

Security, Securitization and Human Capital: The New Wave of Canadian Immigration Laws

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Abstract—This paper analyzes the linkage between migration, economic globalization and terrorism concerns. On a broad level, I analyze Canadian economic and political considerations, searching for causal relationships between political and economic actors on the one hand, and Canadian immigration law on the other. Specifically, the paper argues that there are contradictory impulses affecting state sovereignty. These impulses are currently being played out in the field of Canadian immigration law through several proposed changes to Canada's Immigration and Refugee Protection Act (IRPA). These changes reflect an ideological conception of sovereignty that is intrinsically connected with decision-making capacity centered on an individual. This conception of sovereign decision-making views Parliamentary debate and bureaucratic inefficiencies as both equally responsible for delaying essential decisions relating to the protection of state sovereignty, economic benefits and immigration control. This paper discusses these concepts in relation to Canadian immigration policy under Canadian governments over the past twenty five years.

Keywords—Globalization, immigration law, security, anti-terrorism.

I. INTRODUCTION

IN March 2008 Canadian Prime Minister Stephen Harper's government announced several proposed changes to Canada's Immigration and Refugee Protection Act (IRPA). Contained within this enabling legislation are new discretionary powers being granted to the Immigration Minister. An editorial in the Vancouver Province (24 March 2008) suggested that the changes will "bring order to the current chaos" in the backlog of applicants filling Canada's immigration system. Detractors of the changes, such as some opposition Liberal MPs, argue that they centralize too much discretionary power in the hands of the Minister for Citizenship and Immigration.

The increasing resort to ministerial discretion by parliamentary governments is, in part, a response to the need for rapid responses by governments to perceived crises in immigration, terrorism, etc. The terrorist attacks of September 11, 2001 provided a defining moment for those commentators who advocated the need for a strong executive, unencumbered by norms of legality, to conduct the "war on terrorism." The Conservative government's proposed changes beg two fundamental questions regarding the nature of Canada's twenty-first century Immigration laws and policies. First, what is the purpose of Canadian immigration law? Secondly,

why give the Immigration Minister expanded discretionary powers?

At its core, these changes reflect an ideological conception of sovereignty that is intrinsically connected with decision-making capacity vested in a personalized command structure, centered on an individual [1]. This conception of sovereign decision-making views Parliamentary debate and bureaucratic inefficiencies as both equally responsible for delaying essential decisions relating to the protection of state sovereignty, economic benefits and immigration control. In this paradigm, long immigration backlogs are unacceptable because they threaten both state sovereignty and economic growth.

This paper discusses these concepts in relation to Canadian immigration policy under recent Canadian governments, and is divided into two parts. The first part of the paper argues that the changes proposed by Prime Minister Harper represent less of a radical change than an accelerated evolution of laws and policies introduced in the 1980s under the Progressive Conservative Government of Prime Minister Brian Mulroney. The reforms under the Mulroney administration essentially decoupled economic immigration and labour market trends within the Canadian labour force. During the late 1980s and early 1990s, immigration to Canada thus moved from building citizenship to importing economic capital. No longer would the Government see immigrants as economic threats. Instead, the security threat posed by some immigrants would be portrayed as existential threats, i.e. representing a potential physical danger to Canadians' well-being in the form of terrorism.

In the second part of the paper, I argue that Prime Minister Harper's government has been influenced by portions of old Reform Party ideology with respect to its emphasis on linking security issues to immigration reform. Harper's government has continued a trend begun under the previous Liberal government that succeeded Mulroney, and has increasingly stressed the ties between security policy and immigration policy. This has the effect of creating a sense of urgency in immigration policy, and emphasizes the need for strong executive action bypassing prolonged legislative debate. I examine the government's rhetoric on the proposed changes to the IRPA, with the view to determining the effects of this linkage and if this indicates a permanent shift in the nature of the Canadian government's actions in immigration policy.

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II. IMMIGRATION AND ECONOMIC POLICY

A. *Historic Links Between Immigration and Labour Force Impacts*

Canada's post-World War II immigration policy was premised on two goals – increasing Canada's population while avoiding detrimental economic and labour force impacts. The policy was announced by Prime Minister Mackenzie King in the House of Commons on May 1, 1947. It specifically encouraged immigration, but placed limits on permanent settlement based on government assessments of the number of immigrants that could "advantageously be absorbed" into the Canadian national economy.

In other words, immigration would be used to populate Canada's landmass in the long-term, while avoiding any negative labour-force impacts in the short-term. There were fears expressed at the time, even by King's ministers, that the two goals might not be reconcilable. King's Minister of Citizenship and Immigration, Walter Harris, told the House of Commons after the Prime Minister's speech that no policy of immigration can be operated on a "stop and go basis" and that immigrants entering Canada would have to "fit in" and contribute to Canadian growth.

