



The Extraordinary Statelessness of Deepan Budlakoti: The Erosion of Canadian Citizenship Through Citizenship Deprivation

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ABSTRACT *As part of the larger trend towards “securitization” of citizenship, citizenship deprivation in Canada is becoming increasingly normalized, resulting in some cases in statelessness. In this article, I pursue a sociology of statelessness by examining its localized production and connections to a broader network of social and material relations. I do this through a case study of Canadian-born Deepan Budlakoti, who at age 22 was informed that he was in fact not Canadian, and lacking any other citizenship, was rendered stateless. Actor-Network Theory is employed to trace how it is that legal documentary and heterogeneous networks of humans and things (e.g., a “legal technicality”) have been enrolled to produce a legal decision declaring that Budlakoti, despite his Canadian birth certificate and passports, was never a Canadian citizen. Yet because he has not exhausted all avenues to acquisition of some citizenship (e.g., in India or Canada), he also has failed to secure recognition of his statelessness. A particular innovation in this analysis is the exploration of the exemption in the Canadian Citizenship Act from jus soli citizenship for children born to foreign diplomatic staff. Networks of immigration tribunal and court judgements, and documents treated as evidence have connected and translated into establishing Budlakoti’s fit with this exemption, despite countervailing evidence and a lifetime of documented and state-assisted reproduction of his Canadianness. While robbed of his legal and social identity, and suffering the egregious consequences of statelessness, Budlakoti continues to campaign for restoration of his right to have rights within his country of birth.*

KEYWORDS statelessness; citizenship revocation; citizenship policy

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Introduction

Statelessness is an exceptional phenomenon in a world where having a nationality is not only a human right but also the statistical norm.^{1,2} It is a phenomenon more familiar in transitional regions of state dissolution, succession or breakup, involving structural discrimination against peoples and minority groups in Asia, Europe, Africa and the Middle East (Mandel & Gray, 2014). By way of contrast, statelessness appears to be a relatively foreign concept in the Canadian context. In comparative perspective, Canada's citizenship laws have been regarded as among the most liberal and generous in the world, offering multiple avenues to full citizenship – *jus soli* and *jus sanguinis* at birth, and through naturalization for immigrants who as permanent residents already enjoy many citizenship-type rights. Yet, as I explore here in the case of a Canadian-born stateless man, Deepan Budlaskoti, statelessness exists in Canada. As importantly, mechanisms and reforms in Canadian law and administrative practices serve to produce statelessness.

Gradational citizenship, where the rights specifically to *retain* citizenship have been differentiated between Canadian- and foreign-born, as well as by race and ethnicity, is nothing new in the Canadian context. Indeed, as Anderson (2008, p. 88) points out, “the basic tension between the equality of all citizens and the authority of the state to revoke the citizenship of foreign-born Canadians has existed since Confederation.” Citizenship revocation and deportation have variously targetted “dangerous European” labour radicals in the interwar years (Avery, 1979), Japanese Canadian citizens during World War II, and Nazi war criminals since the early 1990s (Anderson, 2008, p. 88). Nonetheless, the contemporary *reputation* of Canadian citizenship has been of “statefulness” (Kerber, 2007, p. 7) whereby full and permanent citizenship status has been either automatic at birth or relatively easy to gain and nearly impossible to lose.

Yet, recent reforms in Canadian citizenship legislation and procedures during the near decade of Conservative rule (2006-2015), couched in language about “strengthening Canadian citizenship” and “protecting the security and safety of Canadians,” have again made citizenship a conditional privilege that is more difficult to acquire and easier to lose (Government of Canada, 2014b, 2014a, p. 1; National Immigration Law Section, Canadian Bar Association, 2014). Citizenship stripping reforms introduced in the *Strengthening Canadian Citizenship Act* (former Bill C-24), implemented in

¹ There is no consensus on the difference between the two terms “nationality” and “citizenship;” the distinction between these terms also varies from country to country. They are frequently used synonymously to refer to full legal membership in a nation-state. The latter convention will be adopted in this paper.

² Article 15 of the Universal Declaration of Human Rights (United Nations, 1948) states: “1. Everyone has a right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

the dying days of the Harper government, specifically targeted Canadian-born individuals convicted of certain offences against the state (Government of Canada, 2014a).³ Such reforms are significant insofar as they introduce new mechanisms for producing *de facto* statelessness among the Canadian-born. As explored in this article, there are other, less scrutinized mechanisms in Canadian citizenship law (such as the “diplomatic exception” to *jus soli*), and administrative practice that can strip the citizenship of Canadian-born individuals in a political climate where citizenship deprivation becomes increasingly normalized as part of the larger trend towards “securitization” of citizenship.

In this article, I pursue a sociology of statelessness by examining its localized production and connections to a broader (and in some instances, transnational) network of social and material relations. I do this through a case study of Canadian-born Deepan Budlakoti, who at age 22 was informed that he was in fact not Canadian, and lacking any other citizenship, was rendered stateless. I utilize Actor-Network Theory (ANT) as an analytical guide for exploring how Budlakoti’s citizenship was extinguished.

The article is organized to, first, discuss the scholarly contribution of a sociology of statelessness to current debates on this most abject of statuses. Here, I examine the potential relevance of ANT to provide conceptualization of deprivation of citizenship, and its particular bearing on Budlakoti’s translation from a Canadian birthright citizen to a stateless person. Second, the article briefly addresses some dimensions of contemporary statelessness in Canada, including its context of production through reforms in citizenship revocation, its prevalence and the consequences for those holding this abject legal status. Third, I explore the Budlakoti case to reveal the networked production of statelessness. Here legal documental networks were central in creating the lived status of citizenship only to be replaced by another network of documents and other forces, which expunged that citizenship and produced statelessness.

In the fourth part of the paper, I focus on how the government has utilized a listed exception in the *Canadian Citizenship Act* to *jus soli* citizenship, exempting the children born of foreign diplomats and their employees, to negate the two decades of Budlakoti’s government-assisted identity as a Canadian citizen. Finally, in the conclusion, I reiterate the social justice implications of the networked extinguishment of Budlakoti’s Canadian

³ Until recently, the Canadian-born have largely been secure in their citizenship status whereas there has been a long-standing tradition of revocation of citizenship for the foreign-born. Indeed, the grounds for revocation have undergone a process of expansion and contraction. Since 1868, grounds have expanded from misrepresentation or fraud during the process of naturalization, to “disloyalty to his Majesty” in 1919 to grounds of severe criminality in 1920 (Anderson, 2008, p. 85). In order to limit the discretionary powers of the government and promote the equality of all citizens, the 1976 *Immigration Act* made false representation or fraud during application for citizenship the sole ground for revocation (Anderson, 2008, p. 85).

citizenship and briefly address the role of contestation, especially by Budlakoti himself, in resisting legal and social erasure.

