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Aliens vs. Citizens: Who are the Real Enemies of the State?

SHELDON ALDERTON

In today's political climate where nationalism, protectionism and populism dominate the political discourse, democratic values are being interpreted in new ways. These interpretations give rise to fundamental democratic questions, such as: should certain aliens be allowed to have political rights when they have been living in, and contributing to, democratic countries for extended periods of time? This paper will contrast the political position and rights of Canadian citizens living abroad (expats) with those of permanent residents (aliens) living in Canada, demonstrating that the former have full democratic rights despite being geographically disassociated from domestic communities, while the latter are accorded no democratic rights despite contributing directly to the communities in which they reside. This raises the question of whether it is morally permissible to withhold democratic rights from certain aliens who contribute to their host society more than full citizens of that society who live abroad. Section one demonstrates how democracy is a tool for the institutionalization of liberal values. Section two shows how these values affect expats and aliens unequally and in a manner that is contrary to the values themselves, thus creating a statewide injustice. Lastly, section three presents an argument for eliminating the exclusion faced by aliens in order to resolve the contradiction in liberal democratic values.

There are three distinct types of aliens in Canada: visitors, convention refugees, and permanent residents. For the most part, this essay is not concerned with the first two. This is because visitors are, as the name suggests, only in the country for a short period of time. They will not be there long enough to establish the vested interest that is required to share in the collective burdens and benefits of Canadian democratic society. Convention refugees, defined by the United Nations Convention Relating to the Status of Refugees, fall into another category, with which this paper is not concerned.¹ Aliens, in the context of this paper, are permanent residents. Applications for Permanent Resident status must be made from outside of Canada and applicants are selected according to the government's immigration criteria. Permanent Residents can be skilled workers, entrepreneurs, investors, self-employed persons, or family members of any of the aforementioned people.

Section I

Liberalism values individual liberty – the liberty to form one's own conception of the 'good life' – equality, and autonomy. Democracies set out to promote and protect individual liberty, equality, and autonomy. Therefore, democracy is a tool used to institutionalize liberal values. Because of this, democratic values parallel liberal values – with minor variations. Democracies promote and protect liberty by ensuring freedom of speech, freedom of the press – even when it is critical – and freedom of assembly. Another way that democracies protect individual liberty is in the form of negative rights.

¹ United Nations High Commissioner for Refugees, "Convention and Protocol Relating to the Status of Refugees," accessed August 31, 2018, <http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

Negative rights regard one's 'freedom from' versus one's 'freedom to' – meaning that governments cannot and should not interfere with a person's ability to access and take advantage of those rights. Negative rights are the rights to life, water, fresh air, and so forth. In the case of Canadian democracy, all persons – citizens and aliens – living within Canada's borders enjoy these negative rights.

Another value of liberalism institutionalized by democracy is equality. There are many examples of unequal democratic situations, but these are beyond the scope of this paper. For now, it is fair to recognize that democratic countries promote policies that, more often than not, have the intent of equality and inclusion rather than exclusion. Autonomy is another democratically institutionalized liberal value. Liberalism views the self as an autonomous individual capable of self-governance. In democracies, the tools are there for the self to pursue political participation but that self must begin this process on their own. The liberal self and the democratic self are both viewed as unencumbered and it is individuals who make up the whole. Liberalism and democracy share abstract foundational values; however, democracy also requires substantive values to promote liberalism.

An important democratic value is political participation. In order for a democracy to work effectively, there needs to be political participation from that democracy's citizens. Politics is the preference scheduling of society, or in the words of Habermas, "the democratic process accomplishes the task of programming the government in the interest of society."²

² Jürgen Habermas, "Three Normative Models of Democracy," *Constellations* 1, no. 1 (December 1994): 1–10.

