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Deportation in perspective : constructions of a nation and ideal citizens

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DEPORATION IN PERSPECTIVE: CONSTRUCTIONS OF A NATION AND IDEAL CITIZENS

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ABSTRACT

This project attempts to explain the deportation process in Canada. Specifically I highlight how the deportation decision making process is not only about removing a person from the country but also creating a desirable citizenry. The inclusion of Chan's article as a case study was important to this project as no other study has included statistics based on country of origin, Immigration Appeal Division members' comments or reasoning for decisions made at deportation appeal hearings. Comments reveal differential perceptions of immigrants from Anglo-European countries and non-white countries on rehabilitation and re-offending. Statistics are provided and the tendency for appellants from non-white countries to have their deportation appeal hearing dismissed happened more often than those from Anglo-European countries. I will highlight how removing someone from the country and making 'good' citizens is rooted in racialized concepts of nationhood and what it means to be an 'ideal' citizen.

Key words: Canada, deportation; racialization, nationhood, citizenship,

Introduction

Between the years of 1995 and 1997 "of some 355 persons deported to a total of 48 countries, Jamaica received 138 deportees. This represents more than five times the number deported to the next highest recipient country Trinidad, which had 6 percent of deportations from Ontario"[1] (Baines, 2001: 194). The above statistic occurred at time where there was a heightened concern over immigration and crime. Although the deportations of people who have been charged with a crime do not gain the most amount of sympathy, the practice of deportation should be seen within a wider political understanding over "managing and controlling immigrants" (Walters, 2002).

I will use a study conducted by Chan (2005) as a way to critically highlight deportation processes. The focus on deportation appeals is relevant for a number of reasons. One reason is that the contemporary practice of deportation in Canada is a relatively understudied area, where few studies exist with a deportation focus of any kind. As well, the focus on the appeal process is an interesting one as certain factors such as employment and community support are considered when deciding if a person should remain within the country, whereas the initial deportation order is based on an immigration violation where consideration is not given to things such as employment. Her study is useful[2] because there has not been an analysis of deportation cases that provide statistics and highlight Immigration Appeal Division members' comments and reasoning in their decisions as this case study does. Focusing on the findings of this deportation study will allow for a critical examination of the racial undercurrents that are

[1] There is no differentiation between foreign nationals or permanent residents from the statistics provided on deportations from this study.

[2] I discuss the importance of Chan's work in the upcoming pages in relation to the difficulty in obtaining information on deportation statistics.

present within issues of Canadian nationhood and the 'ideal' citizens that make up this country. Drawing on her study and the finding of deportation appeal hearings it is revealed that deportation is not just about removing someone from the country but is also about making 'good' citizens within Canada. I will highlight how removing someone from the country and making 'good' citizens is rooted in racialized concepts of nationhood and what it means to be a citizen within the nation (Chan, 2005). I will do this by first providing a literature review on the three themes that emerge from deportation decision making, which are the history of immigration policy, the idea of multiculturalism and security. Following I will present specific cases on how decision making in deportation appeal cases are guided by racial ideologies which can be observed through the differential rates of deportation and treatment of appellant from Anglo-European and non-white countries[3].

As concepts of nationhood and citizenship are looked at it is necessary to express how they will be defined and understood in this paper. Nationhood is an idea that is not static or definite. Exploring the issues of nationhood in this paper will illustrate that it operates in both symbolic and material ways that often overlap and shift through time. Materially, nationhood can be linked to ideas of industry, economies and building a population. Symbolically, nationhood can be explained by the ideological visions that have been ascribed and projected by policy makers (Banerjee, 2000). Conceptions of citizenship should be thought of alongside issues of nationhood as the two are interlinked. If there is an ideological vision of what it means to be a nation then there are visions of who becomes apart of that nation (Banerjee, 2000; Thobani, 2007). Citizenship will be

[3] The use of these two categories will be explained further in the paper.

discussed in this paper by focusing on the construction of an 'ideal' citizen which inevitably constructs those who do not represent 'ideal' citizens.

Throughout this project I will be engaging with anti-racist and critical race theory. Anti-racist theory focuses on societal institutions such as legislative agencies and justice that reproduce racial inequalities (Henry, 1998; Delgado, 2000). The process of racialization within this project is important when examining the decisions that are made at the deportation appeal hearings as ideas of nationhood and citizenship remain to be understood in racial terms. A discussion on the racialization process is imperative to this project and will be discussed in detail in a later section.

I am aware that there is a lack of an in depth analysis of gender and class in my analysis. However within the time and page constraints of this project I have focused on race. It is important to note that race, gender and class are interlinked with each social position reinforcing the other. I do not purport to have an exhaustive analysis of race within this project, but I would like to provide a glimpse into how deportation brings to surface the racial undercurrents present in how Canada is defined as well as its citizens. An interesting future project would be a further analysis including gender and class which can be included within this discussion.

This project will start by drawing attention to important issues within the deportation process. Firstly I will describe the various ways in which certain information about deportation is made available and the trouble in accessing other types of information. Based on this, I will provide information on the importance of Chan's work and why it should be used (2005). As her work shows, there tends to be discrepancies between appellants from Anglo-European and non-white countries and the decisions

made, so a section on the realities of racialization will follow. The next section will describe the deportation process in Canada along with some of Chan's empirical work. Drawing from her analysis the literature from three ideas of immigration policy, multiculturalism and security which are present within the deportation decision making process will be reviewed. Lastly case studies will be examined to highlight the ways in which deportation is viewed not only as a tool of exclusion but also one of creating 'good' citizens.

Deportation and Access to Information

The importance of using Chan's research is that there are few studies that have deportation statistics[4] or analysis of deportation cases in any sort of form. As deportation is often looked at as an administrative function of the Federal government, rarely is deportation of non-citizens given a lot of attention. Usually when deportation cases are given attention they tend to be covered by the media and focus on an individual case or a story of a group of individuals facing deportation (Chan, 2005). However this is changing. The number of political campaigns and social activist groups that are mobilizing over restrictive and exclusionary immigration policies, including the deportation of non-citizens, is increasing in Canada as well as in Western Europe (Nyers, 2003; Wright 2003, 2006). Also, over the last 10 years there have been charges of constitutional violations and international treaty violations over the removal of long term residents in Canada (Cohen, 1994; Dent, 2002) as well attention has been given to the changing role of the Minister's discretion in deportation hearings (Haigh and Smith, 1998). Important to note though is that these studies have not examined any type of

[4] Although Chan does provide statistics, her statistics are limited as well. There is no breakdown of how many people have their deportation appeals dismissed according to country. She groups them in two, non-white and Anglo-European, for the purposes of her analysis.

statistics or breakdown in terms of country of origin. Although this may not be the focus of some researchers work, it could also be due to the fact that such information is hard to come by.

The ability to obtain statistics on deportation appeals, and deportation rates within Canada and specifically in terms of where each person is being deported to and who is getting deported is an incredibly arduous task. Although statistics are hard to come by details of deportation cases are available through a number of avenues. Deportation cases are public records which can be accessed through various case law databases. Full appeal cases that are heard at the Immigration Appeal Division are available through *InfoSource*[5] by filing a request to access these documents which can be done for a fee (Government of Canada, 2007). Case summaries of deportation cases and appeals can be accessed electronically through the *RefLex* database. *RefLex* is a data base used by the Immigration and Refugee Board (IRB) decision makers to read summaries of cases (IRB, 2007a). Although *RefLex* is used internally within the IRB, the public does have access to the summary of cases and their outcomes. There are some cases within *RefLex* where full text decisions are available, however full text decisions are limited (IRB, 2007a). So although access to deportation cases and deportation appeals cases are available to an extent, the statistical breakdown of people who get deported (i.e. permanent residents and/or foreign nationals) or the country where they are sent to, and why they are being deported is not readily available. The difficulty in obtaining statistical information on deportation brings to light a number of issues.

