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Perilous Territory: Non-Status People in Canada

By Anna Shea

Abstract

The aim of this article is to explore the significance of non-status people for the idea and practice of Canadian citizenship. I argue that these individuals are central to constituting Canadian citizenship in three ways. First, the publicly exclusionary treatment of these types of people contributes to a climate of anxiety, in which security concerns are allowed to compromise citizens’ own civil liberties, which are held up as an integral part of Canadian citizenship. Second, even the most radical branches of non-status activism must appeal to a state-centric logic in order to obtain practical gains. In this way, their campaigns and arguments ultimately provide support for the existence of the very categories and institutions whose operation they are seeking to change. Third, by becoming visible subjects with demands for recognition and rights, these individuals and their struggles subvert the authority of the Canadian state, bring into relief the arbitrariness of previously self-evident categories, and expand the scope of Canadian citizenship.

Introduction

In present-day Canada, there are many thousands of people living in the precarious state of being ‘illegal’. Lacking official status, they fall into the spaces that Edward Said has called ‘beyond the frontier between “us” and the “outsiders”…the perilous territory of not-belonging’ (Said 2000: 177). Usually labelled ‘illegal immigrants’, ‘economic migrants’, or ‘bogus’ refugees by governments and the mainstream media, they and their allies prefer to employ terms such as ‘non-status’, ‘irregular’, ‘undocumented’, and ‘sans papiers’. As I will show, daily life for non-status people is extremely challenging, and there are very few avenues available to regularise their immigration status. Although the discrimination suffered by these types of people in the UK, Germany, Spain, Switzerland and France has been well-documented (Akers Chacon 2006; Barrett 2001; Gibney 2000; Laubenthal 2007; McNevin 2006), the situation of non-status people in Canada has not received the same amount of attention from academic authors. Fortunately, however, organisations formed by, and allied with, these people have discussed their challenges in depth.

The aim of this article is to explore the significance of non-status people for the idea and practice of Canadian citizenship. I argue that these individuals are central to constituting Canadian citizenship in three ways. First, the publicly exclusionary treatment of these types of people contributes to a climate of anxiety, in which security concerns are allowed to compromise citizens’ own civil liberties, which are held up as an integral part of Canadian citizenship. Second, even the most radical branches of non-status activism must appeal to a state-centric logic in order to obtain practical gains. In this way, their campaigns and arguments ultimately provide support for the existence of the very categories and institutions whose operation they are seeking to change. Third, by becoming visible subjects with demands for recognition and rights, these

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1 The author warmly thanks Roderick Macdonald and Sean Mills for commenting on early drafts of this article.

2 The important task of undertaking a comparative international study of how non-status people shape the ways in which citizenship is conceptualised and practised is beyond the scope of this article.
individuals and their struggles subvert the authority of the Canadian state, bring into relief the arbitrariness of previously self-evident categories, and expand the scope of Canadian citizenship.

I proceed in the following way: after examining Canada’s migration regime, by which I mean the rules and policies that govern the entrance and residence of non-citizens, I examine how a human being becomes ‘illegal’ in Canada, as well as the daily challenges and institutional dangers faced by those living without status. I then study their political struggles, focusing on four key groups: the STATUS Campaign, Comité d’action des sans statut algériens, Solidarity Across Borders, and No One Is Illegal. Finally, drawing on the insights of scholars such as Hannah Arendt, Giorgio Agamben, Engin Isin, Peter Nyers and James Tully, I illustrate the centrality of non-status people to the current discourses and practices of Canadian citizenship.

Settling in Canada

Canada, the population of which is mainly comprised of immigrants and their descendants, is commonly portrayed as having a progressive migration regime. Many people would agree that ‘Canada has long been known as an immigrant-friendly nation with inviting policies allowing persons into the country’ (Kruger et al. 2004: 72). In 1986, the United Nations High Commissioner for Refugees (UNHCR) awarded the people of Canada the Nansen Medal for the country’s contributions to refugee protection (Aitken 2001). Moreover, popular media is replete with stories of migrants who successfully integrated into the political community. For example, The Province recently reported on the case of Mira Hussain, whose move to Canada liberated her from an abusive husband. In an interview with the newspaper, she asserted: ‘I love the freedom that I have and the freedom I have to express myself… Canada stands for humanity’ (cited in Shearon 2009).