In order for government to know the interests or preferences of society, participation needs to be realized on a scale large enough to represent an adequate sample of that society. The sample of preferences or interests is then aggregated to the whole society to determine governing policies. Another democratic value is rule by the people. The *Oxford English Dictionary* defines democracy as "a system of government by the whole population or all eligible members of a state."³ This is a virtue because states that are governed by the people they represent are generally seen to be more legitimate and stable. This is because it is easier for the aggregate of society to accept governance by their peers rather than a foreign power. Also, this arrangement seems to encompass a certain amount of empowerment. When people vote, even if their candidates lose, they feel that they were heard and that their interests were considered.

Because democratic governments are chosen by the people of a society, and those governments are bound to make decisions that benefit the majority of the people, achieving a kind of common good, it can be argued that democracy is the best way to achieve the common good. This is interesting because it strays from the liberal ideology slightly. Liberalism is concerned with 'the right' (or justice). It deliberately stays away from matters of 'the good' (or morality). By the good, we mean the conception of the good life – the moral life – that persons choose to live. Under the liberal lens, persons are free – consistent with the liberal values mentioned earlier – to pursue whatever conception of the good life they wish. The liberal democratic state will not interfere with one's choice of the good life unless it interferes with

³ "Democracy," *Oxford Dictionaries | English*, accessed August 31, 2018, <https://en.oxforddictionaries.com/definition/democracy>.

another person's. If someone's conception of the good life is counting the blades of grass in their yard, the state has no right to stop them. But if someone else decides that the good life is throwing rocks at their neighbours' children, then the state has every right to forcibly make them stop. Liberalism and democracy treat matters of the good in different ways – total freedom according to liberalism, restricted freedom according to democracy. It makes sense that if people in democratic societies are governed by their peers, democracy would be the best form of government to achieve the common good for those people – a form of governmental relativism.

Above are the substantive political values of democracy that stem from the abstract foundational values of liberalism. Additionally, from these values come certain social privileges that persons residing in democratic societies enjoy – freedom of speech, religion, movement, and association. Aliens will be subject to these privileges, with the exception of one: freedom of movement. Freedom of movement is the freedom to travel, live, and work anywhere one wishes within the borders of a state and is a democratic privilege that stems from the liberal values of liberty and autonomy. Only some aliens are eligible for this privilege, however; it is usually restricted. In this, there seems to be a contradiction between abstract liberal values and the substantive political application of these values. And this goes against the assertion that “for liberals, some rights are always grounded in a ‘higher law’ or ... reason.”⁴ How, then, do the contradictions between political and

social rights and liberal democratic values affect different groups of people within the liberal democratic state? Let us explore them as they regard Canadian expats living abroad and aliens living within the Canadian state.

Section II

Canadian citizenship is acquired via the English Common Law concept of *jus soli* – right of the soil. This means that as long as a child is born within the geographic borders of Canada (unless the child is born to a diplomat of a foreign country) that child is automatically granted Canadian citizenship. This is one of the reasons why Canada is so attractive to migrants from other, less democratic, countries. Migrants know that if they choose to relocate to Canada, their children will be included in the Canadian social fabric by virtue of birthright. The concept of *jus soli* is followed in North, Central, and South American countries but it “does not exist in Europe, Asia, Oceania or most of Africa.”⁵ Recently, the Canadian Progressive Conservative (CPC) party, at its party convention in Halifax, Nova Scotia, moved to “fully eliminate birthright [*jus soli*] citizenship in Canada.”⁶ This motion came from the concern of birth-tourism. Birth-tourism is when pregnant women travel to Canada for the sole purpose of having their children on Canadian soil, thus securing Canadian citizenship for the child. Suburban Vancouver British Columbia, particularly Richmond, is

⁴ Frank I. Michelman, “Conceptions of Democracy in American Constitutional Argument: Voting Rights Concepts of Democracy: The Case of Voting Rights,” *Florida Law Review* 41 (1989): 443–90.

⁵ Tristin Hopper, “Why Does Canada Automatically Give Citizenship to People Born Here?” *London Free Press*, 28 August 2018, <https://nationalpost.com/news/canada/why-does-canada-automatically-give-citizenship-to-people-born-here>.