From the late 1940s into the 1980s, Canadian governments consistently pursued the short-term approach to immigration, attempting to balance rises in unemployment with drops in immigration levels [2]. Veugelers also makes a compelling argument that immigration levels to Canada are fuelled more by state policy than by individual choices, as more immigrants have always wanted to immigrate to Canada than have been permitted to enter the country.

B. *1984-1993 - Decoupling Canadian Immigration and Economic Policy*

In September 1984, Brian Mulroney and the Progressive Conservative party won a massive national majority in Parliamentary elections. The new government initiated a Task Force on Program Review led by Deputy Prime Minister Erik Nielsen which intended to review all federal government programs with the objective of reducing government expenditures [3]. The Task Force produced a report in 1985 that included a volume on Citizenship, Labour and Immigration, focusing on refugee claims abuse, resettlement costs, and immigrant selection [4]. The report called for enlarged immigration quotas to correspond to an expanding economy, and restrictions on Designated Classes of refugee claimants to UN Convention refugees and those fleeing persecution from Communist states.

The Mulroney government then launched a general review of Canadian immigration policies. In June 1985, the government tabled a report in the House of Commons titled "Review of Future Directions for Immigration Levels" that called for greater immigration levels to prevent Canada's population from falling below thirty million by the turn of the century. The new government emphasized the benefits of

immigrations to an expanding economy, and explicitly linked economic growth with increased immigration levels.

C. *Response by Societal Actors*

The response to the proposed changes was muted. Most groups tended to voice concerns relating to their own self-interest. For example, the Canadian Ethnocultural Council (CEC) made no official submission until 1986 when, although agreeing with the general goal of expanding immigration levels, it disagreed with the new emphasis on economic migration. The Ontario Council of Agencies Servicing Immigrants (OCASI) worried that the emphasis on economic migration would lead to less room for refugee claims. In a letter to Immigration Minister Flora McDonald (15 April 1985), the OCASI warned that an emphasis on encouraging immigration of those with large amounts of investment capital would lead to a downgrading of reunification and refugee resettlement programs.

The two main national labour bodies - the Canadian Federation of Labour (CFL) and the Canadian Labour Congress (CLC) – avoided any strong positions on the immigration proposals. Partially, this dealt with the historic divide in both organizations' members over how to shape immigration policy. Both organizations likely thought the issue too potentially divisive to adopt clear resolutions on the issue, although the CLC did express general support for maintaining a correlation between immigration levels and domestic employment figures.

There is little evidence to suggest that the ending of the employment-immigration linkage was a result of pressure from the pro-business lobby. Although the Mulroney government stressed its pro-business ideology, and found ideological allies with business pressure groups such as the Business Council on National Issues (BCNI), the Canadian Federation of Independent Business (CFIB), and the Canadian Manufacturer's Association (CMA), the membership of both pro-business groups were as divided on immigration reform as the unions. The BCNI essentially treated the immigration question as a minor issue. A slight majority of CFIB members polled in November 1985 were against less restrictive immigration policies. The CMA initially opposed the de-linking of immigration and employment levels but ultimately reversed its position and by April 1987 had fully committed itself to supporting the government's connection between population expansion and economic growth.

D. *The Effect of Ministerial Power*

Most interest groups thus played a relatively minor role in shifting immigration policy during the Mulroney years. The impetus for the changes came overwhelmingly from ideological impulses from within the Canadian government – but where exactly from the government? Much has been written about the influence of the federal bureaucracy in shaping immigration policy, with some commentators arguing that civil servants actually took the lead in the decoupling of immigration levels to employment rates [5]. There is some

evidence to support this view, particularly in the lead shown by some bureaucrats to change Canadian immigration policy. However, this analysis is too narrow and does not take into account political considerations, particular in the Executive, which may have been paramount in the new government's agenda [6].

Ministerial influence played a key role in driving the Mulroney immigration reforms. Cabinet Ministers such as Flora MacDonald and Barbara McDougall most likely wished to leave their stamp on immigration policy. Immigration Minister McDougall and other Government MPs acknowledged in a *Globe and Mail* article (20 October 1990) that the political advantages of higher immigration and stronger party links with ethnic communities had been the topic of cabinet discussions. These sentiments ran contrary to the traditional perception that immigration restrictions, not expansion, offered maximum political advantage. New political motivations, increased ministerial influence and a lack of opposition from societal actors thus combined to offer the Mulroney government maximum space to implement its immigration policies.