Although Canada is generally thought of as an immigrant-friendly state, for many asylum seekers and low-skilled would-be entrants from the developing world, it is in fact extremely difficult to settle in the country. In a world where millions of people live on less than one dollar per day, the cost of an airplane ticket, together with immigration application fees totalling hundreds of dollars, constitute a significant and often insurmountable barrier. As some scholars have pointed out, these sums are comparable to a modern head-tax, with a disproportionately high impact on people from the global South (Carasco et al. 2007). Furthermore, Canada’s points-based immigration system, which prioritises the young, healthy and educated, also discriminates against people from poorer countries, and in particular against women, who often have restricted access to healthcare and training opportunities (Carasco et al. 2007).

Moreover, for individuals seeking asylum, Canadian policies make it difficult to reach Canada’s borders, where they would have the right to apply for refugee status. For example, Canada imposes sanctions on airlines that carry passengers without documentation and requires visas from people originating from countries with many refugee applicants (the case of Mexico being a recent example³). And, while Canada generally refrains from interdicting ships once they are within its jurisdiction, on several occasions it has deflected ships carrying potential refugee claimants before they approach Canadian waters (Macklin 2004-05). Moreover, the Canada-United States Safe Third Country Agreement, which requires most refugee claimants to seek asylum in whichever of the two countries in which they first arrived, is another method by which the state has drastically reduced the volume of refugee applications. Although Canada is far from unique in

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³ Although Mexico is not typically seen as a refugee-producing country globally, individuals fleeing organised crime (from which the state appears unable or unwilling to protect them) often seek asylum in Canada.
implementing these types of non-arrival policies, one prominent scholar has called the country a ‘pioneer in instruments of interdiction’ (Macklin 2004-05: 378-379).

Furthermore, the tribunal responsible for adjudicating immigration and refugee claims – the Immigration and Refugee Board (IRB) – has been the subject of persuasive critiques of its institutional capacity and lack of impartiality. For instance, one study based partly on interviews with Board members, suggested that the IRB’s legitimacy and credibility have been damaged by a lack of consensus about the way it operates (Crépeau and Nakache 2008). Furthermore, a former chair of the IRB, Jean-Guy Fleury, informed a parliamentary committee that the tremendous backlog of refugee claims, which was increasing by as much as 1,000 each month in 2007, had created ‘a crisis at the IRB that is very serious, and requires immediate action’ (Standing Committee on Citizenship and Immigration 2007: 28). Perhaps of greater concern for migrant rights is the potential partiality of the tribunal’s members. Sean Rehaag, who obtained IRB data through an Access to Information Request, examined nearly 10,000 refugee claim decisions made in 2006. Certain adjudicators granted refugee status to nearly every applicant, whereas others virtually never granted refugee status (Rehaag 2007-08). Further research would be required to determine the precise source of the challenges faced by the IRB, but it is clear that the tribunal is urgently in need of reform.

Curiously, arguments in favour of increasingly punitive treatment of migrants are often couched in the language of refugee protection. For example, an editor of the Toronto Star asserts that ‘[w]hen you waste time and resources processing refugee claims from (admittedly imperfect) democracies like Israel, Hungary, the Czech Republic and the U.S., you undermine confidence at home and encourage confidence-artists abroad. Bogus claimants impose a huge expense on the taxpayer and bog down the process — burdening legitimate refugees whose cases typically take 18 months’ (Cohn 2009). This line of argumentation suggests that the idea of Canada as a migrant-friendly country is deeply entrenched.

Becoming and Being Illegal

How does a person become ‘illegal'? I understand this term to mean the absence of official permission to be in Canada. Estimates of the total non-status population in Canada range from 50,000 to 500,000, of which approximately half live in Toronto (Dauvergne 2008; Portuguese-Canadian National Congress 2009; STATUS Campaign 2004). The underlying reasons for a lack of status are manifold. For instance, a person may have entered the country illegally. Or the difficulties associated with settling in Canada, as previously described, may compel individuals to enter legally but stay in the country without maintaining an official status. Some people without status are those whose refugee claims were rejected and against whom a departure or deportation order has been issued. Other individuals are prevented from having status because they lack appropriate identification documents. Another group consists of people who entered Canada on a valid student or temporary worker visa, but whose status has since expired (Status Campaign 2004). Given these different modes of becoming ‘illegal’, I have chosen to employ the general term ‘non-status’, which avoids the specificity of designations such as irregular or undocumented migrants. Moreover, ‘non-status’ appears to be the term most commonly employed by pro-immigrant activists in Canada.

