NOTE TO USERS

Canadian Refugee Policy: Asserting Control

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Abstract: The Canadian public has generally supported immigration; however, support for refugee admissions has been less steady. Canada's shifting refugee policy reflects the state's attempts to satisfy the broader objectives of immigration policy, economic and demographic growth, as it struggles to ensconce the legitimacy of its commitment to those in need of protection. While the public showed a willingness to accept controlled refugee flows, it was less willing to accept refugees who could not be selected to meet economic or demographic needs. Legitimization of refugee policy in Canada depends on its integration into the broader immigration objectives. The front door to immigration can remain open only by closing what the public has come to see as the back door into Canada: claiming refugee status.

Abstrait: En général, le public canadien est en faveur de l'immigration. Cependant, son appui de l'entrée des réfugiés au Canada est moins constant. La politique canadienne inconstante vis-à-vis des réfugiés reflète les tentatives de l'état de satisfaire à des objectifs plus larges de la politique d'immigration, de la croissance économique et démographique lorsqu'il s'efforce de bien installer la légitimité de son engagement à ceux qui ont besoin de protection. La légitimation de la politique dépend de la capacité d'obtenir le soutien du public vis-à-vis des groupes d'intérêt dans la société civile. Traditionnellement, les fonctionnaires canadiens ont justifié l'immigration en termes économiques et démographiques. Tandis que le public a démontre un empressement à accepter le flux contrôle de réfugiés, il était moins disposé à accepter des réfugiés qui ne pouvaient pas être sélectionnés pour satisfaire à des besoins économiques et démographiques. L'immigration n'est possible qu'en barrant la route à ce que le public perçoit comme étant un moyen détourné d'accéder au Canada, c'est-à-dire la revendication du statut de réfugié.

Section 1: INTRODUCTION

This thesis considers the apparent shift in Canadian refugee policy between the more liberal refugee programs of the 1980s to the more restrictive contemporary orientation. We provide an explanation for the nature and content of policy pronouncements made in the period following the events of September 11, 2001. In order to put contemporary policy in context, we begin our investigation post-World War II when Canada first entered the international arena as a fully independent state. What follows is an examination of why the Canadian government has preferred its choice of refugee policies, and a consideration of forces and institutions that have shaped policy in the postwar period. At the same time, we reflect on the tension between Canada's refugee policy choices and its stated commitment to humanitarian values and international agreements. We aim to answer the following

refugee policy? Second, is the shift due to economic, demographic or other concerns? What impact have security concerns had on refugee policy? Third, what impact does the policymaking process have on the outcome of refugee policy? How does the nature of the policymaking process influence the outcome? Finally, what explains Canada's response to the refugee question post-September 11?

We propose that Canada's shifting refugee policy is a reflection of the state's attempt to satisfy the broader objectives of immigration policy, economic and demographic growth, as it struggles to ensconce the legitimacy of its commitment to those in need of protection.[1] The front door to immigration can remain open only by closing what the public has come to see as the back door into Canada: claiming refugee status. While Canadians have generally supported immigration[2], their support for refugees, especially asylum seekers, has been less steady.[3] In Canada, immigration is associated with economic growth and expansion. However, refugees within the immigration program are viewed as economic burdens or threats to national security.[4] Canada's refugee record is mixed. For much of its history, Canadian immigration policy was explicitly racist.[5] Refugees were not spared. For example, Armenians in the 1920s and Jews in the 1940s were denied safe-haven primarily because of their ethnic background. Between 1947 and 1952, Canadian refugee policy took a turn as

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[1] Please note that we interchangeably use "state" in the Weberian sense and also to refer to the Canadian federal government and its bureaucracy.

[2] See Table 1. Also see D. L. Palmer, *Canadian Attitudes and Perceptions Regarding Immigration: Relations with Regional Per Capita Immigration and Other Contextual Factors* August 1999. Available: http://www.cic.gc.ca/english/research/papers/perceptions.html (16 May 2004).

[3] See Appendix 1.

[4] See Stewart Bell, "A Conduit for Terrorists," *National Post,* 13 September 2001, Diane Francis, "Our Neighbour's Upset over Our Loose Refugee System," *Financial Post,* 22 September 2001, Daniel Stoffman, *Pounding at the Gates* (Ontario: Atkinson Foundation, 1992), and Martin Collacott, "Canada's Inadequate Border Controls," *Fraser Forum* March 2003, pp. 12-14. Available: http://www.fraserinstitute.ca/admin/books/chapterfiles/Canadas%20Inadequate%20Border%20Controls-pp12-14.pdf. (16 August 2004).

[5] See D.H. Avery, *Reluctant Host: Canada's Response to Immigrant Workers, 1896-1994* (Toronto: McClelland & Stewart, 1995).

approximately 190,000 displaced persons, mainly European, were admitted. In subsequent years, groups of refugees were admitted in an *ad hoc* manner: Hungarians (1956), Czechs (1968), Tibetans (1970), Ugandans and Chileans (1973). The explicit use of racism to deny admission was in retreat. Then, in 1978 the Immigration Act provided for a refugee determination system and created the private sponsorship program. In the years between 1978 and 1981, refugees made up 25 percent of all immigrants to Canada.[6] Throughout the 1980s the determination system was increasingly put to use by refugees claimants many of whom were believed to be economic rather than political refugees. Since then, successive Canadian governments have been concerned with acquiring more effective tools for the management of its immigration program, including the selection and determination of refugee claimants.

Canada's immigration policy apparatus over the years has displayed a remarkable ability to attain the twin national objectives of economic and demographic growth while maintaining control of the borders. Refugee admissions have significantly contributed towards meeting these goals. In fact, approximately 10 percent of all postwar immigrants until about 2002 were refugees.[7] In the *2003 Annual Report to Parliament on Immigration*, Minister of Citizenship and Immigration Denis Coderre noted, "Immigration has always been a defining characteristic of Canada, bringing together families, providing a safe haven to refugees and attracting new comers with job skills. Canada has developed a dynamic and well-managed immigration program that is focused on our future needs and our international

[6] Valerie Knowles, "Chapter 6: Trail-Blazing Initiatives," in *Forging our Legacy: Canadian Citizenship and Immigration, 1900-1977* (Canada: Public Works and Government Services, 2000). Available: http://www.cic.gc.ca/english/department/legacy/chap-6a.html (18 February 2004).
[7] See Citizenship and Immigration Canada, *Facts and Figures 2002: Immigration Overview*. Available: www.cic.gc.ca/english/pub/facts2002/immigration.html (15 February 2004). In the period between 1985 and 1989 refugees made up approximately 18 percent of total immigrant landings. See http://www.cic.gc.ca/english/research/papers/sources.html. (15 February 2004).

responsibilities."[8] Documented cases of abuses of the refugee-determination system, and backlogs in claims threaten the public's perception of the efficiency with which the refugee program is managed. Garcia y Griego observes, "Canada has never lost control of its borders, but it has, on more than one occasion, lost control of its own admission process."[9] As recently as 2003, the Immigration and Refugee Board (IRB) was dealing with a staggering backlog that peaked at more than 52,000 claims.[10] The rising number of refugees moving around the world further alarmed policymakers. In 1980, there were about 6 million refugees and 2 million internally displaced persons worldwide, by 2002, the number of refugees had increased to approximately 12 million, and the internally displaced were estimated at about 6 million.[11] Streamlining and reasserting control in this policy area became a primary objective of successive governments. Clearly, managing the delicate tensions that underlie immigration and refugee interests are at the root of sound immigration and refugee policy. However, given recent policy developments which seem to take the country towards restrictionism, it is apparent that these tensions have escalated to a point that threatens to undermine the humanitarian values and international agreements to which Canada publicly subscribes, as a public concerned about the levels and sources of immigration compels the Canadian government to justify policy on economic and demographic terms.

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[8] Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration: 2003* (Ottawa: Minister of Public Works and Government Services, 2003), p.3.

[9] Manuel Garcia y Griego, "Canada: Flexibility and Control in Immigration and Refugee Policy," in W.A. Cornelius *et al.* (Eds.) *Controlling Immigration: A Global Perspective* (Stanford: Stanford University Press, 1994), p. 120.

[10] See Immigration and Refugee Board, *Standing Committee on Citizenship and Immigration: Opening remarks by Jean Guy-Fleury.* Available: http://www.irb-cisr.gc.ca/en/media/speeches/2003/scci_e.htm. (16 April 2004).

[11] UNHCR, *Refugees by Numbers, 2002 Edition* available at www.unhcr.ch. 7 March 2003. In 2003, the total number of refugees was 10.4 million and 5.8 internally displaced persons. See *Refugees by Numbers, 2003 Edition* also available at www.unhcr.ch (16 April 2004).

Canada is not the only country struggling to meet its international commitments to refugees while maintaining control over the border. The number of people who want to leave their country is now substantially greater than receiving countries are willing to accept, and the difficulty distinguishing between economic and political refugees complicates the situation. As a result, world leaders discuss the topics of immigration and refugees with alarm. For Canberra, the Indo-Chinese refugee movement and in particular the unwanted arrival of a large number of these in boats, reflects a challenge to Australia's capacity to control the growth and composition of its population. For Washington, until recently, the key concerns were Haitian, Cuban and Chinese boatpeople, but leaders are now increasingly concerned about the possible use of the Mexican and Canadian borders by terrorists targeting American cities. For leaders in various European capitals, the movement of people from North Africa, the Balkans, and Eastern Europe raises concerns about integration while Europe struggles with economic malaise, Islamic fundamentalism, and rising level of anti-Semitism among some of the new arrivals.

In recent years, some scholars have suggested the immigration control policies of the industrial democracies are converging. Ongley and Pearson describe a pattern of convergence in the immigration control policies of New Zealand, Australia, and Canada.[12] Cornelius *et al.* examine the convergence hypothesis that asserts industrial democracies use increasingly similar policy instruments to control immigration.[13] Widgren proposes there is convergence in the policies and practices of industrial democracies in relation to asylum

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[12] P. Ongley and D. Pearson, "Post-1945 International Migration: New Zealand, Australia and Canada Compared," *International Migration Review,* vol. 29, no. 3 (1995), pp. 765-93.

[13] Wayne Cornelius, P. Martin, and J. Hollifield, (Eds.) *Controlling Immigration: A Global Perspective* (Stanford, CA: Stanford University Press, 1994).

seekers and illegal immigrants.[14] The impact of globalization on national immigration policies, and on the directions, volume and composition of the flow of people, is at the centre of much debate in immigration literature. One of the main themes of the debate revolves around the sovereignty of the state in exerting control over national borders. In the main, there are two alternative positions: the first position proposes that the capacity of national governments to deal with the number of international migrants is *externally limited* by regional bodies, and international organizations and agreements; the second position argues against the thesis of declining capacity. Authors supporting the latter view propose that while states seek cooperation on immigration issues, immigration policy has essentially remained in the hands of states though it is from time-to-time *internally limited* by domestic factors. This thesis takes an empirically grounded position in favour of the *internally limited* argument. Our examination accepts that apart from minding its interactions with various societal forces, because of the international context, the Canadian state must also be mindful the effect policy preferences may have on relations with other states. However, internal forces essentially shape immigration and refugee policy and the Canadian state has a great degree of leverage and resources available to achieve its objectives in this policy area. But, we also observe that the state is vulnerable to challenges from within and must monitor public mood to retain the legitimacy of its policies.[15] As such, this study is important because it sits at the intersection of the *statist-pluralist* approach by considering the capacity of the embedded state to formulate policy in a contentious policy area.

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[14] J. Widgren, *The Key to Europe: A Comparative Analysis of Entry and Asylum Policies in Western Countries* (Vienna: International Centre for Migration Policy Development, 1994).

[15] A. B. Simmons and K. Keohane, "Canadian Immigration Policy: state strategies and the quest for legitimacy", *Canadian Review of Sociology and Anthropology*, vol. 29, no. 4 (1992).

Canada's immigration policy apparatus has displayed a comparably remarkable ability to regulate migrant flows and limit the gap between proposed policies and policy outcomes. This comparative success makes studying the Canadian case interesting for us. We have chosen to focus on refugee policy because it is an apparent weakness in the immigration program. Our study of refugee policy provides an analytical overview of Canadian refugee policy since the 1940s before focusing on the period between 1996 and 2001. To understand the shift that began to take place in the 1990s, it is necessary to detail the nature refugee policy up to that point. In the 1990s, the Canadian government reviewed immigration and refugee policy and legislation with the goal of enacting fundamental policy reform and legislative change. There was a general agreement within the immigration policy community that Canada needed simpler and more effective immigration legislation. Also prevailing was a general belief Canadians desired a halt to abuses of the immigration and refugee system and safer borders while maintaining Canada's humanitarian traditions and international commitments.[16] Bill C-86 and the Immigration and Refugee Protection Act (IRPA) represent the Canadian response to an international refugee system in crisis. Bill C-86 was a Progressive Conservative initiative and the IRPA a Liberal scheme, this allows us to control for the possible effect political parties may have on policy output. While the IRPA is set against the backdrop of increased threat by international terrorism, the timing of these pieces of legislation permits us to control for the shock the events of September 11 dealt the international community. The Canadian House of Commons debated Bill C-86 in 1992, well before the terrorist attacks on World Trade Centre in 1993 and 2001, while the Immigration and Refugee Protection Act was being debated as the events occurred.

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[16] Citizenship and Immigration Canada, *Backgrounder #3: Milestones on the Road to New Legislation.* Available: http://www.cic.gc.ca/english/press/01/0103-bg3.html. (2 February 2004).

Section 2: CONTROLLING BORDERS

Our study starts with the premise that the rules established by states regarding the entry to and exit from within its borders significantly shape international migration flows.[17] Zolberg asserts that,

> The twin global dynamics of capitalist development and of state formation generate powerful thrusts of necessity and force that propel large masses of humanity outside their country of origin, but the international migrations that actually take place are shaped to a considerable extent by the will of the world's states, nearly all of which can muster the capacity to control movement across their borders.[18]

He hypothesizes that if all states were to control immigration with the single-minded determination of the German Democratic Republic, or of the late-twentieth-century United Kingdom, there would be little or no immigration. The entry rules established by the Canadian state have not been as illiberal as those employed by other states. Yet, Canada has been comparatively successful in regulating migrant flows.[19] What makes studying the Canadian case interesting is that Canada "… has obtained remarkable results by applying mostly liberal or moderate immigration control policies."[20] Another of our challenges is to explain how Canada has been able to avoid the human rights challenge.

a. Us and Them

Discussion about immigration control revolves around the state and its relationship with those who challenge its desire to locate, identify, and limit movement; and the obligation to the state of those who either legally or illegally establish themselves within its

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[17] Aristide R. Zolberg, "Matters of State: Theorizing Immigration Policy," in C. Hirshman, J. DeWind and P. Kasinitz (Eds.) *The Handbook of International Migration: the American Experience* (New York: Russell Sage Foundation, 1999), pp. 71-93.

[18] *Ibid.*, p. 90.

[19] See *Controlling Immigration*.

[20] Manuel Garcia y Griego, *Controlling Immigration*, p. 119.

territory. Andreas and Snyder note "… these two dimensions of 'state control of borders' reflect the fact that states are at once *territorial* and *membership* associations."[21] In other words, the motivations for the creation and legitimization of a country's border control policy are a combination of the expression of state sovereignty and the creation and consolidation of a national social and cultural identity. Border control provides a dilemma for liberal democracies. Control by definition implies restricting access to a community and to the public good enjoyed by members of that community. A distinction is drawn between members and non-members, or citizens and non-citizens. Can a community claiming to abide by the universal liberal principles of equality and justice, and respect of human rights, legitimately deny access to public goods based on citizenship?

To the extent that political theorists have addressed this puzzle their response has supported and reinforced the contemporary forces challenging the traditional prerogatives of state sovereignty. Almost invariably – with the exception of Walzer – they propose that the kinds of immigration controls that contemporary liberal democracies still seek to enforce are unjust. Walzer maintains that societies can be open only if borders are at least potentially closed.[22] Control and restraint of immigrant flows are necessary for the state to maintain social cohesion. He proposes that, "… neighbourhoods can be open only if countries are at least potentially closed."[23] However, human rights and rights based claims have limited the ability of the state to exercise control over borders. Typical of the arguments against the claims of the state is Ackerman's assertion that "… the only reason for restricting

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[21] John Torpey, "States and the Regulation of Migration in the Twentieth-Century North Atlantic World," in P. Andreas and T. Snyder, (Eds.) *The Wall Around the West: State Borders and Immigration Controls in North America and Europe* (New York: Rowman & Littlefield, 2000), p. 33.

[22] Michel Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983).

[23] *Ibid.*, p. 38.

immigration is to protect the ongoing process of liberal conversation itself ..." and that politicians must strive to respect "... an immigrant's prima facie *right* to demand entry into a liberal state."[24] In making his case for free-movement, Carens takes an extreme position for limiting state sovereignty. "Freedom of movement is in fact an important personal liberty ... any restrictions on freedom of movement (even residency requirements) entail the subordination of an important liberal value to other concerns," he notes.[25] For Carens, justice requires open borders; there are no they and we. Liberal democracies have a special moral obligation not to deter those in desperate need.[26]

b. Refugees and Immigration Control

Historically, human rights have not played a significant role in relation to migration issues. States in fact discriminated against migrants on racial grounds and were unresponsive to the plight of refugees such as those fleeing Nazi Germany. The provisions of the 1951 Convention and the 1967 Protocol were an attempt to avoid past mistakes. Honouring its commitment to those in desperate need, the international community has agreed that claimants for refugee status are not subject to the normal state mechanisms for immigration control. International concern for refugees is centred on the concept of protection of human rights. People who meet the criteria for refugee status are legally entitled not to be returned to their country of origin. According to the 1951 UN Convention Relating to the Status of Refugees, a refugee is,

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[24] Bruce A. Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), as cited by Peter C. Meilaender in *Towards a Theory of Immigration* (New York: Palgrave, 2001), p. 43. Italics are Ackerman's.

[25] Joseph Carens, "Immigration and the Welfare State," in A. Guttman (Ed.) *Democracy and the Welfare State* (Princeton: Princeton University Press, 1988), p. 227.

[26] Joseph Carens, "The Philoshoper and the Policymaker: Two Perspectives on the Ethics of Immigration with Special Attention to the Problem of Restricting Asylum," in Kay Hailbroner *et al.* (Eds.) *Immigration Admissions: the search for workable policies in Germany and the United States* (New York: Berghahn Books, 1997).

> Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it.[27]

The UN Convention's conception at once captures the humanitarian and political aspects of the refugee's situation. Humanitarian because refugees flee a wide range of life-threatening conditions, and political by virtue of the context in which it takes place: a world divided into states. The international refugee system reflects this duality. International refugee protection is designed to protect persons fleeing states that fail to offer protection. However, the international community is not infinitely generous. States vigorously cling to sovereignty thereby restricting the influence of human rights. Potential refugee receiving states balance humanitarian and legal obligations against political and economic interests. Though a relatively strict international legal regime governs refugee policy, foreign and domestic political and economic interests have shaped the form and application of refugee assistance mechanisms. For example, the Cold War still profoundly influences the current list of countries identified by the US State Department as priority for refugee status. Persons fleeing Cuba, Iran, and breakaway states from the former Soviet Union receive priority over those from geopolitically insignificant states such as Rwanda.[28] The system is also open to abuse by the so-called 'economic migrants' who use the system to disguise their motivations.

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[27] United Nations Treaty, 28 July 1958. *The 1951 United Nations Convention Relating to the Status of Refugees*, vol. 189, no. 2545, p. 137. The current definition reflects modifications made by the 1967 Protocol Relating to the Status of Refugees. According to international legal norms, persons granted refugee status receive rights not available to other international migrants. People requesting refugee status and seeking permanent settlement in a country of first-asylum to which they have fled are referred to as asylum-seekers.

[28] The Economist, "Immigration policy: the next masses", 1 May 1999, pp. 25-31.