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[5] "Info Source is a series of publications containing information about the Government of Canada, its organization and information holdings. It supports the government's policy to explain and promote open and accessible information regarding its activities. It is a key reference tool to assist members of the public in exercising their rights under the *Access to Information Act* and the *Privacy Act" (Government of Canada, 2004).*

The difficulty in obtaining statistics from the government on deportation legitimizes the fact that it is an administrative function by the Federal government; the government has the responsibility in carrying out deportation orders and thus it is left within that sphere and kept out of the public eye for the most part and left unquestioned by segments of society. Alternatively it is left out of the public eye where most of society cannot question the processes and practices of deportations. However the way in which some deportation cases are given attention, usually through media attention, is also problematic. The well publicized 'Just Desserts' Bill highlights the way in which some groups may become targeted for deportation over others (Jakubowski, 1997; Adams, 2000; Barnes, 2001; Pratt, 2005).

After two shootings took place over the course of a few months, in Toronto, public panic began to heighten around issues of immigration and crime (Pratt, 2005). The first shooting occurred at a dessert shop where three men from Jamaica and one from Trinidad were charged with killing a white woman, while attempting to rob the shop. A few months later a Jamaican man who had a deportation warrant against him at the time was charged with the killing of a white police officer (Barnes, 2001; Pratt, 2005). Some of the men who were charged with the shootings were not legal residents in Canada but had resided here since their youth (Pratt, 2005). Shortly after the two shootings the RCMP and Immigration Canada (as it was called at the time) created a joint task force and deported 497 foreign-born criminals (Jakubowski, 1997; Baines, 2001). This shooting brought about Bill C-44 and subsequent amendments to the Immigration Act of Canada (1976) (Adams, 2000; Barnes, 2001; Pratt, 2005). Within that political climate some observers questioned whether one group would be more prone to deportation over

others (Jakubowski, 1997). Statistics from 1995 until 1997 showed that "Jamaicans bore the brunt of the punitive effects of Bill C-44 and since 1995 they represent an overwhelming majority of person declared a danger to Canadian society and subsequently deported from Canada"[6] (Barnes, 2001: 194). Accessing statistics on deportation then becomes important if research is going to be carried out currently or in the future as the links to political events and popular perceptions of crime can guide policy formation. The difficulty in obtaining statistics in terms of who is being deported, why they are being deported and what countries are people being deported to, creates barriers for understanding the many facets of deportations. It also makes it difficult to examine whether the targeting of specific groups is going on within the deportation process.

The Importance of Chan's Work

The reliance on Chan's work is important as it provides some statistics on types of crime and where people are being deported to (2005). Other studies which have managed to include statistical information have done so in different ways. For instance, Banes only focuses on the mass deportation of Jamaicans as criminal deportees in the early 1990s. In *Securing Borders: Deportation and Detention in Canada* Pratt provides statistics on the deportation of noncitizens, and provides some statistics on what percentage of deportations are criminally based; however no breakdown is provided in terms country of origin and there is limited information on people who are deported and their immigration status (Pratt, 2005).

[6] The statistics provided on the crimes that were committed, which led to the deportation of Jamaicans during this time period, were based primarily on drug related charges (Baines, 2001).

The way in which she conducted her study was by examining deportation appeal hearings from *RefLex*. Within the cases Chan examined, each decision included information on the country of origin and type of criminal activity. Only certain cases are included within this data base. Cases that are included in the data base usually highlight reasons that:

> set out a novel approach to the law, are set out in a clear and concise manner, demonstrate the application of an established legal principle to an unusual or novel fact situation and are representative of a number of decisions decided on a specific issue from a particular country, or are representative of a number of decisions decided in a particular region of the IRB (IRB, 2007a).

She analyzed 177 of these cases over a 10 year period (1992-2002) taken from across Canada. She found 158 of the 177 cases involved criminality which is a focus of her study. The criminal offenses that were most common were all levels of assault, narcotics, sexual assault and robbery. This study did not take into account all deportation appeal hearings, only those based on criminality. Her focus was on non-citizens; however there is no breakdown between deportation appeal hearings for foreign nationals, permanent residents, or refugees.

Then there was a broad grouping in terms of country of origin which was based on the countries that she came across while analyzing the cases. The countries are divided between Anglo-European countries and non-white countries. The use of these two categories should be clarified. It is important to note the heterogeneity within countries, and that countries she has identified in her study can be composed of a diversity of 'racial' backgrounds. Chan notes the ambiguity in the term Anglo-European country. She creates the category of Anglo-European based on the countries that came up during her analysis of the deportation appeal cases. She categorizes Anglo-

European to mean people from Austria, England, France, Germany, Italy, Poland, Portugal, Scotland, and the U.S.A. The category Anglo-European is not homogenous or includes one group of persons, she recognizes that "cultural differences such as in the case of Italy and a diverse population like that found in the USA make makes it difficult to assume that appellants are 'white'. However such categorization is still useful in revealing the racialized treatment of appellants from other nationalities" (Chan, 2005: 177). As such she found that Jamaica, Iran, India, Vietnam, Guyana, and Trinidad were countries that were represented the most in appeal cases. She classified these countries as non-white. Although non-white appellants are homogenized within this category and their countries are homogenized based on stereotyping nationalities these categories cannot deny the diversity and heterogeneity of cultures, socio-economic positions and 'racial' differences (Barnes, 2001). The use of these two categories is As Chan examines the cases which pertained to the appeal hearing decisions in deportation appeal cases on criminality she concluded that the interpretation of the factors discussed above are shaped by racial and gender ideologies (Chan, 2005). The focus of this project is to draw attention to racial understanding of the nation and citizenship, so a discussion on 'race' is necessary and follows below.

Race and Racialization

The word race and what it denotes has changed throughout history (Satzewich, 1998). Race, as a term, began to be used as a genealogical term to trace one's lineage primarily before the eighteenth century. During the eighteenth century and until the early nineteenth century race took on another connotation, one that was used by Europeans to promote their biological superiority over the peoples of colonized nations. Although it is

continually argued that there exists no scientific base for race as a biological category and it exists as a social construct, it continues to operate within society as a real thing with real implications (Henry, 1998). Using the term race to construct certain groups as the biologically inferior 'other' is an integral tool that is used for those who seek to maximize the most political, social and economic gains in society (Satzewich, 1998). The process of racialization occurs when groups of people are delineated and identified in terms of physical or biological criteria (i.e. same skin colour, same physical characteristics) (Miles, 1989; Satzewich, 1998). One definition of racialization that is used often comes from Miles who states that racialization is a "process of categorization through which social relations between people have been structured by the significance of human biological characteristics in such a way as to define and construct differentiated social collectivities" (Miles, 1989: 75). People come to be identified according to biological characteristics and these characteristics shape the realities in which people live (Miles, 1989; Henry, 1998).

