FAMILY IMMIGRATION POLICY IN COMPARATIVE PERSPECTIVE

Canada and the United States

ABSTRACT

This article compares family immigration policies in Canada and the United States. It offers an explanation as to why family reunification figures more prominently in American immigration policy, reviews current policies and trends, and discusses political debates concerning family immigration in the two countries.

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Canada and the United States are among a small group of self-declared immigration countries. Immigration policy is used to by both states to meet economic needs, fulfil humanitarian objectives, and satisfy other important commitments, including the right of citizens and legal residents to be reunited with family members.

Although family reunification figures prominently in both countries' immigration policies, its scope and impact is much greater in the United States, where family immigration makes up approximately 70 per cent of annual flows. Conversely, in Canada the admission of family members is balanced by the recruitment of large numbers of independent "economic immigrants." In recent years, economic immigration has accounted for more than 50 per cent of annual flows, while family class immigration has fallen to approximately 25 per cent. In other words, Canada has opted to increase the number of independently selected economic immigrants, while the United States continues to privilege family reunification.

The Roots of Contemporary Family Immigration Policies in Canada and the United States

What accounts for this pronounced difference between the Canadian approach to family immigration and the approach adopted by the United States? The roots of policy divergence lie in both countries' efforts to reform their immigration policies in the post-World War II period. Traditionally, Canada and the United States selected immigrants according to their "racial suitability." That is, the entry of immigrants deemed inferior because of their putative ethnic and racial characteristics was sharply limited or, in the case of non-white "unassimilable races," barred altogether. In the United States, this approach was formalized in the passage of the *Chinese Exclusion Act* of 1882 and the National Origins Quotas Laws of the 1920s. The quota laws limited annual immigration to up to 150,000 immigrants per year. The national origins dimension of the laws established a formal preference for immigrants from northern and western Europe, to ensure that immigration did not unduly transform the United States' "national character." Although Canada did not implement a formal quota policy, its admissions policies distinguished among preferred immigrants from the British Isles and northern and western Europe, non-preferred immigrants from eastern and southern Europe, and non-white "excluded classes." While preferred immigrants were actively recruited, non-preferred classes were grudgingly admitted to help meet demands for cheap and flexible labour. Non-whites were largely shut out of Canada, through measures such as the *Chinese Immigration Act* of 1923.[1]

Changes in domestic and global conditions after World War II compelled policymakers in both countries to revise their immigration policies. The discrediting of scientific racism as a result of Nazism, the Holocaust, decolonization, and the emergence of human rights cast older policies in a new light.[2] By the 1950s, immigration reform had emerged as part of a broader civil rights agenda in both countries.[3] Domestic and international critics complained that Canada and the United States were not living up to their self-proclaimed status as leading liberal-democratic nations because they continued to maintain discriminatory immigration policies.[4] This pressure was amplified by foreign policy considerations, including Cold War concerns.[5]

Canada and the United States responded to changing normative conditions by adjusting traditional approaches to mollify critics, while maintaining the aim of limiting admissions to traditionally preferred groups. Thus, formal exclusions to non-white immigration were officially repealed in Canada's 1953 I*mmigration Act* and the United States' 1952 *Immigration Act* (the McCarran-Walter Act).[6] Despite these changes, traditional barriers remained in place, albeit cast in

a new formally non-racist rhetoric. This approach proved to be ineffective, as critics continued to highlight both states' hypocrisy with increasing vigour and frequency.

Ultimately, both countries bowed to this pressure, opting to replace identity-based admissions criteria with more liberal alternatives. Yet, differing political contexts led to very different policy outcomes. In both cases, policymakers intended to replace racially discriminatory policies with universal approaches that weighed applicants' desirability according to their levels of education and possession of work related skills. Thus, both Canada and the United States proposed moving to an admissions system that judged applicants according to their potential contribution to the economy. This preference would be complemented by family reunification and special rules for refugees.

However, this vision was only implemented in Canada, where the introduction of the "points system" in 1967 placed immigration policy on a new footing.[7] Efforts to introduce a similar, economically oriented approach in the United States failed, as opponents of immigration reform in Congress used the system of checks and balances to force President Lyndon Johnson to make family immigration the centrepiece of the 1965 *Immigration Act*.[8] They did so in order to maintain traditional immigration flows despite the 1965 Act's repeal of the discriminatory National Origins Quota Laws. Thus, while both states succeeded in moving away from the explicitly discriminatory policies that had played such an important role in shaping immigration in the past, their respective solutions differed markedly. In essence, Congressional restrictionists attempted to limit non-white immigration by privileging family immigration. While their efforts along these lines failed, the decision to base American immigration policy around the principle of family reunification would have important and lasting results.