Therefore, the question of precisely who is, and who is not, a refugee is one of considerable controversy.[29]

c. Asylum: a challenge to control

A consequence of tightening admission restrictions around the world is an increase in the number of people seeking to enter through backdoors. Some suggest this explains the significant increase in the number of asylum claimants and illegal immigrants since the 1980s.[30] The mid-1970s witnessed mass movements of refugees from Southeast Asia, Africa, and Latin America. Many found closed doors. In the 1980s, refugees from Eastern Europe, Asia, and Africa and other parts of the developing world claimed asylum on arrival to open doors.[31] The result was a muddling of the concept of asylum further complicating the refugee question. What is important is that to be eligible for asylum one must qualify as a refugee. Article 31 of the UN Convention binds signatory states to not penalize refugees and asylum-seekers who, "... enter or are present in their territory without authorization, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence."[32] While in fact many states grant asylum to persons who establish a physical presence and meet the criteria for a refugee, neither the 1951 Convention nor the 1967 Protocol guarantee the right of asylum to refugees.[33] The rise in the number of asylum seekers in Canada since the 1980s presents considerable challenges to the state not simply because of their sheer numbers or because they are a self-selected, demand-driven

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[29] Contrast the definition of refugee with immigrants who may be defined as people invited to a country for permanent residence or eventual citizenship. In some instances, some propose refugee claimants are in fact jumping the legal immigration queue.

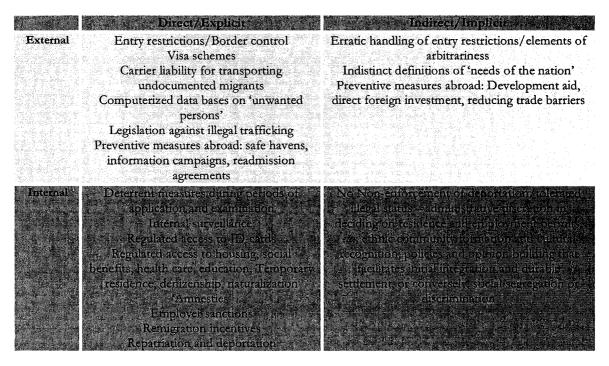[30] The Economist, "Europe's immigrants: a continent on the move", 6 May 2000, pp. 25-31.

[31] S. Castles, and M.J. Miller, *The Age of Migration: International Population Movements in the Modern World*, (Basingstoke: Macmillan, 1998).

[32] *Ibid.*

[33] David Martin, "Refugees and migration", in C.C. Joyner (Ed.), *The United Nations and International Law* (Cambridge: Cambridge University Press, 1997), p. 179.

group whose numbers, country of origin, ethnic background, and social demographic characteristics cannot be determined prior to arrival. Asylum severely tests the commitment of liberal democracies to human rights by challenging governments to provide access to public goods for citizens and non-citizens alike possibly devaluing citizenship. The challenge for policymakers is to devise practical solutions to the "asylum problem" that do not undermine core principles of social contracts.

Table 2. A Framework for the Analysis of Control Policy

	Direct/Explicit	Indirect/Implicit
External	Entry restrictions/Border control Visa schemes Carrier liability for transporting undocumented migrants Computerized data bases on 'unwanted persons' Legislation against illegal trafficking Preventive measures abroad: safe havens, information campaigns, readmission agreements	Erratic handling of entry restrictions/elements of arbitrariness Indistinct definitions of 'needs of the nation' Preventive measures abroad: Development aid, direct foreign investment, reducing trade barriers
Internal	Deterrent measures during periods of application and examination Internal surveillance Regulated access to ID-cards Regulated access to housing, social benefits, health care, education. Temporary residence, denizenship, naturalization Amnesties Employer sanctions Remigration incentives Repatriation and deportation	Non-enforcement of deportation/tolerated illegal status—administrative discretion in deciding on residence and employment. Ethnic community formation and cultural recognition, policies and opinion building that facilitates initial integration and durable settlement, or conversely social segregation or discrimination

Source: G.Brochmann and T. Hammar, *Mechanisms of Immigration Control: A Comparative Analysis of European Regulation Policies*, (Oxford: Berg, 1999), p. 14

States have actively resisted the constraints of human rights pressures by employing or developing a mixture of external and internal control mechanisms.[34] External controls are those steps taken by states to limit entry before departure or arrival; internal controls are exercised from the time the migrant enters a country up to the time she acquires

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[34] G. Brochmann and T. Hammar (Eds.) *Mechanisms of Immigration Control* (Oxford: Berg, 1999).

citizenship.[35] Different states vary the mixture. Canada has tended to emphasize external controls and made little use of internal control measures. One explanation for Canada's preference for external controls may be the relative ease with which those undertaking transoceanic travel may have their documents inspected either abroad or upon arrival. Another explanation may lie in the foundation of Canada's control system, documentation such as passports, visas, and refugee and landed immigrant identity documents, proved insufficient during the 1980s and 1990s for controlling asylum claims. Control efforts have especially targeted asylum seekers, because these could count on international human rights standards and mechanisms to argue against *refoulement*. Eager to prevent in-land refugee claimant's access to a stressed processing and adjudication system, immigration officials employed new external control mechanisms.[36] These controls include: imposing visa restrictions on travelers from specific countries; carrier liability laws that fine transportation companies for carrying improperly documented passengers, even if genuine refugees are prevented from arriving in Canada to make a claim; limiting the number of refugee arrivals by implementing a "safe-third country" mechanism, that eliminates the refugee claims of persons who transited through a country where they could make a refugee claim; the use of Advanced Passenger Information (API) lists to detect improperly documented, undocumented, and unwanted travelers and facilitate interdiction at ports of entry by immigration officials; pre-screening of refugee claimants by the Canadian Security and Intelligence Service (CSIS) to ensure that they are not security risks. All of these mechanisms have the desired effect of denying access to Canada's refugee processing and adjudication system.

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[35] *Ibid.*, p. 12.
[36] The Supreme Court of Canada's *Singh* ruling held that all human beings 'physically present' in Canada has a right to access an oral hearing.

d. Canada: control through selection

The offshore selection process is another external measure employed to control access to Canadian shores. Canada is one of only three countries that have a major refugee resettlement program. However, its relative importance within the overall refugee protection program has declined.[37] Canada recognizes two classes of refugees: Convention Refugees and Humanitarian-protected persons abroad, and those who are accorded refugee status. Convention Refugees and Humanitarian-protected persons abroad are processed as immigrants within the points system of admission except that they enjoy administrative priority within the yearly intake plan. Prospective refugees may apply to a Canadian mission abroad as a UN Convention refugee, as a member of a designated class or qualify under a special-measures landing program. Canadian officials have preferred selecting refugees abroad because it facilitates refugee status determination. Canada's system of selection and control presumes desirability may be distinguished through screening; refugee claimants who make claims from within the national borders pose a problem for the Canadian screening system. Those applying from within are self-selected, have access to the inland-refugee determination system, and are not subject to the demands of the points system. The Immigration Department's inability to handle the inland-refugee-claim backlog in the 1980s deepened the preference for overseas selection.

Section 3: OVERVIEW OF THEORETICAL PERSPECTIVES

The pressure to move on people around the world is very high. Movements are accelerated by fast and cheap transportation, and quick and easy access to information via a

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[37] After reaching a high in 1989 of 36,745 overseas selections, the number of government assisted and privately sponsored refugees has fallen sharply.

wide array of mediums of communication heralding opportunities in the far reaches of the world. Globalization created a significant demand for highly skilled and professional workers. Many of these professional migrants established communities in host countries and are in positions to help newcomers from their lands. Increased migration also results from the widening gap between the rich and poor countries of the world. For many, migration is the best option to escape violence or access economic opportunities unavailable at home. The implication for rich countries, especially those with a history of nation building through immigration and assisting refugees, is evident in the increased numbers of potential immigrants and refugee claimants. From the viewpoint of receiving countries, the problem requires immediate attention but what the response should be is unclear.

a. An evaluation of the control crisis

The response from industrialized democracies for controlling flows has been broadly similar. All have systematically increased their immigration controls and tightened entry requirements. However, the control measures appear to fall short of expectations and sometimes have unintended consequences. Cornelius *et al.* found that "… the gap between the *goals* of national immigration policy (laws, regulations, executive actions, etc.) and the actual results of policies in this area (policy *outcomes*) is wide and growing wider in all major industrialized democracies."[38] Most government officials do not believe control mechanism alone can regulate immigration flows. Comparing the immigration policies and policy outcomes in nine industrialized states, *Controlling Immigration* tackles the difficult task of explaining why individuals move across national boundaries to explain why immigration

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[38] *Controlling Immigration*, p.3.

control policies do not always work as intended.[39]   The editors of *Controlling Immigration* offer a challenge to world-system and Marxist analyses of international migration. Both approaches proclaim economics as the driving force behind migrant flows. While both world-system and Marxist approaches offer plausible explanations of international migration flows, Cornelius *et al.* maintain that politics, as well as economics, play a considerable role shaping flows. They believe that to reassert control, states must address the tension between border control and human rights. In fact, the central argument of *Controlling Immigration* is that the difficulties of immigration control in industrialized democracies correlate with the rise of rights-based politics in postwar Western Europe and North America. The expansion of rights for aliens in industrialized democracies enable many immigrants, for example, to gain admission under liberal asylum procedures, permits many to remain and eventually to bring family members. Therefore, in spite of public opposition to immigration and anti-immigrant pressure on governments, the annual levels of legal immigration in many industrialized countries have increased and only weak attempts have been made to prevent illegal immigration.[40] Cornelius *et al.* suggest the *gap* is a weakness on the part of the state to control borders and provokes hostility towards immigrants and pressures politicians and government officials to adopt increasingly restrictive policies.

Whereas *Controlling Immigration* focuses on the domestic sources of immigration policy and its outcomes, *Mechanisms of Immigration Control* provides a more detailed analysis of the processes or mechanisms at work in their creation. Brochmann and Hammar seek to understand the conditions under which European countries attempt to regulate the size and

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[39] The countries surveyed are Canada, the United States, Britain, Belgium, France, Germany, Italy, Spain and Japan.

[40] R. J. Simon and J. P. Lynch, "A comparative assessment of public opinion toward immigrants and immigration policies," *International Migration Review,* vol. 33, no. 2 (Summer 1999), pp. 455-468.

composition of immigration and monitor foreigners already in the country.[41] Significantly, while they grant a number of national and international actors, processes, and events a role influencing policy outcome, they downplay Cornelius *et al.*'s central assertion by not considering rights-based politics amongst the factors.[42] For Brochmann and Hammar, politics is defined as a process; as a result, the focus of their study is the mechanisms by which the various parameters involved in the making of control policy play together to decide the policy outcome. They draw attention to "… the way in which more subtle or implicit forces may counteract or undermine, or support and strengthen intentional policies, and trigger and reinforce or obstruct formation processes in the realm of public opinion."[43] In essence, Brochmann and Hammar disaggregate "control" to highlight the complexities of policy-making in an attempt to explain why sometimes rational responses to immigration produce unintended results or what Cornelius *et al.* refer to as the *gap*. *Mechanisms of Immigration Control* teaches us that the ability of a state to exert control over its borders is determined by a complex range of interactions between intentional politics, unintended consequences, the relationship between the individual and flow approach to immigration control, xenophobia, the interplay between voters and politicians, amnesties, the labour market, and strategies for the circumvention of control.[44] In short, control is a difficult goal to attain because of the intricate interactions between the explicit- and implicit-controls and the unpredictable outcome of this interplay.

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[41] *Mechanisms*, p. 9.
[42] Brochmann and Hammar consider historical precedents, labour unions, parliamentary parties, and non-governmental organizations to be the central parameters influencing policy outcomes.
[43] *Ibid.*, p. 297.
[44] *Ibid.*, pp. 20-22.

Echoing the findings in *Controlling Immigration*, Brochmann and Hammar hypothesize that there is a prevalent tendency towards policy convergence. They also note a movement towards the externalization of control, while diversifying and strengthening internal controls. In the European case, the Schengen Accord is a palpable example of this development. However, while Cornelius *et al.* propose that states are finding it increasingly difficult to control immigration flows, Brochmann and Hammar submit "... there is no significant *control crisis* present in Europe today in relation to immigration."[45] The assertion of state power is found in policy output not the outcome. Increasingly sophisticated internal surveillance and the externalization of immigration controls show that the state is able to implement efficient instruments for reducing immigration. Nonetheless, nearly all contributors to the volume concede that the apparent effectiveness of control strategies devised by receiving countries has given rise to counter-strategies for circumvention that are increasingly clandestine and therefore not easily measured. We surmise that *Mechanisms of Immigration Control* arrives at its conclusion because half its sample countries, like Canada, are geographically located far from routes of international migration.[46] Countries that find themselves in established passenger travel routes face greater difficulty controlling unwanted immigration. In addition, since the focus of the study is not migration flows, but the demand for and supply of immigration policy, the analysis cannot precisely gage the effectiveness of policies controlling flows. A shortcoming of Brochmann and Hammar's assessment is that it does not consider how institutions create or influence interactions and structure the relationship between the parameters influencing policy outcomes. The shortcoming is a notable one for our purpose since our assessment of the Canadian case

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[45] *Mechanisms*, p. 298.
[46] One of the reasons Canada has not faced a significant control crisis is that the United States is the country of first-landing for most international travelers coming to North America.

observes that institutions are significant contributing factors shaping the demand and supply of policy in the immigration area. Nonetheless, the study does make clear that Canada is not alone in its restrictionism.

Andreas and Snyder in *The Wall Around the West* observe that rich integrating states are undertaking their ambitious projects to control borders despite growing economic relations with poorer neighbours.[47] Andreas and Snyder point out that amidst all the inflated rhetoric of "globalization", and the relaxation of barriers to the flow of goods, capital, and information, states have displayed a great deal of aversion to the thought of relinquishing the sovereign right to control borders. The process and politics of strengthening state controls, and establishing sovereignty in North America and Western Europe varies significantly.[48] In the United States, the border control effort represents a unilateral reassertion of sovereignty; European border controls represent a multilateral "pooling of sovereignty".[49] Contributors to the volume acknowledge the symbolic value of immigration control. The context and politics of the United States and Europe, however, determine the form measures to restrict access assume. The presence of the state in European life is more pervasive than in North America. As a result, internal control methods are more extensive in Europe. Within the European Union, internal barriers may be brought down because states can affirm their sovereignty through internal controls, and the existence of external frontiers. In the case of the United States, Canada may also be included in this assessment, where the workplace and

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[47] Peter Andreas and Timothy Snyder, *The Wall Around the West: State Borders and Immigration Control in North America and Europe* (New York: Rowman & Littlefield, 2000).
[48] Although North America includes Canada, discussions of the continent in this volume focus primarily on the United States and its relationship with Latin America.
[49] *The Wall Around the West*, p. 3.

society in general are less regulated the state announces its sovereignty by building a physically higher and more visible outer wall.

The volume appears to echo sentiments expressed by Brochmann and Hammar that borders still matter but disagrees with their assertion that there is no significant control crisis. Contributors to *The Wall Around the West* paint a grim picture of border control and note the need for states to find creative methods of control to address the dramatically changed functions of borders and territorial politics in the 21st Century. Vogel proposes that one such method is the coordination of immigration policy across policy areas. Vogel provides a detailed and comprehensive framework for the systematic analysis of migration control that may be useful in evaluating state capacity to control immigration flows.[50] Her framework effectively shows the mutual dependence of measures within an immigration control policy, and illustrates how immigration control measures depend on and interact with policies and organizations in other sectors. Policy initiatives may have unintended consequences. Vogel concludes that immigration policies involve a trade-off between the protection of internally valid moral and social values and control. Therefore, the capacity of the state to effectively control borders is limited by the delicate balancing of objectives or national interests across different policy spheres. Elaborating Vogel's assertion that immigration control interacts and depends on policies and organizations in other areas, Rotte proposes that immigration control based on national structures may be successful if governments broaden their approach to control and make it a focus of all policy areas, including foreign affairs and

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[50] Dita Vogel, "Migration control in Germany and the United States," *International Migration Review*, vol. 34, no. 2 (Summer 2000), pp. 390-423.

economic policy.[51] In his study of post-reunification Germany, Rotte found that the German state has shifted away from "a traditional, administration-oriented perspective mainly based on border control and visa regulations to a broader scope of action including foreign policy, development assistance, social security and economic policy."[52] Germany has succeeded in stemming the tide of *Aussiedler* and East European migrants, indicating that broader, more flexible approaches to control can be effective.

Immigration control in essence has two goals: regulating the access of foreigners to its territory and monitoring access to the welfare state and the labour market. The challenge for liberal democracies is to achieve these aims without violating commitments to liberal values. A hallmark of Canadian immigration and refugee policymaking is that it has been able to exert comparative control without resorting to illiberal measures. Our evaluation of the control crisis and the ways in which states are responding yields some valuable insights with which we give context to contemporary Canadian refugee policy. We observe that states are responding to the challenge by denying immigrants access to processing systems that may be used to launch rights-based challenges to control. Europeans have resorted to internal control measures to a greater degree than North Americans. Because of their geography and the extensiveness of European borders, asserting comprehensive control has been difficult to attain. Internal control measures are in part a result of the imperfections of external control. While Canadian policymakers are further externalizing control, we expect an expansion in the deployment of internal control measures. We also anticipate some opposition.

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[51] Ralph Rotte, "Immigration control in united Germany: Toward a broader scope of national policies," *International Migration Review*, vol. 24, no. 2 (Summer 2000), pp. 357-390.
[52] *Ibid.*, p. 387.

b. Externally- or internally-limited sovereignty

A variety of explanations are advanced to account for the capacity of the state to control the flow of people among industrialized democracies. Most point either to external or internal factors as determinants. Few contest that national and international institutions and processes influence public policies designed to regulate migratory influxes in industrialized nations. Existing theoretical controversies concern exactly how, and to what extent, structures and developments shape immigration policies, and thus the capacity of the state to control flows.[53]

Andrew Moravcsik likens the state to a 'transmission belt' by which the preferences and social power of individuals and groups are translated into state policy. Government policy is "... constrained by the underlying identities, interests, and power of individual groups (inside and outside the state apparatus) who constantly pressure the central decision makers to pursue policies consistent with their preferences."[54] Consequently, societal pressures transmitted through representative institutions and practices alter state preferences, and since states operate in an international system characterized by interdependence, transnational ideas may also determine the policy alternatives available to individual states. State behaviour is thus a reflection of the varying patterns of state preferences.[55]

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[53] See James F. Hollifield, *Immigrants, Markets and States* (Cambridge: Harvard University Press, 1992), and Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996).

[54] Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics", *International Organization,* Vol. 51, No. 4 (Autumn 1997), p. 518.

[55] *Ibid.*, p. 519. Moravcsik defines state preferences as comprising "a set of fundamental interests defined across the 'across the states of the world.' Preferences are by definition causally interdependent of the strategies of other actors and, therefore, prior to specific interstate political interactions ..."

Externally-limited

The dynamics of an increasingly interrelated international system shapes or alters state preferences and behaviour. Wallerstein's world-system theory analyses the emergence of capitalism, and traces its development into a global capitalist system composed of a core, periphery and semi-periphery.[56] The core engages in advanced economic activities; the periphery provides the raw material to feed the core's economic growth; and the semi-periphery is involved in productive activities, sometimes related to the core and at others to the periphery. Sassen and Portes argue that the penetration of capitalism into peripheral, non-capitalist societies creates a mobile workforce which given the right conditions is likely to move from the periphery to the core.[57] The process of globalization has largely done away with subsistence economies, forcing many to search the world for work. In the period after World War II, labour shortages in the rapidly expanding economies of liberal democracies provided plentiful opportunities. Various states negotiated and finalized several multilateral and bilateral agreements offering workers protection and rights during this period.[58] An unintended effect of international agreements which allow workers free movement and unrestricted residency in contracting states, is that states have become more permeable to universal human rights norms and discourses that protect people as members of a universal community rather than members of a national community.[59] Transnational migrations have contributed to increased support in liberal democracies for universal human

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[56] Immanuel Wallerstein, *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York: Academic Press, 1974); T.K. Hopkins and I. Wallerstein, *World-Systems Analysis: Theory and Methodology* (Berkeley: Sage, 1982).

[57] See Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton, NJ: Cambridge University Press, 1991) and A. Portes and J. Walton, *Labor, Class, and the International System* (New York: Academic Press, 1981).

[58] See below for a sample of these agreements.