Important to note in this discussion of racialization is although groups may have similar physical appearances such as skin colour, and are considered a "racialized" group, this term cannot ignore the heterogeneity within a racialized group. That is to say that a number of non-white groups such as Aboriginals, Asians and Africans are incredibly diverse within themselves and the ways in which these racialized groups have been categorized and the way they exist differs from each other as they all have very specific histories (Banerjee, 2000; Manning; 2003; Thobani, 2007). Also the racialization of 'white' groups is different from groups that are racialized as non-white in Canada. The process of racialization for those who are white does not exist in the same way as the

racialization process of non-whites. Although non-white groups are heterogeneous they share a history of subordination and domination done by those who have the power to do so. Racialization of whites was mainly done by constructing groups of people as 'other' and dominating over them (Bonilla-Silva, 2001; Lewis, 2003). 'White' groups are not homogenous either (Lewis, 2003). Although it is recognized that people who were from various European countries other than Britain or those in northern Europe were discriminated against and denied access into Canada in the past based on their religious and ethnic differences, they were later included within the 'white' category to maintain the 'whiteness' of the nation (Avery, 1995; Trebilcock and Kelley, 1998). The way in which people are racialized as non-white and white is important to recognize if there is to be a critical examination the deportation process carried out by the Immigration Appeal Division (IAD) as it is an institution that reproduces racial inequalities. Inevitably if a person is being racialized in Canada as non-white, which is in relation to a normalized whiteness, then racial undercurrents become apparent in issues of nationhood, citizenship and belonging.

The Deportation Process in Canada and Chan's Findings

The Deportation Process

If the deportation decision making process is being examined it is necessary to provide information on how removal orders are made against immigrants in terms of deportation and the criminal justice system[7]. It is important to note that no one in Canada is subject to automatic deportation if they have been convicted of a crime. Permanent residents and foreign nationals can be subject to deportation if criminal charges are

[7] I have not included information on the deportation process of refugees as the determination system and removal processes are not only limited to the Immigration Appeal Division, which is the focus of this project.

involved. A permanent resident, as defined in the Immigration and Refugee Protection Act (2001) s.2 (1), is:

> a person who has acquired permanent resident status and has not subsequently lost that status under section 46.

Section 46 of the IRPA (2001) states permanent resident status can be lost:

> (a) when they become a Canadian citizen;
> (b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;
> (c) when a removal order made against them comes into force; or
> (d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination under subsection 114(3) to vacate a decision to allow their application for protection (Department of Justice, 2007).

For permanent residents there are two ways in which they can be subject to a deportation order if they are convicted of a crime. One way is if they have committed a crime that holds a minimum sentence of 10 years in jail, irrespective of the time served in jail; or if a permanent resident is charged with a federal offense and the sentence holds at least 6 months of imprisonment (Citizenship and Immigration Canada [CIC], 2004). In terms of appealing the deportation order Section 64 of IRPA (2001) states:

> (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.
> (2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years (Department of Justice, 2007).

As well if a permanent resident is convicted of a crime punishable by a term of imprisonment of at least two years the deportation case can be judicially reviewed based on procedural or legal errors (CIC, 2004).

The process involved in deporting foreign nationals is different than deporting a permanent resident as the threshold for deporting is much lower (CIC, 2004). Section 2 (1) of IRPA (2001) defines foreign national as:

> a person who is not a Canadian citizen or a permanent resident, and includes a stateless person.

Under Section 36 (2) (a) foreign national can be deported for:

> having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence (Department of Justice, 2007).

Also if the offenses are prosecuted "either summarily or by way of indictment [it] is deemed to be an indictable offence, even if it has been prosecuted summarily" (Department of Justice, 2001). Access to appeals for foreign nationals exists "if they hold a permanent resident visa or if they have the status of protected persons (which include refugees) (CIC, 2004).

The Appeal Process in Deportation Cases

If a deportation order is able to be appealed the process takes place at the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB). At the IAD when it is decided an appeal is allowed[8], members are able to exercise their discretion in determining whether a person should be deported or if a stay in Canada is warranted. The factors that guide the members of the IAD in exercising their discretion are set out in the Supreme Court of Canada ruling in *Ribic*[9]. Discretion is not to be based solely on these factors and they are not to be taken exhaustively but rather should apply

[8] Where discretion is exercised in appeal cases, the crime committed has to be one where there is less than a two year sentence as access to appeals for crimes that hold a sentence for two years or more is denied under section 62(4) of IRPA (2001) (CIC, 2004).

[9] *Ribic, Marida v. M.E.I.* (IAB 84-9623), D. Davey, Benedetti, Petryshyn, August 20, 1985

depending on what the case is and in varying degrees (Immigration Refugee Board [IRB], 2006). The factors to consider by IAD members when exercising discretion that are set out in *Ribic* are:

> the seriousness of the offences leading to the removal order; the possibility of rehabilitation; the length of time spent in Canada and the degree to which the appellant is established; family in Canada and the dislocation to that family that deportation of the appellant would cause; the support available for the appellant not only within the family but also within the community (IRB, 2006).

Important to this project is how the factors above are interpreted in appeal cases. The decisions made at the deportation appeal hearings depend on how the members of the IAD interpret these factors. So in other words the unique factual circumstances of the case must be taken into account. And therefore discretion becomes a concern. I am relying on Chan's findings to highlight the ways in which these factors are interpreted at the deportation appeal hearings and how their interpretations reveal racial undercurrents in ideas of nationhood, citizenship and belonging. It is important to note that her study was conducted under the old Immigration Act, where there was greater access to the appeals process. The factors considered at deportation appeal cases are still guided by *Ribic*. As described above access to appeals under the IRPA (2001) is more restrictive and has been eliminated in some circumstances. This does not compromise Chan's findings.

The use of Chan's analysis is still valid. If anything her analysis allows for the problematizing of the current system as well. Where before there were greater access to appeals, more reasons were given to either stay or deny a removal order, and more discretion exercised. Deportation cases under IRPA, which fall within the two year maximum sentence, no longer have to be dealt with and are effectively streamlined

without justifying why an appeal is not being allowed; it is simply within the policy why a person is being denied access to an appeal process (i.e. the sentence for the crime the person is convicted of is more than two years). What seems like an effective "streamlining" process, however, could actually have the effect in targeting specific groups of people. Because it is difficult to obtain current statistics on where deportees are being sent to, I look to the statistics examined previously on Jamaicans to illustrate my point. If groups are being specifically targeted, and there is no avenue for appeal, their removal then is justified by this policy. It becomes difficult to question or examine the way in which the deportation process is carried out when it falls under this policy. No longer are any reasons provided by members and the mass deportation of specific groups (as an example, Jamaicans) from Canada remains unchecked and viewed as an administrative function by those who carry out the process. The implications of such policies become troubling in the sense that this policy is not neutral; the racialized nature of crime which has been studied by many coupled with immigration has the potential to affect groups of people differently (Barnes, 2001; Jiwani, 2001; Mirchandi and Chan, 2001; Yukov, 2003; Tanovich, 2006). It is important to understand the implications of these decisions as they shed light into larger issues of immigration control and "how the processes of racialization continue to shape the construction of the Canadian citizen" (Chan, 2005: 162). Reviewing the findings from Chan's work we can see how deportation becomes one way to cast people inside and outside of the nation.