Regardless of the reasons why they lack status, these individuals all face myriad challenges in their day-to-day lives. They have no right to work, to go to school, or to access health or social services. The Portuguese-Canadian National Congress (2009) observes that, even though non-

4 A similar trope also appears to have emerged in the UK (see Gibney 2008).
status people pay taxes, contribute to their communities, and work in key sectors of the Canadian economy, they are denied access to healthcare, education, police protection, food banks, and housing. Even the Canadian children of people living without status suffer from discrimination. At the Just Solutions Legal Clinic in Montreal, for example, the Canadian child of one non-status client had been denied access to both public and private schools for over three years because of status requirements for parents in Quebec's education regime. Seeking legal assistance to obtain access to essential services, as this client did, is hazardous. As a STATUS Coalition publication explains, 'whenever a person without status attempts to access a social service, they face a risk that a government employee – such as a police officer, public housing official, or school principal – will report them to immigration authorities' (STATUS Campaign 2004: 6).

Interviews with non-status people convey the frustration and despair often felt by individuals in these circumstances. A non-status person by the name of Soumya Boussouf asserted that lacking status affects every aspect of one's life. Despite this, she said that, as an individual without status, 'you are working; you have friends; you go out; you try to have a life despite all the barriers, despite everything – which is just normal, just human. You are not going to stop living your life...What I am saying here is that it really does affect your life in every possible way' (cited in Lowry and Nyers 2003). Some people without status assert that they 'live like ghosts' (cited in STATUS Campaign 2004: 6). The situation of another woman, interviewed by the Canadian Council for Refugees, illustrates the range of difficulties that can be associated with a lack of official status. Tina Mandeya fled Zimbabwe in 2001, leaving behind her two-year old son because she could not afford a second airplane ticket. In Canada, her application for asylum was refused, and in 2005 she applied for humanitarian and compassionate consideration for herself and her child. In 2007 she had still not received a response regarding the status of her application. Because she was not a permanent resident, she could not sponsor her son to move to Canada; nor did she receive full health coverage. Moreover, the temporary work permit she used had to be renewed annually, at a cost of $150 per year (Canadian Council for Refugees et al. 2007).

Exacerbating these hardships is their apparent immutability, because most individuals are unable to regularise their status. In Canada, the admission, terms of residence, removal and status of non-citizens are governed by the Immigration and Refugee Protection Act (IRPA), which came into effect in 2002. The relevant government department is Citizenship and Immigration Canada (CIC). The IRPA provides only one realistic avenue for status legalisation, which is the Humanitarian and Compassionate (H&C) application process. This process is problematic in many ways. The relevant IRPA provision (s.25) is a discretionary one, under which the Minister of Citizenship and Immigration

\[\ldots\text{may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected (Immigration and Refugee Protection Act 2001).}\]

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5 The passage of Bill C-11 in 2010 will result in several important changes to Canada's immigration and refugee regime, notably the long-delayed implementation of the Refugee Appeal Division. Because this legislation has not yet fully come into effect, it would be premature to discuss its provisions at this point. Likewise, Bill C-31 would also have dramatic effects on the country's migration regime, but at the time of writing it had not yet passed into law.

6 Another related process is the Pre-Removal Risk Assessment (PRRA), which is available to certain categories of migrants against whom a valid deportation order has been issued. It will not be discussed in this article because it is inaccessible to the vast majority of migrants; as Citizenship and Immigration Canada reports, the PRRA acceptance rate is extremely low – in 2006, there was a 2.1% acceptance rate (Citizenship and Immigration Canada 2008).
CIC does not provide figures on H&C decisions, but acceptance rates have been estimated at less than 20% (Buahene and Jurigova 2008). Although there is no limit to the number of H&C applications that one person can make, the prohibitive processing fees ($550 per adult and $150 per child), as well as the risks associated with calling the authorities’ attention to one’s presence in Canada, tend to discourage many migrants from embarking upon this process. Moreover, paralleling the backlog within the IRB is an increasingly slow processing of H&C applications; according to CIC, individuals who submitted their applications in mid-2012 could expect to wait 20 months (Citizenship and Immigration Canada 2012). This can result in individuals being deported before an immigration officer has made a decision about their H&C application. There are also serious concerns about the quality of H&C decision-making; Janet Dench of the Canadian Council for Refugees asserts that, for humanitarian applications, ‘similar cases get different answers’ (cited in Standing Committee on Citizenship and Immigration 2007: 19).