[59] See David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore: The Johns Hopkins University Press, 1996) and Yasemin Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: The University of Chicago Press, 1994).

rights, as opposed to rights based on civic and national identity. According to Jacobson, the national legal system, influenced by international law contributes to the shape of immigration policies. He posits that as "... transnational migration breaks down the citizen-alien distinction, states turn in piecemeal and incremental fashion to international human rights laws. States must increasingly take account of persons *qua* persons as opposed to limiting state responsibilities to its own citizens."[60] International law, in contrast to national law, recognizes the individual as an object of rights regardless of citizenship. Soysal proposes that recent migrations have indeed helped to establish a 'post-national' model of citizenship deriving from a world-level discourse of human rights. Universal human rights, legitimized at the transnational level, undercut the importance of national citizenship by disrupting the territorial closure of nations.[61] For neoliberal institutionalists the state itself is becoming the critical mechanism in advancing human rights not just for members of a state but also specifically for foreign populations.[62]

Globalization shifted the regulation of some aspects of the migration process from the national to regional level. Initiatives for greater economic integration led to the creation of non-governmental or quasi-governmental institutions charged with regulating migration. The gradual expansion of international agreements and conventions increased the instruments available to challenge the authority of the state as various components of state authority are shifted to supranational bodies such as the World Trade Organization and the European Union. According to Sassen, there exists "... a *de facto* regime, centered in

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[60] *Ibid.*, p. 9.

[61] *Limits of Citizenship*, p. 164.

[62] Soysal in *Limits of Citizenship* also sees states as mere transmission belts for human rights norms. She envisions human rights and national sovereignty as "institutionalized scripts" that provide guidelines as to how states are to treat non-citizens.

international agreements and conventions as well as various rights gained by immigrants, that (in principle) could condition the state's role in controlling immigration."[63] Efforts to regulate migration are constrained by international human rights norms and the globalised economy. Sassen cites *Resolution 45/158* on the protection of the rights of all migrant workers and members of their families adopted by the General Assembly of the United Nations as an example of such agreements. Other examples of include the 1957 Treaty of Rome establishing freedom of movement of workers throughout the member states of the European Union, the 1959 Benelux Economic Union, the 1973 Trans-Tasman Travel Agreement between New Zealand and Australia, and the General Agreement on Tariffs and Trade, which has provisions on labour mobility. In the North American context, the North American Free Trade Agreement contains much detail on the various aspects dealing with people operating outside their country of citizenship. The gradual expansion of this type of agreement increases the tools available for civil society to challenge the authority of the state in the immigration policymaking arena. The increased implementation of international trade regimes leads some to ponder whether we are witnessing the genesis of an international migration regime.[64]

Internally-limited

The *externally limited* account of immigration policymaking paints a process largely devoid of politics. In fact, Brubaker criticizes the world-system approach for its excessive reliance on economics. He argues that by focusing on political economy, the approach

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[63] Saskia Sassen, "The de facto Transnationalizing of Immigration Policy," in S. Sassen (Ed.), *Globalization and its Discontents: essays on the new mobility of people and money* (New York: New Press, 1998), p. 8.

[64] Reginald Appleyard, "International Migration Policies: 1950-2000", *International Migration,* vol. 39, no. 6 (2001).

neglects national political and social structures.[65] Zolberg is also critical of an international system devoid of politics, rejecting the proposal that states are merely instruments of the capitalist system. Joppke and Freeman inject politics into the equation and argue against the thesis of declining sovereignty.[66] Joppke firmly stresses the determinative importance of domestic factors in shaping immigration policy.[67] For Joppke, the combined influences of domestic constitutional-legal frameworks, political principles, and political institutions (especially the courts) explain changes in immigration and citizenship practices. The sources of immigrant rights are not found in legislatures or the street but behind the closed doors of the courts or bureaucracy. Guiraudon supports Joppke's assertion. She proposes that migrant rights are more likely to expand when debates regarding migrant rights reform are confined to bureaucratic or judicial venues.[68] For Joppke and Guiraudon, neoliberal institutionalists overstate the force of inter- or supranational regimes for legitimizing and diffusing human rights norms, and underestimate the relevance of domestic legal orders as legitimizing principles for immigrant rights. Joppke notes, "... the entry of the individual into the exclusive sphere of interstate relations, which occurred with the United Nations conventions on universal human rights protection, has remained declaratory and inconclusive."[69] In short, "... limited sovereignty, not externally limited sovereignty, characterizes the state in the age of international migration."[70]

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[65] R. Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University Press, 1992), p.22.

[66] Andreas and Snyder in *The Wall Around the West* point out that in the midst of the rhetoric of "globalization", and the relaxation of barriers to the flow of goods, capital and information, states have displayed a great deal of aversion to the thought of relinquishing the sovereign right to control borders.

[67] Christian Joppke, *Immigration and the Nation-State: United States, Germany, and Great Britain* (Oxford: Oxford University Press, 1999).

[68] Virginie Guiraudon, "The Marshallian Triptych Re-Ordered: The Role of Courts and Bureaucracies in Furthering Migrant Social Rights", *European University Institute Working Paper*, EUF No. 99/1 (1999).

[69] Christian Joppke, "The Domestic Legal Sources of Immigrant Rights: The United States, Germany, and the European Union", *European University Institute Working Paper*, SPS No. 99/3 (1999).

[70] *Ibid.*, p.21.

Freeman proposes that evidence from international organizations and agreements suggest that while there is a tendency on the part of states to seek co-operation on migration issues, migration policy has essentially remained in the hands of states. In fact, state control of immigration is increasing rather than decreasing over time.[71] The apparent loss of control is not a result of incapacity on the part of the state but a consequence of "... an expansionary bias in the politics of immigration in liberal democracies."[72] Whereas Joppke dismisses the applicability of a client-based model, Freeman argues that expansionist policy is driven primarily by organized interest groups, usually employers, ethnic advocacy groups, and civil and human rights organizations. The concentrated benefits and diffused costs of immigration generally lead to client-based politics. State actors are more attentive to organized interests rather than the poorly informed and disorganized general-public.

In *Fences and Neighbours*, Money takes as her point of departure Freeman's insight that the concentrated benefits and diffuse costs of immigration in liberal democracies generally lead to client-based politics. She proceeds to make substantive modifications to his argument. Money reconsiders the costs as well as benefits of immigration from a spatial perspective to show that these may be concentrated. Variation in immigration control policy stems not from differences in cultural values or aggregate economic conditions, but as a result of local political pressures and national political concerns. According to Money, "the spatial concentration of migrants in local communities and the translation of local preferences into national policy through national political institutions are key to

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[71] Gary P. Freeman, "The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States", in C. Joppke (Ed.) *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford: Oxford University Press, 1998).

[72] Gary P. Freeman, "Modes of Immigration Politics in Liberal Democratic States", *International Migration Review*, vol. 29, no. 4 (Winter 1995), p.882.

understanding the politics of immigration control."[73] Money's argument draws from a stream of American political science which argues that immigration from abroad and migrations within the United States have profound impacts on American politics, largely because these population movements are unevenly distributed, not only across states, but also within states.[74]

Money's central insight rests on the observation that geographically concentrated electoral pressures propel change in the instruments determining migrant admission. While Freeman argued that immigration benefits are usually concentrated in particular groups or sectors, Money situates both the benefits and costs of immigration spatially. The author details the confluence of local political demands and national electoral competition. Since immigrant populations are generally concentrated, the costs and benefits of immigration are also concentrated according to the spatial distribution of immigrant groups. The occurrence of geographic concentration gives rise to intense positions for and against immigration. Money argues that when citizens become aware of the rising costs of immigration, usually substantiated by increased local government expenditures, and increased demands for social services in the locality, the likelihood of the emergence of strong, organized opposition to immigration increases. However, national politicians only adopt local preferences and translate them to policy when local constituencies are critical to maintaining or obtaining a national electoral majority.[75] At this point, the formulation of immigration policy moves from client politics to publicly contested politics.

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[73] Money, *Fences and Neighbours*, p. 47.
[74] See J. G. Gimpel, *Separate Destinations: Migration, Immigration and the Politics of Places* (Ann Arbor, MI: University of Michigan Press, 1999).
[75] *Ibid.*

The boundaries of public debate on immigration in liberal democracies are narrow. Freeman notes that the expansionary bias in the politics of immigration in these countries constrains debate. Public officials, generally more sympathetic to liberal policies than the public, control the flow of official data and information on the subject. He states, "The effects of migration tend to be lagged; the short-term benefits oversold and the long-term costs denied or hidden to show up clearly only in the out-years."[76] A liberal consensus on what themes may or may not be raised in public also stifles debate. National folklores of immigration tend to romanticize immigrants and those who raise legitimate concerns about legitimate issues such as the ethnic composition of migrant flows face charges of racism. Therefore, there tends to be a tendency on the part of political parties to depoliticise the issue and seek consensus with minimal public debate. Because of the dynamics of the consensus reached amongst political parties, governments are elected free of electoral commitments.[77] Freeman suggests that if better information were available, the public would not be as indifferent and perhaps even less favourable to immigration.

Simmons and Keohane's description of a Janus-faced state observes that Canadian officials seek to keep crises and immigration problems out of the press. The goals of the immigration program are more attainable if public access to information is limited. Moreover, while the state has the capacity to set its own agenda, to legitimate its position and continue leading the policy field, it seeks to avoid conflict by reaching compromises with groups in civil society.[78] Societal groups interested in immigration and refugee policy at any given moment are weak in relative terms but are by no means powerless. Public sentiment

[76] Freeman, "Modes of Immigration Politics", pp. 882-883.
[77] *Ibid.*, p. 884.
[78] A.B. Simmons and K. Keohane, pp. 421-451.

may be mobilized against the state calling into question the legitimacy of state action.[79]

Simmons and Keohane's conception of the Canadian state suggests that institutions may transform individual or group preferences so that policy is not merely the outcome of an aggregation and ordering of preferences, but the outcome of a process that can change those preferences. They observe that, "… the state [is] not simply an all-powerful hegemonic leader, but also … a grouping of worried actors, always looking at contingencies and seeking strategic solutions. In other words, the state appears both powerful and vulnerable."[80] Alternatively, we can say the state is both powerful and democratically responsible.

The increase in the number of refugees and asylum seekers in the 1980s and 1990s was neither a random occurrence nor a temporary phenomenon. Our review shows that it was the predictable result of fundamental economic and political processes. However, government responses give the impression that the most effective way of dealing with asylum-claimants is to prevent them from arriving without necessarily addressing the root of the problem, the impact of globalization. At the same time migrant flows were on the rise, restrictive immigration policies employed by liberal democracies in response to the domestic challenges raised by the economic recession of the 1970s led to a convergence of political refugees and economic migrants in a single migration route: asylum seeking.[81] The same migration regimes that were supposed to facilitate the movement of workers limited the ability of states to control the unwanted flows. We note that while the ability of states to react may have been hemmed-in the capacity to react was not. In fact, an expansionary bias in the immigration politics of liberal democracies explains the apparent inability of states

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[79] *Ibid.*, p. 447.
[80] *Ibid.*, p. 422.
[81] See Khalid Koser, "New Approaches to Asylum?", *International Migration,* vol. 39, no. 6 (2001), p. 88.

to *control* immigration and refugee flows. State officials lead public opinion by controlling access to up-to-date and accurate information.

Section 4: Policymaking in Canada

This thesis addresses a question that has confronted students of immigration and refugee policymaking: How does the policymaking process influence the outcome of policy? Our review of immigration and refugee policymaking in liberal democracies notes that state's are embroiled in a struggle with external and internal forces that seek to limit their capacity to provide policy. Despite these challenges, the Canadian state has to provide policies leading to comparatively efficient outcomes. An analysis of the policymaking process yields clues to explain the resilience of the Canadian state.

a. Bureaucratic pluralism

The Canadian policymaking process is characterized by a tremendous amount of interest group activity interacting with an executive and bureaucracy pursuing preferences and priorities they believe are in the interest of the state.[82] A statist-pluralist tension exists. The institutional legacy of the Westminster model of parliamentary government and federalism foster a weak-state tradition and discourages assertive policymaking in Canada. Consensus must be sought each step of the way. When faced with a strong social actor, it is preferable to depoliticise issues within policy communities rather than have public debate. The trend in Westminster model parliamentary government has been towards what Pross

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[82] We will discuss the interests of the Canadian state with regards to immigration and refugee policy below.

calls "bureaucratic pluralism"[83] as multiple access points are created. In *Group Politics and Public Policy*, Pross found that the existence of interest groups permits party leaders to refer potentially divisive issues to 'technical levels' where they can be diffused piecemeal by government officials and interest group representatives.[84] He suggests that this method of dealing with issues is a symptom, not the cause, of the inability of representative institutions in Canada to reconcile the territorial and sectoral needs of society. While the constitution provides for representation based on the election of legislators from geographically defined constituencies, the nature of modern interests demands sectoral representation. If we accept this preposition, we may have an explanation for the decreasing relevance of Parliament and more recently Cabinet, and the increasing policymaking power of the bureaucracy.[85]

The natural constituency for the bureaucracy is the sectorally oriented policy community.[86] Pross divides policy communities in two parts. The first, the "sub-government", includes a "lead government agency", other policymaking agencies, and a small group of interests that are continually consulted; the second, the "attentive public" is composed of: other government agencies, corporations, institutions, media, pressure groups, and individuals who have an interest in a particular policy field and seek influence. Policy communities "... include all actors with a direct or indirect interest in a policy area or

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[83] According to Pross characteristic of bureaucratic pluralism is intra-governmental discord between agencies. Agencies encourage the creation of new interest groups to support their positions vis-à-vis other agencies. A "pressure group" or "interest group" are defined by Pross as "organizations whose members act together to influence public policy in order to promote their common interest." See Paul Pross, *Group Politics and Public Policy* (Toronto: Oxford University Press, 1986).

[84] The literature in the sphere of immigration and refugee policymaking generally agrees that in western liberal democracies the matter is potentially divisive and at times acrimonious. It is of interest to note that Canada has not had a national debate on immigration and refugee policy like Austria, France, and the United States among others.

[85] Pross's observation provides an alternative hypothesis for the dearth of public debate on the issue of immigration and refugee issues.

[86] Pross, *Group Politics and Public Policy*, Chapters 9 and 11.

function who share a common 'policy focus', and who, with varying degrees of influence shape policy outcomes over the long run."[87] Members of a policy community tend to develop a sense of commonality about the main problems and solutions in the policy area – call it a 'paradigm' – although with more or less disagreement or conflict over what should be done. Thus, policy community members are internally integrated and share similar beliefs and values. To maintain stability and equilibrium within the community, membership is relatively static but the structures are permeable. If the membership deems it necessary or desirable, it may include interests from the attentive public. Successive reforms starting in the 1960s diffused decision-making power. Therefore, it is more accurate to refer to the policymaking system as a network. Policy networks then refer to "... the dependency relationships that emerge between both organizations and individuals who are in frequent contact with one another in particular policy areas."[88] Some networks are more integrated than others. A characteristic of a highly integrated network is a stable and restrictive membership, interdependence, shared responsibility for the implementation of policy, and insulation from other networks. Alternatively, weakly integrated networks have fluid memberships, a lower degree of organizational dependence, and are more easily influenced by external groups. However, both highly- and weakly-integrated networks highlight the degree of fragmentation and diffusion that characterizes the Canadian policymaking process.

The hesitancy and inconsistency of Canadian policymaking in general, and of the immigration and refugee policymaking area specifically, may be attributed, to the disaggregated and weak nature of the Canadian state. Interest groups that understand the

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[87] W.D. Coleman and G. Skogstad, *Policy Communities and Public Policy in Canada* (Mississauga: Copp, Clark, Pittman, 1990), p. 25.
[88] M. Atkinson and W.D. Coleman, *The State and Industrial Change in Canada* (Toronto: University of Toronto Press, 1989), p. 77.

parliamentary system, which places most of the decision-making power in the hands of the

bureaucracy and cabinet, focus most of their attention on these two branches of

government. "Bureaucratic pluralism" makes it difficult to develop assertive and integrated

public policy. A question arises; who shapes policy decisions? Early writing on Canadian

interest group politics accepted the model of elite accommodation as an accurate and

complete description of state-society relations. This model proposes a system of mutual

accommodation between political, governmental and private elites whereby the interests of

society are determined in informal meetings.[89] Presthus described an asymmetrical

relationship between three elites in which the private elites were dominant. He states:

> despite the vaunted institutional autonomy of the Cabinet, it seems clear that
> in operational terms the national political process is essentially one of
> continual, ad hoc, bargaining and compromise, in which the resolution of the
> claims of a bewildering variety of interests is often the major activating force
> in the behaviour of governmental elites. At the very least, Government's
> policy initiative is virtually always shared with members of the private
> political elite.[90]

This model assumes that policy making is a bottom-up process. It also assumes that the

state accords the private elite a special privileged position over other interests.

Not all elites are equal. The business community has been particularly effective at

embedding itself in the state, a process facilitated by the capitalist orientation of the national

economy. Since the principles of a capitalist market-economy assign the business class

significant influence, it is more autonomous when negotiating the terms of intrusive state

intervention.[91] The history of Canadian immigration policy underscores business' privileged

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[89] Private elites include elites of ethnic, regional, economic among others who have similar background characteristics and values.
[90] Presthus, p.17.
[91] Atkinson and Coleman, p.76

position.[92] However, there is a limit to business' privileges. The Canadian state appears to limit access to areas deemed to be especially important to the national interest. For example, Coleman points out that Canada formulates monetary policy in a state-directed policy network.[93] As the term network implies, there are linkages with other state and societal actors, but according to Coleman over the past twenty years the Bank of Canada has moved away from the use of moral suasion in its relation with others in the network to market-based instruments, signalling a desire and ability to insulate itself from external pressures. When dialogue takes place, it is on the Bank's terms and focus primarily on the economy in general or on the specifics of policy implementation instead of on setting policy objectives. The Bank has the capacity to insulate itself because of the formidable expertise of in-house policy analysts. Coleman also found that the state in setting monetary policy attempts to marshal support from the business community so that the action is perceived as legitimate.[94] A stable working relationship is required because the Bank implements policy through the major financial institutions. Coleman's assertion confirms Simmons and Keohane's Janus-faced conception of the Canadian state.

b. The Embedded state

Cairns suggests the concept of "embedded state" best captures the dialogue between state and society in Canada. The premise of this approach is that while political and bureaucratic elites may exercise some autonomy from interest group pressure, the state is so embedded in society it can no longer exercise complete autonomy. Instead, the state is

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[92] We review the history of Canadian immigration below.

[93] A state-directed network is characterized by weak business representation and a high degree of state autonomy.

[94] W.D. Coleman, "Monetary Policy, Accountability and Legitimacy: A Review of the Issues in Canada," *Canadian Journal of Political Science,* vol. 27, no. 4 (1991), pp.719.

involved in a continuous dialogue with civil society to develop mutually convenient public policy.[95] Old decisions shape present policy preferences.[96] He notes, "[w]hen that state is viewed as the sum total of the programs it administers, most of them the contemporary expression of yesterday's policy decisions, it is clearly seen as embedded in, or tied down to, the society it serves and has a responsibility to lead."[97] Change occurs at the margins. There is no divorce from the past. The explosion of self-consciousness organized around cleavages and differences that are not class-based are a result of the now commonplace understanding that the state is the arbiter of competing conceptions of social justice.[98] Policy responses to the demands of one group trigger the formation – or the intensification of activity – on the part of another group, which in turn prompts the creation of a third group and so on.[99]

An old decision shaping contemporary policymaking and policy is the state's entry into the interest group creation business. In *Interests of State,* Pal takes up Cairns' theme of the state as an arbiter and creator of community and identity. Where Cairns describes an involved state unable to impose itself on society, Pal finds a state with definite interests in supporting collective action. The state is not a neutral arbiter of the public will. By taking a proactive approach and creating interest groups to support its position, the state exerted its power to manipulate and dominate civil society. This approach to state-society relations established a new conceptual approach to the state's relation with interest groups. State

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[95] Alan Cairns, "The Embedded State: State-Society Relations in Canada," in K. Banting (Ed.) *State and Society: Canada in Comparative Perspective* (Toronto: University of Toronto Press, 1986), pp. 53-86.
[96] See Douglass North's, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990). He explains how institutional development may lead to a path-dependent pattern of development.
[97] *Ibid.*, p. 57.
[98] *Ibid.*, pp 56.
[99] Paul Pross, "Governing Under Pressure: the special interest groups – summary of discussion," *Canadian Public Administration*, vol. 25, no. 2 (Summer 1982), p. 174.

actors came to accept that public interest groups perform a valuable service for society and the state. Malvern also describes the state as a manipulative actor.[100] He suggests that the logic of public funding of interest groups is social control. The purpose of publicly funded interest groups is to tell the government what it wants to hear and to create enthusiasm for its policies.[101] State actors find interest groups useful because they provide departments with purpose. The new relationship had a significant effect on internal state developments as it led to government growth. Programs were seen by state actors as opportunities to improve electoral fortunes and develop bureaucratic fiefdoms.[102] Then, when the state's interest in the organizations it helped dissipated, organizations that embedded themselves in the state with the help of state funding, were able to organize and pressure their creator for continued support and protection.[103] The state's dominating role was progressively attenuated, and balance in state-society relations re-established.

c. Disentangling the state

In recent years, the Canadian state appears to be attempting to reassume a dominant role. We interpret the centralization of power described by Savoie in *Governing from the Centre* as an attempt by the state to disentangle itself from past commitments. Savoie outlines a reconfigured structure and nature of relationships between the different components that make up the Canadian system of executive governance. It is a more open representative system, with highly concentrated governance, raising the spectre of unchecked government power and weak parliamentary control. Not only is the Canadian state attempting to

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[100] Paul Malvern, *Persuaders: Influence Peddling, Lobbying and Political Corruption in Canada* (Toronto: Methuen, 1985).
[101] Malvern, p. 27.
[102] Leslie Pal, *Interests of State: The Politics of Language, Multiculturalism, and Feminism in Canada* (Montreal and Kingston: McGill-Queen's University Press, 1993), pp. 153-188.
[103] *Ibid.*, pp. 124-150.

disentangle itself from the past, it also seeks to establish the effective coordinating body the Canadian state has lacked.[104] Savoie's "apex of power" provides the central hub needed to establish a more constant capacity to act across policy sectors, and the ability to produce more consistent and measured public policy.[105]

Savoie traces the birth of the "centre" or "apex" to the explosion of government programs and the challenges of coordinating policies in the postwar period.[106] Government activity in some areas, particularly in the management of macroeconomic policy instruments, began only in the postwar period. As society and its problems became more complex, individual ministers and departments could not make policy decisions in a vacuum. Postwar governments were bigger and more complex. The policies of one department inevitably affected those of another. Since increased levels of consultation and coordination were required, ministerial collegiality replaced departmental autonomy. Political authorities in advanced societies are now responsible for ensuring that citizens enjoy a minimum standard of living. The expansion and complexity of demands have overloaded the machinery of the modern state. The modern Parliament, with the myriad of issues it must consider, finds itself unable to review the number of decisions taken by Cabinet. As a result, the focus of activity and decision making since World War II shifted from Parliament to Cabinet.