Actor-Network Theory (ANT) and the Sociology of Statelessness

Although scholarship on citizenship deprivation and statelessness in the Canadian context is fairly nascent, there has recently been a flurry of debate, engaged in primarily by legal scholars, political theorists and ethicists on the legal and normative (i.e., human rights) aspects of statelessness in Canada, the U.S., Australia and the European community (Edwards & van Waas, 2014). An under-explored dimension of the literature is sociological analysis of the social relations, mechanisms, agency of multiple actors, documents, accidents (Nyers, 2009), bureaucratic errors, etc., that produce statelessness for certain subjects and populations, and of the lived experience and identities of stateless individuals and communities. Ethnographic and other qualitative methodologies have been illuminating of citizenship as not exclusively a juridical relationship between individuals and states involving particular statutory rights and obligations, but as importantly a negotiated and dynamic relationship within a network of institutions and social interactions spanning the state and civil society (Stasiulis, 2013; Stasiulis & Bakan, 2005). Similarly, Sigona (2016, p. 267) has argued that a sociological understanding of statelessness would place “the investigation of the everyday, concrete manifestations at its core, while being attentive also to the process of institutionalization of ‘statelessness’... [as] a technology of power operating across different scales and in different locales.” Sociological analysis would enrich our appreciation of the social relations of power that underlie the making and unmaking of citizenship and of the everyday experience of statelessness. It is essential for producing socio-legal comprehension of statelessness, illuminating how the social and legal realms interact and intertwine to produce this most abject of legal and social identities.

Citizenship is usually regarded as far more than a mere legal bond between state and individual, albeit that legal status is fundamental to the enjoyment often of even basic human rights.⁴ It is also (in most cases) the lived experience of that legal bond or what the International Court of Justice (ICJ) in the 1955 *Nottebohm* case referred to as the “genuine link” basis for citizenship defined in terms of “the social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”⁵ The genuine link (also called the “real and

⁴ Even in the early U.S. and French declarations of rights, there was a recognition that “natural rights” or what are now commonly referred to as “universal human rights” granted to all individuals at birth, “could only be recognized and enforced in a practical way through membership in a State” (David Weissbrodt, quoted in Howard-Hassmann, 2015, p.1).

⁵ *Nottebohm* (Liech. V. Guat.), 1955 ICJ 4, 23. Nottebohm was a man who was born in Germany, had German citizenship, but lived for 34 years in Guatemala, where he never became a citizen.

effective nationality”) criterion for citizenship is by no means the only or most desirable principle for deciding or extinguishing citizenship.⁶ De Groot, Vink and Honohan (n.d.), however, in their review of citizenship revocation patterns in Europe, argue that “[t]he fundamental principles governing provisions for loss of citizenship *should be the absence of a genuine link and avoiding statelessness*” (p. 6, emphasis added). A sociological study of statelessness, attentive to the quotidian denial of the relevance of the genuine link, and the stripping of a stateless person’s “reciprocal rights and duties” is critical for documenting the unremitting human rights violations and indignities suffered by those deprived of citizenship.

Linda Kerber (2007, p. 31) argues that statelessness today “is most usefully understood not only as a status, but as a practice, made and remade in daily decisions of presidents and judges, border guards and prison guards, managers and pimps.” Yet, the process of legally and discursively producing statelessness involves not only decisions of various human agents, but also the agency of objects, particularly documents. As Actor-Network Theory (ANT) insists, human action is entangled with its physical environment and material objects. Following Kerber and the insights of ANT, this paper seeks to understand Deepan Budlakoti’s extraordinary statelessness as a process of production involving heterogeneous networks of various prison and immigration officials, tribunals and courts, documents produced in different jurisdictions, and circumstances that have stripped him of his citizenship and left him vulnerable to indefinite immigration detention and removal from the only country he has ever known or where he has held meaningful ties. Only limited, albeit critical, segments of his ongoing networked production of statelessness will be examined here to explore how a “narrow question of fact” has served to extinguish a person’s lifelong formal and lived membership in Canada and create statelessness (*Budlakoti v Canada (Citizenship & Immigration)*, 2015 FCA 139, para 10).⁷ ANT provides a

On the eve of World War II, Nottebohm applied for and received citizenship from Liechtenstein, a country where he had few to no ties, in order to become a citizen of a neutral country rather than a belligerent one. Upon returning to Guatemala, he was refused entry on the grounds that he was an enemy alien, since Guatemalan authorities refused to recognize his change of nationality and regarded him as German. The International Court of Justice (ICJ) applied the “genuine link” test to decide against Nottebohm’s claim to citizenship in Liechtenstein.

⁶ The genuine link theory stemming from *Nottebohm* does not purport to regulate nationality for all purposes. Sloane argues that the genuine link theory of citizenship, which has “developed into a kind of unreflective dogma” throughout the international law of nationality, is misguided and anachronistic. As people travel, work and live internationally, social attachment to nation states attenuates. Instead, he proposes that international law should regulate nationality in terms of its functions, “so as to better effectuate the diverse roles that nationality serves today” (Sloane, 2009, p. 4). Nonetheless, he concedes that in some areas of law, such as in certain *human rights* cases, *Nottebohm’s* dicta may remain appropriate and effective, “serving to protect precisely the kind of deep social bonds emphasized in *Nottebohm* against a formal nationality imposed by law” (Sloane, 2009, p. 5, emphasis added).

⁷ The “narrow question of fact” referred to by Justice Stratas in the Federal Court of Appeal decision of June 2015 is whether Mr. Budlakoti’s parents’ employment with the Indian High Commission ended before or after his birth. If before, then Deepan enjoyed *jus soli* citizenship; if

useful methodology to study the social action and networks of socio-legal objects - especially legal documents such as passports, birth certificates, tribunal and court decisions and supporting documentation, and fundamental pieces of legislation such as the *Canadian Citizenship Act*, as they become entangled with human decision-making.

Actor-Network Theory (ANT) was developed in the 1980s by science and technology studies scholars Bruno Latour and Michel Callon and sociologist John Law (Callon & Latour, 1981). ANT has since been utilized in many different fields, including socio-legal studies (Cloatre, 2008; Cowan & Carr, 2008; Grabaham, 2011; Levi & Valverde, 2008). As John Law points out, the actor-network approach is more of research method than a theory, grounded in empirical case studies, “a sensibility to the messy practices of relationality and materiality of the world” (2009, p. 142). A distinctive and innovative contribution of ANT is its “posthumanism” that subverts dualisms such as “human and non-human, meaning and materiality, big and small, macro and micro, social and technical, nature and culture...” (Law, 2009, p. 147). Human actors and non-human objects, all positioned in a “network of heterogeneous materials,” are treated equally as “actants,” determinants of social interactions and outcomes (Law, 1992, p. 381).

The effort to identify significant processes producing the deprivation of Budlakoti’s Canadian citizenship (thus minimally creating *de facto* statelessness) is guided by ANT and its illuminating applications in socio-legal studies.⁸ For one of ANT’s founders, Bruno Latour, law is a “network of people and things in which legality is not a field [with any sort of internal autonomy] to be studied independently” (Levi & Valverde, 2008, pp. 806, 818). Rather, law is “an attribute that is attached to events, people, documents and other objects when they become part of the decision-making process...” (Levi & Valverde, 2008, p. 818). Latour’s approach to law both records the “often stammering human interaction that produces law” that is obscured by the public and impersonal voice of law (Levi & Valverde, 2008, p. 814), and brings notice to the “materiality of legal cases,” whereby case files are compiled and put together with rubber bands, staples and paper clips, a fact that can affect court decisions (e.g., because pages might be missing, outdated “facts” are reiterated, etc.) (Levi & Valverde, 2008, p. 816). The network of relations among various documents (birth certificates, employment contracts, witness affidavits, etc.) that may be transformed into evidence for a case constitutes legality. Once a “file is sufficiently ripened –

after, then he was excluded from birthright citizenship through “diplomatic exception” under paragraph 3(2)(a) or 3(2)(b) of the *Citizenship Act*, 1985 (*Budlakoti v. Canada (Citizenship and Immigration)*, 2015 FCA 139 para 10).

