

A Long-Standing Canadian Tradition:
Citizenship Revocation and Second-Class Citizenship
under the Liberals, 1993-2006

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I. Introduction

The meaning and practice of Canadian citizenship has long been the subject of considerable academic inquiry and political mobilization. In the process, questions of equality and identity – and the ways in which they shape the experience of belonging in Canada – have been pursued along several dimensions. Thus, Canadian citizenship has been examined from the perspective of aboriginal peoples, ethnocultural and ethnoracial minorities, francophones, gays and lesbians, and women, among others, as well as along class, regional, and religious lines. Such investigations into what it means to be Canadian can be “understood in broad terms [as] touching on the definition of the political community and the conditions of inclusion – and exclusion,”¹ and they suggest that relations between citizens and the state, and between citizens themselves, are often fraught with tension.

This paper seeks to add to these investigations into the meaning of being Canadian by examining it along the Canadian-born/foreign-born divide in the context of citizenship revocation. As a country of immigration, Canada has always accepted the principle that foreigners can become members of the national political community. Since Confederation, Canada has put into place procedures whereby foreign-born individuals can apply to become naturalized Canadians² – most recently under the *1977 Citizenship Act*. Of course, Canadian history is replete with examples of how unevenly this principle has been applied, as some have been welcomed more warmly than others, and still others have been excluded completely. Thus, although all Canadians, whether born into such status or not, are often said to be equal as citizens, the precise content of such equality and the mechanisms through which it is secured have always been contested.

This has certainly been true with respect to citizenship revocation. While the Canadian-born are generally understood to possess an absolute right to retain their Canadian citizenship, this is seldom the case for naturalized Canadians. The rights-based foundations of the equality of all citizens to remain citizens, and their implications for the meaning of Canadian citizenship, are explored in this paper through an examination of recent efforts to alter the revocation process in Canada, both before and after September 11, 2001. Since 1993, the government has repeatedly attempted to pass a new citizenship law, and in doing so the power to remove Canadian citizenship from foreign-born Canadians has become an ever more contentious political issue. Through a review of the extensive debates that have taken place in Parliament it is possible to trace how proponents and opponents of revocation have justified their positions, with two main objectives in mind. First, to determine whether the government’s proposals would decrease or increase rights-based disparities between Canadian-born and foreign-born Canadian citizens, and, second, to discover how the government’s approach changed after September 11. In pursuit of these ends, the analysis unfolds in three stages.

In Section II, the conceptual landscape is cleared by placing this inquiry within the context of the literature on Canadian citizenship regimes, which provides useful signposts for the study of how

¹ Jane Jenson and Martin Papillon, *The Changing Boundaries of Citizenship: A Review and a Research Agenda* (Ottawa: Canadian Policy Research Networks, April 2001), 3.

² Terms such as Canadians, Canadian citizens, and Canadian citizenship are used in this paper, even when Canadian nationals or British subjects, for example, would be more accurate in historical terms.

Canadian-born and foreign-born Canadians relate to one another and the state. In Section III, some historical background on revocation and the rights of citizens from Confederation to the early 1990s is provided, which addresses a gap in the literature and allows for a broader assessment of patterns of continuity and change to be made in the examination of more recent developments. In Section IV, efforts to replace the *1977 Citizenship Act* since 1993 are reviewed both in terms of their content and the debates that they have sparked, which paves the way for the pursuit of the two objectives noted above. The paper closes in Section V with some considerations as to the implications of these findings for the meaning of being Canadian at the outset of the 21st century.

II. Canadian Citizenship Regimes

For the vast majority of immigrants and refugees in Canada, obtaining Canadian citizenship is a momentous occasion. For the former, it is often the culmination of a process that leaves individuals and their families in a state of considerable uncertainty for half a decade or more; for the latter, it can resolve the condition of statelessness that defines their refugee status. As Canadian citizens, the foreign-born come to possess political rights that had previously been denied to them. Most particularly, under the *1982 Charter of Rights and Freedoms*, they gain “the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein” (s.3), and “the right to enter, remain in, and leave, Canada” (s.6.1). Moreover, under the *1977 Citizenship Act*, their basic equality with Canadian-born Canadian citizens is affirmed.³ Thus, naturalization ostensibly incorporates non-citizens as equal members of the national political community.

In reality, however, citizenship often does not simply distinguish those who possess it from those who do not, but also creates different categories of citizens, an idea captured by the terms “first-class” and “second-class” citizenship. Most importantly, despite the putative equality of all Canadians, only the foreign-born can have their Canadian citizenship revoked. As a result, Canadian citizenship is recognized as an absolute right for those who obtain it at birth, while it is treated as a privilege for those who acquire it through naturalization. This difference is not intrinsic to the concept of citizenship but rather is a political construct, and as such it reflects a particular understanding of what Canadian citizenship means and how it ought to be structured – it reflects, in short, a particular citizenship regime.

According to Jenson and Phillips, “the concept of citizenship regime denotes the institutional arrangements, rules, and understandings that guide and shape concurrent policy decisions and expenditures of states, problem definitions by states and citizens, and claims-making by citizens.”⁴ Because they both reflect and shape prevailing ideas concerning what it means to be a member of a national community, as well as the appropriate relations between citizens and the state, between citizens themselves, and between citizens and non-citizens, such regimes evolve through periods of relative instability and stability. Moreover, they are often linked to larger

³ “A Canadian citizen, whether or not he is born in Canada, is entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities” that extend from Canadian citizenship (s.6).

⁴ Jane Jenson and Susan D. Phillips, “Redesigning the Canadian Citizenship Regime: Remaking the Institutions of Representation,” in C. Crouch, K. Eder, and D. Tambini (eds.), *Citizenship, Markets, and the State* (Oxford: Oxford University Press, 2001), 72.

narratives and processes of national development along economic, political, and socio-cultural lines. In focusing attention on the ideational and structural contexts within which citizenship politics unfolds, the concept offers a useful analytical framework with which to study how the definition of being Canadian is articulated, debated, and even changed.

Much of the literature on Canadian citizenship regimes focuses on *social* citizenship, especially on the negative effects of “Continental integration and the ascendancy of neo-liberalism” on the social pact that came to define relations between citizens and the state after the Second World War.⁵ This reconfiguration has – since at least the 1980s – resulted in a reduction in access for certain categories of citizens to state agencies dedicated to addressing their needs, a questioning of the representative quality of advocacy groups, a decrease in the state-led provision of public services, and a shift away from social justice and pan-Canadian norms in social programming.⁶ In turning to the evolution and meaning of *political* citizenship in Canada, this paper seeks to provide an additional dimension to this prevailing understanding of the Canadian citizenship regime.

According to Jenson, citizenship regimes consist of four elements that influence the overall boundaries of citizenship, each of which is relevant to the study of citizenship revocation. The first involves the mix of responsibilities that are assumed by state and non-state institutions, while the second concerns the “formal recognition of particular rights ... [that may mark distinctions between] those entitled to full citizenship status and those who only, in effect, hold second-class citizenship.”⁷ The third relates to the “democratic rules of the game” that determine the accessibility of the state⁸ and that influence the legitimacy and types of civic participation and claims-making that occur, while the fourth revolves around the mechanisms and sentiments of national belonging. As will be seen in the pages that follow, the politics of citizenship revocation can be understood along all of these dimensions.

Although there is relatively little published work on this aspect of naturalization in Canada, a pattern has been identified in studies of efforts to replace the *1977 Citizenship Act* at the end of the 20th century. Galloway writes that, historically, “undue political attention has been paid to promoting Canadian sovereignty, to building a strong and unified nation, and to generating a rich and unique heritage in which members can take pride,” which “has contributed to the undervaluation of the interests of noncitizens, and also of some individual citizens.”⁹ While he sees the *Charter* as having narrowed the rights-based gaps between citizens and non-citizens in important respects, he also apprehends a new nationalistic urge in the government’s efforts to redefine the terms of naturalization. Similarly, in a review of recent developments, Wong

⁵ Janine Brodie, “Citizenship and Solidarity: Reflections on the Canadian Way,” *Citizenship Studies*, Volume 6, Number 4 (2002), 378.

⁶ See, for example, Janine Brodie, “Three Stories of Canadian Citizenship,” in R. Adamoski, D. Chunn and R. Menzies (eds.), *Constructing Canadian Citizenship: Historical Readings* (Peterborough: Broadview Press, 2002), 43-66, and Jenson and Phillips *op cit.*, 69-89.

⁷ Jane Jenson, “Social Citizenship in 21st Century Canada: Challenges and Options” [The 2001 Tomlin Lecture, University of Saskatchewan] (Regina, February 5, 2001), 4.

⁸ *Ibid.*

⁹ David Galloway, “The Dilemmas of Canadian Citizenship Law,” in T.A. Aleinikoff and D. Klusmeyer (eds.), *From Migrants to Citizens: Membership in a Changing World* (Washington D.C.: Carnegie Endowment for International Peace, 2000), 93.

concludes that “The citizenship regime in Canada is shifting to an exclusive one focusing on the soil, allegiance and loyalty.”¹⁰ This response has been prompted, both authors argue, by the increasing social diversity and transnationalism that have resulted from Canadian immigration policies since the 1970s, which challenge the authority of the state to define belonging in Canada. The question of how recent government proposals would affect the equality rights of Canadian citizens as citizens provides one means of assessing these conclusions.

Another argument in Canadian citizenship studies concerns the effects of September 11, with the consensus being that “there is little doubt that this event has become a politically significant marker.”¹¹ Indeed, the rise to prominence of a national security agenda in response to terrorism has more closely circumscribed the civil rights of citizens and non-citizens alike in Canada, which in turn has affected the meaning of Canadian citizenship.¹² Thus, as Stasiulis observes, there is a need to explore how “the various facets of citizenship [are] being transformed by complex and diversely spatialized practices, including the new forms of governance that securitize and respond to manufactured and felt insecurities in populations.”¹³ The question of whether changes are apparent in the government’s revocation proposals before and after September 11 offers one way of providing a fuller account of this phenomenon.

In pursuit of such ends, this paper relies upon the concept of the “universe of political discourse” – based on those “shared set[s] of interconnected premises which make sense of many social relations and their related practices”¹⁴ – to structure the analysis. The politics of citizenship revocation are examined, then, through the efforts of various state and non-state actors to define which societal paradigm will become hegemonic, will operate as the basic template off which policy decisions are made.¹⁵ Thus, the analysis explores how different understandings of the rights associated with citizenship shape the politics that surrounds the question of citizenship

¹⁰ Lloyd L. Wong, “Home away from home? Transnationalism and the Canadian citizenship regime,” in P. Kennedy and V. Roudometof (eds.), *Communities across Borders: New immigrants and transnational cultures* (London and New York: Routledge, 2002), 181.

¹¹ Yasmeen Abu-Laban, “Liberalism, Multiculturalism and the Problem of Essentialism,” *Citizenship Studies*, Volume 6, Number 4 (2002), 461.

¹² This point was made in the House of Commons by Judy Wasylycia-Leis (NDP): “The recent case of Maher Arar, a 32-year-old Canadian citizen arrested during a stopover at New York’s Kennedy airport on September 26 as he was travelling to Montreal from Tunisia and deported to Syria, brought home just how fragile our citizenship rights have become. That the confidence in Canadian citizenship has weakened to the point that one of our foremost authors, Rohinton Mistry, who was born in India, felt compelled to cancel engagements in the United States because of continued harassment by United States airport security authorities is unacceptable.” Canada, *House of Commons Debates* [hereafter *HCD*] (October 31, 2002), 1145.