Cabinet has now joined Parliament as a bypassed institution. Current and former ministers reveal that decisions are no longer made in cabinet. Savoie describes cabinet

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[104] Recall that Vogel and Rotte proposed that states must coordinate the various policy areas in order to more effectively control immigration.

[105] Consistency, of course, comes with a threat to democratic responsiveness.

[106] It is important to mention that the "centre" Savoie has in mind is, first-and-foremost, the central agency machinery with the Prime Minister at its controls.

meetings as a rolling focus group. Continued government expansion stressed the ability of cabinet ministers to manage their workload, leading them to download responsibility to the bureaucracy.[107] Senior bureaucrats in the central agencies set the agenda and shape the opinions of their political masters. Overburdened administrators, with few checks or guidance from political leaders, rely on interest groups for specialized information and, at times, even delegate regulatory power, draining away power from the state and legitimizing privilege. Interest groups provide government with information and lend support and legitimacy to public policy.

In Savoie's conception of the Canadian government, the apex of power is the prime minister and her staff. What is the source of her supremacy? The prime minister selects all ministers and deputy ministers; controls the machinery of government; and has few or no obligations to either her ministers or members of parliament. Political realities dictate they remain loyal to her and in particular to government policies. Savoie observes, "it is hardly possible to overemphasize the fact that the Canadian prime minister has no outer limits defining his political authority within the government ... the prime minister is free to roam wherever he wishes and to deal with any file he chooses ... It appears that the most significant limit on the prime minister's power is time, or a lack of it."[108] The prime minister does not stand alone at the apex of government dealing with an incessant demand on her time. Four main agencies exist to support the prime minister and/or cabinet as a whole: the Prime Minister's Office (PMO), the Privy Council Office (PCO), the Finance Department,

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[107] For a discussion on the overloading of legislators and downloading of responsibility see Robert L. Stanfield, "The Present State of the Legislative Process in Canada: Myths and Realities," in Neilson, W.A.W. and J.C. McPherson (Eds.) *The Legislative Process in Canada: the need for reform* (Toronto: Butterworth and Co., 1978).

[108] Donald Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 1999), p. 108.

and the Treasury Board.[109] The Prime Minister's Office links her to the world of politics, cabinet ministers, caucus members, the party and the media. The Privy Council Office links the prime minister to the machinery of government, and offers non-political advice and support. The Department of Finance and the Treasury Board primarily provide financial information to the cabinet, and have historically exercised a cautioning, restraining influence on new program proposals. Savoie's proposition that time is the only check on the prime minister's power raises concerns about the absence of accountability at the apex of power. But, that is outside the scope of this paper. Perhaps, more importantly for our purpose, Savoie provides clues for pinpointing a possible source for immigration policy in general and refugee policy in particular.

Savoie refines our search for key players in the setting of public policy. It also raises the questions, when does the "apex of power" intercede in the policymaking process? Why does the "apex" intervene? It is worth noting that while Savoie's work represents an elaboration of claims that in Canada we have an "elected dictatorship", many of his arguments have been made in the past. Simeon in *Federal-Provincial Diplomacy* broke new ground suggesting that cabinets and legislatures were simply rubber stamps, merely approving policies negotiated between the premiers and prime ministers at first minister conferences.[110] Docherty in *Mr. Smith Goes to Ottawa* observed that in Canada the executive dominates parliament.[111] Executive domination is more evident in Canada than in other Westminster-style parliaments due to the relative inexperience of member's of parliament, a

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[109] See G.B. Doern and P. Aucoin, *The Structures of Policy-making in Canada* (Toronto: Macmillan Ltd., 1971).
[110] Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto: University of Toronto Press, 1972).
[111] David Docherty, Mr. Smith Goes to Ottawa: Life in the House of Commons (Vancouver: UBC Press, 1997).

result of high turnover at election time. Savoie's most important contribution is to focus attention on the role of central agencies.

Central agencies wield more power now that governments are under stress. Their job is to advise politicians on policies that serve to harmonize or coordinate the actions of the collective of departments.[112] Savoie states, "one theme that came up time and time again in my consultations was the extent to which the centre, the budget, and the Department of Finance have all come to dominate all policy areas."[113] The financial agencies have the power to stop policies other agencies want to implement. They are the guardians of the public purse.[114] Cabinet ministers are seen by the central agencies to at times act as mouthpieces for interest groups, and too eager to grab a larger piece of an increasingly limited budget. In recent years, the central agencies have become the spenders, introducing new measures and policies under the cover of budgetary secrecy and bypassing debate in cabinet and long interdepartmental consultations.

The central agencies play a policing role and act as a buffer zone between cabinet and the policy communities. Deputy ministers are usually closer to the centre, while the line staffs are closer to the clients. Where ministers think along departmental lines, central agencies pride themselves on their ability to promote a horizontal or corporate perspective on issues. Savoie's analysis puts forth the idea that an autonomous government policymaking process and an independent interest group community seeking influence is not

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[112] Sharon Sutherland, "The Public Service and Policy Development," in M. Atkinson (Ed.) *Governing Canada: Institutions and Public Policy* (Toronto: Harcourt Brace Jovanovich Ltd., 1993).
[113] *Ibid.*, p. 66.
[114] The guardians are the prime minister, the minister of finance, and the president of the Treasury Board. However, the power of the financial agencies need not be static; their power to stop policies may reflect the federal governments aim to bring the budget deficit under control in the 1990s.

an accurate description of the manner in which the current policymaking system operates. Neither is it appropriate to assume that public policy is formulated through the interplay of the state apparatus and interest groups. Instead, he describes a system in which the prime minister, his close advisors, and the central agencies exercise control. The postwar deficiency of governmental coherence, and loss of control over the bureaucracy, resulted in a concentration of power at the centre. In modern policymaking, consensus building is necessary and central agencies act as coordinators and use interest groups to validate decisions.

An imbedded tension between "states" and "pluralism" has been characteristic of the Canadian policymaking process. State officials manage public policy with the aim of legitimating state action, vulnerable to the demands of groups in civil society. While "statism" is most dominant in the policymaking process, the supremacy of the state is not static. The explosion and complexity of demands in the postwar period overloaded the machinery of the modern state. Since then, activity and decision-making has shifted from parliament, to the cabinet, to the bureaucracy. Overburdened administrators, with limited checks or guidance from political leaders, have come to rely on interest groups for specialized information and sometimes even delegate regulatory power, draining away power and legitimizing privilege from the state. The trend we observe towards a higher degree of concentration of executive power appears to be an attempt on the part of the state to provide interest groups with fewer access points thus reducing their influence and increasing the capacity of the state to lead the policymaking process.

Section 5: IMMIGRATION AND REFUGEE POLICY IN CANADA

Immigration and refugee policy in Canada has not been an election issue. Though it has become an issue of public concern from time-to-time, Canadians are comparably more likely to favour immigration. Simon and Lynch in cross-national study found that "opposition to immigration is lower in Canada (averaging 42.0 percent) than in the U.S. (49.7 percent), the United Kingdom (55.2 percent) and Australia (65.9 percent) despite proportionally higher immigration to Canada."[115] There are many groups involved in its planning and implementation, and many different domestic and international interests are involved.[116] Nevertheless, according to our framework of Canadian immigration and refugee policymaking, the state serves as the point where all interests converge and orchestrates policy, though not completely immune from societal influences.

Since immigration is an important and emotional policy consideration, there are various pressures on the policy maker. As David Corbett found in his examination of the Canadian case over four decades ago:

> A national government dealing with immigration policy is like a ship buffeted by contrary winds. Labour blows one way and employers another; French Canadians puff up a powerful blast against the prevailing English speaking majority; various nationality associations exert their pressures; and a chill draught of prejudice against foreigners comes from some of the old stock. In these gusty waters the government must steer a course. Sometimes it may choose to use its auxiliary motors and go against the wind; it may decide to

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[115] R.J. Simon and J.P. Lynch, "A Comparative Assessment of Public Opinion Toward Immigrants and Immigration Policy", *International Migration Review*, Vol. 33, No. 2, pp. 455-467, as cited by J. Reitz in "Immigration and Canadian Nation-Building in the Transition to a Knowledge Economy". Available: http://www.utoronto.ca/ethnicstudies/Reitz_June2002.pdf. (15 August 2004).

[116] Immigration in Canada is a shared federal-provincial jurisdiction under the British North America Act of 1867 and the Constitution Act of 1982 with primacy assigned to the federal government. With the exception of Quebec, which received selection powers under the Cullen-Couture Agreement of 1978, the federal government sets the levels and composition of immigration flows. In recent years, provincial governments, such as Manitoba, have become more active in formulating immigration policy primarily because of its effects on their region.

permit certain forms of immigration which the community is not eager to welcome, but which, with little education, it can learn to accept.[117]

A country's immigration policy has many repercussions from the viewpoint of overall government activity in the particular, and the lifestyle of receiving society in general. Inevitably, there are interactions between immigration policy and foreign policy, economic policy, regional policy, linguistic policy, and social policy among others. Therefore, governments must consider many factors in the generation of immigration policy to ensure it is coordinated with national and international considerations. It is for this reason that policy making in this field is complex, and implementing efficient and effective immigration controls complicated.

a. The pluralist interpretation

The pluralist interpretation of Canadian immigration policymaking is dominated by the belief that the process is primarily influenced by productive forces, in particular business groups, with the state navigating the demands of elites as the economic conditions and opportunities change. The "Staples Approach" to Canadian political economy conceives immigration policy as an essential instrument for business in responding to the increasing internationalization of capital and export markets. Historically, Canadian labour has adopted a restrictionist position, while capital has supported expansionist immigration policies. Corbett in *Canada's Immigration Policy* reviewed the different groups that pressure government. In 1957, he concluded that while it is difficult to assess the relative influence of labour and capital over government policies, immigration policy has generally reflected the changing labour needs of the economy. Even the Great Depression did not entirely curtail the railway

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[117] D.C. Corbett, *Canada's Immigration Policy: A Critique* (Toronto: University of Toronto Press, 1957), p. 37.

companies' colonization activities in Western Canada, and after World War II, the

government sided with employers and demands for increased immigration.[118] Green's

Immigration and the Postwar Canadian Economy found that the amount of immigration is

determined by the differential between economic and population growth. He states,

> In the first decade after the war Canada experienced an increased worldwide demand for its raw materials – which touched off a substantial investment boom financed partly by domestic and partly by foreign savings – plus very slow growth in the native labour force, owing to low rates of natural increase twenty years earlier. The result was an acute labour shortage and rising real wages. As a result, immigration was actively encouraged. In the 1960s, it is argued these events changed. The baby boom, which got underway in the late 1940s, and continued to produce high birth rates until the late 1950s, generated fifteen to twenty years later a rapid increase in the flow of labour entrants into the domestic market. Since high levels of investment occurred again in the 1960s, the overall result was a reduction of demand for the large foreign labour force imports which had been necessary in the 1950s.[119]

While Green's study concentrated on the economic factors that shaped postwar Canadian

immigration policy, his findings appear to confirm the "Staples Approach" claim that

immigration policy reflects the changing labour needs of the economy. Soon after Green

completed his study, the Immigration Act of 1978 was implemented. The Act's requirement

that immigration levels be set with consideration to demographic as well as labour market

conditions should have weakened the link between immigration and the economy.

Nonetheless, a study by Veugelers and Klassen on the unemployment-immigration linkage

after 1978 showed that "… despite changes in government, federal-provincial relations,

interest group representation, and international migration patterns", the linkage did not

weaken significantly until after 1989. At that time, pressure from the business community to

press down wages led to the decoupling of the unemployment-immigration linkage under

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[118] Corbett, pp. 11-16.
[119] Alan Green, *Immigration and the Postwar Canadian Economy* (Macmillan, 1976), pp. 212-213.

Mulroney's Progressive Conservative government.[120] While the labour market umbilical cord was severed, Reitz observes that current immigration policy still reflects the needs of the Canadian economy. The points-based immigrant selection system seeks to ensure maximum employability. As such, it has been instrumental in transitioning the Canadian economy from a low-skill, to a high-skill, to a knowledge-based economy. The challenge is now to ensure the employability of these highly skilled immigrants.[121] Our review finds that few interpretations regard pluralist forces as the prevalent influence in the formulation of immigration policy.

b. The 'statist' interpretation

Assessments of postwar Canadian immigration policymaking tend to emphasize the strength of the state relative to pluralist forces. Hawkins suggests "… it is fair to say that the influence of major interest groups on immigration policy has been very limited and, where it has occurred, has lain more in the *perception* of their views by politicians and officials than in any direct impact."[122] In *Canada and Immigration*, she outlines a "bureaucratic control" theory that situates the "apex of power" in the determination of immigration policy at the top layer of the bureaucracy and cabinet.[123] She notes that while church groups, ethnic organizations, and refugee advocacy groups among others have gained ascendancy, especially in the area of family reunion and occasionally in relation to refugees, the determinant roles in postwar policy formulation have consistently been played by top bureaucrats and a handful of

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[120] J.W.P Veugelers and T.R. Klassen, "Continuity and change in Canada's unemployment-immigration linkage (1946-1993)", *Canadian Journal of Sociology*, vol. 19, no. 3 (1994), pp. 351-369.

[121] J. Reitz, "Immigration and Canadian Nation-Building", pp. 1-46. Also, see D.H. Avery's *Reluctant Host*.

[122] Freda Hawkins, *Critical Years in Immigration: Canada and Australia Compared* (Kingston and Montreal: McGill-Queen's University Press, 1989), p. 252.

[123] Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern*, 2nd Ed. (Kingston and Montreal: McGill-Queen's University Press, 1988).

resolute politicians.[124] The influence of ethnic community organizations, while noticeable

from time-to-time, is much stronger with respect to the provision of community services

rather than in the policymaking process.[125]

The Canadian state leads with vigour. Its leadership involves managing the size of

the program and numbers of immigrants, the evolution of economic immigration, and the

reduction of non-economic immigrants and overall program costs.[126] At times, outcomes

are determined by internal factors, and at others by factors external to the state apparatus.

Whitaker's *Double Standard* exposes contradictions and racism in refugee policymaking.[127]

Abella and Troper, like Whitaker, observe that immigration policy was made by bureaucrats

and politicians behind closed doors, but take their observation one step further, noting that

the government in its quest for votes allowed electoral considerations to determine the

future of Jewish refugees.[128] Admission to Canada was denied because of ethnicity or race

and the perception of policymaking elites that Canadian society would be unable to absorb

certain groups. At other times, the outcome of policy was more benign. According to

Adelman, during the formative years in the 1950s and 1960s, state institutions not only

sponsored unprecedented levels of mass migration but also carefully managed social

acceptance of the social consequences.[129] Hawkins suggests that the Canadian government

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[124] Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern*, 2nd Ed. (Kingston and Montreal: McGill-Queen's University Press, 1988).

[125] Hawkins, *Critical Years in Immigration*, Chapter 5. Also see, Y.M. Abu-laban, *Canadian Immigration Policy and Political Parties: Bills C-55 and C-84* (BA Honours Thesis, University of Alberta, 1988).

[126] J. Reitz, "Immigration and Canadian Nation-Building", p. 4.

[127] R. Whitaker, *Double Standard: The Secret History of Canadian Immigration* (Toronto: Lester and Orpen Dennys, 1987).

[128] I. Abella and H. Troper, *None Is Too Many: Canada and the Jews of Europe, 1933-1948* (Toronto: Lester and Orpen Dennys, 1982).

[129] H. Adelman, *et al.*, *Immigration and Refugee Policy: Australia and Canada Compared, Volume 1* (Toronto: University of Toronto Press, 1994), p. 121.

leads the way and cautiously brings the public along with it.[130] In *Canada and the Indochinese Refugees,* Adelman concludes that government policy led public sentiment in responding to that refugee movement, and that, with a few exceptions, provided the leadership needed to gain public support for increasing the intake of Indo-Chinese refugees.[131] Basok concurs with Hawkins and Adelman's evaluation of the capacity of the Canadian state. She asserts that while in some areas the power of the state has eroded, the area of refugee policy is not one of them. According to Basok, "... the Canadian sate retains full control over the population it allows to cross and remain within its borders."[132] Neither the global ethic of humanitarianism nor societal pressures have had more than a minor impact on Canadian refugee policies since the 1970s.

Reitz observes that the history of Canadian immigration policy is indeed characterized by bureaucratic control. He refers to it as a managerial stance. Canada's managerial approach may be attributed to the importance of immigration for national development and the need to attune it to the country's economic and social system.[133] Hardcastle *et al.* call the process nation-building statism. Nation building is not an unfettered process. They note a tension between 'statism' and pluralism. While state officials may pursue nation-building goals with relative insularity from groups in civil society, they do not have complete autonomy.[134] However, Anderson and Black assert the state has displayed a great degree flexibility and capacity to lead the immigration and refugee policy area. They

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[130] Hawkins, *Critical Years in Immigration,* p. 248.
[131] H. Adelman, *Canada and the Indochinese Refugee* (Regina: Weigl Educational Associates, 1982), p. 2.
[132] Tanya Basok, "Refugee Policy: Globalization, Radical Challenge, or State Control?" *Studies in Political Economy* vol. 50, Summer 1960, p. 133.
[133] Reitz, "Immigration and Canadian Nation-Building", p. 4.
[134] L. Hardcastle, *et al.,* "The Making of Immigration and Refugee Policy: Politicians, Bureaucrats and Citizens", in *Immigration and Refugee Policy: Australia and Canada Compared,* H. Adelman *et al.* (Eds.) (Toronto: University of Toronto Press, 1994), pp. 95-124.

found that while the Chrétien's Liberals promoted an expansionist immigration program upon taking office in 1993, by the end of their first term they had assumed a more restrictionist tone and continued this orientation during their second mandate. The shift in direction is attributed to electoral considerations heightened by the public's concern over immigration and the revelation of inefficiencies in the refugee processing system.[135]   Recall Simmons and Keohane's point that what is particularly notable in recent years is the state's vulnerability to pressure from groups in civil society. In the period between 1986 and 1990, the state dominated in the immigration and refugee policy area, but also remained alert to a diverse and complex range of views emanating from the provinces, associations, interest groups and public opinion. For them, the state displayed a Janus-faced character. Our review found that since the late 1970s the Canadian state has appeared more vulnerable to pressure from organized groups.[136] As Simmons and Keohane observe, "... the groups which oppose or potentially oppose the state with respect to immigration and refugee policy at any given moment are weak in relative terms, but they are by no means powerless. They are able to mobilize public sentiment ... the legitimacy of the state action is never assured ..."[137] Simmons and Keohane's theory of political legitimacy provides the take-off point for our study.