Chan's Findings

Many of the deportation appeal cases that were examined involved appealing to the discretionary jurisdiction of the IAD (Chan, 2005). As noted previously there are a

number of factors that the IAD looks at when making a final decision and most of these cases did not involve challenges on the legal validity of the deportation order, and so most of these cases involved the IAD considering factors, emphasized in *Ribic* (Chan, 2005). In cases involving discretionary jurisdiction "the onus falls heavily on the appellant to demonstrate that they have changed their life around since committing their crimes" (Chan, 2005: 164). She finds that out of all the factors to consider when exercising discretionary jurisdiction attention was mostly paid to a persons risk of re-offending, their efforts at rehabilitation and their level of establishment (family, employment, community support) (Chan, 2005). What is also revealed from this case study is that the criminal offense(s) of the appellant were "insufficient for understanding the outcome of the [appeals] case" (Chan, 2005: 165). Appeals were allowed for cases considered not especially serious as well as very serious cases and the same situation occurred with appeals that were dismissed. Appeals that were dismissed also included not so serious crimes as well as serious crimes (Chan, 2005). Hence, it seems that community integration, family ties and rehabilitation efforts were the focus of appeals' decisions but the way in which each factor was interpreted varied on a case-by-case basis.

This table[10] contains a breakdown of deportation appeal hearing cases that were allowed and those which were dismissed.

[10] Table taken from Chan, W. (2005). Crime, Deportation and the Regulation of Immigrants in Canada. *Crime, Law & Social Change*, *44*, 153–180.

Table 1. Appeal outcome by country of origin and gender

	Appeals allowed (68)		Appeals dismissed (107)	
(N)	(N)	(%)	(N)	(%)
Anglo-European countries	16	46	19	54
Non-white countries	44	38	72	62
Male Appellants (165)	65	37	100	63
Female Appellants (8)	3	38	5	62

Drawing from the table above and focusing on the country of origin, it can be seen that people from non-white countries were less likely to have their deportation order stayed (38%) compared to Anglo-European countries[11] (46%). It is necessary to first describe this table at the onset as she approaches this issue from two ways. First she focuses on country of origin. The total case number as mentioned earlier was 177, however 26 appellants country of origin were unknown. Of the 151 appellants then, 35 appellants came from Anglo or Western European countries and 116 were "from countries that are considered primarily non-white" (Chan, 2005: 163). [12] It is important to note and draw attention back to the fact that countries and their populations are not homogeneous and that 'non-white' and 'white' people are not only confined to the categories Chan has relegated people to and not to assume that all people who are from 'non-white' countries are in fact 'non-white' and vice versa. However, the numbers

[11] Although I have noted the ambiguity in using the terms non-white and Anglo-European, I will use them throughout the project as I have already explained how Chan grouped these and how she obtained the data and the difficulty in accessing specific deportation statistics.

[12] As the table shows there are two numbers that seem out of place in the analysis of country of origin, and that is the 'Appeals allowed (68)' and 'Appeal dismissed (107)' as labeled at the top of the table . These two numbers are relevant for the male and female breakdown. Although this number equals 175 this can be explained by the outcome of two cases being unknown. So the 175 is applicable to the breakdown she provides on male and female appellants and is not relevant to the country of origin breakdown. The numbers of appeals dismissed and allowed between male and females is 173, which leaves 2 cases unknown. It perhaps may have been more beneficial and less confusing if this chart was split into two, one which broke down country of origin and the other between males and females.

presented brings attention to issues of concern including who became targeted for crime and thus subject to deportation and how decisions were made to reflect the likelihood of an appellant from a non-white country having their deportation appeal dismissed.

There are then a number of ways that the *Ribic* factors are considered in deportation appeal hearings; as such the way IAD members interpret these factors vary. Below I examine three themes that emerge from the deportation hearings. I look to past immigration policy, multiculturalism and security as ideas that are relevant when deportation decisions are being made. Critically examining these three issues provides insight into the statistics provided above. First I will provide a literature review of the relevant material and lastly I will provide an analysis of the deportation appeal process which highlights these themes.

Literature Review

A Brief History of Immigration Policy and the Construction of a Nation

The responsibility of immigration policy throughout most of Canada's history was carried out by a group of bureaucrats within the Canadian government who were only interested in populating the country with white British people, who were English speaking and Protestant (Roberts, 1988; Avery, 1995; Trebilcock and Kelley, 1998). Canada was often referred to as "Britain of the North" and "the northern kingdom", where these denotations were attributed to Canadian nationality (Berger, 1966, Razack, 2000; Mackey, 2002). This exclusionary policy was based in the belief of white Anglo European superiority; certain groups were denied and/or discouraged to enter Canada based on the belief that it would be too difficult to assimilate into British culture (Avery; 1995, Trebilcock and Kelley, 1998). Not only were white British people the most

desirable immigrants, their desirable traits translated into defining the ideal Canadian citizen (Berger, 1966; Stasiulis and Jhappan, 1995; Chan, 2005).

This highly racist exclusionary policy set the terms of desirability and undesirability within the Canadian population. The issue of race within Canadian immigration policy has shifted in meaning when looking at the goals related to populating the country. Because desirability first became equated with Britishness, many groups of people where discriminated against such as Jews, Central, Southern and Eastern Europeans and denied access to Canada. These ideas were for the most part supported and unchallenged by dominant society at that time (Roberts, 1988; Avery, 1995; Trebilcock and Kelley, 1998). However the use of racial categorization as a condition of immigration changed throughout different time periods. As less people from Britain immigrated to Canada, there was still the need to populate the country with a 'desirable' citizenry. Permanent immigration extended to people from European countries that were previously excluded based on race (Avery, 1995; Trebilcock and Kelley, 1998; Li, 2003). Thus, being included within the white category as well as having European ancestry set the normative characteristics of the nation and this was used as a way to exclude and deny people of colour from immigrating into the country (Trebilcock and Kelley, 1998; Razack, 2000; Thobani, 2000a; Thobani, 2007).

The explicit exclusion of 'undesirable' immigrants lasted until the mid 1960s. At the end of the 1960s there was the introduction of the new points system. The new immigration policy admitted many more immigrants who had previously been denied based on their country of origin. As the racial composition of the country was changing so too were the various needs and services for an increasingly diversifying country.

Would the country be defined in terms of its historical past, rooted in British and European traditions, or would new ways in defining the nation emerge? The next section seeks to address the ways in which multiculturalism, as a pluralistic model of citizenship, continues to racialize people maintaining a normative whiteness to the nation and creates differential types of belonging.

Multiculturalism

Multiculturalism is seen as an idea that creates new notions of nationhood and citizenship. Past ideas of nationhood which were based on shared tradition, culture and ways of life are now thought to be shifting. There is often the debate on whether Canada has a fixed identity or "Canadianness", or if it is just composed of a "mishmash of people from all over the place" (Howard-Hassmann, 1999). However, there is a sense that multiculturalism, in Canada gives all people space as well as creating a sense of belonging in the country. Some researchers who examine issues of multiculturalism believe that through multiculturalism notions of nationhood and citizenship have grown and shifted to include a great diversity of people belonging to the Canadian polity and not just those who have been included in the past (Kymlicka, 2003; Li, 2003).

Multiculturalism is thought to promote understanding, tolerance and support for cultural differences between people (Howard-Hassmann, 1999). A common perspective given by those who work within multiculturalism related government agencies is the idea that multiculturalism allows many people of different backgrounds to exist peacefully in one country and/or communities (Canadian Heritage, 2007). Diversity in Canada is often seen as something that unites the country; it is something that all Canadians can be proud of (Canadian Heritage, 2007).