¹³ Daiva Stasiulis, “Hybrid Citizenship and What’s Left,” *Citizenship Studies*, Volume 8, Number 3 (September 2004), 296.

¹⁴ Jane Jenson, “Paradigms and Political Discourse: Protective Legislation in France and the United States Before 1914,” *Canadian Journal of Political Science*, Volume 22, Number 2 (1989), 239. “Every paradigm contains a view of human nature, a definition of basic and proper forms of social relations among equals and among those in relationships of hierarchy, and specification of relations among institutions as well as a stipulation of the role of such institutions.”

¹⁵ “The political struggle that occurs within the universe of political discourse sets the boundaries of what are considered to be legitimate claims and relevant actors, determines the possibilities for alliances and advocacy strategies, and limits what are deemed by policy makers to be feasible policy options.” Susan D. Phillips, “Discourse, Identity, and Voice: Feminist Contributions to Policy Studies,” in L. Dobuzinskis, M. Howlett, and D. Laycock (eds.), *Policy Studies in Canada: The State of the Art* (Toronto: University of Toronto Press, 1996), 257.

revocation, in terms of the policies that are pursued, the reactions that they prompt, and the sense of belonging that they generate. In short, if “Canadians and their governments choose how they will live together, and they ... make significant and consequential choices about responsibility, community, governing and inclusion in their actions every day,”¹⁶ then one way to appreciate how this occurs is by studying the politics of citizenship revocation.

III. Citizenship Revocation and Citizenship Equality in Canada, 1867-1993

The issue of removing people from Canada has played an important part in the country’s history (at least as far back as the expulsion of the Acadians in the 18th century), and has affected the foreign-born in two main ways. First, there is the practice of deportation, which is employed against non-citizens who have been found to contravene the country’s immigration laws concerning admission and residence.¹⁷ Second, there is the practice of citizenship revocation, which involves the denaturalization of foreign-born Canadians (often as a precursor to their deportation). Although the ways in which each has been and continues to be undertaken provides insight into the meaning of the liberal-democratic character of Canada, revocation speaks quite directly to the question of the meaning of Canadian citizenship. Most particularly, it allows for an examination of the extent to which Canadian-born and foreign-born Canadians are recognized as being equal as citizens. In this section, a review of the history of revocation in Canada from Confederation to the early 1990s is presented in order to provide an adequate context for the study of more recent developments undertaken in Section IV.

The Roots of Revocation (1867-1945): The principle of the equality of all citizens has always been reflected in Canadian naturalization law, although – as will be seen below – it has never been absolute. For example, the *1868 Naturalization Act* ensured that naturalized immigrants would “thenceforth enjoy and may transmit all the rights and capacities which a natural born subject of Her Majesty can enjoy or transmit” (s.3). In the *Revised Statutes* of 1906, the nature of this equality was even more extensively described.¹⁸ When the *1914 Naturalization Act* was passed, however, such equality was explicitly qualified by rendering it “subject to the provisions of this Act” (s.3), a phrase that remained on the statute books until 1977. Nonetheless, in introducing the 1914 legislation on behalf of the Conservative government, Minister of Justice and Attorney General Charles J. Doherty claimed that it aimed “to do away with, as far as possible, distinctions between natural born subjects and naturalized British subjects.”¹⁹

Despite such professions, Canadian-born and foreign-born Canadian citizens have always been distinguishable by the possibility of citizenship revocation. While the former have largely been secure in their Canadian citizenship, the removal of the Canadian status of the latter has been possible since the *1868 Naturalization Act*, which provided that “Any person willfully swearing

¹⁶ Jenson, *op cit*.

¹⁷ With the exception of Barbara Roberts’ *Whence They Came: Deportation from Canada 1900-1935* (Ottawa: University of Ottawa Press, 1988), the subject of deportation in Canada has received scant attention. See also, Matthew J. Gibney and Randall Hansen, “Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom,” *New Issues in Refugee Research – Working Paper Number 77* (Geneva: United Nations High Commission for Refugees, February 2003).

¹⁸ A naturalized citizen “shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject within Canada” (s.24).

¹⁹ Canada, *HCD* (May 22, 1914), 4124.

falsely, or making any false affirmation under this Act, ...shall, on conviction ... forfeit all the privileges or advantages which he or she would otherwise ... have been entitled to under this Act” (s.13). In order to clarify the process by which this could occur, and thereby render it a more effective tool, the *1914 Naturalization Act* simply authorized revocation “Where it appears to the Secretary of State of Canada that a certificate of naturalization ... has been obtained by false representations or fraud” (s.7). This could also result in the loss of Canadian citizenship for the individual’s minor children (s.12).

Although it is difficult to determine how frequently these powers were used during the half century after Confederation, they were increased dramatically at the end of the First World War, and not simply due to the presence of Canadian citizens who had been born in “enemy” countries. A second major political justification for the change stemmed from the heightened anxiety on the part of the Conservative government with respect to foreign-born labour activists.²⁰ There was also a more general concern about foreign-born individuals engaging in criminal activities. In response, the *1919 Naturalization Act* established a new revocation process and expanded the grounds on which it could be employed. Thus, a foreign-born Canadian could henceforth have their citizenship revoked following a report of the Secretary of State to the Governor in Council. Aside from the grounds of “false representation or fraud, or by concealment of material circumstances,” it could also occur if a person was determined to have “shown himself by act or speech to be disaffected or disloyal to His Majesty” (s.7.1). Citizenship could also be removed for communicating or trading with an enemy, not being “of good character at the date of the grant of the certificate,” living outside the British Dominions for a period of seven years, or being a citizen of a state at war with Britain (s.7.2). Before a report was submitted, the Secretary of State was obliged in some cases to notify the accused so that they could ask that the Governor in Council appoint a commission to examine their case (s.7.3). In certain circumstances, the citizenship of the individual’s wife and minor children could also be removed (s.8.1). In 1920, the government added the power to revoke the citizenship of those who had received criminal sentences of a certain severity after having been naturalized (7.2.c).

Such relatively unfettered ministerial power provoked considerable criticism when the legislation was debated in the House. For example, Jacques Bureau (Liberal) argued that revocation should not be decided by politicians but by the courts, which he felt would be more impartial, and he went so far as to suggest that it was better to try people in Canada for their crimes than to revoke their citizenship and deport them.²¹ More generally, he worried that in the heightened climate of fear following the 1919 Winnipeg General Strike, the lives of innocent foreign-born citizens might be ruined as a result of false accusations.²² For his part, Ernest Lapointe (Liberal) also found the provisions “open to grave objection” and similarly worried that they “may cause serious harm.”²³ He complained that terms such as “disaffected” and “disloyal” were too vague, that the accused might never receive the notice sent by the Secretary of State, and that the new provisions could be applied retroactively. Samuel Jacobs (Liberal) protested that the changes

²⁰ See, for example, Donald Avery, *‘Dangerous Foreigners’ – European Immigrant Workers and Labour Radicalism in Canada, 1896-1932* (Toronto: McClelland and Stewart Limited, 1979).

²¹ “It is far better, if that man is so dangerous that he ought not to live in Canada or any other part of the British Empire, that you should jail him.” Canada, *HCD* (June 21, 1919), 3818.

²² Canada, *HCD* (June 26, 1919), 4119.

²³ *Ibid.*, 4117.

would permit revocation in the case of an immigrant whose country of origin refused to relinquish their previous citizenship. More generally, the powers under consideration, Jacobs argued, created “fair weather” citizens, whose status could be revoked at the will of the government.²⁴

The government responded by asserting that the measures had to be implemented in order to remain in conformity with British naturalization law. For his part, Solicitor General Hugh Guthrie tried to focus the debate on the objectives of the bill rather than the procedures that would be employed in attaining them, and claimed in any case that “the language is capable of reasonable interpretation and it will be reasonably interpreted.”²⁵ Nonetheless, he made it known that revocation would be targeted against labour activists, saying, “I for one do not desire to protect them; I would make them liable to this law.”²⁶ Although it is not clear whether these powers were immediately put to such use, Kelly and Trebilcock observe that “Between 1930 and 1936, there were 461 denaturalization revocations, more than half of which occurred in 1932, following [a] crackdown on the Communist Party.”²⁷ As with the country’s deportation provisions in general, then, revocation could be employed for express political purposes.²⁸ This did not, however, garner much debate in Parliament until the end of the Second World War, when the Liberal government sought to “repatriate” Japanese-Canadians, whether naturalized or Canadian-born.²⁹ Eventually, it was forced to scale back its plans, both as a result of pressure from a growing number of Canadians and – more specifically – Japanese-Canadians, but also because the policy stood in stark contrast to the equality of all citizens that was being promoted with the passage of the *1946 Canadian Citizenship Act*.

Maintaining a Traditional Inequality (1945-74): The language employed by Secretary of State Paul Martin in discussing the new law was nothing if not lofty.³⁰ The equality of all citizens that he envisioned, however, would remain constrained by the power of revocation. Indeed, the *1946 Canadian Citizenship Act* retained the old revocation process, and while some grounds were removed (such as the criminality provision), others were added or altered. Thus, citizenship could henceforth be revoked if a person had been convicted of treason or sedition in Canada (s.21), or if they had remained outside the country for six years (s.20). As well, the individual’s wife or minor children could still lose their Canadian citizenship (s.23). Thus, while it is to some extent true that the creation of a specifically national citizenship meant that “The personal

²⁴ *Ibid.*, 4126.

²⁵ *Ibid.*, 4121. “I think every safeguard is offered to the holder of the certificate, and he can feel reasonably sure that his certificate will not be revoked without good grounds.” (4122)

²⁶ *Ibid.*, 4124.

²⁷ Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998), 227.

²⁸ See, for example, Avery and Roberts, *op cit*.

²⁹ At the time, the government argued that it possessed the authority to “deport or exile or banish aliens or subjects or citizens of the state and to deprive them of citizenship.” Both the Supreme Court and the Judicial Committee of the Privy Council vindicated this position on the grounds that the government could do whatever it liked under the *War Measures Act* and *Transitional Powers Act*. See Ken Adachi, *The Enemy That Never Was* (Toronto: McClelland and Stewart Limited, 1976), Chapter 13.

³⁰ “Our new Canadians bring to this country much that is rich and good, and in Canada they find a new way of life and new hope for the future. They should all be made to feel that they, like the rest of us, are citizens of a great country, guardians of proud traditions and trustees of all that is best in life for generations of Canadians yet to be.” Canada, *HCD* (October 22, 1945), 1337.

allegiance a subject owed to a sovereign was replaced by a set of common bonds with other citizens who together now constituted the sovereign,”³¹ revocation maintained a significant distinction between the status of the Canadian-born and the foreign-born.