Detention and Deportation

Beyond the challenges associated with fulfilling the daily needs required to survive, an individual who lacks status also faces the serious risk of detention and deportation. Detention occurs frequently: in one year (2008-9), the agency responsible for detentions – the Canadian Border Services Agency (CBSA) – detained 14,362 individuals (CBSA 2010). According to Anna Pratt (2005), individuals held in detention fit the general profile of the non-status migrant: people who worked without a visa, people who overstayed their visas, and refused refugee applicants. Non-status people are detained in provincial correctional facilities as well as in immigration holding centres such as the Celebrity Inn in Mississauga, Ontario, and the Immigration Prevention Centre (its official title) in Laval, Quebec. But, as the United Nations Working Group on Arbitrary Detention reported, detainees in certain provinces are automatically sent to maximum security prisons. Furthermore, the Working Group noted that in some cases, detainees who demanded better treatment or detention conditions were punished by being transferred to criminal facilities (UN Working Group on Arbitrary Detention 2005).

The power to detain and release, which is granted by the IRPA and its regulations, is highly and problematically discretionary. While some grounds of detention may be justifiable, the sweeping authority wielded by immigration officers creates the risk of this power being abused. The United Nations Working Group on Arbitrary Detention remarked that it was ‘concerned… about several aspects of [Canadian] immigration law, which give the immigration officers wide discretion in detaining aliens and limit the review of decisions ordering detention’ (UN Working Group on Arbitrary Detention 2005: 22). For instance, under s. 55(2)b of the IRPA, an officer who is ‘not satisfied of the identity of the foreign national in the course of any procedure under this Act’ can arrest and detain foreign nationals without a warrant (Immigration and Refugee Protection Act 2001). There is no requirement that there be reasonable or objective grounds for the lack of satisfaction with the person’s identity – an officer’s subjective belief is sufficient. Even more vague is the language used in s. 55(3)a, according to which a non-citizen can be detained on entry into the country if an officer ‘considers it necessary to do so in order for the examination to be completed’ (Immigration and Refugee Protection Act 2001). While on rare occasions there may be legitimate justifications for the confinement of some non-status people, such as substantiated
concerns about criminality, the highly discretionary nature of these decisions can lead to arbitrary detention.

The main purpose of detention is to pave the way for deportation. As explained to a House of Commons Standing Committee on Citizenship and Immigration, ‘the intention for the non-criminal is that detention be as short as possible. In most cases it really is to facilitate removal, so there is not a justification for a long detention’ (cited in Pratt 2005: 27). In the Supreme Court of Canada’s decision in *Kindler*, Justice La Forest confirmed that ‘[t]he Government has the right and duty to keep out and to expel aliens from this country if it considers it advisable to do so’ (*Kindler v. Canada* 1991: para. 133). This holding was later applied in *Chiarelli v. Canada (Minister of Employment & Immigration)*, which constitutionalised the common law principle that non-citizens have no right to stay in Canada (MacIntosh 2003).

The responsibility for carrying out deportations is held by the CBSA, which deported 13,249 people in 2008-09 (CBSA 2010). However, the agency does not always succeed in expelling the individuals who have been the subject of a deportation order. In 2008, Canada’s Auditor General estimated the presence of 63,000 immigrants with either enforceable removal orders or outstanding immigration warrants for removal. Of those, 41,000 persons’ whereabouts were unknown (Office of the Auditor General of Canada 2008).

The Canadian approach to detention and deportation should be understood in a global context, in which non-status migrants are often even more vulnerable to abusive detention or deportation practices. In Europe, for example, there were over one hundred immigrant detention centres as of 2000 (Hayter 2000). In the UK, Mary Bosworth argues that the state, when regulating migration and managing non-status people, increasingly relies on norms and policies inspired by the criminal justice system (Bosworth 2008). Ironically, the polity founded as a British penal colony – Australia – sends ships carrying refugee claimants and people without status to state-funded detention centres in the Pacific Ocean (Pratt 2005). And in the United States in 2001, even before the *US PATRIOT Act* was enacted, immigration detention centres held an average of 20,000 people each day (Pratt 2005). In other words, compared to many countries, Canada has a much less punitive approach to regulating the flows of people across its border. In fact, several aspects of its general migration regime, such as its refugee status determination procedure, have been admired internationally (e.g. Centre for Social Justice 2008). However, these relatively positive attributes should not shield the Canadian immigration and refugee regime from critique.

**Struggles of Non-Status People**

In reaction to this punitive treatment at the hands of the state, people living without status in Canada and their allied organisations have acted to improve their situation and lobby for systemic change. Presently, there are many groups providing logistical, practical and moral support to non-status migrants. After providing an overview of the most important organisations, I will examine the normative discourses and practical strategies that they employ. In order to highlight the particularities of Canadian developments, I will occasionally refer to influential campaigns elsewhere.