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[135] C.G. Anderson and J.H. Black, "Navigating a New Course: Liberal Immigration and Refugee Policy in the 1990s", in Leslie A. Pal (Ed.) *How Ottawa Spends 1998-1999: Balancing Act, The Post Deficit Mandate* (Toronto: Oxford University Press, 1998) p. 200.

[136] The Immigration Act, 1976 curtailed the sweeping scope of ministerial discretion and made room for parliamentary intervention.

[137] Simmons and Keohane, p. 447.

Section 6: CANADA'S IMMIGRATION EXPERIENCE

Two alternative visions have marked Canadian immigration history and discourse: the *expansionist* and *restrictionist*. Over the years, policies have oscillated from one vision to the other as officials manage the flows. While governments combine elements of both visions, the primacy of one perspective over the other colours the nature of policy.[138] Geographically, Canada is the largest country in the Western Hemisphere, and has a population of just fewer than 33 million people. This fact has led many to regard it an under-populated country capable of absorbing a vastly increased population. Immigration was initially viewed as promoting colonization. Between 1896 and 1914, more than 3 million people immigrated within this eighteen-year period. This number was significant given Canada's 1911 population of just over 7 million.[139] The vast majority of immigrants were English-speaking people coming from the British Isles, the United States, or northern European, mainly from Germany, the Netherlands and Scandinavia. The composition of the immigrant flows was largely a result of a restrictionist immigration policy, which at first was directed against the Chinese and later against all potential non-white immigrants.[140] In the postwar period, Canada received immigrants from a devastated Europe and gradually embraced non-discrimination in the selection of immigrants.

An important determinant of early twentieth century immigration levels was the desire to foster population growth to stimulate economic expansion. Nearly a century ago,

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[138] C.G. Anderson and J.H. Black, "Navigating a New Course", p. 192.

[139] Kelley and Trebilcock, p. 111.

[140] The power to exclude would-be immigrants in the unwanted categories and origins, on which the White Canada policy was based, is delineated in the Immigration Act of 1910, later amended by the Act of 1919. Detailed information on who would be excluded is provided in subsequent orders-in-council. Laws to discourage or prohibit Chinese immigration were approved by the federal government in 1885, 1900, 1903 and 1923.

Clifford Sifton commented that the ideal immigrant was a stalwart peasant in a sheepskin coat with a wife and half-dozen children. Just under two decades ago, former Manpower and Immigration Deputy Minister Tom Kent made a similar recommendation. He stated, "... the ideal immigrants to Canada today are an orphan from the Third World or a mother with five children from the Third World. Given the low fertility rate of a Yuppie society, a clearly reasonable policy is to call in the babies of the Third world to redress the balance."[141] For years, Canada has viewed immigration as the solution to economic and demographic problems it faces. Contemporarily these include:

- The aging population; that is, an attempt to ease, through immigration, the fiscal burden associated with a rising share of non-working to working population;
- Responding, through immigration, to the need for additional skills (human capital), associated with the expansion of the knowledge economy;
- Promoting economic growth especially, at present, regional growth, by dispersing immigrants to small centres across Canada.[142]

Therefore, Canada's interest in economic expansion and demographic growth is still an important determinant of immigration levels. How did these factors become influential in shaping immigration policy in general and refugee policy in particular?

a. "Absorptive capacity"

Canada did not have a formal immigration policy until it adopted the Immigration Act of 1952. In practice, however, Canadian immigration policy up to that point had been guided by the principles of promoting national economic growth and the exclusion of social

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[141] Tom Kent, "Immigration Issues: A Personal Perspective," in C.M. Beach and A.G. Green (Eds.) *Policy Forum on the Role of Immigration in Canada's Future* (Kingston: John Deutsch Institute for the Study of Economic Policy, 1988), p. 10.

[142] Alan Green, "What is the Role of Immigration in Canada's Future?" in Charles Beach and A.G. Green (Eds.) *Canadian Immigration Policy for the 21st Century* (Montreal & Kingston: McGill-Queen's University Press, 2002), p. 34.

undesirables. In 1947, Prime Minister Mackenzie King in an address to the House of

Commons defended the policies that sought to maintain Canada's high levels of immigration

and ethnic composition. This is what the Prime Minister said:

> The policy of the government is to foster the growth of the population of
> Canada by the encouragement of immigration. The government will seek by
> legislation, regulation, and vigorous administration, to ensure the careful
> selection and permanent settlement of such numbers of immigrants as can be
> advantageously absorbed in our national economy.[143]

Mackenzie King aware of Canada's new place among the community of nation's articulated

the internationalist view.

> Like other major problems of today, the problem of immigration must be
> viewed in light of the world situation as a whole. A wise and productive
> policy for Canada cannot be devised studying only the situation within our
> country ... Among other considerations, it should take account of the urgent
> problem of the resettlement of persons who are displaced and homeless, as
> an aftermath of the world conflict.[144]

Then, Mackenzie King dismissed concerns that Canada could no longer absorb large

numbers of immigrants without a reduction in the standard of living.

> The fear has been expressed that immigration would lead to a reduction in
> the standard of living. This need not be the case. If immigration is properly
> planned, the result will be the reverse.[145]

At the time, concern over absorption was raised in reference to possible Asian migration.

Mackenzie King's categorical rejection of Asian immigration would likely have garnered the

approval of the Canadian public.[146] Responding to criticisms that Canadian policy was

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[143] Corbett, p. 3.
[144] *Ibid.*
[145] *Ibid.*
[146] Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern* (Montreal: McGill-Queen's University Press, 1972), pp.93-94.

discriminatory, Mackenzie King articulated the nationalist view that admission to Canada is a

privilege not a fundamental human right.

> With regard to the selection of immigrants, much has been said about
> discrimination. I wish to make it quite clear that Canada is perfectly within
> her rights in selecting the persons whom we regard as desirable future
> citizens. It is not a "fundamental human right" of any alien to enter Canada.
> It is a privilege. It is a matter of domestic policy.[147]

The speech was vintage Mackenzie King. It was a carefully calculated statement that

reflected the tension between the *expansionist* and *restrictionist* visions. He addressed the

concerns of expansionists and restrictionists alike, at the same time, dancing away from a

definitive position. While the statement lacked the enthusiasm such an important policy

deserved, Mackenzie King's general overview became the guideline state actors would follow

when developing immigration policy for the next two decades.[148] In our view, it was also

significant in determining options available to actors creating Canada's refugee policy. Why

was Mackenzie King's pronouncement so influential? Hawkins notes a striking resemblance

of the statement to the recommendations of the Senate Committee on Immigration and

Labour which had been exposed to various sources of official and unofficial opinions. If we

accept our model's assertion that the political process is characterized by "bureaucratic

control", it is likely that Mackenzie King's vague policy statement was a reflection of

bureaucratic battles and preferences. The statement's influence lies in the very fact that it

was shaped by a bureaucracy that could ensure the perpetuity of its themes.

Mackenzie King's pronouncement opened the door to European migration. For the

first time since the turn of the century, a Canadian government would use immigration to

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[147] *Ibid.*
[148] Gerald Dirks, *Controversy and Complexity: Canadian Immigration Policy during the 1980s* (Montreal: McGill-Queen's University Press, 1995), p.10.

boost the Canadian economy and increase population. This was a watershed in Canadian immigration policy as it opened the country's doors to immigrants and refugees. European displaced persons were the first beneficiaries. Strong 'push' factors in a devastated Western Europe also contributed to the change in immigration policy. Over a million displaced persons and refugees endured crowded conditions in shelters maintained by the United Nations. However, it was domestic pressure that provided the impetus for the government's initiative. According to Knowles, "in response to appeals from their constituents, many of whom represented ethnic organizations, members of parliament called on the government to admit Europe's homeless."[149] Among the groups leading the calls was the Canadian National Committee on Refugees (CNCR). B.K. Sandwell of the CNCR stated before a Senate Standing Committee on Immigration and Labour in 1946:

> The obligation to grant sanctuary is not, and never was, unlimited … the nation which ignores this obligation will suffer as all nations ultimately do which ignore the fundamental moral, the debt which man and nations owe to the human being at their gates simply because he is a human being.[150]

In a brief presented the committee, the CNCR requested that the Canadian government aid the displaced persons without waiting for decisions from the United Nations. The committee report stated that "… of all the witnesses heard not one opposed the general principle of immigration into Canada" and that "… all were agreed that Canada, as a humane and Christian nation, should do her share towards the relief of refugees and displaced persons."[151] The committee and parliamentarians urged the government to revise the Immigration Act and regulations and develop a proactive approach to immigration policy. The government responded by admitting displaced persons before an international

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[149] Knowles, p. 128.
[150] As quoted by Knowles, p. 129.
[151] *Ibid.*

agreement was reached. Non-governmental organizations were also influential and instrumental in the refugee selection operations.[152] While preference was given to those who would help meet the demand for manual labour, ethnic origins, as well as, political and ideological views were also central to the screening process.

The economic as well political context of the postwar period was critical in the gradual liberalization of Canada's immigration policy. Organized labour which had traditionally opposed mass immigration began to cautiously support expanded intakes; it also supported the admission of refugees so long as there was no adverse effect on the standard of living of Canadian workers. The postwar economic boom helped soothe concerns about unemployment and declining wages. The need for skilled and unskilled labour in a growing economy was obvious and widely accepted. Interestingly, the significant shift in immigration policy was not debated in Parliament or during federal election campaigns. Discretion was central to the creation of immigration policy. Active support for immigration in the immediate post-war period primarily came from groups in civil society: employers, some ethnic groups, the churches, and voluntary agencies. Organized labour was a cautious supporter. For officials in the Department of Citizenship and Immigration, the only source of institutional support, Mackenzie King failed to clearly outline the purpose of immigration. Contrary to conventional wisdom, the Department of Immigration held an expansionist predisposition. Mackenzie King's "tap-on, tap-off" approach was in conflict with the Department of Immigration's feeling that immigration should be "carried" in times of economic weakness because of its long-term value.[153] The Department of Immigration's strong belief in planning for economic and population growth was at odds with the

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[152] Dirks, *Controversy and Complexity*, Chapter 6.
[153] Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern*, p. 73.

Department of Labour's firm conviction that immigration should be geared to the business

cycle, and to filling precise gaps in the labour force.[154]

The Immigration Act of 1952 reflected the flexibility required by the "tap-on, tap-off

approach" favoured by the Department of Labour. The Act of 1952 vested the Minister of

Immigration and Citizenship and his officials with all-embracing powers concerning the

selection and admission of prospective immigrants. Admission could be denied by reason of

such factors as nationality, ethnicity, occupation, lifestyle, unsuitability with regards to

Canada's climate, and the perceived inability to become assimilated into Canadian society.

Unforeseen, was the increased workload the provisions created for the Minister and his

Department. The extraordinary discretion given to bureaucrats also worked to the

disadvantage of the Department as the Act's vagueness did not provide the means for them

to justify decisions and pitted officials against the legal community and members of

parliament.[155] Immigration department officials felt isolated and developed "... a proprietary

interest and concern in this area of public policy and an anxiety about outside interference

and hostility. It also led to a firm belief in the value of selection to produce high-quality

immigration and therefore to a continuing concern about the quality of the sponsored

movement."[156] The Department's zealous concern about admitting a disproportionate

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[154] Given our understanding of the Canadian political process it may be surmised that the diverging views expressed by the Departments may reflect the dominant views of groups in the respective policy community. Labour appears to champion the views of business, while Immigration those of ethnic groups. Furthermore, Immigration was not powerful enough within Cabinet and the bureaucracy to secure the resources from the Department of External Affairs and Trade and Commerce to operate its Overseas Services.
[155] See Hawkins, *Canada and Immigration: Public Policy and Public Concern*, p. 102-107.
[156] *Ibid.*, p. 73.

number of unskilled persons resulted in charges of discrimination.[157] However, the real issue was not discrimination but *control* over the quality of immigrant admitted. Indeed, it was the same department charged with discrimination that proposed the abandonment of Canada's Euro-centric immigration policy.

b. Skilled migration

The 1960s mark a turning point in Canadian immigration policy. Between 1962 and 1969, the Canadian government introduced changes that moved immigration policy from a discretionary administrative system to one with more clearly established rules and procedures. However, the changes were not made in a way that encouraged public debate and were not the result of pressure from groups in civil society. Canadian policy in the immigration arena was developed in backrooms insulated from public scrutiny and pressure. Deputy Minister's Tom Kent's strategy with the 1966 White Paper on Immigration Policy was to test public opinion as the government sought to lead public opinion by reaffirming the importance of immigration for economic growth.[158] The controlled-expansionism of the policies reflects the outcome of debates within the state apparatus. Adjustments to the Act of 1952 were the result of pressure from the Department of Immigration and the Department of Foreign Affairs and International Trade. Immigration was concerned with the level of structural unemployment as the Canadian economy became more dependent on technology.[159] Foreign Affairs and International Trade expressed concerns about the impact of a blatantly racist immigration policy on relations with newly independent Commonwealth

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[157] For example, in 1959 the government passed an order-in-council that limited the list of eligible relatives admissible through the family class. It was seen as aimed primarily at Italians and created such a maelstrom that it was repealed.
[158] Avery, *Reluctant Host*, p. 179.
[159] Avery, *Reluctant Host*, p. 176.

members. Cabinet took little initiative in immigration policymaking.[160] With the introduction of the Immigration Regulations of 1962 the White Canada policy was virtually abandoned and the 1967 Regulations introduced a completely new immigrant selection system – the Canadian points system.[161] Then, in 1969 Canada acceded to the 1951 Geneva Convention Relating to the Status of Refugees. During the 1960s Canada moved away from a discretionary selection system to a more objective and fair system, embraced the liberal principle of racial non-discrimination in the selection of immigrants, and accepted its obligation to join in the cause to resolve the refugee crisis, while simultaneously reaffirming its goals of promoting economic growth and family unification.[162] The Canadian government's decision to introduce these policy changes was not a result of popular or parliamentary pressure, but because senior officials believed the country needed to attract a higher proportion of skilled and professional immigrants to remain economically competitive. Officials also realized that to operate effectively within the United Nations, or in the multiracial Commonwealth, with a racially discriminatory immigration policy.[163]

c. Finding a purpose

If the 1960s mark a turning point in Canadian immigration policy, the country began to quicken the pace of reform in the 1970s. Minister of Manpower and Immigration, Robert Andras, was convinced that Canada would only obtain a decent Immigration Act once a

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[160] *Ibid.*, p. 130.
[161] Valerie Knowles, *Strangers at Our Gates: Canadian Immigration and Immigration Policy, 1540-1997* (Toronto: Dundurn Press, 1997), p. 158. Under the new selection system immigration officers assign points in each of nine categories, including education, employment opportunities in Canada, age, personal characteristics, and the degree of fluency in one of the official languages. The system has been popular with both immigrants and immigration officers. It is easy to understand and removes caprice and prejudice from the process.
[162] Manuel Garcia y Griego, p.123.
[163] Freda Hawkins, *Critical Years in Immigration: Canada and Australia Compared*, p.39.

basic the purpose of immigration was determined.[164] In his quest to find answers to this fundamental question, Andras invited the provinces and interested organizations to submit briefs. Andras also commissioned a study to gather factual background to policy issues and furnish policy options. He described it as "... an action to create a new long-term basis for Canada's immigration and population policy."[165] Obstacles to the production of an effective Green Paper were the lack of basic research on the issue and the desire to get the job done quickly. The latter sentiment

> stemmed in part from the persistent belief among Canadian politicians and officials that immigration is controversial, hard to manage, and subject to awkward political pressures; and that policy issues in this field should not float freely in the public arena for too long ... Mr. Andras said that immigration was so sensitive an issue that it might not be advisable to prolong public debate on future policy and he added, "One has to ask how long a debate on this issue can go on in this country and remain constructive."[166]

The result was a Green Paper issued by the Department of Manpower and Immigration that reflected restrictionist views. At the same time the economic downturn of the 1970s changed public opinion about immigration, the report claimed urban immigrants were partly responsible for many of Canada's new economic and social problems. Ethnic, religious, and labour organizations countered that the government should adopt a more humane approach to immigration and weigh economic considerations with Canada's obligations to reunite families and aid refugees. Debate was contentious and acrimonious. After holding public hearings, the committee produced a report that formed the basis of the 1976 Immigration

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[164] In 1967, the Department of Immigration and Citizenship was replaced by the Department of Manpower and Immigration. One may interpret the change as the victory of the Department of Labour over the former Department of Immigration and Citizenship as Immigration had a small budget within Manpower. Furthermore, the Department of Labour Hawkins noted in Canada and Immigration was not sensitive at all to operational issues. The location of immigration within manpower may have lead to difficulties with immigration control.

[165] Freda Hawkins, *Critical Years in Immigration: Canada and Australia Compared*, p. 51.

[166] *Ibid.*, p. 52. It is important to note that it was the state that opened the policymaking process to external pressures.

Act. Seeking to respond to competing claims, the 1976 Act broke new ground by outlining

the fundamental principles and objectives of Canada's immigration policy and reaffirmed

Canada's role as a country of immigration. Knowles provides a succinct summary of the act:

> the promotion of Canada's demographic, economic, cultural, and social
> goals; family reunion; the fulfillment of Canada's international obligations in
> relation to the United Nations Convention (1951) and the 1967 Protocol
> relating to refugees, which Canada signed in 1969; non-discrimination in
> immigration policy; and cooperation between all levels of government and
> the voluntary sector in the settlement of immigrants in Canadian society. All
> the act's other provisions derive from one or more of these national
> objectives.[167]

The 1976 Act constituted a major overhaul of the illiberal 1952 Act and enshrined in law the

principles of non-discrimination and universality. Notably, the Act also demonstrates that

the state responded to pressure from interest groups. However, we should not to overstate

the influence of pressure from groups in civil society. While groups have submitted briefs

when invited to do by the government, and wielded influence in a few select cases involving

the Canadian labour movement, the Jewish community, the Italians and Chinese, there has

been no sustained effort to influence the direction of policy.[168]

We observe that while the 1976 Act is undeniably expansionist in orientation, there

are obvious flashes that demonstrate a desire for control. Reflecting the high levels of

unemployment, the Act required immigration officials to set quotas. In theory, the numbers

of 'independent' immigrants would now match labour market needs at home, but the Act

also allowed an increase in refugees and family applicants who would not be subject to the

point system. Independent immigrants admitted under the points system began by 1978 to

be outnumbered by refugees and reunited family members, a trend that sparked further

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[167] Knowles, p. 169.
[168] Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern*, Part 5.

debate about whether immigration should benefit the Canadian economy.[169] An innovation that sets the 1976 Act apart from most other federal statutes is the provision that government has a responsibility to plan for the future. The Act mandated the minister to consult with the provincial governments and other interested parties regarding the planning and management of Canadian immigration; this resulted in shared responsibilities in immigration recruitment and education, and in the case of Quebec, the power to accept or reject through a separate points system, independent immigrants who might enter the province. The minister was also required to make an annual announcement to Parliament on immigration levels, which is the government's target after consultations.[170] Another innovation was the establishment of special selection standards for refugees and for special classes of refugees which constituted the framework of Canada's current refugee policy. Whereas before 1976 Canadian politicians took a case-by-case approach to refugee admissions, the new Act formalized and developed what had been an *ad hoc* approach by creating three special classes of refugees: displaced and persecuted, special-measures, and inland refugees. The Act also included a Special Measure provision which permitted the admission of individual refugees who did not fit into existing categories. As such, the Act established the two distinct components of Canada's refugee admissions policy: overseas selection by visa officials, of government or privately sponsored refugees, and the self-selected, inland refugee-status determination system. Officials expected that the overseas selection process would be the most widely used.[171] They would soon be proven wrong.