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Current Policies and Trends

The reforms of the 1960s established the policy frameworks that would guide family immigration in Canada and the United States in the years to come. Canada continues to divide its immigrant intake into (1) immigrants selected independently according to their potential economic contribution, (2) family class immigrants, and (3) refugees. Under the *Immigration and Refugee Protection Act* (IRPA), which came into force in 2002, "Family Class" immigrants are those sponsored by Canadian citizens and permanent residents who are 18 years of age and older. Eligible family members include spouses/partners, dependent children, parents and grandparents, dependent grandchildren, orphaned brothers and sisters, and orphaned nephews and nieces of the sponsor.

The economic imperative underlying Canadian immigration policy is reflected in the nature of recent flows. As noted above, the bulk of recent immigration to Canada has been made up of independently selected "economic immigrants" and their immediate dependents (spouses and dependent children). In 2004, immigrants coming into Canada under the "Economic Class" accounted for 57 per cent of the total flow (or 133,746 out of 235,824). This was up from 55 per cent in 2003. Conversely, immigrants coming into Canada under the "Family Class" designation accounted for only 26 per cent of total immigration, down from 29 per cent in 2003 and much below historical levels.[9]

The growing proportion of economic immigrants reflects Canadian policymakers' longstanding interest in increasing the proportion of independent, selected economic immigrants. It also reflects an equally longstanding, if understated, antipathy to family immigration, which has driven several important changes, including the IRPA's narrowing of the range of family members who fall under the family class, and raising of financial requirements for sponsorship.[10]

Under the terms of the *Immigration and Naturalization Act* (INA), the United States divides its immigrant admissions into four streams: (1) sponsored family members, (2) economic immigrants, (3) refugees, and (4) "diversity immigrants" selected by lottery from countries with low rates of recent immigration to the United States. Among sponsored family members, first preference goes to unmarried sons and daughters of citizens; second preference goes to spouses and children of legally permanent residents (LPRs) and unmarried sons and daughters of LPRs; third preference goes to married sons and daughters of citizens; and fourth preference goes to siblings of citizens age 21 and over. The INA also establishes an annual cap of 675,000 on non-refugee admissions and sets numerical limits for preference categories and countries. These limits are, however, elastic, and annual rates of immigration usually exceed the stated limit.[11]

What has remained constant is the dominance of family immigration in the United States. In 2002, a total of 1,063,732 aliens became "legally permanent residents" (LPRs). Out of this total, more than 63 per cent, or 673,817 individuals, were admitted because of a family relationship with a United States citizen or permanent resident. Conversely, employment-based immigrant admissions (including dependent spouses and children) accounted for only 16.4 per cent of the total (i.e. 174,968 of 1,063,732).[12] This is directly attributable to the preference accorded to family immigration and the labyrinthine process involved in granting admission to employment-based immigrants.

The Politics of Family Immigration in Canada and the United States

Family immigration policies in Canada and the United States have sparked debates over backlogs and long waiting periods, the meaning of "family" and the scope of sponsorship rights, and the quantity of sponsored flows relative to other streams – i.e. economic immigrants and refugees.

Although Canada and the United States are committed to facilitating family reunification, the practical application of this commitment often falls short of official pronouncements. Individuals sponsoring family members have had to contend with delays in the processing of applications and awarding of visas. In Canada, backlogs have been especially problematic in the case of sponsored parents and grandparents. This is largely due to the decision taken by the government of former Prime Minister Jean Chretien to reduce the number of parental visas in order to attain a 60-40 per cent balance between economic and non-economic immigrants.[13]

In the United States, the situation is even more problematic. The combination of numerical limits on overall immigration, preference categories, and individual countries, on the one hand, and an oversupply of would-be LPRs who satisfy admissions criteria, on the other, has resulted in long delays in both the processing of sponsorship applications and the awarding of visas. Thus,[e]ven though there are no numerical limits on the admission of aliens who are immediate relatives of US citizens, such citizens petitioning for their relatives are waiting at least a year and in some parts of the country, more than two years for [their] paperwork to be processed. Citizens and LPRs petitioning for relatives under the family preferences are often waiting several years for petitions to be processed.[14]

Indeed, the waiting period for brothers and sisters of US citizens is now more than 10 years!