A number of MPs expressed concerns about this situation. On the one hand, Frank E. Jaenicke (CCF) felt that all Canadians should be subject to the revocation provisions, whether born in the country or not.³² In contrast, Anthony Hlynka (Social Credit) was one of a number of parliamentarians who argued that they should only apply to naturalized Canadians in cases of treason – “nothing positive can be accomplished by having two sets of laws in Canada, one for Canadian-born citizens and the other for naturalized Canadians,” he said.³³ Such criticisms did nothing to change the outlook of the government, however, and its proposals survived parliamentary scrutiny intact. Indeed, during the next few years, revocation rarely arose as a subject of debate. For example, no questions were asked when the government revealed that 457 people had had their citizenship revoked between 1947-49.³⁴

By the 1950s, however, the issue of the equality of all citizens began to take on greater significance. For example, when the Liberal government moved to amend the revocation provisions in 1951, Alistair Stewart (CCF) suggested that an appeal to the Supreme Court should be added to the process, which would help in “restoring some of the equality for all which we desire.”³⁵ By the end of the decade, the Conservative government made known its own misgivings with respect to revocation.³⁶ When legislation was brought forth in 1958 (to make revocation applicable only in cases of treason or fraud), however, it did not go far enough for some, such as Leon D. Cresthol (Liberal), who complained that “we are actually creating a cleavage between two classes of citizens.”³⁷ Indeed, over the next few years, Jack Pickersgill (Liberal) repeatedly (and unsuccessfully) introduced legislation to provide for the equality of all citizens, and when his party was returned to government in 1963 a commitment to that end was made in the Speech from the Throne. It would be more than a decade, however, before the Liberals made any changes to the *1946 Canadian Citizenship Act*, and when they did, they maintained the type of inequality against which they had fought while in Opposition.

A More Limited Inequality (1974-93): There were, nonetheless, important alterations proposed when new citizenship legislation was introduced on October 10, 1974. As before, the minister would be obliged under C-20 to give notice to any individual against whom a report was to be made to the Governor in Council in favour of revoking their citizenship (s.17.1). Now, however, the sole grounds on which this could occur was if the minister was “satisfied” that an individual had “obtained citizenship ...by false representation or fraud or by *knowingly* concealing material circumstances” that would have rendered them ineligible (s.9.2). As opposed to a commission appointed by the Governor in Council in certain instances, moreover, all cases would be referred

³¹ Galloway, *op cit.*, 97.

³² Canada, *HCD* (April 5, 1946), 588.

³³ *Ibid.*, 590.

³⁴ See Canada, *HCD* (April 21, 1950), 1765. By 1956, the total had risen to 1,506; see Canada, *HCD* (December 13, 1957), 2366.

³⁵ Canada, *HCD* (April 3, 1951), 1575.

³⁶ See, for example, the comments of Acting Immigration Minister E. Davie Fulton, in Canada, *HCD* (January 30, 1958), 4054.

³⁷ Canada, *HCD* (September 5, 1958), 4694.

to the Federal Court. It was expressly noted, however, that its decision could not be appealed – either by the individual or the government (s.17.3). Thus, while it would become more difficult to revoke a person’s citizenship, the Governor in Council would have a relatively free hand when its arguments were upheld by the Federal Court.

In defense of C-20, Secretary of State James H. Faulkner firmly placed the government’s intentions within the context of securing the rights of non-citizens in the naturalization process, stressing that “one of the prime factors in determining the nature of this new citizenship legislation has been the government’s concern for those individuals who will be most directly affected by it, namely, the potential citizens of this country.”³⁸ For example, rather than being a “discretionary act on the part of the minister,” naturalization would henceforth be “a qualified right ... upon compliance with certain specific statutory requirements.”³⁹ Moreover, he repeatedly stressed that the bill was rooted in a desire to promote equality and diminish the discretionary powers of the government, declaring that if the process was not founded in “the most fundamental traditions of this country” – the rule of law – then a double standard would arise between Canadian-born and foreign-born Canadians.⁴⁰ This commitment was reflected in the proposal that “A Canadian citizen, whether or not he is born in Canada, is entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities” that extend from Canadian citizenship (s.5.5).

As the legislation wound its way through Parliament, the question of revocation was scarcely broached. Indeed, the only specific intervention on the subject came from Crawford Douglas (Liberal), who argued that if Canadian citizenship was so valuable, then it ought to be possible to remove it from the Canadian-born should they commit, for example, a treasonous act.⁴¹ There were, however, certain due process concerns that arose that were analogous to those being expressed with respect to the government’s new immigration legislation being debated at about the same time.⁴² For example, one common criticism was that while C-20 allowed individuals to appeal a rejection of their application for citizenship, no such recourse was to be provided in cases where the Governor in Council determined that the individual in question posed a security risk (s.18).⁴³ As will be seen in the next section, this would become an especially contentious issue when the government sought to introduce similar restrictions with respect to revocation in 2002.

³⁸ Canada, *HCD* (May 21, 1976), 5983.

³⁹ *Ibid.*

⁴⁰ Canada, *Minutes and Proceedings and Evidence of the Standing Committee on Broadcasting, Films and Assistance to the Arts* [hereafter *SCBFAA*], Number 35 (February 26, 1976), 29.

⁴¹ *Ibid.*, 30.

⁴² Indeed, much of the history of Canadian immigration and refugee policy from the 1960s onwards revolves around the question of providing adequate due process protections for non-citizens.

⁴³ Indeed, Cyril Symes (NDP) attempted to amend C-20 during the committee hearings to allow for some independent review of the government’s case in such matters; see Canada, *SCBFAA*, Number 42 (March 16, 1976), and Number 44 (March 23, 1976). During a similar effort in the House, he argued that it “seems to be a denial of natural justice. It is a denial to the applicant to be given clearly the reasons for rejecting his citizenship and the opportunity to put forth counter-argument.” Canada, *HCD* (April 13, 1976), 12798. For his part, Senator Eugene Forsey (Liberal) expressed strong reservations about the proposed process but did not attempt to alter it when it went to committee in the Senate; see Canada, *Proceedings of the Standing Committee on Foreign Affairs*, Number 34 (May 13, 1976), 19-22.

It was not long after the passage of the *1977 Citizenship Act*, however, before revocation came up for public debate, only this time it was in the context of efforts to remove suspected Nazi war criminals from Canada. For example, it arose in 1979 with a Private Members' Bill introduced by Robert Kaplan (Liberal) that aimed to provide the government with the authority to revoke the citizenship of individuals who had been convicted of war crimes, including those who were Canadian-born.⁴⁴ It was not until the election of the Conservative government in 1983, however, that the issue really took hold, with the appointment in February 1985 of a Commission of Inquiry on War Criminals under retired Chief Justice of the Quebec Superior Court Jules Deschênes. In his report, Deschênes recommended that the law "be amended to make participation in war crimes a specific ground for revocation of citizenship."⁴⁵ In response, the government maintained that "The problem of war criminals should, wherever possible, be dealt with here in Canada and every case must be resolved in a manner consistent with Canadian standards of law and evidence."⁴⁶ Thus, it chose "to amend the Criminal Code to give Canadian courts jurisdiction to try in Canada war crimes or crimes against humanity" in a manner that would "preserve the fundamental rights and freedoms of persons in Canada,"⁴⁷ which was accomplished in September 1987.

Of the first five cases pursued against foreign-born Canadians between 1987 and 1992, four involved prosecutions under these new provisions in the Criminal Code, all of which eventually failed. In the fifth case, the government successfully substantiated its charge before the Federal Court that Jacob Luitjens had misrepresented his wartime activities when he came to Canada, which opened the door to the revocation of his Canadian citizenship and his deportation to Holland in 1992. As will be seen below, revocation soon became the tool that the Liberal government came to rely upon in its efforts to remove suspected Nazi war criminals from Canada from the mid-1990s onwards, and this had important implications for the fate of its repeated efforts to enact a new citizenship law.

Already during the Conservative years, support had been growing for legislative action. For example, Secretary of State David Crombie released a discussion paper in mid-1987 titled *Proud to be Canadian*, which argued for a new law that would, among other things, be more closely in tune with the *1982 Charter of Rights and Freedoms*. On the question of revocation, the paper noted that it had not occurred since 1977 and that, moreover, some might consider that it offended "the larger principle of citizenship equality."⁴⁸ Although legislation was expected in early 1988, it failed to materialize after Lucien Bouchard became Secretary of State following Crombie's resignation. Indeed, little more was heard on the subject until December 1991, when the Standing Senate Committee on Social Affairs, Science and Technology was charged with the task of undertaking an holistic investigation into the meaning of Canadian citizenship. Its May 1993 report, however, was short on details in recommending that the *1977 Citizenship Act* be replaced. It would not be until the Liberals returned to power later that year that the issue would once again be placed on the political agenda.

⁴⁴ It was only fair, he said, that such a punishment should operate equally against all Canadians; see Canada, *HCD* (March 6, 1979), 3874.

⁴⁵ Quoted by Justice Minister and Attorney General Ray Hnatyshyn, in Canada, *HCD* (March 12, 1987), 4077.

⁴⁶ *Ibid.*, 4078.

⁴⁷ *Ibid.*

⁴⁸ Department of the Secretary of State of Canada, *Citizenship '87 – Proud to be Canadian* (Ottawa, 1987), 14.

Several conclusions can be drawn from this historical survey that speak both to the meaning of Canadian citizenship and the nature of Canadian citizenship regimes. First, it is notable that the basic tension between the equality of all citizens and the authority of the state to revoke the citizenship of foreign-born Canadians has been present since Confederation. In its most extreme forms, this permitted the government to revoke the citizenship of those who had committed criminal actions after naturalization and to remove thousands of naturalized and Canadian-born Japanese-Canadians at the end of the Second World War. Even in the post-war period, when a new citizenship regime is generally understood to have arrived, the state retained extensive discretionary powers in this regard, which were curtailed but not eliminated under the *1977 Citizenship Act*. The right to remain a Canadian citizen has, therefore, was differentiated across the Canadian-born/foreign-born divide throughout this period. Second, the government often sought to shift attention away from this difference through two discursive practices. The first was to focus on the objectives that lay behind the retention of such powers rather than their implications for the meaning of Canadian citizenship; the second was to offer assurances that such powers would be used judiciously. It is important to observe, however, that the existence of such first-class and second-class citizenship was never officially denied; indeed, very few MPs ever argued that such division was in and of itself problematic.

Third, a consistent stream of criticism can be traced, nonetheless, in support of securing such powers within a judicial rather than a political framework to ensure that foreign-born Canadians are treated fairly. Thus, although support was generally given for the possibility of citizenship revocation, it was often suggested that foreign-born citizens deserved to be treated with the same due process considerations that were understood to apply in other administrative proceedings. As will be seen in the next section, some of the concerns expressed – especially those of Bureau in 1919 – are identical to comments made in the post-September 11 debates on revocation. It also should be noted that (as far as can be gleaned from the parliamentary record) citizenship revocation did not seem to foster citizen-based protests. Finally, there is ample evidence of the political uses to which revocation could be put. The most extreme examples pertain to foreign labour radicals during the interwar years and Japanese-Canadians after the Second World War, but the case of suspected Nazi war criminals during the 1980s can also be cited. Indeed, it was the latter that initially gave shape to the concerns that were raised when the government sought to expand its revocation powers in the late 1990s.

IV. The Liberal Realignment of Citizenship Rights in Canada, 1993-2006

Liberal government efforts to replace the *1977 Citizenship Act* in the 1990s were primarily directed at redesigning the naturalization process, especially in terms of residency and English-French language proficiency requirements, but proposals with respect to denaturalizing foreign-born Canadian citizens soon came to dominate the debates. Moreover, although revocation was initially discussed essentially in terms of suspected Nazi war criminals, it eventually became enveloped within a discourse and politics that stemmed directly from September 11. While the government consistently and forcefully denied that its proposals would perpetuate two classes of citizenship, it had an increasingly difficult time maintaining this position as its attempt to expand its powers in the name of national security fostered an intellectual and organizational mobilization of both citizen-based and parliamentary opposition.

