hurt" that may issue from any sufferer, including oneself (1986, p. 17). Although this position sounds like contemporary human rights discourse, Weil's politics is profoundly not a politics of rights. She writes that:

> The notion of rights is linked with the notion of sharing out, of exchange, of measured quantity. It has a commercial flavour, essentially evocative of legal claims and arguments. Rights are always asserted in a tone of contention; and when this tone is adopted, it must rely upon force in the background (1986, pp. 25-26).

Weil reminds us that the imperial and slaveholding Romans made extensive use of the notion of rights, as did the Third Reich (which saw itself as following the Roman First Reich) (1986, pp. 26-27). Yet her target is more general than the Reichs. As Esposito explains "when Weil, with a radicalism that may appear biased, located the origins of Hitlerism in the experience of Rome, she was referring specifically to the performative power of a legal tradition whose aim from the

beginning had been to turn people into things" (2012b, p. 100). For both Weil and Esposito, discourses of rights may be traced back to distinctions between the rights of free persons (political subjects) and slaves (ostensibly private, apolitical beings). As such, Weil and Esposito each provocatively concludes that rights are simply guidelines for the proper use and abuse of socially defined "types" of human beings (Esposito, 2012b, p. 100; Weil 1986, pp. 26-27). Esposito writes that:

> A right, to make sense, to distinguish itself from a mere fact, can only protect a certain category of people, leaving out all those who do not fall within its scope. Once assumed as an attribute or predicate of subjects rendered such by possessing specific social, political, and racial characteristics, a right ends up coinciding with [actually creating] the dividing line that separates and oppose them to those who are deprived of it (Esposito, 2012b, p. 101).

In short, for Weil and Esposito, the notion of different classes of person goes hand in hand with a politics of rights that virtually annihilates the rights of some classes. Thus, rejecting the notions of divisions between types of person and of individual rights, Weil attempts to found her politics upon talk of obligations and needs (2002). She argues that people have needs (including things like food and shelter, but also including a startling array of immaterial things such as freedom, solitude, risk and order). On this basis, Weil goes on to argue that everyone has an obligation to ensure that no one is denied the satisfaction of any of their needs (2002). Weil's politics provides a rationale for challenging the *dispositif* of citizenship rather than stretching or modifying its logic. On my reading, insofar as talk of citizenship functions to constitute different classes of person, Weil's thought suggests that we should reject the *dispositif* of citizenship (2002, pp. 109, 122).

In case Weil's politics seems too familiar, we may note that two crucial aspects of Weil's thought distinguish it from both liberalism and extremism- and serve to show that, contrary to much contemporary liberal discourse, liberalism and extremism are not our only political options. Against liberalism, Weil argues that critical reasoning, safety, security and avoiding

conflict may be goods but they are neither highest goods nor basic conditions of any acceptable politics (2002, pp. 32ff; see also Neocleous, 2007). Moreover, contrary to the way that liberalism asserts that the state must exercise force to secure the peaceful existence of private individuals, Weil argues that the only reason to exercise force is to help people recognize and fulfill our obligations, and that this end is subverted when force is exercised simply in the name of public security (2002, p.21).

Nonetheless, much as she rejects liberalism, Weil also positions herself against any extremism insofar as she rejects the notion that any specific ends (e.g. justice, holiness, security, freedom) could trump all other ends. In other words, Weil sets the organization of diverse ends against the search for sovereign ends. Unlike the quietist liberal who believes that peace and security (ensured by the state) is necessary to pursuing any other end, Weil contends that needs and obligations may trump concerns with peace and security. Unlike the extremist, who posits supreme ends other than peace and security, Weil rejects the notion that any one end could ever trump all others.

To provide a label for Weil's politics, we might turn to her essay on "Human Personality" (1986). For Weil, personal identity is composed of all the social, legal and political statuses that people assign to an individual. As such, one's citizenship is part of one's personal identity. Indeed, as stated in the introduction, citizenship may be understood as the key dichotomy within the contemporary division of persons (see Kim 2000). For Weil, personal identity is problematic because it "depends upon... social prestige; it is a social privilege" and so has nothing to do with justice (1986, p. 28). Against the cult of personal identity she writes that "when the infliction of evil provokes a cry of sorrowful surprise... it is not a personal thing" but "an impersonal protest."