Moreover, the definition of "family" used in Canada and the United States has been deemed ethnocentric and exclusionary. T. Alexander Aleinikoff has argued that existing rules governing family immigration "do not reflect modern notions of US families and are often inconsistent with how families are organized in other cultures."[15] Similarly, Canadian critics have noted that "Canadians who wish to be reunited with families abroad must not only demonstrate that these individuals fit Canada's definition of 'family' but often must [also] satisfy visa officers that the relationship is 'genuine.'"[16] Gays and lesbians have also long decried discrimination against same-sex couples. Their demands have resulted in important changes in Canadian policy; one of the IRPA's most important innovations has been the widening of the spousal category to include same-sex partners. Similar changes have not been introduced into American immigration policy, and there is little evidence to suggest that they will be anytime soon.[17]

Finally, there has been a long running debate in both countries regarding the proper scope of family immigration, relative to other flows. Critics of family immigration argue that sponsored flows place undue restrictions on the number of economic immigrants granted entry. Consequently, immigration does little to address skills shortages and other economic demands. Rather, an overemphasis on family immigration results in an immigrant population lacking in the "social capital" needed to successfully integrate into host states' labour markets and societies. Critics argue that immigration policy should better reflect the "national interest," as opposed to the narrower interests of individual sponsors.[18]

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Defenders of family immigration argue that sponsorship is a fundamental right worthy of protection, and that family ties are a crucial form of social capital that eases the integration process. Moreover, defenders of family immigration maintain that there is little evidence proving the assertion that sponsored immigrants experience greater difficulty integrating. Contrary to the bleak picture painted by critics of family immigration, defenders of the policy argue that sponsored immigrants are entrepreneurial and make a positive contribution to local economies, particularly in poorer neighbourhoods. Moreover, research suggests that, over time, they are often able to "catch up" to the economic attainments of "employment-based" immigrants (as reflected in their respective earnings).

Conclusion

Whatever the merits of these claims, it appears that the argument in favour of limiting family immigration and increasing the admission of economic immigrants has had a greater influence on policymaking in Canada where, as we have seen, the proportion of independently selected immigrants has risen steadily over the past fifteen years, while family class immigration has declined precipitously.

This trend has not been matched in the United States. Yet, as noted above, the continuing dominance of family-based immigration in the United States is not due to a lack of interest on the part of some for a change in policy. Rather, the same institutional factors that helped Congressional restrictionists block the implementation of an economically oriented admissions policy in the mid-1960s have made it extremely difficult for critics to introduce modifications to the current family reunification-based

approach. As Peter Rekai has noted, the downgrading of family immigration in Canada was possible because of the executive branch's dominance over parliament. Once Cabinet committed itself to this direction, it could proceed relatively quickly. Conversely, "[a] similar policy shift in the United States would almost certainly be run through a vigorous legislative and political gauntlet."[19] This has certainly been the case with efforts to eliminate the family preference for adult brothers and sisters of United States citizens.[20]

It is therefore deeply ironic that many of the most vocal critics of family immigration policy in the United States complain that the changes introduced by the 1965 Immigration and Naturalization Act threaten the maintenance of "American national identity" by allowing for "immense and continuing immigration from Latin America, especially from Mexico."[21] It appears that the very tool restrictionists tried to use to *limit* pluralization in the past has become their central preoccupation today.

Notes

[1] For details on Canada, see Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998); Triadafilos Triadafilopoulos, "Building Walls, Bounding Nations: Migration and Exclusion in Canada and Germany, 1870-1939," *Journal of Historical Sociology* VOL. 17, No. 4 (2004): pp. 385-427. For the United States, see Mae Ngai, "The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924," *The Journal of American History* VOL. 86 (June 1999): pp. 67-92; and Aristide R. Zolberg, *A Nation By Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006).

[2] Alan C. Cairns, "Empire, Globalization, and the Fall and Rise of Diversity," in *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives*, ed. Alan C. Cairns et al (Montreal and Kingston: McGill-Queen's University Press, 1999): 24-25; Jürgen Habermas, "Aus Katastrophen lernen? Ein zeitdiagnostischer Rückblick auf das Kurze 20. Jahrhundert," in his *Die postnationale Konstellation: Politische Essays* (Frankfurt am Main, 1998): 75.

[3] Gabriel J. Chin, "The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965," *North Carolina Law Review* VOL. 75 (1996): pp. 273-345; Triadafilos Triadafilopoulos, "Shifting Boundaries: Immigration, Citizenship and the Politics of National Membership in Canada and Germany" (Ph.D. dissertation, New School for Social Research, 2004).