Citizenship Reform (1993-98): The Liberals returned to power in 1993 with no firm commitments on citizenship policy. Indeed, the issue was not covered in their Red Book election document, except, perhaps, by way of a generic declaration that “One of the core values of Canadian society is a strong belief in the equality of our citizens.”⁴⁹ Although the government soon signaled its commitment to promote citizenship by fulfilling a campaign pledge to create a Department of Citizenship and Immigration (CIC), its first *Immigration Plan* (released on February 2, 1994) scarcely mentioned the citizenship side of the department’s mandate.

On April 14, however, Immigration Minister Sergio Marchi announced that he would introduce legislation in the fall to replace the *1977 Citizenship Act*. In doing so, he proposed to make “far-reaching changes ... to strengthen the ties that hold us together – whether [sic] Canadian by birth or by choice.”⁵⁰ In aid of this process, he asked the Standing Committee on Citizenship and Immigration to examine “the principles, rights and responsibilities which are fundamental to the Canadian concept of responsible citizenship.”⁵¹ In an appearance before the committee on May 25, Marchi specifically raised the subject of revocation as one that might usefully be investigated,⁵² even as he reminded his listeners that “Once we are conferred citizenship, one of the values is that we’re all equal under the law, and I think we have to respect that.”⁵³

More generally, the issue of revocation had already come to the fore two months earlier, after the Supreme Court issued a 4-3 split ruling on March 24 in *Regina v. Finta*, which upheld the constitutionality of the government’s war crimes prosecution programme but made it harder to secure convictions. Not long thereafter, Justice Minister Allan Rock announced that the removal of suspected Nazi war criminals would be sought by revoking their citizenship (as had been done in the Luitjens case) rather than through criminal prosecutions.⁵⁴ Since then, the government has pursued more than two-dozen cases.

Although the Standing Committee heard a number of suggestions in May-June 1994 that revocation should be extended to the point that naturalized Canadians could have their citizenship temporarily or even permanently removed if they committed serious crimes in Canada,⁵⁵ it made no recommendation on the issue in its June 1994 report, *Canadian*

⁴⁹ Liberal Party of Canada, *Creating Opportunity: The Liberal Plan for Canada* (Ottawa, 1993), 86.

⁵⁰ Canada, *HCD* (April 14, 1994), 3009.

⁵¹ *Ibid.*

⁵² “It’s a fair question to ask what is the extent of that revocation. What is the balance between integrity of citizenship and what that means – there ought not to be abuse and the values enshrined in citizenship should not be undermined – and the fairness under our judicial system of imposing a stripping of citizenship.” Canada, *Minutes and Proceedings and Evidence of the Standing Committee on Citizenship and Immigration* [hereafter *SCCI*], Number 13 (May 26, 1994), 10.

⁵³ *Ibid.*, 12.

⁵⁴ As George Tsai (Assistant Deputy Minister, Corporate Services, CIC) phrased it before the Standing Committee: “It is clear that it is sometimes difficult to prove that someone actually committed acts that can be qualified as war crimes or crimes against humanity whereas it may perhaps be easier for a government to prove that someone made a false statement. At that point, you are trying to attain an objective through perhaps less costly means.” Canada, *SCIC*, Number 15 (May 31, 1994), 1140.

⁵⁵ George Frajkor (Canadian Ethnocultural Council) made one of the more forceful interventions on this point: “We think of it as an alternative form of punishment for a criminal offence. That is to say, part of the justification for sending people to prison is rehabilitation. There seems very little reason that we should be rehabilitating criminals

Citizenship: A Sense of Belonging. Meanwhile, Marchi's language had taken on a harder tone with a discourse that put less emphasis on the rights of new Canadians: "When we talk about citizenship the debate should shift quite properly and focus on the responsibilities and obligations of new citizens in Canada to defend, promote and stand on guard for Canada."⁵⁶

This rhetorical realignment was in line with a more general hardening of Canadian attitudes towards immigrants and refugees at the time. Although the rise to political prominence of the Reform party had done much to bring this about, public concerns increased volubly in the first half of the year as a result of two separate cases where individuals who had been ordered deported from Canada were charged with murder.⁵⁷ As Marchi responded with a "get tough" approach,⁵⁸ there was apprehension in some quarters that by committing himself to removing foreign criminals quickly the minister was overlooking "the broader issue of rights – the right of all Canadian residents to be treated equally before the law."⁵⁹ His approach, however, was in tune with those who believed that the country's immigration and refugee policies were out of control, a view that was channeled directly to the minister through extensive public consultations that he had initiated in February to solicit input on future policy directions.

This could be seen in the action plan that resulted from this process, *Towards the 21st Century*, which was released in November and gave voice to many of the anxieties that participants had expressed about immigrants and refugees in Canada. In response to a "concern about the impact which immigration and citizenship policies are having upon the values and traditions that form the foundation of Canadian society," the government promised that its Citizenship legislation – now expected in 1995 – would make certain that new citizens "understand the values and principles that this society is based on."⁶⁰ At the same time, however, it would "ensure fairness and integrity" and "ensure that people receive equal treatment."⁶¹ In the context of rendering the system more effective at "keeping out those who pose a threat to Canadians," it was anticipated that the new law would "widen the conditions under which granting citizenship will be prohibited" and make "changes to the provisions governing revocation of citizenship."⁶² Such talk prompted critics to caution that "if we create a situation in which citizens continue for life to account for their original entry into Canada, we shall endanger the fundamental principle of having only one type of full citizenship, regardless of a person's origins or seniority in Canada."⁶³

when the country from which they came could be charged with rehabilitating them." Canada, *SCIC*, Number 17 (June 2, 1994), 77-78.

⁵⁶ Canada, *HCD* (June 14, 1994), 1210.

⁵⁷ Clinton Gayle, who came to Canada at the age of eight and who had been in the country 15 years, was accused of murdering Constable Todd Baylis; Oneil Grant, who was charged in the death of Georgina Leimonis during a café robbery, was a 22-year old who had been in Canada since he was 12. Gayle was subsequently convicted (he appealed all the way to the Supreme Court), while Grant was acquitted and later deported to Jamaica in 2002.

⁵⁸ See Christopher G. Anderson and Jerome H. Black, "Navigating a New Course: Liberal Immigration and Refugee Policy in the 1990s," in L.A. Pal (ed.), *How Ottawa Spends 1998-99 – Balancing Act: The Post-Deficit Mandate* (Toronto: Oxford University Press), 191-216.

⁵⁹ Allan Thompson, "The deportation dilemma," *The Toronto Star* (June 25, 1994), C1.

⁶⁰ CIC, *Towards the 21st Century: A Strategy for Immigration and Citizenship* (Ottawa, 1994), 10, 17.

⁶¹ *Ibid.*, 18.

⁶² *Ibid.*, 56, 59.

⁶³ Lawyer Julius Grey, "Immigration policy is drowning in a wave of McMarthyism," *The Montreal Gazette* (November 12, 1994), B5.

Although legislation to ensure that foreign-born Canadians would “promote, defend and embrace basic Canadian values”⁶⁴ was before Cabinet in April 1995, it was sidelined by the Quebec referendum on sovereignty association, as the government feared that debates on dual citizenship, the oath of allegiance, and the promotion of Canadian values could encourage support for the “yes” side. While Lucienne Robillard (who became Immigration Minister in January 1996) declared that citizenship legislation was a priority, her first major initiative was to appoint a three-member Immigration Legislative Review, which was given a broad mandate to study immigration and refugee issues, including citizenship. Its subsequent report – *Not Just Numbers* – spoke of an undefined “devaluation of Canadian citizenship” and generally proposed that the government make it more difficult to become a naturalized Canadian.⁶⁵ On the subject of revocation, the authors recommended that it “should result, without appeal rights, in loss of all status in Canada and subsequent deportation” for those found to be war criminals or to have been members of “an organization involved in war crimes or crimes against humanity.”⁶⁶ This is indicative of the war crimes focus that the question of revocation had at the time.

Although the idea of Canadian citizenship being devalued was increasingly expressed from the mid-1990s onwards, the ways in which this was supposed to be occurring were rarely made clear. Certainly, however, the government’s actions in this field had repeatedly come under challenge before the courts. For example, on April 27, 1997, the Supreme Court ruled in *Benner v. Canada (Secretary of State)* that a provision requiring children born abroad before 1977 to be screened for citizenship if their mother rather than their father was a Canadian citizen was unconstitutional. In early May 1998, efforts to deport a non-citizen from Canada were halted when an Ontario court ruled that the government had not taken into consideration the interests of her Canadian-born children – a case that would finally be resolved in the woman’s favour by the Supreme Court on July 9, 1999 in *Baker v. Canada (Minister of Citizenship and Immigration)*. Meanwhile, the Canadian government’s revocation efforts with respect to suspected Nazi war criminals were beset by bureaucratic infighting, repeated criticisms from Jewish organizations, and numerous judicial setbacks, including the government’s first failure before the Federal Court in 1998. It was in this context that Bill C-63 was unveiled on December 7, 1998.

Bill C-63 (1998-99): Canadian citizenship was, Robillard declared at Second Reading, “first and foremost a milestone in becoming a full-fledged member of our society with its great humanitarian tradition of fairness and equity, and it is in keeping with this tradition that we drafted the new Citizenship Act.”⁶⁷ Nonetheless, alongside various proposals to make it more difficult to attain Canadian citizenship (thereby purportedly increasing its value), the Liberals sought to augment the government’s powers of revocation in two major ways.

First, while preserving the basic procedure contained in the *1977 Citizenship Act*, the government proposed to make it easier to remove people by dropping the word “knowingly”

⁶⁴ Paul Gessel, “Liberals pushing Canadian values,” *The Calgary Herald* (April 21, 1995), A5.

⁶⁵ Immigration Legislative Review, *Not Just Numbers: A Canadian Framework for Future Immigration* (Ottawa, 1997), 39.

⁶⁶ *Ibid.*, 114.

⁶⁷ Canada, *HCD* (February 3, 1999), 1520.

from “knowingly concealing material circumstances” (ss.16.1, 17.1.b),⁶⁸ and extending the effects of revocation to anyone “whose citizenship was acquired through” the person in question (s.16.4). Second, it introduced a new procedure of annulment (s.18), whereby the minister could within five years order that an immigrant’s Canadian citizenship “is, and always has been, void” if “satisfied” that fraud had occurred. The individual, while being invited to submit information to the minister within 30 days of being notified, would have no further involvement in the decision. Moreover, the Canadian citizenship of anyone who had received it through that person could be removed as well. Such proposals would have widened the distance between foreign-born and Canadian-born Canadian citizens considerably in terms of the right to retain their Canadian citizenship.

The government tried to position the debate in three ways during Second Reading. First, it emphasized the tenuousness of the citizenship rights of newcomers, arguing that “These exclusive rights ... are actually acquired privileges and such privileges do not come free of charge to anyone.”⁶⁹ This was a very different outlook from that which had framed the debates over the *1977 Citizenship Act*. Second, it argued that those who had lied during the naturalization process were not really citizens, and therefore could be treated differently: “All citizens are equal; this is an inviolable principle[, but] since the conditions necessary for recognition of citizenship have not been met by certain persons, it will be as if citizenship had never been granted to them.”⁷⁰ This idea – that if you assume individuals are not citizens, then they can be treated with fewer rights than citizens – had been mooted by Pickersgill in the late 1950s and early 1960s.⁷¹ Finally, it justified these increases in state power as being part of a series of “measures to enhance the protection of Canadian citizenship.”⁷² This formed part of a consistent discursive pattern on the part of the government since Marchi, whereby immigrants and refugees were portrayed as threatening important Canadian institutions, interests, and values.