One important Canadian group is the STATUS Coalition, based in Toronto. It was formed in 2001 when a group of non-status migrants in the construction industry allied themselves with several legal and community organisations (Wright 2003). Their aim was to achieve a regularisation of their status by lobbying the government, which was in the process of revising the 1976 *Immigration Act*. The Coalition also produced a comprehensive overview of regularisation
campaigns in Canada between 1960 and 2004, which was based on historical research, interviews with community activists and focus group discussions (STATUS Campaign 2004).

Perhaps the best known campaign in Canada was the Montreal-based Comité d’action des sans statut algériens (CASS). Peter Nyers has studied this movement in depth. As he notes, the sans statut were Algerians whose asylum applications had been rejected and who faced imminent deportation following the end of the moratorium on removals to Algeria (Nyers 2003). Strikingly, the moratorium was lifted one day after the Department of Foreign Affairs issued an advisory to Canadian citizens, counselling them to avoid all travel to the country (Nyers 2003). In other words, Algeria was deemed safe enough for Algerian refugees to inhabit, but too dangerous for Canadians to visit. The CASS campaign called for the government to implement three changes: put a stop to the deportations, place Algeria back on the moratorium list, and legalise the situation of all Algerians without status. Eventually, the final item was broadened to request the regularisation of all people who lacked status (Wright 2003). Much of the campaign revolved around the case of the Bourouisa family, whose flight to sanctuary at the Union United Church in Montreal received a great deal of media attention (Nyers 2003).

In response to the activities of CASS, on 30 October 2002, the Canadian and Quebec immigration ministers announced the creation of the ‘Joint Procedures for the Processing of the Applications of Certain Algerian Nationals’. This regularisation programme allowed non-status Algerians in Quebec to apply for permanent residence from within Canada. Of the approximately 1,000 individuals eligible for this process, most were eventually granted status, but 174 went underground or left the country (Nyers 2003). As a Round Table Report on the campaign observed, the federal and provincial governments’ concession was not a full victory for CASS. For instance, it excluded Algerians living in other provinces, as well as people with any sort of criminal record (Lowry and Nyers 2003).

CASS was one of the principal supporters of another key organisation, Solidarity Across Borders (SAB). This network was formed in the summer of 2003. Its main demands are the cessation of deportations and detention as well as the regularisation of all non-status individuals (Solidarity Across Borders 2010). SAB clearly draws inspiration from the well-developed no borders movements in Europe (Nyers 2003). One of the group’s principal achievements was the organisation of a march from Montreal to Ottawa in 2005, in order to demand a comprehensive regularisation programme for all non-status people in Canada. Aaron Lakoff, one of the organisers of the march, described SAB as follows: ‘For every cop that has thrown someone in detention, for every boss that has exploited an undocumented worker, and for every bureaucrat politician that has refused to listen to the cries for justice of whole communities, Solidarity Across Borders is fighting back’ (Lakoff 2005). SAB continues to lobby to end deportations and regularise the situation of non-status migrants. In July 2009, for example, a SAB rally attempted to prevent the deportation of several members of a family which had been living in Montreal for eight years (Solidarity Across Borders 2009).

Closely connected with SAB is the No One Is Illegal (NOII) campaign, which currently has groups based in Montreal, Ottawa, Toronto and Vancouver. Similarly named organisations have also emerged across Europe: Kein Mensch ist illegal in Germany, Ingen Manniska Ar Illegal in Sweden, and Zaden Czlowiek Nie Jest Nielegalny in Poland, among others (Dauvergne 2008). The Canadian incarnations of these types of groups tend to have a broad social justice agenda, which differentiates them from organisations that focus principally on status regularisation. The Toronto group, for instance, describes itself in the following way:
We believe that granting citizenship to a privileged few is part of racist immigration and border policies designed to exploit and marginalise migrants. We work to oppose these policies, as well as the international economic policies that create the conditions of poverty and war that force migration. (No One Is Illegal – Toronto n.d.).

NOII not only engages in these types of long-term political struggles, but also fulfils practical needs. The group offers free workshops to migrants of all kinds, and the Toronto website contains several documents in Spanish, Portuguese and English which detail how to interact with immigration officials as well as migrants’ legal rights upon arrest or detention, and provide lists of organisations providing legal services. The Toronto branch also collaborated on a successful ‘Don’t Ask, Don’t Tell’ campaign, which resulted in the Toronto Community Resource Guide for Non-Status Immigrants (Social Planning Toronto 2007). This online resource provides a list of essential services that are available to non-status people across the city. On the Vancouver group’s website, NOII offers legal information for protestors, guidance for asylum seekers requiring temporary health insurance, and assistance to migrant women in situations of domestic violence (No One Is Illegal – Vancouver n.d.).