⁸ The practical difference in access to rights between *de jure* and *de facto* statelessness is often minimal. A *de jure* stateless person is one “who is not considered as a national by any State by the operation of its laws” (1954 U.N. Convention relating to the Status of Stateless Persons). A *de facto* stateless person is one who “without having been deprived of their nationality no longer enjoy[s] the protection and assistance of their national authorities” (quoted in Brouwer, 2012, p. 20).

with an increasing number of documents added to it” from different offices and bureaucracies, “the alchemy of legal decision making takes place” (Levi & Valverde, 2008, p. 817).

Networks under ANT are regarded as “flows of translations,” referring to “all the negotiations, intrigues, calculations, acts of persuasion and violence” by which an authority speaks or acts on behalf of another actor or force (Cowan & Carr, 2008, p. 152). They are mobile but also “hold patterns of links stable, at least for a period of time” (Cowan & Carr, 2008, p. 152). Participants in networks are active mediators as opposed to passive intermediaries, shaping the social, and “making it bifurcate in unexpected ways” (Latour in Cowan & Carr, 2008, p. 152).

Documents or texts frequently feature as key actants within actor-network analysis, and legal-documental networks are often studied in socio-legal applications of ANT (Law, 1986; Grabham, 2011). Given that many of the points of contention in the Budlakoti case involve interpretation of documents and their circumstances of production (e.g., the passports issued in bureaucratic “error,” the affidavits judged to be tainted by faulty memory, etc.), ANT, with its focus on the “agency” of material objects such as documents, is an attractive tool to analyze the particularities of this case.

ANT explores the *hows* and not the *whys* of the social (Law, 2009, p. 148). In order to examine the reasons *why* Canadian authorities questioned and denied citizenship status to Budlakoti, it is additionally important to examine the racialization of processes of citizenship revocation and statelessness, and the securitization of immigration and citizenship policies through a critical race and intersectional lens.⁹

Statelessness in Canada

As those who study statelessness both in Canada and internationally have observed, “data on statelessness is notoriously difficult to obtain and often unreliable” (Brouwer, 2012, p. 58). In the 2006 Canadian Census, 1,455 persons self-identified as “stateless” when asked to select their country of origin (Brouwer, 2012, p. 58). Despite the relatively small numbers of stateless in Canada (or born of Canadian citizens), there are pressing reasons to make the production of statelessness in Canada a focus of research, analysis and public awareness. First, there is evidence of statelessness in Canada and new policy innovations that increase the likelihood of statelessness. Second, Canada has made an international commitment to reduce future statelessness by virtue of having signed and (in 1978) ratified

⁹ Given the limitations of space in this article, the analysis of the racialized and intersectional dimensions of the broader context of social relations of power are treated here in a fairly cursory manner.

the 1961 *UN Convention on the Reduction of Statelessness*.¹⁰ Third, the fact that in 2014, the UNHCR embarked on a 10-year global campaign to end statelessness offers a unique contemporary moment to examine and address statelessness in Canada.

What does it mean to be stateless in a country that has an international reputation for “statefulness,” characterized by a relatively democratic and socially inclusive citizenship regime? A stateful country accords some rights to stateless persons; but with far less legal obligation to the denationalized, these are not rights but discretionary privileges provided by a “generous” state. For those stripped of nationality, if additionally (as likely) deemed to be “inadmissible to Canada” for reasons such as serious criminality, treason, or terrorism, the stateless are prone to indefinite detention or banishment. Statelessness in Canada, as elsewhere, becomes a form of “political and civil death,” the total destruction of the individual’s status in organized society (Lavi, 2011, p. 800, citing *Trop v Dulles*). To be a stateless person is to face endless legal and practical erasure, suspicion, rejection and punishment on a daily basis. This includes the inability to prove one’s identity, register one’s marriage or birth of one’s children, move freely, and access health care, education, employment and other social services. Not having citizenship or permanent residence leaves stateless persons as ineligible to leave the country and robs them of the right to return, even to a country where they may have resided their entire lives. One who has had their citizenship extinguished and lacks the protection of any sovereign conforms to Giorgio Agamben’s concept of *homo sacer*: having been stripped bare of citizenship, the “accursed man” (or “sacred man,” a figure in Roman law) exists in a wasteland between exile and belonging, between life and death. Deprived of rights, *homines sacri* such as the stateless experience only “bare life” (Agamben, 1995).

Agamben’s “states of exception,” such as promulgated by the global war on terrorism have produced *homines sacri* through laws to curtail, contain and monitor the state’s own citizens through illiberal and non-democratic means. Citizenship reforms in Canada, the United States, Australia and several European countries during the past decade have broadened grounds and paths for revocation and extinguishment of citizenship,¹¹ opening up what Linda Kerber (2007, p. 24) calls new categories of “instability and potential statelessness.” Citizenship, long thought of as an “inalienable right,” particularly for those born with this status, is now increasingly recast as conditional upon conduct through the emergence of new “regimes of

¹⁰ As of May 8, 2016, 65 state parties had ratified or acceded to the Convention (United Nations, 2016). Importantly, Canada has yet to ratify the 1954 Convention, which would require Canada to actually put in place some kind of specific protections for stateless people. Principally, this could include a statelessness determination procedure separate from the refugee status determination process (Brouwer, 2012).

¹¹ As of 2014, 22 countries in Europe had passed laws permitting denaturalization for terrorism or other behavior contrary to the national interest (Forcese, 2014).

citizenship deprivation” meant particularly to target citizens who have engaged in or are suspected of supporting terrorist activity (Forcese, 2014; Lenard, 2016; Macklin, 2014). Through strengthening the “security state,” many liberal democracies are now sliding down the slippery slope in extinguishment policies, beginning with naturalized citizens, continuing with dual citizens, then moving to birthright citizens in revocation directed at so-called “homegrown terrorists,” and finally countenancing such extinguishment even if the end product is statelessness.¹²

As Barbara Jackman, a lawyer specializing in immigration law has pointed out, the move to citizenship deprivation was preceded in Canadian immigration law by several reforms that diminished the rights of permanent residents to remain in Canada for reasons of criminality and national security and strengthened executive powers to remove permanent residents (Jackman, 2014). In the Canadian context, permanent residency has traditionally provided a broad range of citizenship-like rights, and often was seen as almost equivalent to Canadian citizenship. In the post-9/11 era, permanent residence had already become an increasingly precarious status.¹³

The Conservative government, under Stephen Harper (2006-2015), introduced significant reforms that render Canadian citizenship conditional on meeting new criteria for conduct. The rationale for fortifying two-tiered citizenship was couched in terms of protecting national security through “refusing citizenship to individuals who pose a security risk,” and reinforcing the “value” of Canadian citizenship by making it harder to acquire and retain, and easier to revoke (Government of Canada, 2014b). In June 2015, the federal government’s Bill C-24, the *Strengthening Canadian Citizenship Act* came into effect, permitting the *stripping* of citizenship, not only among naturalized Canadians but also among those born in Canada holding a second nationality. Moreover, the law’s reach has been interpreted by some critics as applying not only to dual nationals, but to those simply having the imputed ability to acquire a second nationality “in another state through a parent or more distant relative” (National Immigration Law Section, Canadian Bar Association, 2014, pp. 17-18). As delineated below, this creates a “reverse

¹² For a discussion of the trend in Europe and North America toward denationalization of citizens as a counter-terrorism strategy, manifesting the “securitization of citizenship” see the EUDO CITIZENSHIP Forum Debate (Macklin & Bauböck, 2015; see also Forcese, 2014; Macklin, 2014).