As C-63 came before the Standing Committee, many witnesses criticized the proposals, primarily on the grounds that they did not ensure a sufficient degree of fairness or justice for the foreign-born.⁷³ For example, David Matas of B’nai Brith Canada – who had long fought for an effective and efficient programme to remove suspected Nazi war criminals from the country⁷⁴ – nonetheless maintained that “we would like to see a system that is fair, so that even though we’re dealing with people who denied every principle of justice in their dealings in the past, we want to make sure they are given the justice they denied their victims and that we assert our values in the

⁶⁸ “Currently, the degree of evidence or the burden of proof is very high. What the bill proposes to do is to bring this burden to proof to a more reasonable level to ensure that we’re able to take away citizenship when there has clearly been false representation or fraud.” Norman Sabourin (Director of Citizenship and Citizenship Registrar, CIC), in Canada, *SCIC*, Number 50 (March 3, 1999), 1720.

⁶⁹ Raymonde Folco, in Canada, *HCD* (February 5, 1999), 1035.

⁷⁰ *Ibid.*, 1040.

⁷¹ He proposed, however, that the matter should be settled by the courts rather than the Governor in Council, with an appropriate right of appeal; see, for example, Canada, *HCD* (May 8, 1959), 3496.

⁷² Parliamentary Secretary (Citizenship and Immigration) Andrew Telegdi, in Canada, *HCD* (February 5, 1999), 1225.

⁷³ These included representatives from the Canadian Bar Association, B’nai Brith Canada, the Canadian Council for Refugees, the Canadian Ethnocultural Council, the African Canadian Legal Clinic, and the Council of Agencies Serving South Asians, among others.

⁷⁴ See, for example, David Matas with Susan Charendoff, *Justice Delayed: Nazi War Criminals in Canada* (Toronto: Summerhill Press Ltd., 1987).

face of their values.”⁷⁵ Thus, for all that the government talked of the need for new citizens to embrace Canadian values, critics charged, these same values – such as “fairness and equality – were not adequately reflected in the legislation.

In the end, the government made changes during clause-by-clause analysis that were in line with some of the concerns that had been expressed. Specifically, it put the word “knowingly” back (ss.16-17), excised the power to remove citizenship in a derivative fashion (s.16.4),⁷⁶ and made it incumbent upon the minister to inform a person against whom annulment proceedings had been initiated of “their right to apply for judicial review” (s.18.4). With respect to other criticisms that had been made, however, the government offered no amendments.

Most prominently, it declined to introduce an appeal of the findings of the Federal Court on the question of the government’s case for revocation against a citizen. The absence of such judicial recourse had been one of the most frequent complaints. As lawyer Ben Trister noted, “Revocation of citizenship is as basic an issue in this democracy as there ever was. Taking away someone’s citizenship is crucial, and to have no right of appeal” was difficult to justify.⁷⁷ Moreover, it ran counter, critics maintained, to the declaration of the equality of Canadian-born and foreign-born Canadian citizens proposed in s.12.⁷⁸ Many witnesses also argued that the government was perpetuating first- and second-class citizenship: “By broadening the process by which citizenship can be revoked without clear definition, we may inadvertently create further alienation and marginalization of affected groups,” Jonas Ma (Canadian Ethnocultural Council) cautioned.⁷⁹

For its part, the government responded that an appeal was not necessary because “the determination of the Federal Court serves as a factual determination only of whether or not the person formed the intention to commit the fraud,” and not of whether citizenship should be revoked, which was left to the Governor in Council.⁸⁰ Thus, it was claimed, the question of rights did not really arise because the Federal Court took nothing away from the individual. Moreover, the government noted that there was access to judicial review throughout the revocation process and suggested that this was sufficient to ensure due process. Surprisingly, the issue of annulment did not spark much debate – despite worries on the part of many MPs over the numerous new discretionary powers that the government would assume under the legislation. Although several witnesses raised it as a concern, few follow-up questions were posed and no amendments were put forward.

The Standing Committee report was presented to the House on May 14, 1999, but was not debated before Parliament rose for the summer, during which time it was revealed that revocation had created a rift within the government.⁸¹ When parliamentarians returned to Ottawa in the fall, Elinor Caplan had replaced Robillard as Immigration Minister, and the session

⁷⁵ Canada, *SCIC*, Number 55 (March 25, 1999), 0910.

⁷⁶ This power would remain, however, in cases of annulment.

⁷⁷ Canada, *SCIC*, Number 59 (April 22, 1999), 1735.

⁷⁸ “A citizen, whether or not born in Canada, is entitled to all rights, powers and privileges and is subject to all the obligations, duties and liabilities to which a person who is a citizen at birth is entitled or subject and has the same status as that person.”

⁷⁹ Canada, *SCIC*, Number 52 (March 11), 1040-45.

⁸⁰ Sabourin, in Canada, *SCIC*, Number 60 (April 28, 1999), 1750.

⁸¹ Philip Jalsevac, “Citizenship bill divides Liberals,” *The Record* [Kitchener] (July 16, 1999), A3.

was soon brought to a close on September 18, leaving C-63 to die on the order paper. The Liberals did not wait long, however, before unveiling its successor on November 25.

Bill C-16 (1999-2000): In introducing the government's second effort, Caplan continued in the tradition established by Marchi of shifting the focus from rights to responsibilities: "Citizenship is not a right: it's something that is conferred on someone who has met the standards," she said. "This bill lets people know that we think Canadian citizenship has great value and we want them to understand what their obligations are."⁸² As before, such discourse was used to justify the expansion of state power to remove Canadian citizenship by implying that foreign-born individuals were decreasing its value.

As he initiated Second Reading in February, Parliamentary Secretary (Citizenship and Immigration) Andrew Telegdi stated that it was time "for an act that fully recognizes the impact of the Canadian Charter of Rights and Freedoms."⁸³ Building on the amendments that had been made to C-63, he revealed, the government proposed to allow a person facing annulment to make representations to the minister, rather than simply to submit information in writing (s.16.3). He also said that it would not pursue the derivative removal of the citizenship of children. As before, then, the proposals would decrease the equality of all citizens, albeit to a slightly lesser degree. Although there was relatively little indication of it during this early debate, the concerns over revocation and annulment had sharpened over time, such that several Liberals (including Telegdi) ultimately voted against C-16 at Third Reading. Moreover, the bill was subsequently held up when the Liberal-dominated Senate proved unwilling to push it through.

Only two days of hearings with four non-government witnesses were held by the Standing Committee, but it quickly became apparent that the proposed revocation and annulment procedures remained controversial, especially the lack of an appeal.⁸⁴ This was, Kenneth M. Narvey (Coalition of Concerned Congregations on the Law relating to War Crimes and Crimes against Humanity including those of the Holocaust) maintained, simply a question of fairness as "There's not something magic about citizenship that makes a trial division judge infallible."⁸⁵ Indeed, he noted that in two recent Nazi war crimes cases, "two very good [Federal Court] judges came to diametrically opposite conclusions as to whether there was a legal basis for security screening before June 1950."⁸⁶ Such variation was best clarified, he submitted, through an appeal process. As for the issue of creating two classes of citizenship, Narvey took the position that "There is an inequality between a naturalized citizen and a natural-born citizen that doesn't come out of anybody trying to be mean, but out of the nature of the situation," and that this made it all the more "important that there be a fair procedure with the possibility of rights to appeal."⁸⁷

⁸² Quoted in Andrew Duffy, "New rules tabled for Canadian citizenship," *The Observer* [Sarnia] (December 11, 1999), B10.

⁸³ Canada, *HCD* (February 18, 2000), 1005.

⁸⁴ Those who had made submissions on C-63 were invited send in additional comments on C-16.

⁸⁵ Canada, *SCIC*, Number 20 (March 30, 2000), 0950.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, 1010.

When senior officials appeared for clause-by-clause debate, Norman Sabourin (Director of Citizenship and Citizenship Registrar, CIC) tried in various ways to justify the government's position. The demand for an appeal, he put forward, was "based on a misunderstanding of the revocation process."⁸⁸ In an overview of the various stages involved, Sabourin tried to rebut suggestions about there being two classes of citizens by suggesting that an individual's access to judicial review was as good as an appeal; indeed, he argued that the Federal Court referral was an extra due process protection, "like icing on the cake."⁸⁹ He also cautioned that an appeal would give the government a new avenue through which to pursue its case: "Do we want an individual who has succeeded in convincing an impartial judge that he didn't commit fraud to then have to be tied up more years in a costly and lengthy appeal process so that the government might then try to convince another set of judges that in fact there was fraud?"⁹⁰ Finally, he warned that if too many cases were appealed, then a situation might arise where "the perception of fairness diminishes in the public eye."⁹¹

A number of MPs remained unconvinced by such arguments, however, and when the issue came up for discussion Pat Martin (NDP) introduced an amendment to allow for an appeal by leave, with revocation being decided not by the Governor in Council but by the Federal Court on a finding of fraud. By way of explanation, he said that "it's sort of a basic Canadian fairness issue. Most people want to see full access to appeal at every stage."⁹² For his part, Telegdi supported the amendment, saying that "If you look at our whole jurisprudence in this country that has been built up over generations, centuries, it has always been based on your right to appeal."⁹³

In response, the government brought in Max Wolpert (Crimes Against Humanity and War Crimes Section, Department of Justice), who spoke of the "plethora of appeal rights that are already in the existing law and [that] are essentially carried over to the new bill."⁹⁴ He stressed that those against whom revocation proceedings had been initiated often used these to forestall – even prevent – removal from the country. While recognizing that important differences existed between judicial review and an appeal, he asserted that each provided for an "equivalent ... opportunity for justice."⁹⁵ Moreover, he suggested that the process would be unduly elongated if an appeal were added. In response, Telegdi emphasized that the missing appeal was on the matter of the determination of the facts of the case, which was the most important stage, and that this was why due process concerns continued to arise: "if that one judge who sits in judgment was infallible, then it would be fine."⁹⁶ In the end, however, both the amendment and another proposed by Leon Benoit (Canadian Alliance) were unsuccessful.⁹⁷

The Standing Committee's report was returned to the House on April 14, and Second Reading continued on May 10 with 23 motions to amend the legislation. With respect to revocation,

⁸⁸ Canada, *SCIC*, Number 22 (April 12, 2000), 1555.

⁸⁹ *Ibid.*, 1650.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, 1715.

⁹² *Ibid.*, 1650.

⁹³ *Ibid.*, 1655.

⁹⁴ Canada, *SCIC*, Number 23 (April 13, 2000), 1055.

⁹⁵ *Ibid.*, 1100.

⁹⁶ *Ibid.*, 1105.

⁹⁷ No amendments were put forward with respect to the annulment process.