Despite the philosophical and tactical differences among the STATUS Campaign, CASS, Solidarity Across Borders, and NOII, they have several attributes in common. The first is their demand that the Canadian government allow all migrants to achieve official status. The very name of No One Is Illegal embodies the belief that, as an adjective applied to a person, the term illegal is both nonsensical and unethical. As a flyer distributed during the march organised by NOII contended, ‘there is no such thing as an “illegal” human being, only unjust laws and illegitimate governments’ (No One Is Illegal – Montreal 2005). These groups assert that no person should be compelled to live underground, without access to basic services and in constant fear of being detained or deported. According to the STATUS Campaign, although past regularisation programmes in Canada have never been complete amnesties, since governments have always imposed criteria for eligibility, ‘these are not reasons to give up on the idea of a regularisation programme for non-status immigrants’ (STATUS Campaign 2004: 8).

Another similarity among the movements is a reliance on the tactic of providing sanctuary, an ancient custom in which a community or religious group offers refuge to fugitives from the law. This tradition, argues Peter Nyers, is ‘rooted in the idea of a “sacred space” of protection, free from governmental power’ (Nyers 2003: 1085). Although no legal right to sanctuary exists, in general an institution’s choice to offer sanctuary is respected by Canadian authorities (Standing Committee on Citizenship and Immigration 2007). One scholar has documented 28 Canadian sanctuary incidents between 1984 and 2002, in which over 200 migrants received protection (Lippert 2004). Churches and Sikh temples have provided refuge to non-status people, with priority generally given to refused refugee applicants. In the case of CASS, it was the occupation of a church by a family of non-status Algerians that galvanised the Quebec and Canadian governments into action. As another example, Solidarity Across Borders organised marches and fundraising events in support of Abdelkader Belaouni, a blind Algerian man who, facing deportation, lived in a Montreal church between January 2006 and October 2009 (Committee to Support Abdelkader Belaouni n.d.). The impressive grassroots campaign that he organised from his place of sanctuary resulted in his being granted permanent resident status.

A final parallel among these diverse campaigns is a general approach that fosters the visibility of non-status people. The STATUS Coalition’s efforts, for example, have made public these individuals’ insights and personal stories, while simultaneously keeping their names confidential in order to protect their safety. The tactics of CASS focused on awareness-raising among the general public. Mohammed Cherfi of CASS explained that, when the group distributed thousands of
flyers at a St-Jean Baptiste celebration, the objective was not to impart detailed information, but simply to make people aware of the struggle: ‘at least they know that non-status people exist as a result of this activity’ (cited in Lowry and Nyers 2003: 69). SAB’s seven-day march from Montreal to Ottawa was motivated by a similar goal of focusing attention on a previously unnoticed community. As explained in the pamphlet distributed during the march: ‘From the immigrant neighbourhoods of Montreal, to Parliament Hill in Ottawa, we refuse to be invisible and silenced’ (No One Is Illegal – Montreal 2005). In a dramatic episode at the Vancouver Airport in December 2007, a group of about 1,500 protestors, organised principally by No One Is Illegal – Vancouver, prevented the deportation of Laibar Singh, a quadriplegic man from India (No One Is Illegal – Vancouver 2007). Although after several months the government eventually did deport Mr. Singh, this protest succeeded in raising awareness about non-status people’s vulnerability to state oppression.

These types of visibility tactics were likely informed by a movement that emerged in France in the mid-1990s. In 1996, approximately three hundred African people living in France without official documentation, who called themselves the Sans Papiers, openly declared their presence by occupying a church in Paris. Madjiguène Cissé, one of the principal organisers of the event, explains the ethical and practical reasons for visibility:

A person who is underground is someone who hides, who conceals themselves, and if you conceal yourself it must be because after all you have something to hide... We have made ourselves visible to say that we are here, to say that we are not in hiding but we’re just human beings (Cissé 2003: 43-44).

Although the Sans Papiers were targeted by violent police actions and evictions, their campaign ultimately brought about a set of 1997 French laws that regularised the status of 78,000 individuals (McNevin 2006).

**Theorising Political Communities and their Outsiders**

Non-status people have responded to state policies and practices in a range of creative ways. But what do these struggles mean? Not a great deal, according to dominant understandings of the phenomenon called illegal migration. Since non-status people are understood as inhabiting a space beyond the frontiers of the political community, their actions and characteristics are usually represented as irrelevant to the full members of the polity. But, as I will discuss, a range of authors have reached insights that shed light on non-status people’s importance for ideas and practices of Canadian citizenship.