(1986, p. 19). The pursuit of justice, defined by Weil as the recognition and fulfillment of obligations and needs in response to the cry of any "sufferer," is thus radically impersonal.

Weil's notion of the impersonal is particularly interesting if we remember that, as discussed in Chapter One, modern politics rests upon the Innocentian understanding of "personhood" as a representative construct. This foundation opens up the way for Hobbes to call the state an artificial person. In turn, Hobbes treats the personhood of individuals as an artificial status. Furthermore, Hobbes holds that an individual's right to be recognized as a person depends upon their relation to the artificial state (Esposito 2012b, pp 84-87). This liberal logic that Hobbes develops mirrors contemporary claims that the nation-state is an "imagined community" and that citizenship is an artificial status bestowed by government. From this perspective Weil's call for an impersonal pursuit of justice seems to be an attempt at disrupting nothing less than the logic of contemporary liberal politics founded in ideas of artificial or constructed personhood. To elaborate upon the notion of the impersonal and how it disrupts contemporary politics, I turn next to Zizek's related notion of the "asubjective" (2008, p. 135). It seems to me that impersonal and asubjective may be read as closely allied concepts.

IV. Zizek: Asubjective politics

The notion of the impersonal suggests a break with the way law, state and society assign us a personal place in the order of things. Zizek links his notion of asubjectivity to a discussion of how the "true" atheist ceases to be a subject of God. Consideration of atheism might seem like a strange tangent in a discussion concerned with contesting the *dispositif* of citizenship. However, as shown in earlier chapters, modern nation-states are modeled on understandings of God and employ conceptions of representation originally developed through considerations of

the proper relation to God. As such, atheism may provide a lesson in how not to be a citizen or a subject of the nation-state.

Zizek writes that "a true atheist does not choose atheism: for him, the question [of God's existence] is irrelevant" (2004, p. 2). In other words, Zizek argues that to simply renounce God is still to be a subject of God. To decisively choose "not to believe" in God still presupposes the relevance of God to one's life and one's identity. Rejection of the existence of God is thus not so different from simple belief that God exists. What does this mean in relation to citizenship? It suggests that there is no real choice between believing in the nation-state and disavowing it; no choice between prizing one's passport and renouncing one's citizenship. In either case, one remains disposed by conceptions of citizenship and political community. From this perspective, if it is possible to escape from the *dispositif* of citizenship and the way it structures human lives, it is possible only through indifference to the question of the existence of citizenship and the nation-state. This does not mean that one must cease to act politically, but rather that the target of one's political interventions must change. One would begin to understand authorities as individuals rather than as representatives of citizenship, the nation-state or sovereignty.

The atheist may recognize that claims to represent God hold import to some people, and analyze the political effects of this import, but does not raise the question of the truth or falsehood of the claims themselves (because the question of the reality of God has ceased to be a plausible question). Similarly, an asubjective or impersonal politics might analyze claims to represent citizenship or the nation-state, but would remain profoundly disinterested in the idea that the people making these claims really do represent such a thing as citizenship or the nation-state.

The abstraction of this discussion may be reduced with an example. As chronicled by Nyers (2003, 2010), some of the most effective political interventions within Canadian immigration politics have proceeded precisely by not acting at the level of the imagination of the nation or of citizenship – but by way of particular individuals confronting other particular individuals. For instance, Nyers discusses the way non-status Algerians in Montreal responded when the government of Canada lifted the moratorium on deportations to Algeria (2003). These Algerians entered the offices of immigration decision makers, uninvited, to protest that they could not be deported to Algeria because their lives would be at risk there (2003, p. 1082ff). After a sustained campaign and multiple such actions, practical change followed in the form of the naturalization of some of Montreal's non-status Algerians (2003, p. 1086). Although naturalization was not the goal (which was actually just to avoid deportation), it was an acceptable means to the goal.

In practice, such strategies depart from a liberal understanding of representation. The non-status Algerians did not treat immigration officials as representatives of a transcendently sovereign nation-state, but as particular individuals to be pressured and reasoned with. Instead of recognizing some universal/transcendent object of faith behind representations, those who adopt asubjective strategies interact on a common level (as simple individuals) with those who claim to represent this universal/transcendent object. As Zizek writes, we need not buy into doctrines of representation (2008, p.290-230).