Benoit moved an amendment to require revocation should a finding of fraud be made by the Federal Court, and to allow for an appeal of any such finding not simply under C-16 but under previous legislation as well.⁹⁸ In support, Art Hanger (Canadian Alliance) argued that if non-citizens such as refugees were to be given the full benefit of the courts in determining their status, then foreign-born Canadian citizens should surely receive it as well.⁹⁹ As someone whose family had arrived in Canada as refugees in the 1970s, Rahim Jaffer (Canadian Alliance) emphasized the seriousness of the issues at play: “The revocation of citizenship is not something to be taken lightly and must be done only under complete and thorough scrutiny by the Canadian legal system.”¹⁰⁰ The issue was personalized in a similar fashion by Telegdi, whose family had arrived as refugees from Hungary in the 1950s: “As a Canadian by choice who values his citizenship, like many other Canadians by choice, if I am to lose my citizenship I want to have the due process of law. My family came across mine fields because we wanted to be in a country that is ruled by law, not where the politicians or the prime minister of the country decide what my rights are as an individual citizen.”¹⁰¹

For the government, Carolyn Parrish claimed to “speak on behalf of the almost 100% ... of legitimate immigrants who would not support citizenship for those who have entered this country through stealth, or acquired citizenship through lying or any other means that were other than honest.”¹⁰² An appeal was not necessary, she said, because of the principle of responsible government: “A decision to revoke citizenship should remain with cabinet which itself is accountable to the Canadian people through parliament.”¹⁰³ More generally, she argued that due process was already provided for in the law, that an appeal would lengthen the process, and that the motion would entail too radical a change. Although the amendment was subsequently defeated, eight Liberals voted for it with the Bloc Québécois and Canadian Alliance.¹⁰⁴

At Third Reading, Caplan opened up a new line of argument by discussing the question of revocation and annulment within the context of national security: “Above all,” she declared, “Canada is not and will not be a safe haven for war criminals, those who have been involved in terrorism, and those who have committed crimes against humanity.”¹⁰⁵ It was an argument that would become increasingly prominent. She failed, however, to convince the six Liberal MPs who voted against C-16 on May 30, including Telegdi, who had already resigned as Parliamentary Secretary in protest.¹⁰⁶ Moreover, 28 Liberals were not present for the vote, at least 19 of whom were known to be against the bill.¹⁰⁷

Although the government wanted C-16 to move quickly through the Senate, it soon became

⁹⁸ Liberal Lynn Myers had attempted a motion that would have prohibited any amendments being made to the bill, which sparked considerable criticism from Opposition MPs.

⁹⁹ Canada, *HCD* (May 10, 2000), 1625.

¹⁰⁰ *Ibid.*, 1650.

¹⁰¹ *Ibid.*, 1635.

¹⁰² *Ibid.*, 1655.

¹⁰³ *Ibid.*

¹⁰⁴ The eight were Murray Calder, Joe Comuzzi, Roger Gallaway, Janko Peric, Paul Steckler, Andrew Telegdi, Rose-Marie Ur, and Joe Volpe.

¹⁰⁵ Canada, *HCD* (May 29, 2000), 1535.

¹⁰⁶ The six were Colleen Beaumier, Murray Calder, Janko Peric, Paul Steckler, Andrew Telegdi, and Rose-Marie Ur.

¹⁰⁷ Marcel Prud'homme, in Canada, *Senate Debates* [hereafter *SD*] (June 27, 2000), 1520.

apparent that both Conservative and Liberal Senators had concerns with the bill, which was referred to the Standing Senate Committee on Legal and Constitutional Affairs on June 27. In opening Second Reading, Senator Sheila Finestone asserted that the process already observed due process, and that the right of the Governor in Council to grant or revoke citizenship was an important tradition of parliamentary government. In contrast, the addition of an appeal would lead to an American-style system: “Honourable senators,” she warned: “I think that you will agree that we must not start dismantling our parliamentary system piece by piece.”¹⁰⁸ Some senators, however, were uncomfortable with the “citizenship by probation” that the bill seemed to entail,¹⁰⁹ and the numerous non-governmental witnesses who spoke before the Standing Senate Committee reinforced this concern.¹¹⁰

In two appearances before the Senate Committee, Caplan was aggressive in her defense of C-16. She countered criticisms of the revocation procedure time and again by stating that it was the same as that found in the *1977 Citizenship Act* and that it did not create two classes of citizens: “This is a fair process. It guarantees due process to those facing potential revocation of citizenship while ensuring that such a serious measure will not turn solely on a point of law” by allowing cabinet to make the final decision.¹¹¹ Moreover, she claimed, the government needed such powers to ensure that immigrants who were “criminals, terrorists and those implicated in war crimes or crimes against humanity” did not remain Canadian citizens.¹¹² She stressed repeatedly that the procedures were rarely used: “since 1977, we have granted Canadian citizenship to over 3 million people. During that same period, citizenship has been revoked 37 times.”¹¹³ Despite the virtual unanimity with which the revocation and annulment proposals had been criticized, moreover, she emphasized the extent of consultation that had occurred and asserted that “there is a general consensus – never unanimity, but a real consensus – on the provisions of Bill C-16.”¹¹⁴ Her officials went further in arguing that this was “the best possible bill that the government can bring before the Senate.”¹¹⁵

Senators were not, however, generally convinced that the system was adequate, especially with respect to the question of an appeal. The government’s claim that it was better to keep the process as it was – despite its imperfections – than to change it did not address many specific

¹⁰⁸ Canada, *SD* (June 6, 2000), 1450.

¹⁰⁹ Noël A. Kinsella, in Canada, *SD* (June 15, 2000), 1700.

¹¹⁰ Those who argued against the proposals included B’nai Brith Canada, the Canadian Council for Refugees, the Inter-Church Committee for Refugees, the Canadian Bar Association, the Quebec Bar Association, the Ukrainian-Canadian Congress, the Latvian National Federation in Canada, the Canadian Arab Federation, the Canadian Polish Congress, the German-Canadian Congress, the Hellenic Canadian Congress, the Coalition of Concerned Congregations, the Kitchener-Waterloo Multicultural Centre, the Metro Toronto Chinese & Southeast Asian Legal Clinic, the Serbian Orthodox Diocese of Canada, the World Sikh Organization, and the Islamic Humanitarian Service; Benoit, Bryden, and Telegdi also appeared before the Standing Senate Committee. The Canadian Jewish Council supported the government on the grounds that time was running out to get at suspected Nazi war criminals in Canada.

¹¹¹ Canada, *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs* [hereafter *SSCLCA*], Issue 20 (September 20, 2000).

¹¹² *Ibid.*

¹¹³ Canada, *SSCLCA*, Issue 22 (October 5, 2000).

¹¹⁴ *Ibid.*

¹¹⁵ Sabourin, in Canada, *SSCLCA*, Issue 22 (September 28, 2000).

concerns raised by witnesses.¹¹⁶ For example, Peter Doody (Ukrainian-Canadian Congress) challenged the claim that judicial review was available at every stage by pointing to recent Federal Court rulings that suggested otherwise.¹¹⁷ For his part, Narvey offered amendments so that the courts could decide questions of fact and law, while the Governor in Council could review with humanitarian and compassionate considerations.¹¹⁸ Thus, problems with the status quo had been identified and alternatives had been suggested, to which the government did not respond directly.

As for the claim that the process was used only rarely, senators recalled a CIC estimate that some 3,000 cases were actually opened each year, which raised a concern that many more might be pursued through the proposed annulment power. Although Caplan assured them that it would only be employed in clear-cut cases of fraud,¹¹⁹ some felt that its use should be more clearly defined in the law. As Serge Joyal (Liberal) observed: “I am not really interested in your fine intentions or your responsibility, but rather, I am interested in what the law says to guide a successor minister who may not have or maintain your philosophy... My concern is not to give the ministry such a discretion over the highest honour we can confer in this country – the right of citizenship.”¹²⁰ Moreover, continued Nicholas Taylor (Liberal), the due process protections present under the annulment procedure through judicial review were insufficient: “the appeal to the Federal Court is hollow ... [because it] covers procedure but not fact.”¹²¹

Such considerations had formed the basis of numerous submissions before the committee. For example, Nick Summers (Canadian Council for Refugees) had warned that “Since the standard is so low, that of being satisfied that the enumerated offences have occurred, ...the chances of successfully applying for judicial review ... are almost nil.”¹²² Milena Protich (Serbian Orthodox Diocese of Canada) challenged Caplan’s claim that being “satisfied” was an objective condition.¹²³ Moreover, Professor André Braen (University of Ottawa), an expert in Administrative Law who was invited twice to clarify some of the legal issues that might arise with C-16, asked: “one wonders why a distinction is made with respect to the applicable procedure and the Federal Court’s intervention. Why, in one case [revocation], is the court asked to rule on the merits of the matter, while in the other case [annulment], it is merely asked to

¹¹⁶ Why, Sabourin asked, should “we choose a new, unproven model and wait many years to see how the courts interpret these provisions?” *Ibid.*

¹¹⁷ “I know the minister has said there is a right of judicial review. In fact the people who are trying to deal with this legislation in the courts, because this bill is identical to the existing legislation, are still trying to figure out where that right of judicial review is. In a case called *Fast* in July this year, the Federal Court ruled there is no right of judicial review from the process that starts it -- the minister’s decision to issue a notice of revocation. In a case called *Katriuk*, from about a year ago, the Federal Court of Appeal said there is no right to judicially review the decision of the trial judge in a determination that an individual had or had not obtained his or her citizenship by fraud. The only place left is perhaps judicially reviewing the Governor in Council, who makes the final decision. My view is that that will be almost impossible.” Canada, *SSCLCA*, Issues 21 (September 26, 2000).

¹¹⁸ Canada, *SSCLCA*, Issues 21 (September 27, 2000).

¹¹⁹ Canada, *SSCLCA*, Issue 20 (September 20, 2000). “There is no subjectivity whatsoever when you come to annulment,” Caplan said. “What you are dealing with are objective facts and documentation of proof.”

¹²⁰ Canada, *SSCLCA*, Issue 22 (October 5, 2000).

¹²¹ Canada, *SSCLCA*, Issue 20 (September 20, 2000).

¹²² Canada, *SSCLCA*, Issue 20 (September 21, 2000).

¹²³ “...there is no requirement to meet any specific standard under the present draft. They must simply be satisfied. It is a subjective standard. There is no objective component to it, no requirement of reasonable standard or satisfaction.” Canada, *SSCLCA*, Issues 22 (September 28).

check whether the decision was legal?”¹²⁴

In the end, the government began to insist simply that its proposals were at least sufficient: “Is it the ideal? Certainly not. Is it perfect? Certainly not. Is it a process that has been proven before the courts? The answer is yes.”¹²⁵ As for concerns about creating two classes of citizens, it maintained that “When you rightly receive Canadian citizenship, you are equal to those who were born here and those who have chosen Canada.”¹²⁶ In short, the government found it difficult to respond in a concrete manner to the criticisms that its proposals had faced, and in the place of argumentation often resorted to plain assertion. When the Senate Committee on C-16 met for the last time on October 19, however, it was clear that amendments on revocation and annulment would be forthcoming, and that they would probably garner the support of Liberals such as Anne Cools, Jeremiah Grafstein, and Serge Joyal, as well as Conservative senators. This eventuality was forestalled, however, by the election call of October 22, which once again left the government’s legislation to die on the order paper. By the time the Liberals brought forward their third legislative effort, C-18, the political context had changed dramatically after September 11, 2001.

September 11 and the Rights of Citizens and Non-Citizens (2001-02): The issue of revocation remained in the headlines in early 2001 due to the government’s continuing war criminals programme as well as Telegdi’s reaction to it. For example, there was considerable press coverage of the cases of Helmut Oberlander and Wasyl Odynsky when the Federal Court ruled that, while they had probably lied about their wartime activities when coming to Canada, there was no evidence of either having committed war crimes. Critics like Telegdi charged that if the government could not prove that they were war criminals, then it should not deport them simply for fraud.¹²⁷ In June, he was in the news again when he introduced a Private Members’ Bill (C-373) to “enhance citizenship rights for nearly six million Canadians who are citizens by choice, not by birth” by amending the *1977 Citizenship Act* to allow for an appeal in revocation cases, with the courts determining questions of fact and law, and the Governor in Council assessing humanitarian and compassionate considerations.¹²⁸

The issue faded into the background, however, first as the government moved to pass its long awaited immigration and refugee legislation, and then in the aftermath of the heightened national security concerns that followed in the wake of September 11. Although the government argued that its immigration and refugee proposals did not need to be amended as they would be able to weed out criminals and terrorists, it soon undertook other initiatives that put into question the rights of both citizens and non-citizens alike in Canada, such as the *2001 Anti-terrorism Act* and

¹²⁴ Canada, *SSCLCA*, Issues 21 (September 27, 2000).