¹³ As non-citizens, permanent residents enjoy many but not all of the same rights as citizens; excluded are the right to vote and the right to travel abroad with a Canadian passport. Canadian citizens also enjoy privileged access to the Federal Public Service. The status of permanent residence is also more easily revocable than that of Canadian citizenship, leaving permanent residents more vulnerable to deportation. Thus, under sections 33 and 77 to 85 of the *Immigration and Refugee Protection Act*, permanent residents, but not citizens, may be inadmissible to Canada if suspected of violating human rights, having membership within organized crime, or perceived to be a threat to national security. Those issued “security certificates” are subject to removal orders.

onus,” whereby individuals have to prove that they are not citizens elsewhere in order to retain their citizenship in Canada.

In the 2015 federal election campaign, the Harper government acted on the controversial new law, and moved to strip the Canadian citizenship of several men convicted of terrorist-related charges who were either incarcerated or had recently been released after serving their criminal sentences. The string of revocation notices provoked both human rights and security questions regarding the implications of banishing convicted terrorists, the revival of the medieval practice of “exile” as appropriate punishment in the “age of global terror,” and the use of “double punishment” (incarceration and deportation) by the government in its actions against its citizens convicted of terrorism (Macklin, 2014; Macklin & Bauböck, 2015; Forcese, 2014; Lenard, 2016).

The augmented conditionality, distinctions among different “classes” of citizens, and revocability of citizenship were in keeping with the views, articulated by then Citizenship and Immigration Minister Chris Alexander, when sponsoring Bill C-24, *Strengthening Canadian Citizenship Act*, that “Citizenship is not a right, it’s a privilege” and that it is not and never was inalienable (quoted in Black, 2014, n.p.). Since the October 2015 federal election, the Liberal government of Justin Trudeau, whose election promise was to restore equality among all Canadian citizens, has moved quickly to make good on its promise to repeal the parts of C-24 that applied to those convicted of terrorism-related crimes, ensuring that they can keep their Canadian passports.¹⁴ An important question that arises with the shift from the Conservative to the Liberal policies governing citizenship is what happens to those persons, such as Budlakoti, deprived of Canadian citizenship under the Conservatives and now caught in the transition between these two citizenship regimes?

¹⁴At the time of writing (December 2016), Bill C-6, *An Act to amend the Citizenship Act and to make consequential amendments to another Act* had passed final reading in the House of Commons and was in the process of second reading in the Senate (www.parl.gc.ca/Content/Sen/Chamber/421/Debates/077db_2016-11-28-e.htm?Language=E#37) – Bill C-6 halts the government’s ability to strip citizenship from convicted terrorists and those who commit treason against Canada. Critics have charged, however, that Bill C-6 has failed to fix the lack of procedural fairness and safeguards for individuals facing citizenship revocation due to misrepresentation or fraud by ensuring that they have the right to an independent hearing and to consideration of compassionate and humanitarian factors (Kwan, 2016). It is also striking that the Trudeau government was reported as more aggressively pursuing citizenship revocation than the Harper Conservatives. According to Dyer (2016, n.p.), “the 184 revocation decisions of the first 10 months of the Trudeau government nearly match the total number of decisions over a 27-year period between 1988 and the last month of the Harper government in October 2015.” As Jenny Kwan, NDP immigration, refugees and citizenship critic, argues: “It also does not matter that the misrepresentation is a result of an honest mistake even if you are a child and your parent presented misinformation on the application for whatever reason. Your citizenship could still be revoked and you cannot argue your case based on humanitarian and compassionate grounds. This is wrong” (Kwan, 2016).

Deepan Budlakoti's Journey to Statelessness

How does a person who is born in Canada, has a Canadian birth certificate and passport, and who has spent his entire life in this country as a documented citizen face extinguishment of his citizenship and exile because of a “technicality”? Utilizing the logic of ANT, the production of Deepan Budlakoti's statelessness can be traced through networks or “rhizomes” involving immigration administrative tribunals, citizenship law, discourses of fit citizenship, racial profiling and bordering processes, documents in more than one country, other realms of (e.g., criminal, anti-terrorism) law, the courts, and authorities connected with penal law.

Budlakoti was born in Ottawa's Grace Hospital on October 17, 1989. He has been resident in Canada throughout his life. His parents were Indian nationals who came to Canada in 1985 to work as private household help – gardening, cleaning and cooking for the Indian High Commissioner. As the judgment by Mr. Justice Phelan in Federal Court states, the parents' “employment [with the Indian High Commission] terminated at some point in 1989 – the exact date is hotly contested and the facts in this record are difficult to make out” (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para. 17). According to one set of documents, submitted by Budlakoti's lawyers (discussed below), his parents began working for a medical doctor in Nepean, Ontario beginning in June 1989.¹⁵ According to the documentary evidence favoured by the Immigration and Refugee Board (IRB) and courts, one or both parents continued to work for the Indian High Commissioner until December 1989, two months after Budlakoti's birth.

In 1992, Budlakoti's parents applied for and were granted permanent residence (PR) for themselves and for Deepan, whom they listed as a dependant child in their application¹⁶ In 1995-97, his parents applied for and received Canadian citizenship for themselves; they did *not* submit a citizenship application for Deepan since by then they understood that through his birth in Ottawa, he already had (*jus soli*) Canadian citizenship. This

¹⁵ “In the IRB proceedings, the mother claimed that while pregnant with the Applicant, she had stopped working for the High Commission. The father testified that he had left his job in June 1989, applied for a Canadian work visa in Boston and moved into his new employer's home. Additionally, their new employer (Dr. Dehejia) testified that he travelled to Boston with the Applicant's father in the summer of 1989 to regularize the father's status” (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para. 11).