⁶ Hopper.

said to be the epicenter of the birth-tourism epidemic.⁷ The reason to repeal *jus soli* in this case is to eliminate a “free rider” scenario, though it is “estimated that there fewer than 500 birth-tourists” exist.⁸ If there is a free rider concern with birth-tourists, then this same concern must be applied to Canadian expats – who make up a much larger number than the former.⁹

In Canada, even ex-pat citizens who have chosen to be geographically disassociated from the country are able to enjoy the benefits of Canadian values and privileges – regardless of whether they have the intention of returning. Not only do expats enjoy many of the benefits of Canadian democracy, they also benefit from the privilege of carrying a Canadian passport. Initially, this may seem to be a non-issue, but the following example will show how this could disproportionately affect expats and aliens, further highlighting the problem of expat exploitation and free ridership.

Consider a Canadian expat who has lived in country X for five years and has no intention of returning; the expat no longer has living relatives in Canada and has built a comfortable life in country X. Now imagine a Canadian alien (Permanent Resident) who is a business executive for a major corporation and has been living in Canada for seven years with their family and is in country X on business. For various

reasons the alien has chosen not to go through the process of becoming a Canadian citizen and holds a passport for country Y. While both the Canadian citizen and the Canadian alien are in country X, a civil war breaks out. People are fleeing the country in massive numbers and airports are overflowing trying to determine who can leave and where they can go. The Canadian expat, by virtue of a Canadian passport, would be placed on the first flight to Ottawa. Meanwhile, the Canadian alien is denied entry into Canada because they are not a full Canadian citizen. The alien must either stay in country X, where there is increasing danger or try to get a flight to country Y – where their passport is valid. In this scenario, the Canadian expat, who voluntarily left the country and had no intention of returning, is now safe on the ground in what is essentially a foreign country to them. Meanwhile, the alien is still in danger as they try to find a way back to a country they thought was their home. It is easy to see how this seemingly small detail – the ability to hold a Canadian passport – can disproportionately affect residents of Canada.

Not only do Canadian expats get to keep their passports, they do not pay any Canadian tax on income earned outside Canada. It would be naive not to mention that expats will surely pay into whatever taxation system their country of residence deploys. The reason for mentioning this point is twofold: first, aliens in Canada are required to pay into Canada’s taxation system; second, expats benefit from Canada while contributing little or nothing in return. Canadian expats essentially receive collective benefits of Canadian society (except, as we note below, the right to vote) while not sharing in the collective burdens. The lack of a monetary contribution to Canadian society is just the first side of this problematic coin. Canadian expats do not contribute to the localities that make up the whole

⁷ Paula Simons, “CPC Rejection of Citizenship Law Is the True Threat to Canadian Values” *Edmonton Journal*, 28 August 2018, <https://edmontonjournal.com/opinion/columnists/paula-simons-conservative-rejection-of-birthright-citizenship-is-the-real-threat-to-canadian-identity>.

⁸ Hopper.

⁹ CBC News, “Estimated 2.8 Million Canadians Live Abroad,” 29 October 2009, <https://www.cbc.ca/news/canada/estimated-2-8-million-canadians-live-abroad-1.790218>.

of Canada. These could be local economies, participation in political parties or community associations, or even simply participating in general community discourse. While this generalization cannot be extended to all Canadian expats, surely some do contribute as much as, or at least close to, citizens within the borders. The fact is, if they wanted to both completely disassociate and still benefit, the current system of citizenship allows for expats to exploit it. In other words, Canadian expats are able to become free riders of the state with minimal repercussions.