[4] Carol Lee, "The Road to Enfranchisement: Chinese and Japanese in British Columbia," *B.C. Studies* VOL. 30 (1976): pp. 44-76; F. J. McEvoy, "'A Symbol of Racial Discrimination': The Chinese Immigration Act and Canada's Relation with China, 1942-1947," *Canadian Ethnic Studies* VOL. 14, No. 3 (1982): pp. 24-42; John D. Skrentny, *The Minority Rights Revolution* (Cambridge: Harvard University Press, 2002); Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Pres, 2002).

[5] Skrentny, *The Minority Rights Revolution*. Also see Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge, Massachusetts: Harvard University Press, 2001); Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, New Jersey: Princeton University Press, 2000).

[6] David Corbett, "Canada's Immigration Policy, 1957-1962," *International Journal* VOL. 18, No. 2 (Spring 1963): pp. 166-180; Marion T. Bennett, "The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965," *The Annals of the American Academy of Political and Social Science* (September 1966).

[7] Kelley and Trebilcock, *The Making of the Mosaic*, pp. 358-361.

[8] Tichenor, *Dividing Lines*; Jeffrey Togman, *The Ramparts of Nations: Institutions and Immigration Policies in France and the United States* (Westport, Connecticut: Praeger, 2002); Desmond King, *Making Americans: Immigration, Race, and the Origins of Diverse Democracy* (Cambridge, Massachusetts: Harvard University Press, 2000).

[9] The remainder of Canada's immigration intake was composed of refugees and individuals granted permanent resident status on humanitarian and compassionate grounds. See Communication Branch, Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration* (Ottawa, 2005): pp. 21.

[10] Canadian Bar Association, "Immigration and Refugee Protection Act – Family Reunification Issues," available online at: < http://www.cba.org/cba/submissions/pdf/05-20-eng.pdf >.

[11] Peter H. Schuck, "The Immigration System Today," chapter in *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship* (Boulder, Colorado: Westview Press, 1998): p. 14.

[12] Ruth Ellen Wasem, "US Immigration Policy on Permanent Admissions" (Washington, D.C.: Congressional Research Service/Library of Congress, February 2004): available online at: <http://fpc.state.gov/documents/organization/31352.pdf>.

[13] Canadian Bar Association, "Immigration and Refugee Protection Act – Family Reunification Issues."

[14] Wasem, "US Immigration Policy on Permanent Admissions."

[15] T. Alexander Aleinikoff, "Legal Immigration Reform: Toward Rationality and Equity," in *Blueprints for an Ideal Immigration Policy*, ed. Richard D. Lamm and Alan Simpson (Washington, D.C.: Center for Immigration Studies, 2001): p. 6. Available online at: <www.cis.org/articles/2001/blueprints/blueprints.pdf>.

[16] "Submission to the Standing Committee on Citizenship and Immigration by the Ontario Council of Agencies Serving Immigrants: Family Reunification," April 2005, p. 5. Available online at <http://www.ocasi.org/downloads/OCASI_Family_Reunification_Apr05.pdf>.

[17] Nicole LaViolette, "Coming Out to Canada: The Immigration of Same-Sex Couples Under the Immigration and Refugee Protection Act," *McGill Law Journal* 49 (2004): pp. 969-1003; Christopher A. Dueñas, "Coming to America: The Immigration Obstacle Facing Binational Same-Sex Couples," *Southern California Law Review* VOL. 73, No. 4 (May 2000): pp. 811-841.

[18] For a succinct presentation of this argument see George J. Borjas, "The US Takes the Wrong Immigrants," *The Wall Street Journal*, April 5, 1990, p. A18; George J. Borjas, "Immigration Policy: A Proposal," in *Blueprints for an Ideal Legal Immigration Policy*, pp. 17-20.

[19] Peter Rekai, "US and Canadian Immigration Policies: Marching Together to Different Tunes," *C. D. Howe Institute Commentary*, VOL. 171 (November 2002): p. 7. Available online at: <http://www.cdhowe.org/pdf/Rekai.pdf>.

[20] Tichenor, *Dividing Lines*, pp. 253-254.

[21] The quotation is from Samuel P. Huntington, "The Hispanic Challenge," *Foreign Policy* 136 (March/April 2004). Huntington explores the putative threat unrestrained immigration poses to American national identity at length in *Who Are We? The Challenges to America's National Identity* (New York: Simon & Schuster, 2004). For a trenchant critique of Huntington's argument see Rogers Smith's review of the book in *Political Science Quarterly* VOL. 119 (2004): pp. 421-422.