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[169] Hugh M. Grant and Ronald R. Oertel, "Diminishing Returns to Immigration? Interpreting the Economic Experience of Canadian Immigrants," *Canadian Ethnic Studies*, vol. 30, no. 3 (1998), pp. 56-71.
[170] *Ibid.* It should be noted that the setting of levels does not set a limit on the number of immigrants or refugees who could be landed in Canada.
[171] Dirks, p. 63.

d. Fine-tuning required

The 1980s were dominated by some of the most challenging immigration issues to confront policymakers. At the top of the list was the refugee issue. The issue was catapulted to the top of the policy agenda because of the dramatic increase in the numbers of the world's refugees. In 1970, there were about 2.5 million refugees in the world.[172] By 1980, there were 6 million refugees and 2 million internally displaced persons worldwide. Civil war, ethnic strife, natural disaster, political persecution and upheaval plunged the international refugee system into crisis.[173] Another major trend was the escalating number of "illegal" or "undocumented" migrants. Improved communications, cheaper transportation, and the widening economic disparity between developed and developing economies led to a marked increase in the number of people seeking to improve their lot. W.G. Robinson, in a report prepared for the Minister of Employment and Immigration, put the number of "illegals" at an estimated maximum of 50,000. This number, however, was significantly lower than the 200,000 estimated by the Advisory Council.[174] Since many of these did not meet the qualifications to be admitted through conventional means, they sought refugee status. As a result, the asylum-seekers as they came to be known, added to the strain on Canada's refugee determination system. As the number of claims for refugee status mounted, the phenomenon ignited public debate. The 1976 Act had created a cumbersome refugee determination procedure. Claimants had two opportunities to establish that they were refugees: at "determination" and at "re-determination". Immigration officers interviewed and investigated claimants and an inter-departmental committee made decisions.

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[172] UNHCR, *The State of the World's Refugees 1993* (New York: Penguin Books, 1993), p. *i*.

[173] D. Matas and I. Simon, *Closing the Doors: The Failure of Refugee Protection* (Toronto: Summerhill Press, 1989), p.13.

[174] W.G. Robinson, *Illegal Immigrants in Canada: A report to the Hon. Lloyd Axworthy, Minister of Employment and Immigration.* (Ottawa: Minister of Supply and Services Canada, 1983), pp. 23-30.

In the 1980s, as an increasing number of people began to arrive and make their claims from within the country, the process broke down.[175] By 1986 there was a backlog of 18,000 claims and the first six weeks of 1987 saw over 6,000 new claims added.[176] The government responded with the controversial Refugee Reform Bill, Bill C-55, designed to streamline the refugee determination process and to clear up the backlog of claimants. It did, however, create a new institution, the Immigration Review Board (IRB) and a complex multi-stage refugee determination process. Then, after a group of Sikhs landed in Nova Scotia and claimed refugee status, the Conservative government issued and emergency recall of Parliament and tabled Bill C-84 in 1987, the Refugee Deterrents and Detention Bill. It would be a full year before the "emergency" bill was passed. Bills C-55 and C-84 went into effect in 1989 but without the "safe third-country" feature that had created uproar.[177]

Canadian immigration and refugee policy from 1947 to the end of the 1980s underwent significant changes. The most significant change was the program's shift from Euro-centrism and blatant racism to pluralism. Today, Canada has one of the most generous immigration and refugee programs in the world. However, the more things change, the more they stay the same. Throughout the period, Canadian officials yearned for control and sought to develop tools to manage migrant flows. The *expansionist* and *restrictionist* struggle persisted. But, the pendulum appears to have swung too far in favour of expansionism with the Immigration Act of 1976. Liberal provisions intended to facilitate

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[175] Another complication for the efficient operation of the refugee determination system was the Supreme Courts decision in the Singh case in 1985. The Court decided that the procedural guarantees of the Charter of Rights and Freedoms extended to foreign, non-resident refugee claimants, and that the existing determination system was unconstitutional.

[176] Knowles, p. 180.

[177] The "safe third-country" feature would allow immigration officers to refuse entry to any refugee claimant who arrived from a safe third-country, where they could have filed a refugee claim. The list of countries considered "safe" was to be drawn up by cabinet.

family reunification and a refugee processing system unable to cope with unexpectedly large flows stressed the 'absorptive capacity' of the system and Canadian people. In response, Mulroney's Conservative government responded with the most far-reaching amendments to Canada's immigration laws since the Act of 1976. The clear intent was to tighten Canada's immigration and refugee system by providing more stringent control mechanisms. The pendulum began to swing in favour of *restrictionism*.

In the years following World War II, there were two distinct paths for migration to Canada. One was comprised of immigration programs; the second, of refugee resettlement programs. Since the 1970s, possibilities for migration through each of these paths have narrowed. One of the reasons for reducing the scale of refugee resettlement programs and implementing more selective immigration criteria was the economic recession.[178] Until the 1973 oil crisis, immigrants and refugees helped fill labour market gaps, the recession that ensued dried up demand for overseas labour. Family reunion became one of the few legal ways to be admitted. Immigration numbers for Canada decreased dramatically in the years following the oil crisis, then underwent ups and downs in the late-1970s and early-1980s and did not begin to increase until 1986.[179] Although the number of immigrants to Canada has increased since the late 1980s, the admissions criteria are more restrictive as the family class has become a less important category relative to the skilled workers class, perhaps reflecting the demand for highly skilled and professional workers.[180] Therefore, the evolution of Canada's refugee policy may be segmented into four phases:

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[178] See Cornelius *et al., Controlling Immigration*.
[179] See Canada. Citizenship and Immigration, *Facts and Figures 2002: Immigration Overview*. Available: http://www.cic.gc.ca/english/pdf/pub/facts2002.pdf. (16 April 2004).
[180] See Reitz "Immigration and Canadian Nation-Building".

i. A liberal phase during the 1950s, consisting mainly of the repatriation of World War II refugees and the protection of refugees from Central and Eastern Europe;

ii. In the 1960s, Canada affirmed its commitment to aid the international community in addressing the refugee crisis as the refugee problem shifts to countries of the developing world;

iii. Canada introduces the first administrative reforms to refugee and asylum selection policies in the 1970s;

iv. Then, in the 1980s Canada begins a fundamental re-orientation of its refugee and asylum policies down a restrictionist path.

An outcome of restrictionism is a convergence of political refugees and economic migrants in a single-migration path – asylum seeking.[181] As a result, it has become increasingly difficult to distinguish political refugees from economic migrants.

The history of Canadian immigration is characterized by two dualities: first, a tension between *expansionism* and *restrictionism*; second, the need to satisfy *economic* and *demographic* needs. Immigration policy and migrant flows reflect these dualities. Canadian immigration officials have comparatively been more inclined towards a controlled form of expansionism. Since Confederation in 1867, immigration officials have weaved a story into the national folklore with two themes. The first theme was about the relationship between immigration, demographic, and economic growth; and the second, that immigration while necessary must consider the 'absorptive capacity' of the country. An unintended consequence of the Act of 1976 was decreased control over the selection of migrants who are expected to contribute to nation building. While Canadians generally favoured the Canadian government's expression and support of liberal values embodied by the Immigration Act of 1976, they were unwilling to accept a change to themes they have been told are important for successful nation

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181 See Reginald Appleyard, "International Migration Policies: 1950-2000," *International Migration*, vol. 39, no. 6, 2001. Also see, Khalid Koser, "New Approaches to Asylum?" *International Migration*, vol. 39, no. 6, 2001.

building. In the 1980s, it became clear to general public and immigration officials that the numbers of refugees, many of whom do not necessarily fill the needs of the economy, were much larger than they were able or willing to accept. Officials recognized the need to address the source of discontent with the immigration program to maintain its legitimacy.

Section 7: MANAGING IMMIGRATION, TIGHTENING REFUGEE POLICY

The main goal of immigration control is to regulate the access of foreigners to a country's territory. If this goal is achieved, the secondary goal of monitoring access to the welfare state and the labour market is less necessary. The challenge for liberal democracies is to achieve control without reneging on their commitment to liberal values. Restricting access to territory is the most evident way for liberal democracies to remain faithful to their obligation.[182] Internal control measures are in part a result of the imperfections of external control. While the migrant flows of the 1980s and 1990s revealed flaws with internal control mechanisms, external control has been comparatively more important in Canada. Because of geography and the fact it shares a border with the United States, internal controls like the ones employed by the European states have not been as necessary. However, we observe that the main thrusts of Bill C-86 and the Immigration and Refugee Protection Act (IRPA) were to strengthen both internal and external control mechanisms. Both pieces of legislation represent the Canadian response to an international refugee system in crisis.

We have chosen to study these pieces of legislation in particular, not only because they are the last two significant pieces in the area of immigration and refugees to become law, but also because they were presented by different political parties forming government.

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[182] Some theorists like Alan Cairns would disagree.

Bill C-86 was a Progressive Conservative initiative and the IRPA a Liberal scheme, thereby allowing us to control for the possibility that parties affect policy output. Both pieces of legislation also dedicate considerable energy to the issue of national security. The timing of the pieces permits us to control for the impact of the increased threat of international terrorism. The Canadian House of Commons debated Bill C-86 in 1992 well before the terrorist attacks on World Trade Centre in 1993 and 2001; while the lead up to the IRPA was being debated as the events occurred.

a. Bill C-86

Bill C-86 was introduced with the clear intent of tightening up Canada's immigration and refugee system by providing more stringent control mechanisms. With this in mind, the bill provided for "... among other things, the fingerprinting of refugee claimants to discourage welfare fraud, public hearings of refugee cases, harsher detention procedures, and deportations without hearings. Even more important, Bill C-86 introduced measures designed to streamline the severely taxed refugee determination system."[183] The year C-86 was introduced there were approximately 120 million people on the move around the world, and money, crime and terrorism were increasingly global. If C-86 was a response to changing world conditions, it was also a retort to the Supreme Court's *Singh* ruling. The Charter of Rights and Freedoms meant immigrant and refugee programs operated in a more litigious atmosphere.[184] All of these factors added up to severe complications for the management of migration flows. The externalization of controls became the state's response. Another significant policy change in this period was the presentation of a five-

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[183] Knowles, p.197.

[184] Ibid., p. 196. For example, (Adjei v. Canada [1989] 7 Imm. L.R. 169 at 173) established that "there need not be more than a 50 per cent chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility" of persecution.

year immigration plan by the federal government to Parliament in 1990. Interestingly, at the same time the door was being closed to refugees, the Progressive Conservatives proposed to open the immigration gate by increasing annual intake from 200,000 in 1990 to 250,000 each year until 1995. It marked the first time in Canadian history that the government committed itself to a long-term immigration plan less influenced by economic cycles. According to Kelley and Trebilcock, "... this policy represented a sharp departure from the Department of Labour's view in the 1950s and 1960s that immigration levels should be adjusted frequently to reflect the current state of the economy ...".[185] The five-year immigration plan was not as benign as it appears. With the announcement, the Mulroney Conservatives revealed their intention to tilt immigration policy away from family-sponsored immigrants, over whom it has little discretionary control, towards independent immigrants, who must qualify under the points system.[186] Long-term planning had for years been favoured by the Department of Immigration; the Mulroney government's embrace of this view may be interpreted as a signal the Department of Immigration had arrived from the relative backwater of the federal bureaucracy.

Since the mid-nineteenth century, the Canadian state has engaged in a project of national development through immigration. One of the stated goals of this project has consistently been to stimulate economic growth. According to Simmons and Keohane, the provision of economic security allows the state to strengthen its legitimacy; thus, Canadian immigration policy has been geared towards the smooth running of the economy.[187] This was especially the case before the 1970s when Canadian policymaking was characterized by

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[185] Kelley and Trebilcock, p. 387.
[186] Employment and Immigration Canada, *Backgrounders to the Annual Report to Parliament: Immigration Plan for 1991-1995* (Ottawa: Employment and Immigration Canada, 1990).
[187] Simmons and Keohane, p. 427-428.

elite accommodation.[188] Economic actors have influenced policy since the 1970s but we

observed in the lead-up to the Immigration Act of 1976, Bill C-55, and Bill C-84 that they

are no longer the only important players in the immigration policy area. Canada's evolving

role in the international community and the growth of ethnic communities within its borders

has increased the influence of pluralist forces.[189] Policy makers must now consider the

increasing importance of non-governmental agencies and ethnic communities. In this

section, we consider the arguments and effect of these groups on the nature of policy during

the introduction of Bill C-86.

Bill C-86 was an attempt by the state to assert control in an area it appeared to be

losing the ability. In the introduction of Citizenship and Immigration Canada's publication

Managing Immigration: A Framework for the 1990s, Minister of Employment and Immigration

Bernard Valcourt made the following statement with regards to the changes to the

Immigration Act proposed by Bill C-86:

> The proposed changes will allow us to continue to support family
> reunification, and to select immigrants in a manner more responsive to the
> economic and labour force needs of Canada. They will ensure that we can
> effectively protect Canadian society against those that would abuse our
> immigration program and the generosity of Canadians. And they provide for
> a more efficient, streamlined refugee determination system, ensuring that we
> can help those who truly need refuge in the fairest and most timely manner
> possible."[190]

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[188] This model proposes a system of mutual accommodation between political, governmental, and private elites whereby the interests of society are determined in informal meetings. However, Robert Presthus describes an asymmetrical relationship between the three elites in which the private elites (business) were dominant. He states, "... despite the vaunted institutional autonomy of the Cabinet ... At the very least, Government's policy initiative is virtually always shared with members of the private political elite." See Robert Presthus, *Elite Accommodation in Canadian Politics* (Toronto: MacMillan, 1973), p.17.

[189] Paul Pross in *Pressure Group Behavior in Canadian Politics* disputes Presthus' claim that policy is determined in informal meetings between elites.

[190] Canada. Employment and Immigration, *Managing Immigration: A Framework for the 1990s* (Ottawa: Supply and Services Canada, 1992), p. 1.

Bill C-86 was not intended to change long-standing immigration policy objectives. Family reunification, humanitarian approaches to refugees, and acquiring economic benefits for Canada through immigration remained goals. The bill was an attempt by Canadian officials to control the volume and composition of refugees as part of a general response to an international refugee crisis. Canada's response echoed the European response years earlier. Under the Dublin Convention of 1991, the members of the European Community sought to curb the movement of illegal workers by standardizing refugee determination systems, adopting common measures to combat illegal immigration, terrorist organizations, and organized crime.[191] Bill C-86 included many of the security provisions found in the Dublin Convention, as it sought to establish a more efficient method to recruit and bring needed labour to Canada.

Criticism of the bill was extensive and well organized. Opposition to it came from the labour, civil liberties, and ethnic fronts. The Canadian Labour Congress (CLC) brief poignantly summarized the views of the opposition, "Bill C-86 ... in our view will make Canada a less caring, less compassionate and a less responsible member of the international community." According to its president Bob White, "we are quite unaware of our borders being flooded by prospective refugees. We are completely unaware of a groundswell of public opinion against the number of people we currently accept through normal immigration channels ...".[192] The CLC joined forces with civil liberties groups in attacking those sections of the bill that dealt with subversion and criminality. Several of the measures

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[191] The convention stipulated that only those seeking asylum with valid documents and who could demonstrate that they could support themselves during their stay and did not pose any threat to national security would be granted entry. Once admitted they could travel unimpeded within the European Community. Avery, p. 224.

[192] Canada. House of Commons, *Minutes of the Proceedings and Evidence of the Legislative Committee on Bill C-86.* Issue 8 (August 12, 1992). p. 9-10.

in the bill unleashed a wave of protest. Among the notable ones were the fingerprinting clauses, the detention procedures, the provision of public hearings for refugee cases, and some of the methods proposed to streamline the refugee determination system. The National Organization of Immigrant and Visible Minority Women of Canada (NOIVMW) criticized the bill's failure to recognize "... the realities of women who have experienced persecution in the form of sexual assault," calling on the government to include sex as one of the grounds of persecution for which a person can be granted recognition as a refugee.[193] NOIVMW also criticized the open refugee determination hearings arguing that these would expose refugee women to a degrading traumatic process.

Of all the provisions contained in the new legislation, it was the "safe third-country" provision that stirred the most controversy. Non-governmental agencies and ethnic groups had been quick to denounce that provision when it was introduced with Bill C-55 and succeeded in altering the government's plans. However, the Conservative government that had backed down just three years earlier was more determined in 1992. The initial purpose of the "safe" country provision was to prevent "asylum shopping", that is, "coming to Canada as a matter of personal choice."[194] From the perspective of Canadian officials, this was a necessary measure to regain control over Canada's immigration program because "over the past decade, there have been growing, unpredictable, and large scale movements of people from one country to another."[195] According to Valcourt, the purpose of the bill was to "... provide the management tools needed to maintain a fair, balanced and effective

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[193] Avery, p. 229.

[194] Lisa Marie Jakubowski, *Immigration and the Legalization of Racism* (Halifax: Fernwood Publishing, 1997), p. 82.

[195] *Managing Immigration: A Framework for the 1990s*, p.3.

immigration program."[196] A spokesperson for the Coalition for a Just Refugee and Immigration Policy, an umbrella group of more than 120 organizations, suggested that the government planned "... to deport refugees to a third country to get them to do our dirty work and send the refugees back home to be tortured."[197] The Canadian Ethno-cultural Council (CEC) and the B'nai B'rith repeated concerns they had expressed concerning Bill C-55 that political considerations would overshadow determinations about whether a country was actually 'safe'.[198] There are obvious political and diplomatic reasons for placing the United States on the 'safe' list. Given that approximately 49 percent of refugee claimants arrived via the United States concern was expressed about the United States' treatment of refugees.[199] Member of Parliament Warren Allmand reminded the Legislative Committee on Bill C-86 that the United States is often more accepting of refugees fleeing leftist regimes than countries where the regime in power has "... some sort of working relationship with the Government of the United States."[200] The Canadian Hispanic Congress (CHC) supported Allmand's statement.

> Canada has recognized certain countries as members of a list of countries that protect or respect human rights in a loose definition of the Geneva Convention ... People coming through the United States would automatically be told to go back and be forced to undergo American refugee determination ... the practice in the United States has been beneficial only to certain Latin American countries such as Cuba ... People coming from Central America ... were, in fact, treated as illegal immigrants – Guatemalans, Salvadorians, Hondurans, etc. They came from countries that had military police alliances with the United States.[201]

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[196] Canada. Employment and Immigration, *Canada's Immigration Law* (Ottawa: Supply and Services, 1993), p. 1.

[197] M. Rose and S. Aikenhead, "New Policy, New Protests," *Macleans*, 18 May 1987, p.16.

[198] Kelley and Trebilcock, p. 426.

199 Jakubowski, p. 83.

[200] *Proceedings and Evidence of the Legislative Committee on Bill C-86*, p.74.

[201] Avery, p. 228.

Some opponents of the measure even suggested the measure was racist. Patricia Wong of the Refugee Lawyers Association (RLA) argued that the safe third-country provision discriminated against would-be refugees from the developing world. Another member of the RLA executive, Christine Kurata, stated before the legislative committee: "without a doubt and I'd like to be very direct with the committee – we, [the Refugee Lawyers Association], feel that this provision discriminates against black, brown and yellow people, against people from the developing world. The bottom line of this provision is that most people who can get to Canada on connecting flights are people who are coming from European countries."[202] New Democratic Party immigration critic Dan Heap also noted the provision discriminated against refugee claimants from African, Asian and Latin American countries that did not have direct air routes to Canada.[203] Jakubowski drew a comparison between the safe third-country provision and the "continuous journey stipulation" used to restrict the entry of East Indian Immigrants in 1908.[204]

Opposition to other provisions was just as intense. Many critics strongly opposed the expansion of the powers and duties of the Senior Immigration Officer (SIO). In an attempt to streamline the hearing process, the government proposed to eliminate the credible-basis hearing and replace the panel for the eligibility hearing with the SIO.[205] Opponents argued that this move granted the SIO too much discretionary power. The Department of Employment and Immigration argued that there would be no room for discretion by the SIO since the determination of eligibility would be based on a checklist.

[202] Jakubowski, p. 86.

[203] Knowles, p. 198.

[204] The stipulation allowed the refusal of entry to immigrants who came to Canada "otherwise than by continuous journey from the countries of which they were natives or citizens, and upon through tickets purchased in that country." Jakubowski, p. 85.

[205] The hearing was considered too time-consuming and not very valuable since 94% of the claimants were found to have credible claims.

Among the issues the SIO must consider were whether the refugee had been recognized as such by another country, whether the claimant had come from a "safe" country, and whether the claimant was ineligible on some other ground.[206] Opponents argued that a number of the criteria were open to interpretation. The World Sikh Organization (WSO) commented that the arbitrary powers given to the SIO reinforced a system where "... justice is not the same for white Europeans as it is for so-called visible minorities."[207] It is clear that immigration officials sought to streamline the process and reduce processing times by minimizing the possibility of disagreement under the panel deliberations model.