Section III

Intuitively, there seems to be a contradiction between the liberal democratic values that Canada is founded upon and access to the benefits these values create. It has been shown that democracy values participation, it has also been shown that the Canadian democracy explicitly excludes members of its society from that participation. This raises the argument that political exclusion of aliens leads to a contradiction in the abstract foundational values of the Canadian state. This political exclusion must be corrected if Canada is truly to make strides toward becoming a fully democratic and just society. In other words, for Canada to achieve a society that can be called fully ‘just,’ political rights must be extended to aliens – especially as they are extended to non-contributing, disassociated expats. Political equality for aliens needs to be realized in Canadian democracy. Democratic exclusion effectively equals democratic injustice. In the current situation, Canada is effectively using aliens, simply to benefit from them economically. They pay into all Canadian tax programs creating a steady stream of revenue for governments. Some of these programs, like Employment Insurance and the Canada

Pension Plan, will bar aliens from enjoying the benefits these programs produce. The Canadian state advances liberal values while at the same time turning its back on aliens. If we are actively trying to advance certain values, while working just as hard against those values, how can progress be made? Canada needs to be a world leader in the acceptance of aliens. Our global community is becoming ever more connected and diverse, and Canada is in a position to embrace this by allowing aliens to access to its political arena.

Frédéric Mégret, an associate professor of law at McGill, has recently penned an article entitled “Why Expatriates Should Be Able to Vote.”¹⁰ In the article Mégret give three reasons in support of his titled conclusion. First, Mégret argues that expats “have a vested interest in their country of citizenship”¹¹ and that if they are unable to vote Canada is “depriving them of their only opportunity to exercise political rights.”¹² These two points can be looked at from the point of view of Canadian aliens. Aliens also have a vested interest in the expats’ country of citizenship, maybe more so than the expats themselves. Aliens are participating in the daily life of Canadian communities, and have chosen to reside in Canada – which expats have chosen to leave – and this conscious choice shows which party was thinking more about their vested political interests. Secondly, Mégret says that expats are “affected by the law and policies of Canada,”¹³ aliens, being fully

¹⁰ Frédéric Mégret, “Why Expatriates Should Be Able to Vote,” *The Globe and Mail*, 2 April 2018, https://www.theglobeandmail.com/amp/opinion/article-why-expatriates-should-be-able-to-vote/?__twitter_impression=true.

¹¹ Mégret.

¹² Mégret.

¹³ Mégret.

immersed in Canadian society, are clearly affected by the laws and policies of Canada as well. Lastly, it is said that expats “do a considerable amount for Canada, directly or indirectly.”¹⁴ Again, this does not seem to be a feature exclusive of expats. Aliens may do more for Canada in the sense that they are contributing to the social fabric of Canadian society more so than expats. It can be argued that if Canada is to extend political rights to expats for the reasons highlighted by Mégret, they can also be extended to aliens for the same reasons. Habermas wrote that “members of ... solitary communities become aware of their dependence on one another.”¹⁵ If this is true, then aliens could be more beneficial to Canadian society than expats by virtue of participating in that solitary community directly.

Conclusion

This discussion of expats vs. aliens began with a demonstration of how democracy is a tool for the institutionalization of liberal values. From there it was shown how these values affect expats and aliens disproportionately in a way that is contrary to the values themselves. It was then demonstrated how this creates statewide injustice. In conclusion, an argument was presented for eliminating the democratic exclusion faced by aliens in order to resolve the contradiction in liberal democratic values. If Canada is to be a fully just and democratic country it needs to embrace globalization and lead the way in eliminating policies that create

contradictory value injustices. Joseph Carens, a political scientist at the University of Toronto, writes about the same issues under the lens of temporary workers: “democratic justice requires us to provide temporary workers with most of the rights enjoyed by citizens and residents.”¹⁶ Carens’ conclusion should be extended to all aliens who reside in Canada for extended periods of time.

¹⁶ Joseph H. Carens, “Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy,” *Journal of Political Philosophy* 16, no. 4 (March 25, 2008): 419–45.

¹⁴ Mégret.

¹⁵ Habermas, “Three Normative Models of Democracy.”



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