The Mulroney policy changes displayed dramatic effects in a relatively short period of time. Veugelers notes (p. 7) that total landings in Canada rose from 84,302 in 1985 to 254,321 in 1993 as economic migrations became the new focus of Canadian immigration policy, while from 1981 to 1985, economic migrants represented 39% of total immigration – increasing to 48% of total immigration by 1990. Moreover, the Mulroney government initially allowed total immigration levels to rise while accommodating the family and economic streams [7]. The break with the past linkage of immigration and unemployment levels was not readily discernible, due primarily to rising employment levels in the late 1980s. However, as Canada descended into a recession in 1990, unemployment levels had begun to rise while immigration levels remained unaffected, and the change in government policy became readily apparent.

In the middle of the economic decline, a 1991 report by the Economic Council of Canada titled *Economic and Social Impacts of Immigration* concluded that, in the long term, immigration has a negligible effect on employment levels unless there were extremely rapid increases in immigration levels in a relatively short period. Despite this, public opinion polling consistently shows public approval for increased restrictions on immigration levels during periods of high unemployment [8]. This political contradiction provides the basis for Canadian government immigration policy for most of the last half-century. The changes to immigration policy during the Mulroney administration, although reflecting the priorities of the government, and the economic realities of immigration and unemployment, ignored the political implications of disassociating the two. Although the changes were based partially on a political appeal to Canada's new immigrant communities, they risked alienating the traditional base of Conservative support. The policy shift on immigration during the 1980s intensified a growing a political

rift in the 1990s within the Progressive Conservative party, and contributed to the rise of nativist sentiment through the Reform Party.

E. Immigration, Populism and the Reform Party

The 1993 Federal Election was a seminal event in Canadian politics. The New Democratic and Progressive Conservative Parties were decimated, with the latter reduced to 2 seats and supplanted in opposition by the Reform Party and the Bloc Quebecois. Stephen Harper won his first seat in Parliament in 1993 as an MP for Calgary-West. Although the BQ became the Official Opposition, their mandate was preoccupied with obtaining Quebec independence. It often fell to Reform MPs to articulate ideological opposition to the Liberals on the issue of immigration.

The emergence of the Reform Party proved a watershed in the area of Canadian Immigration law and politics. For the first time, a party which advocated radical immigration reforms and openly raised previously sensitive issues related to immigration moved itself onto the mainstream public agenda. The opposition within the Reform Party to many of Mulroney's specific immigration policies extended to opposition to official multiculturalism in general. As far back as 1988, the Party's first General Election Platform clearly stated in its immigration section that there "is perhaps no area of public policy where the views of Canadians have been more systematically ignored." Party members were clearly nervous at the changing makeup of Canadian immigration, and the changing patterns from European to Asian/African migration.

Stephen Harper was then the Reform Party's Chief Policy Officer, and played a major role in drafting the Party's 1988 Election Platform, which stated that "increasingly," Canadian immigration policy seems to be "explicitly designed to radically or suddenly alter the ethnic makeup of Canada." In an effort to state its support for a "national culture", in 1990 an Official Policy Resolution was adopted stating that it is "the responsibility of the state to promote, preserve, and enhance the national culture" and that immigration and cultural policies "should encourage ethnic cultures to integrate into the national culture" [9]. Official Reform policy statements seldom clarified what exactly was meant by a national Canadian culture, but occasional statements made by party activists and MPs revealed it to be one opposed to official multiculturalism. One party activist was quoted in the *Toronto Star* (16 October 1993) stating his belief that Canadians' identity is a "derivative of white European culture." Reform Party leaders quickly disavowed statements such as these. However, attempts to endorse a Canadian multicultural policy, promoted by leader Preston Manning, failed to gain approval in a 1992 National Party Assembly.

F. The 1993 Federal Election

By the time of the 1993 federal election campaign conservative journals such as the *Alberta Report* reported what they viewed as a long-delayed and urgent debate on

Canadian immigration policy, while they complained that any criticisms of the Liberal/Progressive Conservative immigration policies were “quickly rebuffed” and “branded racist” [10]. Nearly a decade after the Canadian government decoupled immigration to employment levels, many in the Reform Party continued to push for increased economic migration. Party members pointed to evidence put forth by some economists demonstrating that newcomers who have either competence in one of Canada's official languages or a marketable skill will be a net benefit to the economy - but immigrants with neither (the bulk of new Canadians) were likely to be “a drain on society for the rest of their lives” [11].

For a variety of reasons, restricting humanitarian immigration to Canada was a broad goal shared among Reform party members. Although some in the Party advocated adopting U.N. Refugee Convention rules, others were hostile towards defining refugees in such a way as to increase the number of admissions to Canada. During the 1993 election campaign, many Reform candidates openly called for the abolition of official multiculturalism in Canada.