¹⁶ If Deepan had *jus soli* citizenship, his inclusion in his parents' application for permanent residence was redundant. The courts have decided that the inclusion of Deepan in his parents' PR application is evidence that they were employed by the Indian High Commission at the time of his birth, rather than based on an error on their part. The courts have also decided that the non-inclusion of his name in his parents' citizenship application is simply a neutral fact or at best an unfortunate circumstance, rather than evidence supporting his claim to *jus soli* citizenship. See *Budlakoti*, 2015, FCA, 139, para 5: “It is not clear why the appellant did not apply or why no application was made on his behalf. In any event, only the parents were granted Canadian citizenship.”

understanding was further reflected in Budlakoti's inclusion in 1997 on his mother's Canadian passport until he was 14 years old, and his own separate successful application for a Canadian passport thereafter. The government "clearly had no issue with his status" in issuing these Canadian passports to Budlakoti (Behrens, 2015, n.p.). For two decades after his 1989 birth and the issuance of a Canadian (Ontario) birth certificate, arguably a powerful actant that enrolls other documents that are gateways to Canadian citizenship rights (e.g., passports, social assistance, health care coverage), Deepan's networked existence as a Canadian citizen was unremarkable. The courts in *Budlakoti* dismiss such evidence of Deepan's citizenship by simply arguing that the issuance of passports is "not determinative of citizenship" and merely reflects administrative errors on the part of passport-issuing authorities (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para. 39).

Like many children of working class parents, Budlakoti had a difficult childhood; he ran away from home and became a ward of the Ontario state, where he witnessed and experienced violence in group homes. Like many other troubled Canadian youth in foster care, he fell into a life of crime as a young adult, was incarcerated and served his sentences. In December 2009, he was convicted of break and entry and was sentenced to four months. In late 2010, he was convicted of both weapons and narcotics trafficking and sentenced to three years in jail. While incarcerated, a prison official profiled Budlakoti as someone whose citizenship status should be investigated by Canadian immigration officials. This instigated private discussions of Budlakoti's status among officials of Citizenship and Immigration Canada leading to a decision in 2011 that he was in fact not a Canadian citizen. It also led to a decision that as a permanent resident, Budlakoti was inadmissible to Canada on the grounds of "serious criminality" under the provisions of s. 36(1) of the *Immigration and Refugee Protection Act* (S.C 2001, c 27). One can only speculate what combination of his brown skin, dark beard and "foreign" name became significant actants in casting suspicion on Deepan Budlakoti's "genuine" status as a Canadian citizen.

Budlakoti's case has often been treated unsympathetically by the mass media.¹⁷ Unlike victims who are portrayed as innocent or hapless, insofar as he has had significant brushes with the law, notice paid to his criminal convictions has often superseded focus on the fact that after two decades of his life as a documented and Canadian-born citizen with full protection of the state, he was deprived of his Canadian citizenship and rendered stateless. Viewed through the lens of "cimmigration," however, the decidedly hostile and punitive action of the Conservative government to the issue of Budlakoti's legal status reflects "double punishment," the revival of practices

¹⁷ According to Kane's (2013) analysis of Canadian print media's coverage on the stateless in Canada, the stateless are frequently depicted as enemies, dangerous and tricksters. The stateless are deemed blameworthy and the harsh effects of their legal and/or *de facto* statelessness diminished by the print media's use of quotation marks or the qualifier "so-called" when discussing "stateless" persons.

of banishment and exile intersecting with erosion of rights of persons accused or convicted of crime (Hernández, 2013; Macklin, 2014).¹⁸

In the IRB tribunal and courts, the extinguishment of Budlakoti's Canadian citizenship has been rendered in terms of:

“a significant factual dispute between the parties [and even by the Federal Court of Appeal as a “narrow question of fact,”] as to whether the Applicant's parents left their Indian High Commission employment before or after his birth. If the parents left their employment before his birth, then the Applicant was entitled to Canadian citizenship by virtue of his birth.” (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para.10)

In the latter case, he would be considered as having acquired the right to citizenship under Section 3(1)(a) of the *Citizenship Act*. If not, he would be ineligible for *jus soli* citizenship by virtue of being “not applicable to children of foreign diplomats” under Section 3(2)(a) or 3(2)(b) of the *Citizenship Act*. Citizenship and Immigration Canada officials,¹⁹ the IRB, and the courts have thus far decided that Deepan is not a Canadian citizen and also that it is premature to conclude that he is stateless, because he has not applied for either Canadian or Indian citizenship.²⁰

In 2011, the Minister of Citizenship and Immigration concluded that Deepan was a permanent resident, not a Canadian citizen. The government's contention is not that they have revoked his Canadian citizenship, but that “despite his passport,” he has *never been* a Canadian citizen. As they determined that his parents were employees of the Indian High Commission at the time of his birth, Deepan was thus subject to the exception to *jus soli* citizenship applied to children born in Canada of diplomatic or consular officers or other representatives or employees in Canada of a foreign government. In October 2011, the IRB held an admissibility hearing, ruled Budlakoti inadmissible on the grounds of “serious criminality,”²¹ and issued a removal order to India, a country in which he had no social connection or familiarity. By the end of 2012, having served out his criminal sentence, he

¹⁸ The effort to exile citizens convicted of criminal acts is in keeping with long-standing Conservative Party policy that regards deportation as an effective strategy to support the safety and security of legitimate Canadians. Thus, in *Stand up for Canada*, the 2006 Conservative Party of Canada Federal Election Platform, “effective deportation laws” are touted as a key strategy in keeping Canada's borders safe from foreign criminals within and abroad (Conservative Party of Canada, 2006, p.27, cited in Kwak, 2016).

¹⁹ Soon after the new Liberal government of Canada took office in November 2015, the federal department Citizenship and Immigration Canada (CIC) was renamed Immigration, Refugees and Citizenship Canada (IRCC).

²⁰ Hon. Justice Phelan who heard the case in Federal Court, stated that “India has denied that the Applicant is a citizen of India or entitled to citizenship but the record on this issue is sketchy at best” (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para. 5.)

²¹ Under s. 36(1)(a) of the *Immigration and Refugee Protection Act*, a permanent resident or a foreign national will be considered criminally inadmissible if he or she has been convicted (in Canada) of an offence: carrying a maximum term of imprisonment of at least 10 years; or for which a term of imprisonment of more than six months has been imposed.

was transferred into Customs and Border Protection Agency custody in Toronto's Metro West Detention Centre pending removal in accordance with the removal order. In April 2013, he was released from custody on certain bonds and under strict conditions and surveillance. The government has been unsuccessful in its attempt to deport him to India as Indian authorities have found that he is not an Indian national and refused to issue him travel documents.²² Stripped of his Canadian citizenship, Budlakoti has been "left in a vulnerable position whereby his country of birth and residence has withdrawn his citizenship, thereby rendering him stateless" (Hameed, 2013, pp. 3-4).

Today, as a stateless person, Budlakoti's life is full of hardship, mental health issues, uncertainty, and crushing debt incurred from continuous litigation. He has worked for wages intermittently, waiting in some cases six months for work permits, and is ineligible for social assistance. His low educational level, criminal record, statelessness and threat of deportation have made it impossible for him to financially support himself. The government's insistence that Budlakoti fill out documents to apply for a work permit confers foreignness upon him as only temporary foreign workers need fill out such forms. Similarly, in 2012 Budlakoti's transfer from the prison where he was serving out his term to the West Detention Centre in Toronto, where he was detained under immigration law, established his foreignness, as such spaces are reserved for non-citizens. Just as citizenship is produced through documental networks, providing access to publicly funded health care, social services and basic democratic and legal rights, a reverse documental and material network has been enrolled to translate an erasure of Budlakoti's legal and substantive citizenship.