However if multiculturalism is to be critically examined it should be done on a number of different fronts. Firstly, the idea of multiculturalism in Canada has been presented as an illusion to the global community. As discussed previously before the 1970s immigration was based on racial categories as the goal to fill the country with mostly white Europeans was desirable. However, during the 1970s as Canada was increasing its role within the international community, the racial categorization in immigration policy would not be looked upon favourably by bodies such as the United Nations (Thobani, 2007). As many countries regained their independence, free from colonialism, they also became international players in the world capitalist market. Canadian policy makers could not have an overtly racist immigration policy that asserted the superiority of European whiteness and be expected to deal with countries that they thought were inferior (Bolari and Li, 1988; Banerjee, 2000; Thobani, 2007). In this sense the Multiculturalism Act (1985) was endorsed by the state for a number of reasons one of which was the appeal it would have to the international community (Banerjee, 2000; Thobani, 2007). It is important to note that the Multicultural Act was brought about and endorsed by the state "only after the whiteness of the 'nation' and its 'citizens' had been consolidated by the policies of the previous era" (Thobani, 2007: 147). In this way the maintained whiteness of the nation was done by things such as the perpetuation of Canadian national stories rooted in British and French relations and exclusionary immigration policies up until 1967. As more immigrants of colour came to the country, their place in Canada was based on a normalized white state in which they were deemed a "cultural outsider" (Thobani, 2007). Multiculturalism then is defined in relation to a nation that has already been conceptualized as white and European. Any shift into new

notions of nationhood and belonging which include the diversity of the population cannot be separated from a past that has been conceptualized on shared racial characteristics.

Another way in which multiculturalism can be critically examined is on the focus and link between diversity and multiculturalism. As Canada becomes a more diverse country, with more immigrants having come from non-traditional source countries over the last few decades, multiculturalism is often used to explain the integration of immigrants into Canada (Harles, 1997; Kymlicka 2007). This means that there is space for immigrants no matter where they come from, to live where their traditions and cultural practices are tolerated. In the late 1980s and early 1990s a number of news sources, including periodicals and newspapers, pointed to the growing ethnic diversity in Toronto and the ability for the city to avoid racial tensions and to carry on harmoniously (Croucher, 1997; Howard-Hassmann, 1999).

However, the growing emphasis on diversity has only come after the increased level of immigrants from non-traditional source countries which included immigrants from countries other than England, France and other European countries (Li, 2003). In the late 1980s and early 1990s the discussion on diversity was becoming quite predominant within Canadian society. What needs to be questioned is in what way was Canada becoming increasingly 'diverse'? In reality the same amount of diversity existed in 1991 as in 1961, the only difference was that the ethnic and racial composition of immigrants was non-European in the early 1990s (Banerjee 2000; Abu-Laban and Gabriel, 2002; Li, 2003). So within Canadian society, diversity became equated with non-white immigration (Banerjee 2000; Abu-Laban and Gabriel, 2002; Li, 2003).

The way in which diversity is discussed often deals with how cultural norms and practices of racialized immigrants are incompatible with "Canadian" values and in turn challenges a predominantly white European state (Banerjee, 2000; Li, 2003). There are some people who identify multiculturalism as something that weakens national unity, where the "accommodation" of a diverse population threatens the traditions and the ways of life of the Canadian born population (Abu-Laban and Gabriel, 2002; Li, 2003). When Canada is seen as having a distinct culture, tradition and history any immigrant whose way of life differs from that of Canada is seen as disturbing the balance and dividing the country (Harles, 1997). When multiculturalism becomes identified as an idea that divides the country immigrants are often cast as people who must assimilate into the "Canadian" way of life. In this respect any tensions that do arise from differing cultural norms of the dominant Canadian society and that of another group the blame is placed on the 'other' group as they failed to adopt 'Canadian' values and practices. In this sense 'Canadian' values seem fixed, and the 'other' immigrant group's cultural norms are seen in direct contrast with that of those in Canadian society. In effect "diversity" which is only discussed in terms of non-white immigrant, takes on this exact meaning, thus constructing the immigrant as racialized without ever referring to race (Banerjee, 2000; Li, 2003). The way in which diversity and racialization is constructed in relation to immigration is hardly if ever, discussed in the mainstream or within government institutions or policies. Lack of discussion on this issue illustrates how institutions including those in government have failed to recognize the ways in which they have a role in marginalizing racialized groups (Croucher 1997; Barnes, 2001)

Multiculturalism and the way it operates in Canada can also be criticized for homogenizing and essentializing groups of people into cultures. Multiculturalism is primarily focused on the promotion of a symbolic type of ethnicity where emphasis is placed on clothes, type of food and entertainment, and not the politics or history of groups of people, is one way people become cast as outsiders of Canada (Croucher, 1997; Abu-Laban and Gabriel, 2002). People and their cultures become constructed in essentialist ways and conflated ways. As emphasis is placed on foods, clothing, and "song and dance", cultures are only represented and thus viewed in these restrictive ways and in very specific ways. Cultural groups are not perceived as being heterogeneous within a group of people that may be from the same country, it does not examine forms of patriarchy, and more importantly it does not recognize the political capacity of individuals. Essentially defining cultures and groups of people in terms of clothes and food, which fall into stereotypical categories, severely limits their ability to be considered a part of the political sphere in Canada (Bissoondath, 1994; Banerjee, 2000; Thobani, 2007). By essentializing cultures and making no mention to relations and systems of power found within cultures, cultures then become represented in "uncritical, de-materialized [and] de-politicized" ways (Banerjee, 2000: 37).

Critically examining multiculturalism reveals that those within elite positions within the government do not recognize the ways in which people become racialized. There are a number of ways that ideas of multiculturalism contribute to and exacerbate how immigrants are racialized and cast as 'others'. The state's supposed neutrality is questioned as it fails to recognize that there is differential access to resources to things such as housing and employment and thus favours those in dominant society who have

greater access to these resources (Abu-Laban and Gabriel, 2002). Often ethnic identity markers, such as food, clothing and entertainment, fall into the realm of the private sphere. If aspects of the culture are relegated to the private sphere and are left up to the same cultural group members, policy will inevitably favour the dominant group in society (Abu-Laban and Gabriel, 2002). This is problematic as there is little pressure on the state government to recognize its own or other institutional systems of power; policies that are not culturally neutral actually puts forth "the way for popular ethnicized or racialized conceptions of who belongs to the Canadian nation or who is 'Canadian' (e.g., being white and European and Christian)" (Abu-Laban and Gabriel, 2002: 119). While relegating issues of culture to the private sphere and leaving groups responsible for their own affairs on one hand, there exists a dominant population base on the other hand; thus policies are created in a way that addresses the needs of the dominant group and continually creating policy which addresses the needs of a dominant group perpetuates and establishes notions in Canada of who belongs to the nation by having their issues heard and met (Abu-Laban and Gabriel, 2002).

As the nation continues to be defined as a white European power, anything that differs from that is created in relation to this normative whiteness. For instance there tends to be an underlying assumption that non white people in Canada do not actually belong to the nation in the sense that they have no real claim to Canada, regardless of how long they have lived here or their families have lived here; however there is the generally uncontested belief that anyone who is white need not be questioned on their lineage to Canada (Banerjee, 2000). This is not to deny the immense diversity among

'white' groups[13], but to point out that when the nation is conceptualized as white and European, any 'white' group has the privilege of fitting within this definition, where the same does not hold true for immigrants and/or people of colour (Banerjee, 2000; Lewis, 2003). As discussed immigrants become synonymous with racialized people and this also becomes synonymous with specific ideas of culture and ethnicity and personal traits.