¹²⁵ Sabourin, in Canada, *SSCLCA*, Issue 22 (September 28, 2000).

¹²⁶ *Ibid.* Sabourin had earlier argued in the same vein: “If somebody born abroad lies to us about their entitlement to become a citizen and we discover this fact, it’s fraud ... [and] we should have a way to go back and make sure that we can address the fraud so that all citizens are treated in the same way.” Canada, *SCIC*, Number 21 (April 5, 2000), 1600.

¹²⁷ When he charged that this was the sort of thing that “Hitler used to do,” the Canadian Jewish Congress called for his expulsion from the Liberal caucus; see Andrew Telegdi, “Not my words,” *The Waterloo Chronicle* (May 9, 2001), 1.

¹²⁸ Canada, *HCD* (June 5, 2001), 1005.

the proposed *Public Safety Act*.¹²⁹ As a result, the question of first- and second-class citizenship increasingly came to be discussed as some groups and individuals began to see the “war against terror” as being imbued with discriminatory practices such as racial profiling. The concern that the meaning of Canadian citizenship was becoming increasingly fragile was underscored when Maher Arar, a Syria-born Canadian, was deported to Syria to face detention and torture in late 2002, and when Reza Zazai, an Afghan-born Canadian, was arrested in Baltimore on the first anniversary of September 11 and detained for two months during an American terrorism investigation. These and other developments spurred on a great deal of intellectual and organizational mobilization around the issues of the rights of Canadian citizens – including foreign-born Canadians – and this had a direct effect on both the content and tone of debate as the government unveiled its next effort to replace the *1977 Citizenship Act*.

Bill C-18 (2002-03): During the debate on the 2002 Speech from the Throne, Denis Coderre (who had become Immigration Minister in January) said cryptically that “We must ensure that we are truly valuing citizenship, and if we want to revoke citizenship, we have to see if what we are currently doing is sufficient.”¹³⁰ When he introduced C-18 on October 31, the meaning of his words quickly became clear.

While the bill contained promoted the equality of all citizens in some respects, it introduced important new powers that circumscribed the rights of foreign-born citizens. On the one hand, a statement of purpose was proposed, which included commitments “to reaffirm that all citizens, no matter how they became citizens, have the same status” (s.3.d), and “to promote respect for the principles and values underlying a free and democratic society” (s.3.g). Moreover, a Federal Court judge would henceforth determine revocation, and an appeal would no longer be prohibited (s.16). On the other hand, the Solicitor General and the Immigration Minister would be authorized to issue a security certificate claiming that an individual was or had been involved in terrorism, war crimes or organized crime. In such revocation cases, the person might never hear the specific evidence against them and would be denied a right of appeal (s.17). Moreover, the annulment provision from C-16 was retained, except for the added requirement that the minister provide a summary of the grounds on which a person’s citizenship was to be removed (s.18.3).

Concerns and criticisms were plentiful at Second Reading. While Diane Ablonczy (Canadian Alliance) gave Coderre credit for including an appeal in some revocation cases, she nonetheless worried that there were still avenues through which citizenship might be removed without due process: “We believe that privilege should not be taken away without the highest adherence to the natural justice process and the highest standard of proof.”¹³¹ Telegdi complained that the new provisions would not apply to those who had already been processed under the old system and whose fate now rested with cabinet: “It seems to me that if we abolish capital punishment,” he argued analogously, “we do not hang people on death row.”¹³² He also opposed the continued inclusion of the power of annulment, declaring that “we all know it is not the minister

¹²⁹ See Kent Roach, *September 11: Consequences for Canada* (Kingston and Montreal: McGill-Queen’s University Press, 2003).

¹³⁰ Canada, *HCD* (October 2, 2002), 1605.

¹³¹ Canada, *HCD* (November 7, 2002), 1030.

¹³² *Ibid.*, 1235.

who will make those decisions, it will be a faceless bureaucrat who does not have to answer for his or her decision.”¹³³ This concern was shared by Inky Mark (Progressive Conservative), who asked: “What about the rule of law? What about the Charter of Rights and Freedoms? Does that not apply within the first five years of obtaining citizenship? It does not under this legislation.”¹³⁴

Within the context of September 11, many MPs worried, as Madeleine Dalphond-Guiral (Bloc Québécois) did, that “The current context of the fight against terrorism seems to be becoming the justification for every imaginable action. We fully agree that it is absolutely vital to avoid the death of innocent civilians in terrorist attacks, but we absolutely do not agree with this justifying shameless attacks on fundamental rights and freedoms.”¹³⁵ “We must,” Judy Wasylycia-Leis (NDP) warned, “guard the balance between security and freedom carefully in this defining legislation.”¹³⁶

When C-18 was examined by the Standing Committee, which went across the country to solicit comments on this and other issues in early 2003, witnesses were overwhelmingly of the opinion that the balance had swung too far towards the former. Although annulment was often criticized, attention frequently focused on the new security provisions. As Gordon H. Maynard (Canadian Bar Association) put it: “It’s a significant concern that these secret evidence proceedings, as short as one year ago, were only applicable to foreigners in Canada, to persons who had no permanent status. Under the [2002 *Immigration and Refugee Protection Act*], they were then brought in and applied against permanent residents. We now see them being brought in and applied against citizens.”¹³⁷ Although the government was wont to call attention to the role of the Federal Court judge as an independent actor, lawyer Lorne Waldman (one of the few to have argued in Canadian security certificate cases) suggested that CSIS generally had a large role to play in defining the content of the summaries provided by the judge to the accused.¹³⁸ More generally, retired Ontario Superior Court Justice Roger Salhany argued that the system “imposes a burden on judges. They are not equipped, by reason of the nature of their judicial process and training, to make a proper determination.”¹³⁹

For the government, Rosaline Frith (Director General, Integration, CIC) argued that “we have no choice” but to keep the evidence secret because of the need to protect the witnesses involved and to preserve the sources of security information.¹⁴⁰ Moreover, she tried to assure MPs that such cases would not arise very often, and that “In the very rare instances where they do, this is the

¹³³ *Ibid.*

¹³⁴ *Ibid.*, 1210.

¹³⁵ *Ibid.*, 1055.

¹³⁶ *Ibid.*, 1140.

¹³⁷ Canada, *SCIC*, Number 10 (November 28, 2002), 0940.

¹³⁸ Canada, *SCIC*, Number 16 February 4, 2003), 1115.

¹³⁹ Canada, *SCIC*, Number 49 (March 18, 2003), 1120. This was confirmed a year later by Federal Court Justice James Hugessen, who said: “We hate hearing only one part. We hate having to decide what, if any, sensitive material can or should be conveyed to the other party ... We greatly miss, in short, our security blanket which is the adversary system that we were all brought up with and that ... is for most of us the real warranty that the outcome of what we do is going to be just and fair.” Quoted in Andrew Duffy, “Testing time for justice: We hate it, judge says of one-sided secret hearings,” *The Montreal Gazette* (December 13, 2004), A3.

¹⁴⁰ Canada, *SCIC*, Number 14 (January 28, 2003), 1030.

only way to proceed before the courts.”¹⁴¹ These were, officials repeatedly stressed, cases involving terrorists or members of organized crime against whom both the Immigration Minister and Solicitor General were convinced of the evidence. Moreover, Joan Atkinson (Assistant Deputy Minister, Policy and Program Development, CIC) claimed, the process would help to “enhance the value of citizenship and ensure that our citizenship legislation is promoting the values that we aspire to and hold as Canadians.”¹⁴²

In response to the “no choice” argument, critics offered suggestions to increase the overall fairness of the process, such as establishing an *amicus curiae* to make arguments on behalf of the individual and provide the judge with alternative views. More generally, witnesses underlined the serious constraints that would be placed on the accused and their lawyers: “How can anyone defend themselves if they don’t know what the accusation is? We’re told, they know what it is. I said, how do they know what it is? It’s always as if the accusation is true, therefore the person knows what it is, therefore they don’t need to hear it. Well, what if it isn’t true, what if it’s false, what if it’s a mistake?”¹⁴³

While several commentators advanced the idea that some of the provisions under consideration were likely to be ruled unconstitutional, lawyers cautioned MPs that they should not rely on the *Charter* to fix problems in the new law: “What really provides protection is the use of good sense by the parliamentarians enacting the laws.”¹⁴⁴ More generally, the argument was frequently made that in failing to provide adequate due process for those against whom proceedings had been initiated, the government was “diluting the meaning of citizenship for people who obtained citizenship by naturalization.”¹⁴⁵ Such arguments were founded on an increasingly expressed belief that citizenship was – once granted – a right and no longer a privilege.¹⁴⁶

Aside from those who suggested ways to amend C-18 to render it fairer, there were growing calls that the revocation and annulment provisions should be completely removed. For example, Amina Sherazee (Law Union of Ontario) argued that “the discrimination against naturalized citizens that is at the very heart of Bill C-18 is unacceptable, racist, and criminal and must be abandoned, on the principle that non-discrimination and equality are fundamental human rights.”¹⁴⁷ Even the Chair – Liberal Tony Valeri – seemed to challenge the government when he declared that the committee was “not going to create two classes of citizens, or even three for that matter. At the end of the day, by birth or by choice, you are a citizen, and it doesn’t matter how you got that citizenship, the system ought to be fair and equal for both sides.”¹⁴⁸

While expressing dismay at the lack of trust in their integrity that underlined some of the

¹⁴¹ *Ibid.*

¹⁴² Canada, *SCIC*, Number 12 (December 5, 2002), 1005.

¹⁴³ Rivka Auginfeld (Table de concertation des organismes de Montréal au service des personnes réfugiées et immigrantes), in Canada, *SCIC*, Number 40 (February 18, 2003), 1050.

¹⁴⁴ Maynard, in Canada, *SCIC*, Number 10 (November 28, 2002), 1015.

¹⁴⁵ Waldman, in Canada, *SCIC*, Number 16 (February 4, 2003), 1130.

¹⁴⁶ “I think the distinction between rights and privileges is one that is usually used to deny people rights. You start by qualifying something as a privilege, and then you say, now we can walk on you, because it’s not a right.” Lawyer William Sloan, in Canada, *SCIC*, Number 40 (February 18, 2003), 1020.

¹⁴⁷ Canada, *SCIC*, Number 18 (February 10, 2003), 1020.

¹⁴⁸ *Ibid.*, 1240.

concerns raised, senior immigration officials did little more to rebut the criticisms made or to respond to the alternatives suggested than to argue that C-18 was necessary and workable. They also emphasized that only 26 security certificates had been used since 1989. In the end, with concerns being voiced by all parties, clause-by-clause analysis ceased, and the bill died on the order paper when the parliamentary session was brought to a close on November 12, 2003. Although it was the last attempt by the Liberals to replace the *1977 Citizenship Act*, the debate over the citizenship rights of foreign-born Canadians continued.