Under Bill C-86 family-class migration was no longer guaranteed the highest priority in processing. The new legislation authorized the officials to alter the processing priorities among the three designated streams when such a change was deemed necessary.[208] Furthermore, the legislation empowered officials to shift processing resources if demand for particular types of skilled labourers unexpectedly arose, a critical refugee-producing emergency occurred, or an opportunity to acquire an unusually large number of immigrant investors developed. One significant target of the bill was the high number of semi-skilled immigrants that had come to Canada in increasing numbers since 1976. A senior bureaucrat in the Department of Employment and Immigration outlined the challenge when speaking about the qualities of the immigrants admitted under the five-year plan:

> According to this plan we are to admit 100,000 persons in the family class, 50,000 persons on the humanitarian front, and some 37,000 immigrants whom we select in the skilled worker and business categories... [But] there's a problem of immigration content ... On many fronts we find that today's

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[206] For example, has been determined by an adjudicator in an inquiry to be a security risk, serious criminal, or war criminal and in the opinion of the minister constitutes a danger to the public.

[207] Avery, p. 228.

[208] The three designated streams are family, refugee and independent classes. For a definition of each class see *Managing Immigration: A Framework for the 1990s*.

immigrants don't enjoy the advantages enjoyed by earlier cohorts. The educational advantage, formerly enjoyed by the foreign-born, has largely disappeared, although we still import a significant number of highly educated and highly skilled people. The proportion of professionals and managers has dropped ... recent immigrants are experiencing higher rates of unemployment and social assistance ...[209]

Furthermore, under the provisions of the bill, immigrants bound for the labour market would have the processing of their applications expedited if they agreed to reside outside of the main metropolitan centres for a specified period. Officials emphasized that by adopting this modified contract labour scheme they would be able to provide skills and services required in smaller cities and rural areas. The scheme would also reduce the congestion in Canada's major metropolitan centres. Bob White was critical of the introduction of the entrepreneur/investor program and criticized the increased emphasis on skilled immigrant workers. He stated,

> my concern has always been – and I bargained with the auto industry for several years – that at least two of those companies did not accept the responsibilities in terms of training skilled workers, but would reach and pirate them from small employers or bring them in from somewhere else ... We are not saying that there should not be provisions for skilled workers to come into the country. We are saying we have to make sure we are not going down that road again of not accepting our responsibilities in Canada to upgrade skill and to provide opportunities for younger people to move into the unskilled job market today.[210]

Reflecting the convergence in immigration policy preferences of labour and business groups, White testified that he was not concerned about new immigrants or refugees taking low-paying jobs from Canadians.

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[209] Avery, p. 225.

[210] *Minutes of the Proceedings and Evidence of the Legislative Committee on Bill C-86*, p. 13-14.

The de-emphasizing of family reunification raised less controversy than some of the bill's other provisions. While the bill did not limit the number of family reunifications, it did propose a redefinition of the term family. Critics proposed that the redefinition was a subtle attempt at controlling the immigration of people of colour. The CEC expressed concern about the government's almost singular focus on economic needs, while disregarding social needs. Presenting the organization's argument before the legislative committee, Lilian To stated:

> Although the CEC welcomes the proposed amendment that will speed up the reunification of spouses, fiancés, and children under the age of 19, we are very concerned that there are much stricter proposals about family reunification. Under the proposed regulation ... parents and grandparents are to be placed in the second stream, where quotas will be in place. This arbitrary division fails to take into account that many cultures have a view of the family unit that is less restrictive and more inclusive and than the western one ... and that includes parents and grandparents as immediate and integral family members ...[211]

The message that CEC attempted to convey was that the government was demonstrating little recognition of different conceptions of the family. The government's position, however, was consistent with the trend that Canadians were becoming less accepting of those who did not adapt to "Canadian" ways.[212] In taking this position, the government placated the interests of restrictionists, at the same time, it asserted the government's interest in restricting avenues of migration that provided challenges to a planned and managed immigration program.

The face of Canadian immigration has changed considerably over the past several decades, shifting away from primarily European and American in favour of immigrants from

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211 Canada. House of Commons, *Minutes of the Proceedings and Evidence of the Legislative Committee on Bill C-86*, Issue 4 (July 29, 1992), p.29.
212 Maclean's-CTV Poll, "Voices of Canada," *Macleans*, 4 January 1993, pp.42-45.

the developing world. To illustrate this shift, consider that in 1968, British and Americans constituted 32.4 per cent of immigrants to Canada. Twenty years later, the percentage of British and Americans had dropped to 9.7 per cent.[213] It would be fair to describe the atmosphere at the time the bill was introduced as one in which Canadians were feeling economically vulnerable, developing mistrust and intolerance towards foreigners, and disenchanted with the political process, in general, and politicians more specifically. According to a Gallup Report released a month before the bill was introduced in the House, almost "6 in 10 adult Canadians cite some aspect of the economy as the most important problem facing the country today."[214] The same poll found that 34 percent of adult Canadians cited unemployment as the most serious problem facing the country and 80 percent stated that they were "very concerned" about unemployment. Gallup also found that 71 percent of those polled were "very concerned" about "honesty in government". The issue of honesty in government was ranked third on the list of voter concerns after unemployment and taxes.[215] In a report released later that month, 54 percent of adult Canadians believed that there had been "... an increase in racial intolerance over the last five years." Moreover, 67 percent believed that racial problems would increase over the next five years.[216] Another poll on immigration found that:

> almost one in two people (46%) believe that Canada should accept fewer immigrants at the present time. Only 13% of Canadian favour increasing the immigration level to the country, while 37% fully endorse the status quo. Another 4% offer no opinion concerning this controversial issue.[217]

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[213] Avery, p.171.
[214] Gallup Poll. "Economic Difficulties Preoccupy Canadian Public." 7 May 1992.
[215] *Ibid.*, p.2.
[216] Gallup Poll, "Many Believe Racial Intolerance Has Increased." 25 May 1992.
[217] Gallup Poll, "Nearly One Half of Public Favours Lower Immigration." 9 June 1992.

It is clear that an atmosphere of economic vulnerability, developing mistrust and intolerance towards foreigners, and disenchantment with politics existed. The Mulroney Conservatives, who demonstrated a special sensitivity to polls during their terms in power, were faced with a hegemonic crisis in which the state's quest for legitimacy was challenged.

Given the state of public opinion at the time, the government's response was to introduce a measure that reasserted, or at least appeared to reassert, the ability of the state to control its borders. With an election looming, the Conservatives, who had managed to antagonize groups across all social spectrums, needed to carve out a niche of support. While the "anti-populist norm" prevented the government from using race, ethnicity and immigration fears to buy electoral support, the Conservatives had little choice but to seek the vote of right-wing voters desirous of five more years of conservatism. Andrew Cardozo, former executive director of the CEC, proposed in a July 1992 *Globe and Mail* column that "... changes in government immigration policy were a concession to disaffected Tories who had begun to support the right-wing Reform Party ... Conservatives appropriated at least part of six of eight Reform Party positions on immigration policy."[218] In this way, the state responded to the widespread ethnocentric and anti-immigrant sentiment in large segments of the Canadian population. The government successfully managed the discourse balancing the dual demands of appeasing an increasingly intolerant electorate and maintaining the state's caring and compassionate image.

Although C-86 passed virtually intact, non-governmental organizations and groups representing ethnic interests were successful in modifying some of the harsher provisions of

[218] Kelley and Trebilcock, p. 426.

the bill. In response to criticisms that public hearing would expose refugee claimants to a traumatic process, the government reverted to the norm of holding refugee board hearings *in camera*. However, exceptional cases would be heard in public. The government also agreed to alter the severe detention procedures provided in the bill and to amend the measures regarding fingerprinting. In the revised position on fingerprinting, the government agreed to destroy applicant's prints once Canadian citizenship was granted.[219] Another major concession was the acknowledgement of arguments put forth by NOIVMW requesting that gender be included as one of the grounds of persecution for which a person could be granted recognition as a refugee. On March 9, 1993, the Immigration and Refugee Board released its *Guidelines for Women Refugees Facing Gender-Related Persecution*, which went into effect in 1996 thus updating the definition of Convention refugee in the 1976 *Immigration Act*.

b. The Immigration and Refugee Protection Act

The response of the Progressives Conservatives to the question of the future of immigration and refugee policy addressed the *expansionist* and *restrictionist* visions for building the nation. At the same time the door was opened ever wider for skilled and professional migrants, the Canadian government closed it on those in need of protection. Why? It has been established that the Canadian public generally viewed refugees as economic millstones. For many, the cost of compassion was too heavy a burden to bear.[220] Moreover, officials speculated that perhaps as many as seven-in-ten past claimants would not meet the definition of refuge as provided by the 1951 Convention. In fact, 74% of those polled believed that Canada was doing more than its fair share in taking in refugees in comparison

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[219] Knowles, p. 197.
[220] Gallup Poll, "Canadians Offer Mixed Opinions On Southeast Asian Refugees." 26 September 1994.

to other countries. [221] There also appears to have been some concern at least on the part of government officials about security issues. Refugees were singled out for blame. We have seen that C-86 made various changes to the security provisions in the Act of 1976. Then, in a pre-election cabinet shuffle, the Conservatives "… moved responsibility for the selection of immigrants and refugees from the Department of Employment and Immigration to a new Department of Public Security, where it joined the Canadian Parole Board, the Canadian Security and Intelligence Service, and the Royal Canadian Mounted Police."[222] The shift towards security concerns in Bill C-86 is striking. Did labour, non-governmental organizations, and ethnic communities still wield influence in this new environment?

The Liberals assumed a clearly expansionist stance during the 1993 Federal Election. Their campaign also touched on the second theme of the national folklore, the relationship between immigration, demographics and economic growth. The party's election platform asserted it was the party with a "progressive" immigration policy and the one that "balances humanitarian considerations with [Canada's] demographic and economic needs."[223] Once in government, the Liberal government under Chrétien continued to set immigration levels independent of short-run economic conditions. In fact, the Chrétien Liberals set an explicit annual targeted inflow of 1% of the population or approximately 300,000 immigrants a year, with a focus on selecting young and skilled workers. However, the arrival of the Reform Party as a political force and embarrassing revelations about the inefficiency of the Department of Immigration and Citizenship in screening out criminals and bogus refugee

[221] Gallup Poll, "59 % Believe Canada Should Accept Fewer Refugees." 2 March 1989. Also see Gallup Poll, "Canada Doing More Than Share on Refugees," 29 September 1996.
[222] C.G. Anderson and J.H. Black, "Navigating a New Course", p. 194.
[223] Liberal Party of Canada, *Creating Opportunity: The Liberal Plan for Canada* (Ottawa, 1993), p. 87, as cited by C.G. Anderson and J.H. Black in "Navigating a New Course".

claimants forced the Liberal government to reassess the orientation of its policy. Undoubtedly, the nature of the policy was affected since it was created an environment more conducive to restrictionism.[224]

Between 1996 and 2001, the Canadian government reviewed immigration and refugee policy and legislation with the goal of enacting fundamental policy reform and legislative change. There was a general agreement within the immigration policy community that Canada needed simpler and more effective immigration legislation. Also prevailing was a general belief Canadians desired a halt to abuses of the immigration and refugee system and safer borders while maintaining Canada's humanitarian traditions and international commitments.[225] Minister of Citizenship and Immigration Elinor Caplan responded to these concerns. In her introduction of Bill C-11, she noted the legislation reintroduced severe penalties for human smugglers and traffickers, would speed up family reunification, and maintain Canada's humanitarian tradition of providing safe haven for those in need of protection. "By saying 'No' more quickly to people who would abuse our rules, we are able to say 'Yes' more often to the immigrants and refugees Canada will need to grow and prosper in the years ahead," said Caplan.[226] The roots of the new legislation, which received royal assent in November 2001, are found in the 1997 report entitled *Not Just Numbers: a Canadian Framework for Future Immigration*, and the 1998 White Paper *New Directions for Immigration Policy and Legislation*. *Not Just Numbers* proposed a radical rewriting of the Act of 1976 and also for fundamental changes in the substance of policy and administrative

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[224] See C.G. Anderson and J.H. Black, "Navigating a New Course", pp. 195-201.
225 Citizenship and Immigration Canada, Backgrounder #3: Milestones on the Road to New Legislation. Available: http://www.cic.gc.ca/english/press/01/0103-bg3.html. (2 February 2004).
[226] Citizenship and Immigration Canada, News Release: Immigration and Refugee Protection Act Introduced. Available: http://www.cic.gc.ca/english/press/01/0103-pre.html. (15 April 2004).

practices. *New Directions* proposed the strengthening of family reunification, the modernization of the selection system for skilled workers and business migrants, and reiterated a commitment to security while offering protection to *genuine* refugees. Commenting on the legislation which replaced the 1976 Immigration Act, the new Minister of Citizenship and Immigration Denis Coderre remarked, "Canada's new *Immigration and Refugee Protection Act* and the accompanying regulations take a balanced approach. They build on the important contributions immigrants and refugees have made in the past and will continue to make in the future, yet are tough on those who pose a threat to public security."[227]

The emphasis of public policies with regards to immigration at the dawn the new millennium has been on security, border control, and combating threats created by international migration. Within two years of the terrorist attacks, the Canadian Parliament passed the *Immigration and Refugee Protection Act* (IRPA), which was later modified by the *Anti-Terrorism Act* and the *Public Safety Acts,* as well as, the *US-Canada Joint Statement on Border Security and Regional Migration Issues,* and the *Canada-US Smart Border Declaration.* The threat of terrorism has indeed changed the immigration policymaking environment. Stein neatly summarizes the effects of the IRPA:

> increased and strengthened the powers of detention; expanded inadmissibility categories on the basis of security and terrorism, categories which remain undefined in IRPA; restricted the right of immigration appeal on the grounds of security; and strengthened interdiction provisions without exempting humanitarian issues.[228]

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[227] Canada. Citizenship and Immigration, *News Release: Canada's New Immigration and Refugee Protection Regulations Finalized.* Available: http://www.cic.gc.ca/english/press/02/0218-pre.html. (15 April 2004).

[228] Janice Stein, "The Global Context of Immigration," in Charles Beach *et al.* (Eds.) *Canadian Immigration Policy for the 21st Century* (Montreal & Kingston: McGill-Queen's University Press, 2002), p. 27.

We are not suggesting that these stipulations were a direct result of terrorist attacks on the United States. It is clear that several of the provisions found in the IRPA had been under discussion for several years.[229] But, it is also clear that the Canadian public lacked confidence in the immigration and refugee system. The refugee system was the target of much of the criticism and Simmons and Keohane's "grouping of worried actors" needed to alleviate the concern or run the risk jeopardizing the legitimacy of Canada's immigration program. The response in 2001 was similar to the response in 1996: by closing what was considered the back door to unwanted immigrants the front door could be maintained open for skilled and professional workers. Refugees served as the safety valve for reducing pressure off policymakers.

Canadians had developed a concern with refugees and security issues prior to September 11. Provisions that sparked considerable indignation in the debates of the mid-1990s did not appear to evoke the same level of concern this time around making it easier for the government to justify passing increasingly restrictive legislation to address its Achilles heel.[230] There appears to have been some support in Canada for tightening immigration and refugee policy. A poll conducted by Gallup around the time the IRPA was passed, indicated that 80 percent of Canadians saw a need for tighter security.[231] Another poll for the Council on Canadian Unity found 45 percent of respondents felt Canada should accept fewer

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[229] For example, the provision for implementing a safe third-country has been under discussion since the Canada-USA Accord on Our Shared Borders of February 1995.

[230] In March 2000, the House of Commons Report Refugee Protection and Border Security: Striking a Balance was tabled in Parliament. Moreover, the IRPA contains clauses related to refugees and security issues such as provisions for condensing the security certificate protection procedure, which were drafted before September 11.

[231] Gallup Poll, "Large Majority of Canadians Sees The Need For Tighter Border Security," 23 November 2001.

immigrants, up from 29 percent in the spring of 2001.[232] In November 2001, 49 percent of

Canadians in one poll favoured restricting "... the number of immigrants that come to

Canada from Muslim countries." The same question was asked in November 2002 and 44

percent of those sampled still supported such restrictions.[233] Interestingly, in a poll

conducted in May 2002, 81 percent of Canadians believed that potential terrorists had

slipped into the United States through Canada, 42 percent blamed the Canadian immigration

and refugee system, with an additional 20 percent blaming both the American and Canadian

systems.[234] Media reports echoed the public's sentiments. Stewart Bell wrote an article in the

National Post entitled, "A conduit for terrorists".[235] Diane Francis wrote in the *Financial Post*

about, "Our neighbour's upset over our loose refugee system".[236] Given the circumstances,

justifying a more liberal immigration policy would have been difficult. Then again, perhaps

it was not desired. Consecutive Conservative and Liberal governments had shifted Canada's

immigration policies from the *expansionism* characteristic of the Act of 1976 to the

restrictionism of more contemporary policies.

Liberalizing immigration and refugee policies hardly seemed possible at a time when

Canada's largest trade partner expressed concern about the security of it southern and

northern borders. In response to concerns regarding security, the Canadian government

announced the *Canada-US Statement on Common Security Priorities* in December 2001. The

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[232] Genevieve Bouchard and William Chandler, "The Politics of Inclusion and Exclusion: Immigration and Citizenship Issues in Three Democracies". Available: http://web.uvic.ca/ecsac/toronto/papers/on/line/pdf/8D-gbouchard-wchandler.pdf, (13 January 2004).

[233] M. Blatchford, "Canadian attitudes on immigration hardening against Muslims," *Ottawa Citizen*, 21 December 2002.

[234] Ipsos Reid, "Three-quarters (77%) of Americans believe potential terrorists have slipped into the U.S. through Canada," 10 May 2002.

[235] Stewart Bell, "A conduit for terrorists," *National Post*, 13 September 2001.

[236] Diane Francis, "Our neighbour's upset over our loose refugee system," *Financial Post*, 22 September 2001.

statement proposed special joint border security patrols, more border guards, coordinated visa policies, and an increase in the number of overseas immigration officers. The most contentious provision of the announcement was the proposed "safe third-country" agreement that could drastically reduce refugee claims in Canada. About 40 per cent of those who apply for refugee status in Canada first landed in the United States. Under this agreement, they must apply in the country where they first arrive. However, the nature of the transportation flow is such that the main effect of the agreement will be to reduce the number of would-be refugee applicants accessing the more generous Canadian refugee system. Canadian government officials downplayed the agreements effects on asylum-seekers and heralded its impact on security. Minister of Citizenship and Immigration Elinor Caplan remarked that the agreement would stop "... queue-jumpers, criminals, those who pose security risks, or terrorists ... before they even get to Canada and the US."[237] Deputy Prime Minister John Manley stated, "We're well on our way to creating a smart border for the 21st century, one that's open for business, but closed for terrorists."[238] Manley argued the safe third-country agreement was not designed to stop refugees but to deal with them in a more effective way. But, in fact, the border was being closed not so much for terrorists as it was for asylum-seekers. Security concerns served as a pretext for implementing a measure the Canadian government had been forced to repeal a decade earlier.[239] Bloc Quebecois leader Gilles Duceppe criticized the agreement fearing it may result in the loss of sovereignty. Maude Barlow of the Council of Canadians expressed the same concern, "Say if

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[237] CBCNews.ca, "Canada, U.S. agree to more secure border," 3 December 2001. Available: http://www.cbc.ca/stories/2001/12/03/canada/canus_border011203, (17 October 2002).

[238] CBCNews.ca. "Canada and the U.S. unveil border plan," 28 June 2002. Available: http://www.cbc.ca/stories/2002/06/28/canada/border020628, (17 October 2002).

[239] The Canadian government had attempted to implement the "safe third-country" provision since Bill C-55 but until present has not been able to even though it is on the books.

the United States has a dispute with another country which Canada doesn't share, we will not be able to take their refugees."[240]

Debate over the IRCA was relatively muted. Although it was the most significant piece of legislation dealing with immigration since the 1976 Immigration Act, it was scarcely debated during the 2000 Federal election. Then, in a report entitled *Hands Across the Border*, the Standing Committee on Citizenship and Immigration reported to the House of Commons on the effects of the September 11 terrorist attacks on border and immigration issues. The report concluded that Canada is not a haven for terrorists and warned that terrorism is not only an external threat noting that "the suspected terrorists had valid visas issued by the American State Department" and that some of the terrorists had been in the United States for a considerable time prior to the attacks.[241] Opposition parties endorsed the report. Even the Canadian Alliance Party, generally perceived as an anti-immigration party, announced its support for immigrants and genuine refugees, "the Official Opposition will continue to work with the government to maintain Canada as a nation that welcomes immigrants, and is a country that accepts its internationally fair share of genuine refugees." However, the Canadian Alliance qualified its endorsement adding, "... capacity creates its own demand, for where there is a weakness it will be exploited. The 'refugee system' continues to be exploited by non-refugees and is a grave security concern."[242] Even among Parliamentarians, refugees are the one group of migrants the draw attention when the

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[240] CBCNews.ca, "Canada-US border deal goes too far: critics," 4 December 2001. Available: http://www.cbc.ca/stories/2001/12/04/canada/border_critic011204.