According to several scholars, those who lack a political community are not merely unequal individuals; they are, on one level, apolitical beings. For instance, Hannah Arendt has argued that individuals who are compelled to live outside the public domain ‘have lost all distinctive political qualities and have become human beings and nothing else’ (Arendt 1973: 302). This explains why, she asserts,

the conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human. The world found nothing sacred in the abstract nakedness of being human (Arendt 1973: 299).
In her analysis of the loss of legal rights flowing from citizenship, she affirms that these human beings – who are set beyond the sight of the state – thereby cease to be rights-bearers (although she discusses the notion of a ‘right to have rights’) (Arendt 1973). This idea of the simply human was further developed by Giorgio Agamben. Following Arendt, he asserts that there is no autonomous space within the political space of the nation-state for this utterly abstract human being (Agamben 1995).

But although the ‘simply human’ may be outside the realm of the political, s/he is far from irrelevant to the political community’s formation. In Homo Sacer: Sovereign Power and Bare Life, Agamben argues that bare human life is actually central to the foundation of sovereign power. As he explains, a given group seeks to create and maintain its inner coherence through the method of banishment (Agamben 1998). An individual who has been ‘banned’ (to use Agamben’s term) is not passively left behind, but rather actively abandoned: ‘exposed and threatened on the threshold in which… outside and inside become indistinguishable’ (Agamben 1998: 28). This dynamic relationship between inside and outside is foundational to the constitution of a political community. Similarly, in Being Political: Genealogies of Citizenship, Engin Isin asserts that otherness is what makes citizenship possible (Isin 2002). The category that Isin calls the ‘alterity of citizenship’, does not predate citizenship; it is citizenship itself that brings it into being (Isin 2002: 4).

There is an intimate and sometimes contradictory connection between the realm of the political and the actions of those who belong to it. According to Isin, being a citizen is the basis for being political: ‘Being political, among all other ways of being, means to constitute oneself simultaneously with and against others as an agent capable of judgment about what is just and unjust’ (Isin 2002: x). Put another way, it entails being an active and creative participant in a political project. Betty Honig deepens this insight when she identifies the recurring metaphor of the foreigner in Western political thought’s foundational texts (Honig 2001). In her analysis, this is a paradoxical figure; although foreigners are perceived as reinvigorating democratic practices by redistributing rights and privileges, they are simultaneously portrayed as unsettling them. Honig writes: “Their” admirable hard work and boundless acquisition puts “us” out of jobs. “Their” good, reinvigorative communities also look like fragmentary ethnic enclaves. “Their” traditional family values threaten to overturn our still new and fragile gains in gender equality’ (Honig 2001: 76). In a manner similar to Isin, Honig understands citizenship not simply as a state-granted legal status, but as a practice in which people hold states accountable for how they allocate goods, powers, rights, freedoms, privileges and justice (Honig 2001). Likewise, James Tully argues that citizenship is not only an institutional status, but also a negotiated practice. This conceptual difference can be understood by comparing civil citizenship, which confers the legal right to participate in the public sphere, with civic citizenship, which is brought into being by individuals actively critiquing the institutional rule of law (Tully 2008).

**Meaning through the Margins**

Drawing on these understandings of how political communities are constituted, I argue that non-status people are central to the idea and practice of Canadian citizenship in three respects.

First, their public exclusion from the political community contributes to a climate of anxiety, in which security concerns are allowed to compromise citizens’ own civil liberties. The state’s responses to purported threats demonstrate to citizens that they require protection and that the state is fulfilling that need. In this respect, it is no accident that the detention and deportation of non-status people are practices that often occur openly. These processes, which severely undermine the rights of non-citizens, are permitted to continue and intensify in the name of
national security. The rhetoric of the CBSA and CIC relies heavily on the idea that Canada needs to be protected from individuals – such as non-status people – who are portrayed as not belonging. At work is a sinister discursive slippage between the categories of alleged illegal immigration, so-called bogus refugees, organised crime and terrorism. For instance, a government source alleges that ‘[b]y detaining and removing those who would enter Canada illegally or who pose a threat to Canadians, the Canada Border Services Agency contributes to the safety and security of Canadians’ (Office of the Auditor General of Canada 2008: 1). In other words, individuals who lack official status pose an actual danger to citizens’ well-being. The solution, according to the logic of the state, is to accept a trade-off; increased discretionary power for state agents and diminished civil liberties for individuals. Since these freedoms are understood as crucial aspects of Canadian citizenship, the generalised narrowing of their exercise has an important effect on what it means to be a citizen in this country.