A particularly harsh effect of the extinguishment of his citizenship has been the cancellation of Budlakoti's Ontario Health Insurance Program entitlements, and given his impoverishment, his inability to purchase private insurance. This withholding of public health care also reinforces his production as a non-citizen, whereby he joins "the ranks of an estimated half a million people in Canada [including the undocumented and new immigrants in the first three months of arrival] without access to medical care because of their immigration status" (Bozinoff, Goel, Jones, & Shahid, n.p., 2015). Despite a medical diagnosis that he has PTSD, he is unable to access therapy and health care more generally. In all realms of daily life where he has encountered the impossibility of retaining relationships, supporting himself, maintaining his health, etc., his experience reflects how an individual's slide

²² As the Applicant's Record argues in *Deepan Budlakoti and Minister of Citizenship and Immigration*, "Significantly, the Indian government indicates that the Applicant is not an Indian citizen, a fact which is undisputed by [the Minister of Citizenship and Immigration.] A relevant communication made by India to CBSA on March 18, 2013 regarding its position on the Applicant's nationality [never communicated to Budlakoti]...was later discovered by the Applicant in September 2013 through a personal information request made by him under the *Privacy Act*" (Hameed, 2013).

to statelessness results in the most egregious of harms.²³ In January 2016, Budlakoti was incarcerated on a new charge and subsequently released in August 2016 under strict monitoring and curfew conditions and subject to unannounced visits to his residence from Canadian Border Services Agency officials. At different points, Budlakoti's citizenship extinguishment involved the seizure by authorities of those documents which had long been "proof" of his legal identity as a citizen (e.g., his passport and later his birth certificate).

Thus far, Budlakoti has engaged in a fruitless round of litigation to regain his Canadian citizenship, having had his case decided first by Citizenship and Immigration (CIC) officials and the Immigration and Refugee Board (IRB), and then heard by the Federal Court and the Federal Court of Appeal. The courts have refused to decide on "a factual matter" that had already been decided upon by the IRB. Thus, the IRB can be said to have enlisted the Federal Court and Federal Court of Appeal to form an "eddy" of common opinion regarding the "factual matter" (the dates of Budlakoti's parents' cessation of employment with the Indian High Commission). The courts have also refused to provide a bare declaration of citizenship, arguing that Budlakoti had not exhausted all avenues or grounds for acquiring citizenship either in Canada or in India, the country of his parents' birth. In January 2016, the Supreme Court declined Budlakoti's request for leave to appeal. His legal team has since worked to prepare an application under the *Citizenship Act* to the Citizenship Minister, assembling the documents that provide an alternative narrative to the "administrative error" and "diplomatic exception" stories created through the documental networks of the IRB and Canadian courts.

The "Diplomatic Exception" to Birthright Citizenship

I will now turn to one of the key junctures or interaction of elements in the networked production of Deepan's statelessness – the rulings of immigration officials, an IRB tribunal, the Federal Court and Federal Court of Appeal that Budlakoti was not a Canadian citizen under paragraph 3(1)(a) of the *Canadian Citizenship Act*. Thus far, all administrative and legal rulings have argued *against* the suggestion that the Canadian government revoked Budlakoti's citizenship. Rather, they contend that Budlakoti had *never been* a Canadian citizen, as the offspring of parents employed by the Indian High Commission at the time of his birth; as such, his citizenship status was governed by section 3(2) of the *Citizenship Act*, which prohibited Canadian

²³ *Trop v. Dulles*, 356 U.S. 86 (1958), was a federal case in the United States in which the Supreme Court ruled, 5-4, that it was unconstitutional for the government to revoke the citizenship of a U.S. citizen as a punishment. Chief Justice Earl Warren described citizenship revocation as "a form of punishment more primitive than torture" as it inflicts the "total destruction of the individual's status in organized society" and "subjects the individual to a fate of ever-increasing fear and distress."

citizenship at birth. As discussed above, what was presented through the network of litigation of his case were several documents and conflicting evidence about the dates of termination of employment of Budlakoti's parents with the Indian High Commission.

However, it is illuminating to first examine the assumptions underlying the section 3(2) exception in the *Canadian Citizenship Act* to birthright citizenship and its application to the case of Budlakoti. Foreign diplomatic missions and consular posts are governed by the Vienna Convention on Diplomatic Relations, based upon principles of diplomatic immunity originating more than 3,000 years ago (Castro, 2014, p. 355). The Vienna Convention grants diplomats and their families numerous protections, including immunity from criminal and civil jurisdiction of receiving states (Castro, 2014, p. 353). The exception to birthright *jus soli* citizenship that excludes children born of parents who are representatives of foreign nations is widely assumed to be fair and equitable in those countries such as the United States and Canada that take this "expansive" approach to citizenship (Guendelsberger, 1992; Feere, 2011).²⁴ This is the "one area of solid agreement" among advocates on both side of the ongoing debate about automatic citizenship granted to children born of non-citizens (Feere, 2011, p. 1).

The exemption from *jus soli* citizenship for children born to foreign diplomatic staff is based on the perceived unfairness of automatic recognition of this citizenship where it would confer *both* the rights of diplomatic immunity from criminal and civil law in the country of birth *and* all the benefits of birthright citizenship. In a relatively wealthy country with a robust social rights and human rights record, the gain to the diplomat's child of acquiring the rights, benefits and opportunities of the country of birth would be substantial. The fear is that lax regulation of *jus soli* citizenship for a child of foreign diplomats would create a "super citizen" who not only enjoys all the benefits of birthright citizenship but whose diplomatic immunity also puts him or her above the law (Feere, 2011, p. 1).

Notwithstanding the consensus on the "diplomatic exception" to children gaining *jus soli* citizenship, in practice, an unknown number of children of foreign mission employees "mistakenly" receive *jus soli* citizenship. In the U.S. context, Feere (2011, p. 2) suggests that "the limiting language in the 14th Amendment's Citizenship Clause has been effectively rendered a nullity as a result of a lack of regulations aimed at birth certificate and SSN [Social Security Number] issuance." His contention is that "today's application of the Citizenship Clause is so lax that the United States has a *de facto* universal

²⁴ The Citizenship Clause of the 14th Amendment in the U.S. Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The exception regarding children born to parents who are representatives of foreign nations is based on the fact that they are not "subject to the jurisdiction" of the United States and are therefore not to be granted U.S. citizenship (Feere, 2011, p. 1).

birthright citizenship policy that denies U.S. citizenship by birth to no one, including children born to foreign diplomats” (Feere, 2011, p. 2). The suggestion that the practice also occurs in Canada is reflected on the Global Affairs Canada website (n.d.) which provides redress instructions to diplomat parents of children “born in Canada who did not acquire Canadian citizenship,” and yet who had obtained a Canadian passport warning that “application for such a passport can be construed as misconduct,” and that any such passport should be surrendered.

The “error” of granting birthright citizenship to children of diplomats is created through a chain of documents. As Global Affairs Canada (n.d.), notes, “children born of foreign representatives would normally obtain a provincial birth certificate.” The birth certificate in turn permits acquisition of a social insurance number and a Canadian passport. Notably, birth certificate request forms do not require declaration of parental diplomatic status. This practice is significant insofar as a Canadian long-form birth certificate in fact is a portal to citizenship – the key identity document to establishing one’s access to Canadian passports for children.

