

## Omar Khadr: A Bleak Mark on Canadian Civil Rights

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*This essay seeks to answer the question “does Omar Khadr’s story represent a failure of multiculturalism or of justice?” While it might be tempting to label the failure to uphold his charter rights as the exception to the rule and that the judiciary has the tools they need to protect the rights of Canadians, this paper argues that is far from the case. Khadr’s treatment is indicative of a prevalent flaw in Canadian multiculturalism, and in the idea of human rights as a whole, which is its reliance on the state to uphold them. Even though the judiciary determined that Khadr’s rights were violated, it was negligence by the state that led to his prolonged imprisonment in Guantanamo Bay. Ultimately, the state failed to protect Khadr’s rights because he was not seen as a citizen, despite being born and raised in Toronto. This paper draws on Hannah Arendt’s arguments about the inadequacy of citizenship rights, and examines the case of Maher Arar, whose rights have been similarly neglected.*

### Introduction

“Today, we are announcing that the Government of Canada has reached a settlement with Mr. Omar Khadr, bringing this civil case to a close.

On behalf of the Government of Canada, we wish to apologize to Mr. Khadr for any role Canadian officials may have played in relation to his ordeal abroad and any resulting harm.

We hope that this expression, and the negotiated settlement reached with the Government, will assist him in his efforts to begin a new and hopeful chapter in his life with his fellow Canadians.”

- Statement of apology to Mr. Omar Khadr from the Honourable Chrystia Freeland, Minister of Foreign Affairs, and the Honourable Ralph Goodale, Minister of Public Safety. July 7, 2017

From his initial detainment at Guantanamo Bay, it took 15 years for Omar Khadr to get an apology from the Canadian Government. With it, the government recognized its role in his detainment and the subsequent violation of his rights. While the apology was a relief for some Canadians, it struck a hard nerve with others. Hence, public perception of the apology and the \$10.5 million payout he received was mixed. According to a survey of 2,036 Canadians by Abacus Data, 43 per cent said the government should have

made a different choice compared to 28 per cent who said the government made a difficult, but perhaps the best choice available. Reinforcing the mixed public reception of his apology were statements from both Andrew Scheer and Stephen Harper condemning the Liberal government's actions.

The subject of Omar Khadr is a divisive one for the public, and such divisiveness also speaks to the public's acceptance of him as a Canadian citizen. As his status as a Canadian citizen is still ignored by some, people such as Ezra Levant have used it as justification for the abuse of his rights (qtd. in Capurri 150). This runs contrary to the idea that as part of a liberal and multicultural state, Khadr's rights should be upheld as a Canadian citizen.

So what does Khadr's saga say about multiculturalism and Canada's ethnic-pluralist framework? Was the failure to uphold his rights an anomaly, a dark spot on Canada's civil rights track record? Or does it speak to something wider?

This paper will argue that Khadr's treatment speaks to a wider failure in Canada's multicultural framework, and that it is not merely a failure in the justice system, or an exception to the rule. To argue this point, this paper will look at Khadr's story and how his rights as a Canadian citizen were denied, and that racialism played a large role in denying him those rights by constructing him as a non-citizen. Drawing on Hannah Arendt's writings on citizenship, this paper will also examine how the mistreatment of Khadr by multiple governments shows that the success of multiculturalism is ultimately dependant on governments and their willingness to enforce the rights of its citizens. Other examples of Canadians being mistreated abroad, such as the story of Maher Arar who was detained and tortured in Syria from 2002 to 2003, will also be discussed.

### **Multiculturalism and Charter Rights**

Multiculturalism need only refer to the co-existence of various cultures or groups in a multi-ethnic state; that does not inherently speak to the quality of rights minorities have access to. In the context of Canadian politics, multiculturalism refers to the idea that Canada is exceptional in granting minorities equal rights within a western liberal-democratic equality-based framework, one that includes and accommodates cultural difference as opposed to rejecting it (Abu-Laban and Nath 77; Kymlicka 39). Multiculturalism refers to a body of laws, policies, values, and constitutionally-enshrined rights that forms Canada's approach in accommodating minority groups.

One of the significant components of multiculturalism is the protection of the rights of Canada's multiethnic citizens, rights that are enshrined in law, and the state's ability to uphold those rights. In particular, the Charter of Rights and Freedoms enshrines the rights of all Canadian citizens in the Constitution. As is an important legal tool, the Charter protects against a number of incursions on fundamental rights, such as arbitrary detention, which is enshrined in section nine of the Charter. It also ensures the preservation of Canada's multicultural heritage, which is included in section 27. In theory, these rights are enshrined so that Canadian citizens can make a claim to their rights if they are violated. This raises the question of why Khadr's rights remained ignored from the time he was detained to when he finally returned to Canada.

## **The Infringement of Khadr's Rights**

There is no doubt Khadr was deprived of his rights when he was detained and tortured in Guantanamo Bay. Such was the finding of the Federal Court when it concluded that “conditions at Guantanamo Bay do not meet Charter standards” (Capurri 150). As Capurri writes, “the [Federal] court ruling was a further reminder that, guilty or innocent, Omar Khadr should have enjoyed inalienable Charter rights that were being violated in Guantanamo” (150).