The role of multiculturalism has been used as a political tool by those in power to construct a tolerant, benevolent and pluralistic citizenry (Banerjee 2000; Thobani, 2007). It has been pointed out that multiculturalism has been used specifically as an ideological tool that is contradictory in nature. Multiculturalism is often used as a defining characteristic of the nation, while at the same time the definition of multiculturalism relies on differences of others. The ability to define groups as 'others' and to name "differences" illustrates the power white Canadians have in constructing the nation. I feel it necessary to quote at length Banerjee to illustrate the power in defining 'others':

> On the one hand, by our sheer presence we provided a central part of the distinct pluralist unity of Canadian nationhood; on the other hand this centrality is dependent on our 'difference', which denotes the power of definition that "Canadians" have over "others". In the ideology of multicultural nationhood, however, this difference is read in a power-neutral manner rather than as organized through class, gender and race (Banerjee, 2000: 96).

[13] Although there is great heterogeneity within the group 'white' which consists of people from all over the world, there is a privilege that comes with being grouped within the 'white' category and proclaiming ancestral heritage to another nation (Dyer, 1997; Lewis, 2004). That is to say, to have an external ascription in being identified as white and to have an assumed belonging to Canada while also being able to identify according to ancestral homeland is something that can be negotiated more easily for someone who is 'white'. Someone who is not white does not have the same privilege in having the ability to shift into one way of being identified or another or simultaneously. Although those who are all non-white are also not part of a homogenized group the tendency to be questioned on where they are from as well as being perceived as not having any lineage to Canada is common (Banerjee, 2000; Manning, 2003; Lewis, 2004; Browne, 2005; Thobani, 2007).

Ideas of multiculturalism then have been used to demonstrate how united Canada is where there is the ablility to accommodate various groups of people. In reality, however, this concept has been utilized to perpetuate the historical exclusion and the emphasis on race. This is but one process that constructs 'others' within the nation. The processing in 'othering' also involves the criminalization of people and the playing out of this can be seen within the contemporary discussion on security and bordering. Criminality is looked at as something that threatens the "process of replenishing and sustaining a secure population base" (Yukov, 2003: 345). However in the heightened insecurity of national borders and the perceived threats internally and externally, a number of screening processes have been implemented. The processes and policies have filtered out peoples in designated groups where securing the border "underscore[s] the way in which definitions of undesirable immigrants are highly racialized" (Yukove, 2003: 345). Examining contemporary issues of security will highlight the way racialized others are cast as security risks.

Security

The policing and monitoring of the borders from potential threats is vital to the security of the population. Ensuring the safety and security of the population in Canada is done through Citizenship and Immigration Canada's partnership with Canada Border Service Agency. Open dialogue between federal agencies as well as between nations is encouraged to protect Canadians. Many of the state actors are committed to an intense screening process of immigrants and refugees at the port of entry as well as "enforcement measures applicable to persons who are in Canada" (CIC, 1994: 55). Not only is security applicable to border patrol in keeping serious threats out, but the government along with

the number of actors in which they work with are committed to ensuring the immigration system is not abused. What can be known as the "gate keeping mechanisms" are criterions that effectively keep out people who are designated undesirable (Stasiulis and Bakan, 2005). By having strict control and enforcement policies, those who make it through are deserving of Canadian generosity, while those who sought to deceive the system are prevented from accessing resources and are removed from Canada (Sharma, 2001; Thobani, 2001). As purported by immigration agents and institutions, effective streamlining processes of removal as a result of strict enforcement measures ensures minimal abuse of the system (Jakubowski, 1997; Sharma, 2001; Thobani, 2001; Chan, 2005) .

What has been created in Canada over the last few decades is the increased concern of people who come into Canada and who are non-citizens (Pratt, 2005). Canadian legislation in immigration over the years has changed to become stricter, where powers to detain and deport have increased and the criteria for being inadmissible have increased (Simmons, 1998; Pratt, 2005). The IRPA (2001) has been criticized as anything but protectionary. The stipulations within the IRPA have made it increasingly difficult for some groups to come to Canada, work in Canada and eventually become a permanent resident or citizen of Canada (Sharma, 2001). In this way restrictive immigration policy in the name of security inevitable will affect bodies of colour as they are more likely to be perceived as suspicious and criminal (Jiwani, 2001; Banerjee, 2000; Thobani, 2007).

The issue of security and bordering needs to be critically examined. It is important to note that security and bordering of the nation is not only done through policies

implemented by Citizenship and Immigration Canada or Canada Border Service Agency. Within the realm of security there exists a wide range of institutions domestically and abroad that are endowed with certain enforcement powers (Bahdi, 2003). The area of international security and bordering requires the cooperation of many actors including governments of other nations, and international organizations (Bahdi, 2003). The most obvious example of cooperative international security is the 'war on terror'. Legislation that exists in a number of areas such as airport security and aircrafts include anti-terrorism clauses. For example, airport security and pilots have the discretion to remove people from the premises if some individuals are perceived as being "subject to higher scrutiny than other passengers" (Bahdi, 2003: 298). However the targeting of certain marginalized groups for crimes is often linked to times of "moral panic" where there is an increased concern over national security issues and includes situations such as terrorist threats (Tanovich, 2006). The instances of racial profiling and targeting of certain groups such as Arabs and Muslims from around the world have been well documented during times of 'moral panic' (Chan and Mirchandi, 2001; Bahdi, 2003; Yukov, 2003; Tanovich, 2006). Discretionary power becomes problematic for a number of reasons, especially when there is profiling for security risks. Bahdi writes extensively on access to justice issues. She states that the decision making process of those who are given discretionary powers to exclude people from the country needs to be problematized. Decisions cannot be made objectively by those who need to identify threats because of the racial undercurrents and stereotypes present within many spheres of society.

> When decision makers operate against a backdrop of ingrained, but often unconscious stereotypes, they are likely to filter and interpret facts or events through the lens of stereotypes rather than by making and individual and rational assessment based on the particular facts of a given

> case. Philosophers and thoughtful decision makers have long recognized that there is no pure gaze (Bahdi, 2003: 305).

Not only has the entry into Canada been stricter as immigration policy becomes an effective exclusionary tool, there have also been certain policies put in place in order to regulate those who do not have full citizenship status within the country (Browne, 2005). The creation of the permanent resident card is one example of an enforcement measure applicable to persons within Canada. Anyone who immigrates to Canada is required to apply for this card (CIC, 2007). Citizenship and Immigration Canada introduced this card to "increase border security, to improve the integrity of the immigration process; and to provide holders with secure proof of their permanent residence status when re-entering Canada on a commercial carrier (plane, train, boat, and bus)" (CIC, 2007). Bordering of the state depends on a fixed idea of who occupies legitimate spaces within the nation, and inevitably certain people are constructed as 'outsiders' of the nation (Thobani, 2000b; Browne, 2005). The existence of security measures such as the permanent resident card is an effective tool in functioning "as [an instrument] of inclusion and exclusion" (Browne, 2005: 425). This creates a sense of an insider-within status, where someone is let into the country through the 'correct' channels and are still regularized and monitored as if their place within Canada is conditional and suspect. The implementation of the border card becomes problematic for racialized bodies who immigrate to Canada. The top four source countries that have been represented over the last 3 years have been China, India, Philippeans and Pakistan (CIC, 2006). This means that there are many bodies of colour that are being monitored and made suspect upon their arrival. This is just one measure, among others already

mentioned, that creates an "outsider within status" where certain people are fixed as belonging to the nation; and others are not (Thobani, 2000b; Browne, 2005).