It is not known how many Canadian-born children of foreign diplomats have followed the network of documents issued by Canadian federal and provincial government agencies from Canadian provincial birth certificate to acquisition of Canadian passport and access to a lifetime of treatment by all levels of the Canadian state as a Canadian citizen. In Canada, the issue of ethically questionable application of *jus soli* has focused primarily on so-called “birth tourism” and “passport babies,” born to foreign women who come to Canada for the express reason of gaining Canadian citizenship for their Canadian-born children rather than children of foreign diplomats or employees (Wong, 2014). In the United States, the heated debate over intended scope of the 14th Amendment’s Citizenship Clause has focused primarily on U.S.-born children of “illegal immigrants.” Interestingly, in the U.S. context, Feere argues that the State Department has determined that birth to a foreign diplomat “may not necessarily bar an individual from being considered a U.S. citizen at birth.” The U.S. State Department’s determination “required a fact based analysis to determine whether he/she was born subject to the laws of the United States,” skirting the issue of whether such a child was “subject to the jurisdiction of” the U.S. (quoted in Feere, 2011, p. 5, emphasis added).

How has the issue of birthright citizenship and the diplomatic exception been applied in the case of Deepan Budlakoti? As mentioned earlier, Deepan’s parents were never part of diplomatic staff; rather they were employed as low-level household workers for the Indian High Commissioner. Citizenship and Immigration officials, the IRB and the Federal Court and Federal Court of Appeal have all agreed that Budlakoti’s parents’ employment ended after their son’s birth, concluding that he had never been a Canadian citizen under S. 3(1)(a) of the *Citizenship Act*, his lack of such status governed by S. 3(2) of the *Citizenship Act*.

Budlakoti's contention that he was born after his parents had concluded their employment with the Indian High Commission is supported by (among others) his Ontario certificate of live birth which lists a Nepean doctor's address rather than the Indian High Commission as the residence of his parents, and affidavits signed by both the former Indian High Commissioner and the Nepean doctor. IRB officials and judges in subsequent court proceedings have treated with suspicion documents and forms of legal evidence that support Budlakoti's contention that he was born after his parents left the Indian High Commission and therefore is entitled to *jus soli* Canadian citizenship. Instead they have favoured an alternative set of documents that indicate Budlakoti's parents were still employed by the High Commission at the time of his birth. Thus, the affidavit evidence of the former Indian High Commissioner is reported to be "undermined" by the fact that the "3rd page of the four-page affidavit is missing" (*Budlakoti*, Judgment and Reasons, 2014 FC, para 22). The government and the courts relied on several documents from the Indian High Commission and an employment authorization from the Canadian government whose dates place the work departure of Budlakoti's parents from the Indian High Commission in December 1989, about two months after Deepan's birth. The integrity of these documents are never questioned by the IRB or Federal Court, even though the former Indian High Commissioner stated that the December date is in error.

Central to ANT is the concept of "translation," whereby all the actors in the network agree that the network is worth building and defending. Translation "requires a performative definition in which power is the consequence of an intense activity of enrolling, convincing and enlisting" (Cowan & Carr, 2008, p. 152). In Budlakoti's case, this network where state power has been invested is one of extinguishment of his citizenship and production of statelessness. Documents that are enrolled to support this position and treated as factual are those that reinforce Deepan's exemption from birthright citizenship (regardless of the possibilities that they may express administrative error, laxity or lag). Those that contradict this claim are here enrolled as lacking in integrity, undermined by several other documents, internally inconsistent, or (as in the case of Budlakoti's passports) dismissed as having been produced in error and of no significance to his efforts to regain state and judicial recognition of his status as a Canadian citizen.

If one pierces the thin technical argument regarding the determination of Budlakoti's birthright citizenship, the rationale behind the Section 3(2)(b) exception to birthright citizenship simply does not apply in this case. The ambivalence expressed by the U.S. State Department to birthright citizenship of U.S.-born children of foreign diplomats, suggesting that it depends on whether they were "born subject to the laws of the [U.S.]" in fact suggests a deeper socio-legal understanding of citizenship. Deepan has never had access to a life of diplomatic privilege where he was not subject to the jurisdiction or the laws of Canada. Quite the contrary – in his troubled youth, he was a ward

of the Ontario state. Justice Phelan (quoting Justice Shore in *Al-Ghamdi*, 2007) states: “The objective of paragraphs 3(2) (a) and (c) of the *Citizenship Act* is to ensure that citizenship is not accorded to someone who is immune from almost every obligation of citizenship (e.g., paying taxes and respecting criminal law). This is manifestly an important objective” (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para. 48). Yet Budlakoti was *never* immune from the obligations of Canadian citizenship. He has been subjected to the full force of Canadian criminal law in his convictions and sentences. More sympathetic readings of his brushes with Canadian law have pointed out how his pleas and sentencing have reflected his status as a young and low-income person, and the particular vulnerabilities associated with his racialized Otherness (Behrens, 2015).

The approach taken by the government and courts is a “reverse onus” approach, which places responsibility on individuals, faced with Canadian citizenship revocation, to show that they do not have citizenship in some other country, rather than on the state to prove that the decision to deprive individuals of citizenship will not render them stateless. Since the first determination by Canadian authorities that his citizenship had been issued in “administrative error” given his parents’ presumed employment with the Indian High Commission at the time of his birth, only those objects (mainly documents) in legal-administrative networks that reinforce his non-citizenship in Canada have been enlisted to support the Canadian government’s case that Budlakoti is a non-citizen of Canada. The government’s actions were to his detriment in that Budlakoti had opportunity during this time to apply for Canadian citizenship. Yet he (and his parents) were implicitly discouraged from doing so by the reiterated assurances by the Canadian government, which issued Deepan passports (which involves vetting applicants to ensure that they are indeed Canadian), documents involved in his becoming a ward of the state, an OHIP card, etc., indicating he was indeed a Canadian citizen. A justice-based argument to restore Budlakoti’s citizenship would accept that his case is one of “detrimental reliance:” to his detriment, the Canadian state made him believe for about 20 years through its various document-issuing actions that he was a Canadian.²⁵

The Canadian courts have thus far also refused to engage with a fuller socio-legal understanding of citizenship, following *Nottebohm*, based upon a “genuine link” to a state, and “a social fact of attachment.” The genuine link principle of citizenship may be limiting in an era of globalization whereby more people are living and working internationally, and individual’s social and affective ties to nation-states have attenuated. However, in cases such as Budlakoti’s involving extinguishment of citizenship, *Nottebohm*’s dicta remain appropriate and effective, “serving to protect precisely the kind of deep social bonds emphasized in *Nottebohm against a formal nationality*

²⁵ I would like to thank Audrey Macklin (personal communication) for bringing this argument to my attention.

imposed by law” (Sloane, 2009, p. 5, emphasis added). A test of “effective nationality” seems appropriate in the Budlakoti case, whereby genuine links in Canada, created in part by the state’s repeated treatment and verification of Budlakoti as a citizen for over 20 years, provide strong arguments for the “re-recognition” of his citizenship.