Zizek's notion of escaping from the field of representation and belief also has implications for the *dispositif* of citizenship in another important way. We may remember Hobbes's argument that when we accept what a person says we have faith in that person (1968, p. 132). Zizek's perspective suggests that instead of believing in or doubting the other, one may

suspend the notion that an “inner life” lies behind and animates what the other says. He writes that, “the 'truth' of what we are saying depends on the way our speech constitutes a social bond, on its performative function, not on the psychological 'sincerity' of our intention” (Zizek, 2008, p. 239).

Rather than treating speech acts as representations of a person’s “inner” identity (their critical faculties, trustworthiness and so on) Zizek’s perspective makes “inner” identity out to be an object of belief. Once recognized as mere objects of belief, inner characteristics ought to become practically irrelevant to the way people are treated. Taken far enough, treating inner lives as something attributed to people (rather than innate in people) disrupts not only practices of citizenship but the general way in which people assess one another as examples of certain types of person (selfish or altruistic, dangerous or benign, disingenuous or honest, lawful or criminal, critical or extremist, etc.). Furthermore, this idea might be applied to oneself. One might then cease to answer the call to testify about oneself, to make oaths or to demonstrate one’s inner convictions and character.

To give this last notion specificity, we may turn to Foucault (2005). Foucault offers a glimpse of what a politics that refuses to express subjectivity through discourse might look like when he reproduces the disturbing but fascinating scene of a repeat violent offender who refuses to say anything at his trial. The court excerpt reproduced by Foucault reads as follows:

> Judge: “Have you tried to reflect upon your case?”
>
> —Silence.
>
> “Why, at twenty-two years of age, do such violent urges overtake you? You must make an effort to analyze yourself. You are the one who has the keys to your own actions. Explain yourself.”
>
> —Silence.
>
> “Why would you do it again?”
>
> —Silence.

> ... "For heaven's sake, defend yourself!" (2005, p. 126)

For Foucault, the degree to which the accused man upsets the judge by refusing to "explain" himself is telling. Unable to assess the man's motivations and psychology through his words, the judge finds himself at a loss. Foucault concludes that:

> When a man comes before his judges with nothing but his crimes [acts], when he has nothing else to say but "this is what I have done," when he has nothing to say about himself, when he does not do the tribunal the favor of confiding to them something like the secret of his own being, then the judicial machine ceases to function (2005, p. 151).

Of course, the judicial machine does not cease to function in the sense that a sentence cannot be passed and carried out. Perhaps the judge will impose the harshest penalties available in this case. Yet insofar as the legal system constitutes itself as a mechanism that judges acts in light of dispositions, the offender's refusal to confide in the court upsets legal practice. In this light, the interesting thing is not so much the accused man's silence so much as his refusal to confess truths about himself. Perhaps he might just as well have changed the subject as been silent. Indeed, Coetzee's (1999) novel *Disgrace* contains a very similar scene to that described by Foucault but where the accused does answer. David Lurie, brought before a university tribunal for sexual misconduct, pleads guilty to "whatever" he is accused of (Coetzee, 1999, p. 50). The members of the tribunal proceed, under the guise of judging or helping him, to ask that he clarify what it is he is pleading guilty to (Coetzee, 1999, pp. 50ff). Thereafter, they cajole him to confess his inner life. One asks "does he accept his guilt or is he simply going through the motions...?" (Coetzee 1999, p. 51). Another tells Lurie, "There is a difference between pleading guilty to a charge and admitting you were wrong," and adds, as if hopeful, "you know that" (Coetzee, 1999, p. 54). This leads Lurie to goad the tribunal, asking what it is they want him to say and how they will tell it comes "from the heart." In the result he says he "was wrong" and "regrets" his actions, but in each case spoils his performance by asking the tribunal "is that good enough for you?" (Coetzee, 1999, p. 54). In effect, Lurie calls attention to the social and performative dimensions

of what should be, according to commonsense perspectives, a confessional scene resulting in a judgment of his character. Before the tribunal, he puts on trial the notion that words represent our "inner" lives. He asserts "I have said the words for you, now you want more, you want me to demonstrate their sincerity. That is preposterous" (Coetzee, 1999, p. 55).