[241] See Canada. Report of the Standing Committee on Citizenship and Immigration. *Hands Across the Border: Working Together at our Shared Border and Abroad to Ensure Safety, Security and Efficiency.* Available: http://www.parl.gc.ca/InfoComDoc/37/1/CIMM/Studies/Reports/cimm03rp-e.htm. Chapter 2, (22 November 2003).

[242] As quoted in Howard Adelman, "Governance, Globalization and Security The Harmonization of Immigration Policy: Canada and the United States". Available: http://www.iigr.ca/conferences/archive/pdfs1/adelman.pdf. pp. 12-13, (11 January 2004).

security issue comes up. In the mid-1990s the public and parliamentarians called for restrictionism but interest groups were successful in modifying some of the harsher proposed provisions including the safe third-country provision. Public opinion and parliamentarians at the turn of the 21st century sounded calls for increasingly restrictionist refugee policy. Given the tenor of recent legislation dealing with refugee policy, the influence of interest groups demanding a liberal policy appears to have declined.

The Non-Governmental Organization (NGO) community expressed concerns about the safe-third country agreement. For example, immigration lawyers noted that treatment of refugee claimants in the post-September 11 United States would be even tougher as the government planned to shift responsibility for immigration to the newly created Department of Homeland Security. The American Immigration Lawyers Association – Canada chapter (AILA) viewed the agreement as flawed since:

> it restricts refugee claimants in their freedom to choose the country from which to seek refugee protection and, as such, does not adhere to the principles set out by the UNHCR Executive Committee in Conclusion 15 (XXX). Additionally, AILA has serious reservations that the Agreement is not consistent with basic principles of human rights law, the *Canadian Charter of Rights and Freedoms*, and the Geneva Convention of 1952.[243]

Furthermore, the United States has not entered into as many international agreements affecting refugees as Canada. KAIROS Canada observed, "the U.S. is not a safe place for refugee claimants. Its asylum law and procedures fall short of international law and do not provide the procedural safeguards to ensure adequate protection."[244] National President of the Canadian Arab Federation Raja Khouri observed, "Canada seems to be abandoning its

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[243] American Immigration Lawyers Association, "For the Press: AILA's Canada Chapter Comments on Safe Third Country Regulations". Available: http://www.aila.org/contentViewer.aspx?bc=9,576,2205, (12 February 2004).

[244] KAIROS Canada, "Canada-US 'Safe Third Country' Agreement is Signed But not yet Implemented". Available: http://www.kairoscanada.org/e/refugees/safeCountry/index.asp, (12 April 2004).

tradition of fairness, compassion and perhaps even equality in the way it handles immigrants

and refugees."[245] The Canadian Council for Refugees (CCR) was also critical calling the

agreement the "none is too many" agreement, a clear reference to a Canadian policy that

denied entry to Jewish refugees fleeing Nazi Germany before World War II. CCR argued

that, "by signing the agreement, Canada joins a sorry group of countries that take the 'Not in

my backyard' approach to refugees."[246] Some ethnic groups offered guarded criticism of the

IRCA. For example, B'nai Brith's Executive Vice President Frank Dimant stated:

> we want protections for refugees to be strengthened, but we also need to be
> vigilant in dealing with bogus claimants. A definition of terrorism already
> exists in the Anti-Terrorism Act and should be used in the regulations that
> govern the Immigration and Refugee Protection Act as well, in order to
> ensure uniformity of application. If a suspicious claimant is unearthed, then
> investigation should follow leading, where appropriate, to prosecution,
> conviction and sentencing. An order to move on would simply allow for
> justice to be circumvented. We must not allow Canada to become a haven
> for terrorists.[247]

The focus on security appears to have fractured the unity of labour, civil liberties and ethnic

groups. As a result, these groups were not successful in limiting restrictionism as they were

in the past.

A possible reason for the decreased influence of groups in civil society may be the

fact that immigration is now included within the security policy envelope.[248] The immigration

policy network should include the participation of departments and agencies such as: the

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[245] Canadian Arab Federation, "CAF is disturbed by direction of immigration and refugee policies," (5 July 2002).   Available:
http://www.caf.ca/t_publications/PressReleases/CAF%20is%20disturbed%20by%20direction%20of%20im
migration%20and%20refugee%20policiesJul5.pdf, (12 April 2004).
[246] Canadian Council for Refugees, "10 Reasons Why the US-Canada Refugee Deal is a Bad Idea," (July 2002). Available: http://www.web.net/~ccr/10reasons.PDF, (11 November 2003).
[247] B'Nai Brith, "News Release: Regulations to Immigration and Refugee Act Must be Ammended," 30 January 2002. Available: http://www.bnaibrith.ca/press5/pr-020130-05.htm, (12 April 2004).
[248] Janice Stein, "The Global Context of Immigration," in Charles Beach *et al.* (Eds.) *Canadian Immigration Policy for the 21st Century* (Montreal & Kingston: McGill-Queen's University Press, 2002).

Department of Foreign Affairs and International Trade, the Canada Customs and Revenue Agency, the Department of Justice, the Royal Canadian Mounted Police, the Canadian Security and Intelligence Service, and the Department of National Defence since immigration policy necessarily impacts on these. None of the September 11 terrorists entered the United States through Canada. However, the fact Canada receives people from regions in conflict is cause for concern. In a report the Canadian Security and Intelligence Service (CSIS) suggested some immigrants and refugees bring the politics of homeland conflict with them, and others associated with state sponsors of terrorism attempt to coerce and manipulate émigré communities in Canada. The report claims almost all of the world's terrorist organizations have a presence in Canada and may use it as a staging ground for attacks.[249] Accentuating immigration and refugee policy's inclusion in the security envelope, the Immigration Screening Program was created so CSIS may provide security advice in immigration and security matters. The following statement provides a glimpse into the perspective shaping the advice rendered:

> as the number of refugees and immigrants increases, often due to regional conflicts in various parts of the world, so does the likelihood that persons of security concern will try to enter Canada so as to evade prosecution or engage in activities to support their cause. Individuals associated with hostile intelligence agencies, terrorist organizations, or organized crime organizations may use chaotic situations abroad to veil their entry into Canada.[250]

In response to the attacks of September 11, Immigration requested CSIS not only screen all new refugee applicants at the beginning of the determination process but also those currently in the refugee process. The shift of immigration policy from the economic and demographic to the security envelope, we suggest, has impacted on the ability of civil society

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[249] Canada. Canadian Security and Intelligence Service, *2001 Public Report.* Available: http://www.csis-scrs.gc.ca/eng/publicrp/pub2001_e.html#3a. (19 April 2004).
[250] *Ibid.*

to exert influence and consolidated the influence of the state in this policy area. Moreover, concerns over security enable Canadian government officials to deflect some of the criticisms for implementing tougher controls on refugee flows.

How else can we account for the restrictive nature of the IRPA? Answers may be found in the changing relationship between the Department of Immigration and Citizenship, the Department of Labour and the Department of Foreign Affairs and International Trade. Immigration and refugee policymaking in Canada since 1945 shows a state, at times responsive to pressure from groups in civil society, and at others, pursuing preferences independent of their demands. As Simmons and Keohane suggest, it is a Janus-faced state on occasion an all-powerful hegemonic leader on others a grouping of worried actors. However, seldom are all branches working or worrying in concert. We observed competition between the departments of Immigration, Labour, and Foreign Affairs. Immigration traditionally seeks a greater ability to manage immigrant flows; Labour appeals for immigration levels responsive to the labour market; Foreign Affairs solicits policy mindful of its impact on foreign relations. The interests of individual departments occasionally intersect with those of the others. Policy output often reflects the influence individual departments wield and their ability to marshal support for their positions within and outside the state apparatus. September 11 created a coming together of interests.

Prior to September 11 there was pressure within and outside the state for a more restrictionist refugee policy. While the events of that day did not necessarily determine the character of impending policy, they did create an atmosphere of alarm and urgency thus limiting the range of options available. The events had diverse and far-reaching political and

economic ramifications for Canada. Minister of Foreign Affairs John Manley at a speech in

November 2001 to the Public Policy Forum in Toronto noted, "the events have put into

high relief Canada's interdependence with the United States and our shared vulnerability,

from both a security and an economic perspective -- and much of this centered on the 5000-

mile border that runs between us."[251] He added:

> Now, priority one for Prime Minister Chrétien and our government in
> addressing this crisis has been to protect the safety and security of Canadians.
> There is no more central purpose of national government than this. Without
> safety and security, the trust and confidence that are essential to our
> democratic institutions and market economies will suffer. This is most
> evident at the border, where we can see the human and economic cost of
> fear.[252]

Manley went on to mention that while the Canadian and American governments had been

cooperating on border management issues for six years, "... a new urgency has been brought

to this endeavour ... to get the border open and traffic moving once again ... unpredictable

wait and inspection delays are placing just-in-time delivery schedules at risk, threatening

production lines and hampering competitiveness." Other senior Canadian politicians echoed

these remarks. Manley's statement suggests security concerns after September 11 may have

led to convergence of the interests Immigration, Labour, and Foreign Affairs. A need was

created to implement more rigorous border control policies and practices to ease the security

concerns of Canada's neighbour and largest trade partner while minimizing the impact of

American security anxiety on the Canadian economy.

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[251] See Notes for an Address to the Public Policy Forum Conference on Managing Our Borders with the United States. Available: http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?publication_id=378840&Language=E>, (19 April 2004).

[252] *Ibid.*

Section 8: CONCLUSION

Over the years, Canadian policymakers have displayed remarkable confidence in their ability to manage immigration. However, while policymakers in the postwar period were primarily concerned with economic and demographic goals, Canada's contemporary stepped up immigrant inflow is taking place with the increased threat of terrorism as a backdrop. Policymakers, post-September 11, have shifted their primary focus from managing immigration to satisfy economic and demographic demands to dealing with security concerns. The immigration and refugee determination system, in general, and in particular border security and monitoring the inflow of people, have attracted the attention of policymakers. In the past decade, Canadian and American governments moved to externalize control mechanisms. For example, the *Canada-USA Accord on Our Shared Borders of February 1995* had the provision for implementing a safe third-country provision, but there was little movement until after the events of September 11. After the attacks, international cooperation on security issues appears to have stepped up. Although all of the hijackers entered the United States legally, refugees have become an issue of concern. Groups such as the Centre for Immigration Control in the United States charge that,

> Over time, in the face of widespread abuse, the United States and Western European countries have tightened their asylum procedures. Canada, however, has moved in the opposite direction. In November — two months *after* the terrorist attacks — the Canadian Parliament passed new legislation that makes it easier for asylum seekers to apply for refugee status and makes it more difficult for those found not to be genuine refugees to be sent home. Consequently, the security of both countries remains vulnerable to a Canadian asylum system that seems designed to openly welcome potential terrorists.[253]

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[253] See James Bissett, "Canada's Asylum System: A Threat to American Security?" which is available at, http://www.cis.org/articles/2002/back402.html, (15 May 2004).

The *Joint Statement of Cooperation on Border Security and Regional Migration Issues* of December 2001 included a commitment to work towards a safe third-country agreement to reduce or impede access to Canada for refugees passing through the United States. The provision prohibits prospective claimants, who have passed through a country where they are entitled to file a refugee claim, from making claims at the country of arrival. Another important area is visa screening abroad. Canada and the United States are working towards a common list of countries exempt from visa requirements. Canada's current list of visa exempt countries is approximately fifty percent larger than the American one. The impact is that few refugee claimants, especially those from Central and South America, are likely to make it to Canada as a result of security pre-clearances and the safe third-country provision.

In the years following World War II, there were two distinct paths for migration to Canada. One was comprised of immigration programs; the second, of refugee settlement programs. Since the 1970s, possibilities for migration through each of these paths have narrowed. One of the reasons for reducing the scale of refugee settlement programs and implementing more selective immigration criteria was economic recession.[254] Until the 1973 oil crisis, immigrants and refugees helped fill labour market gaps, the recession that ensued dried up demand for overseas labour. Family reunion became one of the few legal ways to be admitted. Immigration numbers for Canada dramatically decreased in the years following the oil crisis, then underwent ups-and-downs in the late-1970s and early-1980s, and did not begin to increase until 1986. Although the number of immigrants to Canada has increased since the late 1980s, the admissions criteria are more restrictive as the family class has become a less important category relative to the skilled workers class, perhaps reflecting the

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[254] See Cornelius *et al., Controlling Immigration.*

demand for highly skilled and professional workers.[255] At the same time, the evolution of

Canada's refugee policy may be segmented into four phases:

1. A liberal phase during the 1950s, consisting mainly of the repatriation of
   World War II refugees and the protection of refugees from Central and
   Eastern Europe;
2. In the 1960s, Canada affirmed its commitment to aid the international
   community in addressing the refugee crisis as the refugee problem shifts
   to countries of the developing world;
3. Canada introduces the first administrative reforms to refugee and asylum
   selection policies in the 1970s;
4. Then, in the 1980s Canada begins a fundamental re-orientation of its refugee
   and asylum policies down a restrictionist path.

An outcome of restrictionism is a convergence of political refugees and economic migrants

in a single migration path: asylum seeking.[256] As a result, it has become increasingly difficult

to distinguish political refugees from economic migrants.

The shift in Canadian refugee policy between the more liberal refugee programs of

the 1980s to the more restrictive contemporary orientation is a reflection of the state's

attempts to satisfy the broader objectives of immigration policy: economic and demographic

growth, as it struggles to legitimize its commitment to those in need of protection. While

Canadians have generally supported immigration, their support for refugees, especially

asylum-seekers, has been less steady. In Canada, immigration is associated with economic

growth and expansion; refugees within the immigration program are viewed as economic

burdens or threats to national security. Our examination accepts that the Canadian state has

a great degree of leverage and resources to achieve its objectives in the area of immigration

and refugee policy. But, we also observe that the state is vulnerable to challenges from

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[255] See Reitz, "Immigration and Canadian Nation-Building".
[256] See Reginald Appleyard, "International Migration Policies: 1950-2000," *International Migration,* vol. 39, no. 6, 2001. Also see, Khalid Koser, "New Approaches to Asylum?" *International Migration,* vol. 39, no. 6, 2001.

within and must monitor public mood to retain the legitimacy of its policies. As the state seeks to establish a leading role in the immigration and refugee policy field, it seeks to avoid conflict by reaching compromises with groups in civil society. We observed this in the case of Bill C-86 and the IRPA. While successive governments could easily have passed proposed legislation, they backed down on both occasions. Government officials understand that societal groups interested in immigration and refugee policy at any given moment are weak in relative terms but are by no means powerless. It is understood that some sacrifice must be made to maintain a strong working relationship within the policy network. A striking example is the hesitancy in the implementation of the safe third-country provision. It is clearly within the government's capacity to implement the provision, but it appears to be cognizant of the fact public sentiment may be mobilized against it thus calling into question the legitimacy of its action. Moreover, fear of a challenge to its legitimacy appears to be the motivation behind the current Liberal government's wavering on the introduction of a mechanism to appeal the merits of rejected refugee claims. Allowing refugee claimants access to an in-land processing system in part created Canada's refugee crisis of the 1980s and 1990s. Officials appear to be managing the tension between the humanitarian values and international agreements to which Canada publicly subscribes, and their desire for control of the border by agreeing on the necessity of an appeals mechanism but forgetting to provide one.

Simmons and Keohane's conception of the Canadian state suggests that institutions may transform individual or group preferences so that policy is not merely the outcome of an aggregation and ordering of preferences, but the outcome of a process that can change those preferences. Our study confirms this assertion. What is unclear is who is responsible

for determining the state's preferences. Savoie tells us government officials located at the "apex of power" establish the preferences. However, if we accept Simmons and Keohane's conception of immigration and refugee policymaking, we cannot accept Savoie's claims that in Canada we have an "elected dictatorship". Dictators do not worry about establishing compromises. The implication appears to be that the capacity to determine policy rests with the bureaucracy. The fact that Progressive Conservative and Liberal governments pursued similar restrictionist policies supports this assertion. Then, what needs to be determined is where in the bureaucracy the capacity rests. Who wields influence? Is it Deputy Ministers? We are told that information is essential for maintaining control, what is the implication of new information technologies and their ability to spread information across borders and around the world in seconds? How will government officials respond? Further research also needs to be conducted to explain the convergence of immigration policies of liberal democracies around the world. Will the policies of liberal democracies diverge now that states are becoming more adepts at externalizing control and denying access to national courts? The collaboration between Canada and the United States seems to imply this will not be the case.

Acknowledgements

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TABLE

Table 1. Canadian Opinion on Immigration Levels

The question asked was:
"If it were your job to plan an immigration policy for Canada at this time, would you be inclined to increase immigration, decrease immigration, or keep the number of immigrants at about the current level?"

	Increase	Decrease	Current Don't Level	Know
National:				
2001 Jul 17-23	17%	33%	49%	1%
2000 Jul 13-21	17	33	49	3
1999 Jul 13-19	17	31	50	2
1998 Jul 24-Aug 3	11	37	49	3
1997 Jul 22-27	9	41	44	6
1996 May 6-13	10	40	43	7
1995 May 8-12	9	44	43	4
1993 Dec 3-14	11	45	40	5
1992 May 6-9	13	46	37	4
1991 Jun 12-15	14	45	38	4
1990 Sep 12-15	17	32	46	5
1989 Aug 9-12	14	34	47	6
1988 Mar 2-5	14	41	42	3
1987 Mar 11-14	13	41	42	4
1985 Oct 3-5	14	42	38	6
1982	7	55	35	3
1980 Sep 4-6	8	42	44	7
1975 Jun 5-7	10	39	43	8
Region Today:				
Atlantic	17	31	50	3
Quebec	19	29	51	2
Ontario	15	37	47	*
Prairies	15	33	53	0
B.C.	22	31	47	0
Education:				
Less than University 11	39	49	2	
University	29	22	49	*

Note: Percentages may not add to 100 due to rounding
* = Less than 0.5%
Source: Gallup Canada, Inc.

The question asked was:
"On a matched level of private and public sponsorship, the Canadian government proposed the entry of 50,000 Indo-Chinese Refugees.
Private groups, anticipating this 50,000 level will be reached earlier than the December, 1980 deadline, have proposed allowing more indo-Chinese to enter Canada.
If private sponsorship can be arranged, should the federal government allow the entry of more than the original target of 50,000 refugees, or not?"

	Yes, Should	No, Should Not	Don't Know
National:	29%	63%	8%
Age:			
18 to 29 years	36	55	9
30 to 49 years	31	63	6
50 years and over	20	70	10
Education:			
Elementary	21	66	12
Secondary	26	66	8
University	48	45	7

Source: 21 May, 1980 Gallup Report

Appendix 1.1 Refugee Quota Analyzed

The question asked was:
"Do you think that Canada should have a policy that would allow us to accept more or accept fewer refugees?"

	Accept More	Accept Fewer	No Change	DK
National				
-Today	21%	59%	17%	3%
-1986	18%	58%	17%	7%
Region:				
Atlantic	15	68	16	1
Quebec	18	65	15	3
Ontario	25	53	18	3
Prairies	20	58	19	3
B.C.	24	62	13	2
Toronto	31	40	24	6
Montreal	21	60	15	4

Source: 2 March, 1989 Gallup Poll

Appendix 1.2 Opinion on $975 Entrance Fee

The question asked was:
"Every adult immigrant to Canada is assessed an entrance fee of 975 dollars. Do you think that this fee should be: i) increased significantly, ii) increased somewhat, iii) maintained at its present level, iv) decreased somewhat, or v) decreased significantly?"

	Increases Significantly	Increased Somewhat	Maintained	Decreased Somewhat	Decreased Significantly	No Opinion
National:						
1995 May 8-12	20%	17%	36%	8%	10%	9%
Region:						
Atlantic	12	28	29	5	9	18
Quebec	23	16	40	8	6	7
Ontario	20	14	38	7	13	8
Prairies	15	21	35	9	13	8
B.C.	24	17	29	11	9	11

Source: 15 June, 1995 Gallup Poll