Standing Committee Consultation (2004-05): When the issue next came before Parliament, not only was there a new Immigration Minister – Judy Sgro, appointed in December 2003 – but a Liberal minority government produced by the June 2004 election. As a result, Telegdi, who since 2000 had been marginalized within his own party, became Chair of the Standing Committee. The context had also changed due to several high profile events that shaped the perceptions about national security and the rights of the foreign-born on both sides of the debate. In early 2004, the issue of revocation was raised in connection with Fawzi Ayub, Karim and Maha Elsamnah Kahdr, Abderraouf Jdey, and Amer El-Maati, all of whom were foreign-born Canadian citizens suspected of having terrorist affiliations.¹⁴⁹ For supporters of revocation, this highlighted the need to ensure that it remained a viable option. Meanwhile, although cabinet had earlier revoked Oberlander’s citizenship, it was reinstated by the Federal Court – some nine years after proceedings had been initiated. Moreover, 23 students who primarily originated from the Pakistani province of Punjab were alleged to have formed a terrorist sleeper cell and detained in “Operation Thread” in 2003; the terrorism allegations were quickly dropped, but many of the accused were soon deported on immigration-related charges. For critics of revocation, such cases highlighted how politics in general – and a national security framework in particular – could distort the ability of officials to assess individual cases accurately, to the great expense of the individuals involved.¹⁵⁰

In her first post-election appearance before the Standing Committee, Sgro suggested that she would be more flexible than her predecessors by inviting input: “Give me your suggestions on those areas that are most contentious. At that point, I would ask the department to put them into the legislation, introduce the legislation in February at the first opportunity, and bring it back” for review.¹⁵¹ On the specific subject of revocation, she announced that she wanted “to make sure it’s transparent, it’s open, and that people understand that it’s an open, fair, and just process.”¹⁵²

The committee took her at her word and released *Updating Canada’s Citizenship Laws: Issues to*

¹⁴⁹ Ayub was an alleged Hezbollah operative who returned to Canada after having been released from an Israeli jail in a prisoners-for-hostage exchange, the Khadrs were part of a family of which several members allegedly had ties to al-Qaida, while Jdey and El-Maati were wanted by the American government on suspicion of planning terrorist attacks.

¹⁵⁰ “In a series of interviews ... the men both here and in Pakistan revealed a series of problems they’ve encountered following the terrorism allegations. They talk about broken marriages and engagements. Most have lost their jobs and worry about their prospects for future employment. Most are estranged from their family and friends. They no longer feel free to travel.” Michael Shephard and Sonia Verma, “‘They only arrested the Muhammads’; 23 students falsely labelled ‘terrorists,’” *The Toronto Star* (November 30, 2003), A6.

¹⁵¹ Canada, *SCIC*, Number 6 (November 2, 2004), 1015.

¹⁵² Canada, *SCIC*, Number 10 (November 23, 2004), 1010.

be Addressed just a few weeks later. On revocation, the report proposed that the standard of proof be that of “beyond a reasonable doubt” rather than “on a balance of probabilities.” As for the security certificate process, the committee recalled that during its previous hearings witnesses had “objected to it most strenuously,” and therefore proposed that any decision be forestalled until an impending review of the question of the country’s anti-terrorism legislation had been completed.¹⁵³ It also questioned the need for an annulment power. More generally, the committee asked that the legislation conform to a number of principles, including that “There must be equal treatment of Canadian-born and naturalized citizens,” that “There should be no probationary citizenship status,” that “Citizenship should be seen as a right for those who qualify, rather than a privilege,” and that “All determinations under the Act should be made by an independent decision-maker in a judicial process free from political influence.”¹⁵⁴

Sgro’s commitment to follow up on the recommendations was brought into question, however, when she announced not long thereafter that she would proceed with several new revocation cases, a commitment that was confirmed by her ministerial successor, Joe Volpe, who was appointed in January 2005. Instead of producing a new citizenship bill in February, Volpe asked the Standing Committee to study the issue some more, which it did just weeks later as it conducted another cross-country tour. While the Canadian Jewish Congress and B’nai Brith Canada continued to express their support for a judicially based revocation process along the lines proposed in C-18, those calling on the government to recognize the absolute right of foreign-born Canadians to maintain their Canadian citizenship had become more organized and strident. Such a position was taken, for example, by the Canadian Citizenship Coalition, which consisted of representatives from the African, Arab, Chinese, German, Islamic, Sikh, Somali, and Ukrainian communities, among others, as well as the National Anti-Racism Council of Canada and various immigrant, refugee, and civil liberties organizations.

Part of the vehemence with which some groups protested against the government’s previous proposals was in direct reaction to the national security agenda that had unfolded since September 11. “What it feels like from the community’s perspective,” Aameena Sultan (Canadian Arab Federation) said, “is that it targets their communities and activities.”¹⁵⁵ Such concerns were voiced by representatives of those who were directly affected by the government’s war crimes programme, those who felt the brunt of practices such as racial profiling, and Muslims who felt that their faith had been condemned as being extremist. As a result, many witnesses expressed a feeling of being marginalized within Canada, of being treated as second-class citizens. At some point, Sultan suggested, Canada had to make a commitment to its new citizens, because “if we allow for citizenship to be revocable for naturalized citizens, basically we are allowing those people to remain vulnerable for their entire lives, and that’s problematic.”¹⁵⁶

In June, the Standing Committee released *Citizenship Revocation: A Question of Due Process and Respecting Charter Rights*. The committee did not accept that citizenship should be irrevocable, supported the basic grounds for revocation contained in the *1977 Citizenship Act*,

¹⁵³ SCIC, *Updating Canada’s Citizenship Laws: Issues to be Addressed* (Ottawa, November 2004).

¹⁵⁴ *Ibid.*

¹⁵⁵ Canada, SCIC, Number 18 (February 8, 2005), 1215.

¹⁵⁶ *Ibid.*, 1245.

and agreed with the judicial model (including an appeal) proposed in C-18. At the same time, the report repeated the earlier submission that the standard of proof should be “beyond a reasonable doubt,” suggested that the courts be empowered to consider punishments other than revocation in cases where fraud had been proven, and rejected the need for a power of annulment. As for the security procedures envisioned in C-18, it was recommended that these should not be pursued until Parliament had completed its more general review of the government’s anti-terrorism legislation.¹⁵⁷

The reaction from Volpe was immediate and negative. This was quickly underlined when it was reported days later that the government would seek to revoke the citizenship of five more suspected Nazi war criminals, including a second attempt to remove Oberlander. The minister also mused openly about having the citizenship of Gurmant Grewal (Conservative) revoked after allegations were made that he had committed fraud when he sought permanent resident status in 1992. “We have countries where opposition members get their citizenship stripped and are put in jail,” Telegdi retorted. “We are not one of those countries.”¹⁵⁸

As the Liberal minority government began its final fall from power, and as Volpe shifted his attention to other issues, the question of redesigning the Canadian revocation process all but disappeared from view. While the Standing Committee released one further report in the fall, attention dissipated with the onset of the 2005-06 election campaign. The Conservative government’s announcement in May 2006 that it will amend the *1977 Citizenship Act* to streamline overseas adoption processes suggests that it could be some time before another effort to replace the law is made. Thus, after more than a decade of debate, revocation remained unchanged. At the same time, a constituency has been alerted to the fact that it possessed a form of second-class citizenship, at least insofar as the right to retain Canadian status is concerned. This, in turn, prompted a much more thorough discussion into the meaning of being Canadian than might have otherwise occurred, one in which foreign-born Canadians in particular have contested the claim that they were the ones devaluing the country’s citizenship.

V. Conclusions

This paper has explored the history of citizenship revocation in Canada in order to contribute to a more general debate over what it means to be Canadian. It has shown how an important distinction has always been made between Canadian-born and foreign-born Canadians to the extent that, as a general rule, only the latter face the possibility of having their citizenship removed in Canada. In this context, therefore, it is appropriate to talk of second-class citizenship. Moreover, the paper has argued that Liberal government efforts since the 1990s to assume new powers in this respect would have widened the gap between these two groups. Indeed, these efforts can be seen as an assertion of state power in the face of the presence of immigrants and refugees in the country, as maintained by Galloway and Wong. Furthermore, it has suggested that the proposals made in the wake of September 11 – while increasing certain due process protections – sustained or increased the gap by carving out exceptions where these

¹⁵⁷ Parliamentary Secretary (Citizenship and Immigration) Hedy Fry attached a dissenting opinion, in which she opposed the recommendations on moving away from the “balance of probabilities” standard and on considering other forms of punishment.

¹⁵⁸ Karen Kawawada, “Telegdi outraged by his party’s plan for Oberlander; MP also attacks suggestion that Tory MP may lose citizenship,” *The Record* [Kitchener] (June 13, 2005), A1.

would not apply, not only on the grounds of national security but also through the power of annulment. As a result, citizenship revocation has come to constitute another area where a national security agenda is shaping debates and policy choices. These findings are also of relevance to the literature on Canadian citizenship regimes, with its emphasis on unpacking the ways in which citizens and the state relate to one another. For example, taking Jenson's four elements that influence the overall boundaries of citizenship as a guide, the following observations can be made in conclusion.

With respect to responsibilities, the government has argued that it has a responsibility to remove those whom it is satisfied of having committed fraud, or whom it believes to pose a threat to national security, in order to protect Canadians and, as well, the value of Canadian citizenship. This position has generated two counter-arguments. The first is that this responsibility ought to be undertaken within a process that fully respects the due process standards and traditions that define political life in Canada, which would go a considerable way to countering the extent to which foreign-born Canadians experience second-class citizenship. The second holds that the state has a responsibility to maintain the absolute equality of all citizens, and that it should prosecute individuals for their alleged transgressions in Canada (whether they constitute fraud or terrorism) rather than place all foreign-born citizens in a condition of perpetual uncertainty. In either case, the government would – it is argued – increase the value of Canadian citizenship by reflecting Canadian values more fully.

In terms of rights, the government proposed that those who lied or who had committed acts of terror would have been ineligible for Canadian citizenship had such information come to light during the naturalization process, and that they therefore did not have rights equal to Canadian citizens because – in effect – they ought not to be Canadian citizens. Critics charged that such reasoning is based on the mistaken assumption that the government's suspicions would be proven rather than alleged, and that the risk of error to innocent citizens make it essential that the accused should benefit from a presumption of innocence. If not, it is claimed that the government would be providing only second-class citizenship to the foreign-born.

As for the accessibility of the state and political participation, the government sought to limit the appeal and due process rights of those against whom it wished to pursue revocation, especially in annulment and security certificate cases, thereby increasing its discretionary power. By labeling those against whom its proposals would be directed as liars, terrorists, and war criminals, the government sought to circumscribe closely the claims that they might make against the state. Those who opposed such moves not only fought for a right of appeal and due process, but also looked to legitimate their position by claiming to be defending important Canadian values, such as the rule of law. This included those who had fought against the proposals when they had been directed primarily at suspected Nazi war criminals as well as those who had become mobilized in reaction to the rights-restrictive aspects of the government's response to September 11.

Finally, the government approached questions of the mechanisms and sentiments of national belonging from the perspective of a gatekeeper. In making it harder to naturalize and easier to denaturalize, the state would increase the value of Canadian citizenship by ensuring that only those who deserved it became members of the national community. This would strengthen the sense of attachment felt by all Canadians. Opponents countered that such collective sentiments

of belonging would be denied to the six million or so foreign-born Canadians because the possibility would always exist for their Canadian citizenship to be revoked. In contrast, they proposed that the government promote a national Canadian identity by ensuring that all citizens would be treated fairly. Moreover, while the debate over revocation highlighted for many participants the limitations on their equality with other Canadians, it also encouraged a more profound sense of belonging as both Canadian-born and foreign-born citizens became engaged in the politics of citizenship and strove to articulate an alternative understanding of what it means to be Canadian.