Beyond permitting the state to further shore up control over the political community’s outsiders as well as its insiders, there is a second way in which non-status people are significant for the idea and practice of Canadian citizenship. In their responses to state repression, these individuals and their organisations are forced into a position that ultimately supports the existence of the categories and practices whose operations they seek to disrupt. Campaigns for status regularisation focus on lobbying governments, and this appeal to state institutions serves to legitimise their authority. Furthermore, the campaigns themselves often revolve around particular non-status people who can be presented as non-threatening and particularly deserving: the family long-resident in Canada, the blind man, the quadriplegic individual, the young single mother. One virtually never hears about the typical non-status migrant: the young, able-bodied male. Clearly, these campaigns cannot be condemned for helping to reinforce the status quo, for they are responding as best they can to a dilemma faced by any political struggle seeking to change a system of power. Within a particular community, as Arendt and Agamben so clearly articulated, there is no political space for the simply human – a sans statut. Non-status people must make themselves visible and audible, for it is the only way for them to cease being simply human and thereby become political beings.

There is a third sense in which non-status people affect the idea and practice of Canadian citizenship, and this is the challenge that they present to the current configuration of political power in Canada. To begin with, their campaigns often defy the state’s authority to decide who belongs in this country. The commonly employed technique of providing sanctuary is one important example. State officials are reluctant to deport or detain people who have reached sanctuary, and the resulting creation of an alternative normative order serves to highlight the vulnerabilities of state power. As some authors have argued, the idea of sanctuary as a sacred zone is a direct challenge to the principle of state sovereignty (Nyers 2003). Other tactics, particularly those that prevent deportations, also highlight and make public the gaps in the power of the state to regulate the individuals on its territory. Moreover, the idea that no person is illegal is highly problematic for the legitimacy of a state-centric world order. As Nyers suggests, it undermines ‘the entire architecture of sovereignty, all its borders, locks and doors’ (Nyers 2003: 1089). If everyone is legal, then the authority of state agents who seek to brand some human beings as illegal is thereby undermined. Finally, when non-status Algerians succeeded in pushing the government to create a regularisation programme, in some sense they subverted the parliamentary system itself by entirely bypassing the IRPA.

Furthermore, non-status activism helps unsettle several commonly accepted and foundational categories. For example, once these individuals are openly announcing their presence on Canadian soil, they declare that they are not outsiders but are in fact present within the political community. And, by asking for recognition and protection from the state, the distinction between
the categories of legal and illegal is harder to maintain. Similarly, by focusing campaigns on their efforts to become gainfully employed, support their families, and access basic health and social services, they call into question the separation between so-called deserving and undeserving migrants. In sum, their collective actions reveal the falseness of dichotomies that are usually held up as natural and non-political: outside/inside, illegal/legal and undeserving/deserving.

Finally, the actions and campaigns of non-status people help to expand the scope of Canadian citizenship itself. Citizens are full members of a given political community, whereas non-status individuals are usually conceptualised as outsiders. As Nyers argues, when these outsiders speak up and take action, ‘[t]hey provoke fundamental questions about politics: Who speaks? Who counts? Who belongs? Who can express themselves politically? In short, who can be political?’ (Nyers 2003: 1089). By marching openly to Canada’s national capital and by distributing pamphlets on Quebec’s national holiday, these migrants are seizing the right to speak in a political forum. The vision of citizenship embodied in these struggles is based not on birthplace, but on participation in the political life of the community. In doing so, Tully might say, non-status people are pushing back the boundaries of civil citizenship, and putting into practice the notion of civic citizenship.

Conclusion

Despite being marginalised, non-status people are far from marginal. Public manifestations of non-status people’s exclusion or expulsion help the Canadian state create an anxious citizenry, consenting to the restriction of freedoms in the name of national security. Moreover, in their need to make practical gains in their campaigns, non-status people must appeal to the state, which further shored up its legitimacy. Yet, at the same time, the tactics deployed by non-status people call into question the authority of the sovereign state as well as the naturalness of various categories of insiders and outsiders. By virtue of these various activities, non-status people expand the political realm and challenge the current criteria for membership in Canada’s political community.

To return to the words of Edward Said, Canada is a perilous territory for non-status people. They are vulnerable to a range of abusive practices, not least of which is the institutionalised violence inherent in detention and deportation. At the same time, these individuals pose a danger to Canada. But they are threatening not in the way that one might suppose, but rather because ‘[a]ll domination is arbitrary and its success depends on its ability to conceal its arbitrariness’ (Isin 2002: 276). Non-status activists are perilous because, in the end, there is no satisfactory answer to the question they pose: why shouldn’t we belong too?

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