The Place of Race, Nationhood and Citizenship in Deportation Cases

The following section will review some case studies and statistics which highlight the ways in which deportation becomes a tool to deport undesirables from the country as well as assimilate immigrants into 'good'/ 'ideal' citizen. Reiterating the factors that were considered most significant is necessary as the examination of cases will be looked at below. Significant attention at deportation appeal hearings was placed on the chances of the appellant re-offending and their efforts at rehabilitation. It can be suggested then that the IAD places "the safety and security of the public as a top priority in determining whether the appellant should be deported or not" (Chan, 2005: 165). Following closely after an appellant's risk of re-offending and their efforts at rehabilitation is their level of establishment in Canada (i.e. family, community support, employment and any dependents) (Chan, 2005).

I will compare two cases, one from a non-white country and one from an Anglo-European country to highlight the ways in which IAD members interpret factors differently and often to the disadvantage of those from non-white countries. The first case is one of Mr. Balkissoon from Guyana. He resided in Canada for 11 years, and he was charged with committing a sexual assault against a female. His deportation appeal was rejected by the IAD member who stated "on a balance of probabilities, there is a likelihood that the appellant will re-offend and that the possibility of rehabilitation is poor" (IRB, 2001: 15). The IAD member went on to say Mr. Balkissoon's testimony was "contrived, self-serving and neither credible nor trustworthy" (IRB, 2001: 7). Mr.

Balkissoon was then read a definition of what apology and remorse meant according to the Oxford English dictionary. He was told his testimony was a

> thinly veiled attempt to minimize his own culpability by blaming the victim for his predicament. Remorse seems to imply a manifestation of one's innermost personal feelings respecting a wrong that has been done. In other words, it envisages more than a simple show of acknowledgement and regret for the offending deed. One indicator of remorse is whether the appellant has personally accepted that what he has done is wrong. The appellant has clearly not done so (IRB, 2001: 12).

The IAD member concludes with denying the appeal to Mr. Balkissoon where they are not "prepared to put the safety and well-being of Canadian society at any further risk. [The safety and well-being of Canadian society] weighs more heavily, than the concerns of Khemrajh Barsati Balkissoon" (IRB, 2001: 15).

Contrasting the above case with Mr. Edge from England, illustrates how the same issue of remorse is exposed however there is a differential outcome. Mr. Edge who came to Canada and resided as a permanent resident was appealing a deportation order based on criminal charges. The IAD member found that Mr. Edge

> expressed little remorse for his offences and denied that he was addicted to alcohol or drugs, although his consumption of alcohol was an important factor in some of the incidents leading to his convictions. [They] considered the best interests of the appellant's four Canadian-born children and determined that it would not be contrary to their best interests if the appellant were removed from Canada. He did not support the children financially and had limited contact with them (IRB, 2000: 4).

However the IAD ruled in staying the deportation order against Mr. Edge with the member stating: "having considered all the circumstances of this case, I have doubts as to whether the appellant will be able to control his anger, cease his involvement with alcohol and not re-offend. Nevertheless, he did testify that he is willing to try in order to remain in Canada" (IRB, 2000: 6). So although both cases involved appellants who were not viewed

as remorseful where Mr. Balkissoon's deportation appeal was denied based on this fact but Mr. Edge's was stayed, highlights the concerns over discretionary power.[14]

The case studies mentioned above on the deportation appeals process highlight how factors are interpreted by IAD members and what decisions are made. Their decisions and comments reveal that there are differential treatment of appellants from non-white countries and those from Anglo-European countries in terms of whose deportation appeals are stayed. Although it is not possible to go through each case that was examined by Chan there are the statistics she provides through her analysis (2005). Of the 107 dismissed appeals, 72 came from non-white countries (Chan, 2005). It is difficult to believe then that decisions of IAD members are objective and free from biases. As the member outlines there is a risk of re-offending for Mr. Edge, as well as Mr. Balkissoon. Coupled with the statistics on dismissed appeals from non-white countries, such discrepancies should be questioned. A deeper look into how immigrants of colour have been constructed as undesirable is necessary. A way that non-white subjects are constructed as being undesirable and undeserving can be traced to their historical exclusion or conditional acceptance into the country. Desirability then can be equated with who a 'good' immigrants is; a good immigrant becomes associated with whiteness where it is easier for someone who is white to be perceived as someone who "plays by the rules, [is] well assimilated, and [does] not abuse Canadian generosity" (Razack, 1999). The construction of the 'bad' immigrant is often associated with those who seem

[14]In the *RefLex* database, the case regarding Mr. Edge did not contain any information on his criminal charges, only that they had been brought about in a an alcohol and drug induced state. In this sense it is difficult for the cases of Mr. Edge and Mr. Balkissoon to be truly compared. Although the IAD decision makers look at a number of factors when making a decision, including the specificities of the offense, I have chosen to focus on the interpretation of 'remorse', the way it is looked at in each case, and the racial undercurrents that it seems to carry. It would be beneficial if future research that would be carried out in a similar way included similar cases, or cases that included specific information on the criminal conviction so that comparissions could be made on a number of different levels.

undesirable and unable to conform and less likely to rehabilitate. The history of immigration in Canada illustrates that 'bad' or 'undesirable' immigrants are synonymous with immigrants of colour who are not "amenable to reform" and are excluded from the country (Chan, 2005: 174).

The next two cases examine the reasons for stays on deportation appeal cases, and the differing reasons for staying a removal order between an appellant from Portugal and an appellant from Vietnam. Chan study reveals more appellants from Anglo-European countries that were granted stays were more likely to be viewed as having the capacity to turn into 'good' citizens. Those appellants from non-white countries were viewed as the exception and not the rule in having their deportation appeals stayed (Chan, 2005).

The first case involves Mr. Cota who came to Canada from Portugal at the age of 13. He was charged with sexually assaulting two family members. While in prison he enrolled in an anger management program and attended weekly counseling sessions. The IAD member stated that Mr. Cota understood "the roots of his criminal behaviour in his own victimization as a child" (IRB, 2007b). The fact that it had been 10 years since his last criminal conviction also worked in his favour. He was also supported by his wife and

> he was steadily employed and he and his wife had purchased a home. Noting that the appellant and his family had gone to great lengths to understand and cope with his problem and that he had demonstrated a significant potential for rehabilitation, and taking into account the considerable length of time the appellant had resided in Canada and his establishment here, the Appeal Division stayed the execution of the deportation order for four years (IRB, 2007b).

It is important to note that the IAD member considers the length of residence within the country; however this is usually not given that much weight (Dent, 2002; Chan, 2005) and is not given that much weight in many of the cases Chan (2005) examines.