Lurie seems to come from another world of discourse, law and politics, one that rejects the premises of self-representation and inner dispositions. He evidences that, as Derrida (2000) has written, the other is never in a position to know whether one is speaking "from the heart" (p. 16). Indeed, one is never in a position to "know" for oneself whether one is offering a true account of oneself or merely performing as expected in a social scene (Derrida, 2000, p. l6; Butler, 2005, p. 37-39). For this reason, Derrida writes, we should recognize that authorities "rely on a naive concept of testimony" when they purport to read the intentions behind speech (2000, p. 48). Could we then, for good pragmatic reasons, reject confessional politics and judgments of individuals' dispositions? Could a political practice of refusing to incriminate or exonerate oneself offer an asubjectivity of the sort Zizek invokes? Moreover, how would one respond differently to others if one renounced efforts to understand their dispositions; and the categories of citizenship, nationality and so on that are so often employed to pre-judge dispositions?

Closing Summary

To conclude, this dissertation has described a liberal *dispositif* of citizenship wherein a certain liberal theory of representation portrays the nation and citizenship as political artifices that exist because they are represented as existing. Portraying nation and citizenship as artifices makes it possible to portray them as universalist and to assert that they are not tied to any "particularistic" grounds of identity (ethnicity, religion, culture, etc.). In turn, the well-disposed

citizen is said to be a critical individual who understands politics as a matter of employing collective representations to avoid conflict - rather than seeing the world in terms of realities worth fighting over.

Within this liberal discourse, the state is perceived as good insofar as it ostensibly provides the conditions for individuals to pursue their own well being, free from threats of unpredictable violence and group coercion. Moreover, each individual is supposed to reach the conclusion that the state is good on their own, through their private reason, on the grounds that the state accords them the security to reason privately and to pursue their private interests (see Schuck, 2002, p. 137). In other words, liberal logic asks each person to reason privately, because private reason favors liberal politics. This is the reason that Hobbes appeals directly to his readers, asking us to look into ourselves to understand others and to judge whether we find Hobbes's comments on "Mankind" accurate (1968, p. 83). It is likewise the reason that Kant tells us to exercise our reason maturely and to question power incessantly. In general, it is the reason that the *dispositif* of citizenship discussed in this dissertation founds its crucial division between citizens and others upon an alleged difference between those who are disposed to critical individualism and those extremist, fundamentalist, or traditional people who are not.

However, the belief that citizens are critical and responsible individuals is possible only insofar as citizens are contrasted with dangerous others subject to group mentalities, fundamentalist creeds, backward cultures and so on. In its last three chapters, this dissertation attempted to unmask the practices and taken for granted assumptions that make it possible to reify distinctions between "us" (reasonable, critical, well-disposed citizens) and "them" (extremists, fundamentalists, essentialists, etc.).

My argument in the end is that "Canada" and "citizenship" truly are artificial, in the sense that they are upheld by a reified and false but unquestioned distinction between well-disposed citizens and threatening others. I have also argued that this state of affairs is not simply beneficial to citizens and detrimental to others. Although the critical individualism that the *dispositif* of citizenship privileges appears to raise the possibility of thoughtful political action on the part of individuals and thus of participatory democracy – or even "radical" democracy (Martel 2007) - critical individualism also, and perhaps more readily, leads to "impatience with political process" and to "an indifference" to collective ends and public life (Singer, 2008, p. 99). The dissertation thus argues that the critical individualism that thinkers such as Hobbes and Kant promote is ultimately intended to turn individuals against causes and ideals, and to reconcile us to authorities. In other words, by liberating subjects from truth claims and essentialist positions the liberal logic and *dispositif* of citizenship described in this dissertation work to achieve the predictable continuance of things as they are. Thus, Esposito (2009) calls modern politics a "depoliticization - of Hobbesian origins" that was "born precisely to neutralize conflict" (p. 103).

In this conclusion, I have turned to Weil and Zizek in pursuit of a politics that could truly contest the *dispositif* of citizenship. Weil's work strives for a materialist universalism that would dismantle all legal and social distinctions that operate to divide human beings into categories. Zizek's notion of asubjectivity takes us further down the path opened up by Weil, and suggests that the politically astute thing to do may be to cease believing in hidden truths and higher powers, and thus to stop taking seriously claims to represent the nation-state, universal citizenship, and the like. This may open up avenues for contesting existing institutions, laws and authorities in novel ways, without being frightened off by the notion that they are part of a transcendent order. More radically, Zizek's work suggests that it might be wise to give up

attempts to represent our own internal commitments and dispositions. Doing so may render the *dispositif* of citizenship practically inoperative, insofar as it rests upon a distinction between the well-disposed and ill-disposed.

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