Despite the Federal Court's ruling that the government should press for Khadr's return to Canada, it was overturned by the Supreme Court in 2010. The court argued that while Khadr's rights were breached, and that Canadian officials played a role in the violation of his rights, to order the government to push for his return would veer into the realm of foreign relations, which was purely the domain of the executive branch of government. Because of that, the Supreme Court could not tell the government to push for Khadr's return as it could have damaged Canada-U.S. relations. As written in the ruling, “the impact on Canadian foreign relations of a repatriation request cannot be properly assessed by the Court.” Capurri argues further that “Canada considered Omar Khadr as an alien” and that it was pressure from the Obama administration that led to his return in 2012 (152).

## **The Conditionality of Canadian Citizenship and the Rights it Guarantees**

Capurri – who calls Canadian multiculturalism a myth that disguises true hierarchical relations – builds on her point that Canada had *de facto* considered Khadr a non-citizen (159). Her core point is that racialism, Khadr's Arab heritage and the charges of terrorism that were levied against him, was the basis with which he was denied the rights he should have been guaranteed as a Canadian citizen. She reinforces this with Hannah Arendt's writings on citizenship and that the protection of human rights ultimately lie with governments that guarantee them. While Arendt was talking about people who were stateless and had no state to defend their rights, what Khadr's case shows is that even as a citizen, governments can still fail to enforce those rights. On the other hand, it validates her point that rights are ultimately dependant on national governments (153).

While both Federal and Supreme Courts recognized that Khadr's constitutional rights were infringed, the failure of Liberal and Conservative governments to protect the rights of one of its citizens speaks to the nature of multiculturalism and how its success is dependent on various branches of government. It is tempting to argue that the court's inability to press the government for Khadr's return is a failure of justice, based off the idea that the courts did their job, and that Khadr's eventual return speaks to the success of multiculturalism in Canada. But what this ordeal shows is that multiculturalism exists as a function of both the judiciary and the executive branch working to uphold the rights of its citizens. The fact the executive failed for so long in this case is significant. As Arendt argues in *The Origins of Totalitarianism*, at the end of the day rights are dependent on governments to uphold them (291). In Khadr's case, multiple Canadian governments failed to do just that.

## **Arar's Detainment, and Parallels to Khadr's Story**

While Khadr's case shows us how governments can fail to protect an individual's rights, it is still possible to write it off as an anomaly in Canada's history of civil rights, as has been done with similar

examples in the past few years (Laban and Nath 77). But those other examples are illuminating in how a Canadian citizen can have their citizenship challenged, questioned, and dismissed in ways similar to Khadr's experience. One example is Maher Arar, who was accused by U.S. Immigration and Naturalization Service officials of being a member of al Qaeda before being deported to Syria where he was tortured.

Much of what was about his case is also applicable to Khadr. Just as Capurri argues that Khadr was expelled from the circle of the nation on the basis of his race, Abu-Laban and Nath show how Arar's citizenship was likewise questioned, with newspaper headlines calling him a "terrorism suspect", "deportee", and "Canadian immigrant" (84). Where Arar's story seems to differ from Khadr's is that towards the time of his return to Canada, there was a growing cross-partisan agreement that Arar was indeed a Canadian citizen, whereas Khadr's citizenship remains controversial even after the government apologized to him. What Arar's and Khadr's stories show is how someone's citizenship can be questioned and invalidated should one fall within such categories, and that a denial of citizenship leads to the subsequent denial of rights.

Abu-Laban and Nath also warn against viewing Arar's example as an anomaly in Canada's framework of ethnic pluralism. Similar to Capurri's critique of multiculturalism, they argue that "treating Arar's case as a mere exception speaks to a larger strategy of state legitimation," and that "a shift to a framework of ethnic pluralism in official multicultural discourses, makes it hard to invoke any causal connection between history (for example colonialism) and contemporary racialized inequalities" (80). Therefore, Arar's ethnic origins cannot be ignored when considering the story of his detainment in Syria.

### **Conclusion**

The title of this essay was borrowed from comments made by Conservative MP Inky Mark, who called Maher Arar's ordeal a "bleak mark on Canadian civil rights" and that "there is no doubt that Mr. Arar was apprehended, not because he was a Canadian but because he was a Canadian of Arab descent... If this can happen to Maher Arar, it can certainly happen to many other Canadians, whether they are Arab or of other ethnic descent" (qtd. in Abu-Laban and Nath 87). Mark's comments are striking in just how applicable it is to Omar Khadr's story and the non-recognition of his legal Charter rights as a Canadian citizen.

Over the course of this paper, the modern shortcomings of Canadian multiculturalism were illustrated using Khadr and the abuse of his Charter rights as an example. Due to Khadr's Arab heritage and the terrorism accusations against him, he was construed as a non-citizen, thus allowing for the violation of his rights to be left unaddressed by multiple governments. Khadr's example also shows that rights are ultimately protected by governments at the end of the day, and that the courts alone cannot be the sole defender of multiculturalism in a given case.

Still, it is difficult to proclaim that multiculturalism has failed, due to the pervasiveness of multiculturalism in Canadian polity. Some could point to other episodes of Canada's constitutional history, such as the failure of Quebec separatism, and proclaim that Canada is a successful multicultural state (Kymlicka 39). But if the ultimate goal of multiculturalism is the granting of equal rights to minority groups within Canada, what Khadr and Arar's story says is that flaws still remain in Canada's multicultural framework.

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