This following case study outlines the comments of a dissenting member in a deportation appeals case which was stayed. Mr. Hoang was from Vietnam had a few criminal charges against him. One was from when he was 18 for trafficking narcotics and one for breaking and entering. He did make efforts to rehabilitate himself, however the IAD saw that "the degree of rehabilitation that is required must be linked to the seriousness of the offence and the number of convictions" (IRB, 2007c). Bail was denied to him, as the judge believed him to be a danger to the public; however he had not been convicted of these charges yet. The appellant was given a stay on his deportation order however a dissenting member expressed that "the appellant had displayed no signs of rehabilitation, that it was significant that he had been denied bail as a danger to the public, and that there was little evidence of establishment in Canada" (IRB, 2007c). So there were no favourable comments made about the efforts to rehabilitate or the possibility of rehabilitation for Mr. Hoang.

Decisions made at the IAD from this study reveal that although many immigrants were investigated for deportation many were granted stays and were allowed another chance at becoming a "good citizen" through rehabilitation (Chan: 2005: 172). The concept of rehabilitation and how it applies to appellants from non-white countries and Anglo-English countries within the deportation process differs. In cases where immigrants were from Anglo-English countries rehabilitation was looked upon more favourably with those on the IAD expressing "keenness to grant the appellant a second

chance" (Chan, 2005: 167). When appellants from non-white countries were granted a stay and it was favourable they were often "cast as the exception rather than the rule" (Chan, 2005: 168). Of the handful of deportation appeals that were allowed from appellants from Anglo-European countries (14), these were looked upon more favourably justifying their stay (Chan, 2005). As the discrepancies in the treatment of appellants by the IAD members reveal, decisions are not made objectively and becoming a 'good' citizen with an emphasis on rehabilitation carries racial connotations. The ability of rehabilitation holds differently for someone who is white and for someone who is non-white. Although the IAD made reference to rehabilitation, this idea can be extended further into the idea of "enforced assimilation" as the success of rehabilitation is observed by adhering to "mainstream notions of propriety, industry and family relations" (Chan, 2005: 173). The idea of enforced assimilation involves set notions of what Canada is and how one becomes a citizen within it. However what are the implications in creating an 'enforced assimilationist' goal within deportation? For example if a racialized person is given another chance and is successful in maintaining a job, being truthful and reporting for their parole, the chances of still being suspect and interrogated are great (Banerjee, 2000; Jiwani, 2001; Thobani, 2007). Drawing on the literature examined on multiculturalism completely assimilating into Canadian society, as to be free from any type of interrogation, would be difficult to do when racial subjects are often constructed as suspicious and relegated into the margins of society (Banerjee, 2000).

Also the issue of rehabilitation within deportation appeal hearing cases can be applied to the issue of security as well. The last case I will examine is that of Mr. White. This case is also a deportation appeal case however it is an appeal case which occured

after the appellant had violated his first stay of a deportation order. Mr. White, from Jamaica, was charged with a number of offenses during his stay which was granted for three years. At the deportation appeal hearing for these violations he

> explained that he was so frustrated with his employment and immigration problems that he went on a crime spree. A year after the stay was granted, he had failed to comply with any of the terms and conditions of the stay. He had continued to commit property-related criminal offences and had failed to appear in court or to report to immigration. He refused to moderate his behaviour even though he clearly understood that he was significantly diminishing his chances of remaining in Canada. He produced no evidence to support his claim that he was making efforts to rehabilitate himself. The likelihood of his reoffending was very high (IRB, 2007d).

Mr. White had neither community support, nor family members in Canada so his stay was cancelled and appeal was dismissed. As employment is looked at as a neutral factor that is considered during deportation appeals, the reality is that there exist many barriers, including racial barriers, in accessing employment within certain employment sectors. Not being able to get a job in the legitimate economy could consequently furthering criminal activity as shown with Mr. White. By furthering criminal activity out of frustration the likelihood of being classified as a security threat is great and the likelihood of having a deportation appeal dismissed will also increase. As employment is looked at as a neutral factor it is tied to social position and race and will inevitably influence the way in which deportation appeal cases are carried out to the detriment of racialized bodies.

From the analysis above two things can be concluded. One is that the decisions made by IAD members are not made objectively but have been shaped and influenced by racial ideologies that exist in many spheres of society. The second issues is that as immigration policies no longer explicitly refer to race or the racial desirability of

immigrants, deportation becomes a method in which exclusion and expulsion of those who are constructed as undesirable still maintains constructions of what the nation represents and who 'ideal' citizens are.

Conclusion

In this project I have attempted to highlight the issue of deportation within Canada. Specifically I have tried to highlight how deportation decision making process is not only about removing a person from the country but also creating a desirable citizenry. As such issues of nationhood and citizenship become apparent within the deportation process as the case studies highlight. The inclusion of Chan's article as a case study was important to this project as no other study has included IAD members' comments or reasoning for decisions made at hearings on deportation appeals. In the study statistics are provided and the tendency for appellants from non-white countries to have their deportation appeal hearing dismissed happened more often than those from Anglo-European countries. This project highlights the many ways in which racialized understandings of nationhood, citizenship and belonging are constructed and interpreted. As discussed, the way in which members of the IAD and how decisions are made can be interpreted as being shaped by racial ideologies. During IAD hearings, the racialized subject cannot be separated by the history and systems that have cast them as undesirable.

The literature review highlighted the history and construction of desirable citizens within the nation; it highlighted the way in which multiculturalism continues to racialize people; and how issues of security disproportionately affect bodies of colour. These three ideas are apparent when analyzing deportation appeal cases as those appellants who are perceived as more likely to reform are given another chance. There is a long history of

exclusion of people of colour based on their supposed inability of reformation (Roberts, 1988; Trebilcock and Kelley, 1998) and being judged on the likelihood of re-offending and rehabilitating holds differently for those who are racialized.

Racialized subjects are relegated to the margins of society within the nation where they are not conceived as a part of its definition as the history of their undesirability reveals. In this sense deportation can be seen as an extreme form of national definition. Removing 'undesirables' from the country inevitable creates notions of who 'deserves' to remain in Canada and become part of society. Not only are concepts of citizenry racialized, they are gendered as well (Cheng, 1999; Sharma, 2001; Sharma, 2006). And the links between the two should be explored in greater detail. As well I realize that a gendered, racial and class based analysis is vital to the idea of citizenry, notions of the state and belonging; however such an extensive scope surpasses the limitations of this project.

The continued process of deportation as a means to exclude and enforce assimilation does not mean that all racialized bodies will be deported. What this means though is that although 'undesirables' (i.e. racialized bodies) materially reside in the nation; they are subject to a differential type of citizenship where full membership into the symbolic nation cannot be attained and their residence always questioned (Banerjee, 2000; Thobani, 2000a; Thobani, 2007). How are systems to be changed as to not reproduce racial inequities? It is difficult to propose recommendations or suggestions to disrupt the racialized understandings of the nation and desirable citizens and the way it is reflected in the IAD decision making process. Racial understandings have been constructed over time, through different forms, and in many different spheres of society,

and it is important to continually examine and remain critical of these forms and be aware of the ways in which they affect peoples' lives.

But still change is not impossible. For instance the current work done by advocacy groups such as 'No One is Illegal' draws attention to unfair practices of deportation, detention and differential citizenship rights. Alliance building is instrumental in such advocacy movements (Wright, 2003). The IAD is but one institution that reproduces racial inequality so the larger goal becomes one of social change, where institutions are reorganized where these unfair practices will no longer exist. Drawing on the work of Thobani she emphasizes the importance in "challenging the racialized construction of the nation as bilingual and bicultural [as] necessary if the processes of radicalization are to be transformed in a socially just and progressive manner" (Thobani, 2000a: 52).

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