The courts have also declared Budlakoti’s statelessness to be “premature” in that he has not pursued other grounds than birthright citizenship, such as “Special and unusual hardship” of Subsection 5(4) of the *Canadian Citizenship Act*. They also have suggested that Budlakoti should explore application for Indian national status or citizenship: they import essentialist reasoning to assert that since he was “born of two Indian nationals” this gives him “considerable connection with India” (*Budlakoti v Canada (Citizenship & Immigration)*, 2015 FCA 139, para. 32, 49).

The courts define Mr. Budlakoti’s legal status as not necessarily and prematurely stateless, arguing that his circumstances are not beyond his control. It can be very difficult to provide satisfactory evidence of statelessness as it requires proving a negative, the absence of a nationality. It is also unjust that some one who has had his life-long citizenship extinguished in the country where he was born and lived his entire life has additionally to undergo overwhelming financial debts and prolonged process to prove that he has no nationality (in this case in India). In the interim stretch of many years, his everyday life is plagued by the indignities and “protection gap” of *de facto* statelessness.

Conclusion

As the most abject “Other” to the citizen, the stateless serve an important boundary function for the state in securing its sovereignty and stabilizing its borders (Kerber, 2009, p. 31). The “stateless serve the state,” writes Linda Kerber, “by signaling who will not be entitled to its protection, and throwing fear into the rest of us” (Kerber, 2009, p. 31). The decision by the Conservative government to strip Mr. Budlakoti’s citizenship was clearly shaped by the motivations underlying its citizenship revocation reforms that “tethers citizenship revocation to criminal convictions” (Macklin, 2014, p. 29). By making citizenship alienable on the basis of a sliding scale of “criminality,” citizenship is no longer a right but a “revocable privilege” and is downgraded to an “enhanced form of conditional permanent residence” (Macklin, 2014, p. 29). Under the Conservative government, which stripped Budlakoti of both his citizenship and basic human rights, an application to the Citizenship Minister under the prior government was perceived by Budlakoti to be tainted by pre-judgments regarding his criminality as grounds for citizenship stripping and exile (Keung, 2013)

Utilizing the insights of Actor-Network Theory (ANT), the production of Budlakoti’s statelessness has been traced through heterogeneous networks

involving prison officials, racial profiling and bordering processes, immigration administrative tribunals, the *Citizenship Act*, discourses of fit citizenship, documents in more than one country, other realms of (e.g., criminal, anti-terrorism) law, the courts, lawyers and judges.

Immigration lawyers such as Barbara Jackman are critical of the manner in which under the Conservative government, the Canadian courts have built case law in terms of a stack of negative cases, which permit the cavalier extinguishment of an appellant's citizenship and human rights. Referring to a context of "gutting of Charter Rights since the Supreme Court imposed a standard of 'reasonableness'," Jackman (2014) argues the "the ability of people to challenge cases...has gone experientially down since the Supreme Court imposed that standard [of reasonableness]." She specifically refers to Justice Phelan's Federal Court ruling extinguishing Budlakoti's citizenship, as the "most demeaning decision in terms of Deepan's rights as a human being" (see *Budlakoti vs. Canada (Citizenship and Immigration)* 2014, FC 855). How is it the case that once the "error" (of daily treating and confirming a person's citizenship all his life) is unearthed, the courts can decide that their course of action need *not* be, in Justice Phelan's words, "the least impairing imaginable," but only necessary to ensure that "the law falls within a range of reasonable alternatives" (*Budlakoti*, FC 2014 855, para 77)?

As I have argued in this paper, certain "simple facts of law" such as the diplomatic exception to birthright citizenship in the *Canadian Citizenship Act* are worthy of scrutiny as they hold tremendous power over persons' lives. The regulation of this diplomatic exception is clearly not cut and dry: as a document-requiring nation, Canada has relied on birth certificates for issuance of citizenship cards, thus permitting an untold number who might technically fit the diplomatic exception to slip by without notice, to have their lives legitimated through a legal documental network produced by multiple agencies that reinforces their Canadianness. For those, like Budlakoti, who are documented citizens all their lives, the courts need to import richer, more rights-based and genuine link notions of citizenship rather than snuff out their citizenship on the basis of a technicality. This is the argument made by Budlakoti (e.g., in 2013 at the Federal Court) where he "emphasized the importance of citizenship to personhood and one's sense of belonging and well-being" (*Budlakoti v. Canada (Citizenship and Immigration)*, 2014 FC 855, para. 18). This historically prior legal documental network, that establishes that Budlakoti was since birth a Canadian, needs to be identified and enrolled to contest the administrative error and diplomatic exception stories narrated in tribunal and court decisions that argue Budlakoti was never a Canadian citizen. This is precisely what Budlakoti himself and the Justice for Deepan committee (online and through various events) are attempting to do in an ongoing campaign to educate various publics and elected officials about the injustice of Budlakoti's citizenship extinguishment, while

supporting a legal and now administrative process to win back his citizenship.²⁶

Despite severe limitations on his geographic mobility imposed by CBSA, Budlakoti has himself been an activist – raising funds and awareness of his situation through a speaking tour in several Canadian cities. He has also supported other causes within his experience, such as the inhumane conditions of prisoners in criminal detention. Budlakoti has clearly galvanized and created several new networks as justice-minded lawyers and university students have been working on different files governing his status. Impressively, it was the awareness of his experience through one of his speaking engagements in Toronto that led to the founding in 2014 of the new advocacy-focused Canadian Centre on Statelessness (n.d.).²⁷ Despite the enrollment of the governmental networks in effecting a legal erasure and reduction to “bare life,” Budlakoti has clearly refused banishment from Canadian society and the status of *homo sacer* (Agamben, 1995).

Currently, under a new Liberal government that has made it clear that “a Canadian is a Canadian is a Canadian,”²⁸ there is some hope though no guarantee of reinstatement of Budlakoti’s birthright citizenship. An important question posed by his case is what happens when individuals fall between the cracks in the transition between two citizenship regimes. The Trudeau government’s Bill C-6, which amends the *Citizenship Act*, contains a provision that would restore the citizenship of any convicted terrorists who lost it as a result of changes brought in by the previous Conservative government (Bell, 2016). In addition, the current Citizenship Minister has promised not to take any further action against nine terrorists who had received notices informing them their citizenship was being revoked (Bell, 2016). This suggests an openness in the current government to a solution supporting restitution of Budlakoti’s human right to his birthright citizenship rather than permitting the punitive ethos of the prior Conservative government to govern the final disposition of his legal identity. More broadly, this extraordinary case of statelessness exposes how the strengthening of Canadian citizenship requires that it become more difficult rather than easier to lose.

²⁶ See www.justicefordepan.org/, Budlakoti’s latest effort to build support for his case involves showing a 15-minute documentary, “Stateless” directed by Amar Wala, about his case to audiences in various Canadian cities. As of writing, Budlakoti’s lawyers are preparing a Citizenship Application to the Minister (of Immigration, Refugees and Citizenship).

²⁷ See also www.statelessness.ca/about-us.html.

²⁸ This was a slogan repeatedly used by current Prime Minister Justin Trudeau during the 2015 federal election campaign.

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