G. Reactionary Reform

Reform's immigration policy was a reaction against what James Tully calls the "politics of cultural recognition" [12]. It was a reaction against a variety of identity-based groups, including immigrants, Aboriginals and even French-Canadians, seeking, to varying degrees, self-determination or official recognition through state policies that actively celebrate social diversity. In addition to Tully, other scholars such as Marion Young challenged the Reform Party's discourse on citizenship and nation, arguing that there is no contradiction or injustice in nation-defining policies that assert that “sub-national collectivities” have a right to both inclusion and to different treatment [13]. And Steve Patten has argued that Reform's immigration policies would have transformed the Canadian nation into one that is exclusionary, and that “would benefit those who are already privileged by racial, ethnic and linguistic social hierarchies; that is, it would benefit non-Aboriginal anglophone Canadians who are not members of an ethnocultural minority” [14].

The success of the Reform Party was attributable in large part to a resurgence of populism in Western Canada. Reform differentiated itself from mainstream progressive conservatism in its use of populism, less of a coherent ideology than an “ideological instrument” used to build political identity in relation to a supposed struggle between the common people and elitist “special interests” [15]. Immigration law is often an easy target for populist politics.

However, there was apparent division within the Reform caucus over increased economic immigration. Some Party members, such as Yellowhead, Alberta Reform candidate Cliff Breitzkreuz, began to contradict the economic rationales for immigration, and expressed support for broadly limited immigration to Canada. An article in Maclean's magazine titled “A Calming Presence” (28 February 1994) quoted Breitzkreuz as stating that Canada would have to “drastically

reduce our intake of immigrants...maybe even impose a temporary moratorium.” In the article Breitzkreuz pointed out that the 250,000 immigrants admitted annually is roughly equal to the number of new jobs created between 1991 and 1993.

The more socially conservative wing of the Party followed a more collectivist strand of thinking. For example, the Party's 1990 *Blue Book: Principles and Policies* claimed on page 23 that it was “the responsibility of the state to promote, preserve, and enhance the national culture” and that Canadian immigration policies should “encourage ethnic cultures to integrate into the national culture.” The contrarian position from within the Reform Party came mostly from economic conservatives who did not support a return to the linkage of labour market statistics and immigration levels [16]. For similar reasons, these same party members opposed official multiculturalism because it went against their belief that a national Canadian culture should emerge out of individual initiative and market forces, not from government intervention.

Which Reform Party faction did Stephen Harper emerge from? Harper has been perceived as belonging to both camps. While acknowledging certain splits within the Reform Party on immigration, there is an important point of convergence that may reveal the current Conservative government's approach to the issue. Both factions agreed that preferential treatment should be given to immigrants who could both contribute to and easily assimilate into Canadian society. According to Tully, whether a government attempts to actively assimilate non-dominant cultures or whether it essentially ignores recognizing those cultures actually results in the same outcome, in that they both favour the dominant culture, in this case a white, European conception of Canadian culture. Supporting this case is the argument made by Iris Young. Young argues that allowing unregulated market forces to shape immigration and national entity, while requiring immigrants to possess certain language skills or entrepreneurial capability to ensure that Canada will economically benefit from immigration, favours currently dominant groups in the national political community. The Party was thus content while in Opposition to tacitly support a continuation of the Mulroney government's policies on increased economic immigration, while arguing against growing numbers of humanitarian admissions.

III. IMMIGRATION AND HUMAN RIGHTS

A. 1993-2006 - *The Liberals and the IRPA*

The party that actually won the 1993 federal election, the Liberals under Jean Chretien, continued the Mulroney government's decoupling of economic immigration and domestic labour market trends. The Chretien government also took the first steps towards privatizing Canada's refugee resettlement programs. Anna Pratt describes the inmates of such facilities as victims of “the culture of fear and disbelief” that began to reshape many aspects of Canadian public policy

in the late 20th century. [17]. The Liberals soon began to make major changes to federal departmental structures. With respect to immigration, in June 1994 the new Liberal government created the Department of Citizenship and Immigration and tabled a new Citizenship Act in Parliament in December 1998. In its 1997 Election Platform, *Securing Our Future Together*, the Chretien government highlighted its desire to reform the Immigration Act, and described the Immigration system as complex and administratively unwieldy. This marked the beginning of a decade long characterization of immigration law and policies in Canada as inefficient and requiring streamlining through increased discretionary powers by administrative officials and ministers.

B. The Immigration and Refugee Protection Act

In the years following the 1982 adoption of the *Canadian Charter of Rights and Freedoms*, refugees gained greater protection through a series of Court rulings and Government measures. In 1985, the Supreme Court of Canada ruled in *Singh v. Minister of Employment and Immigration* ([1985] 1 S.C.R. 177) that refugees to Canada have the same rights under the *Charter* as Canadian citizens. In *Singh*, the Court held the lack of oral hearings for refugee applicants to be arbitrary and a denial of fundamental justice. In the late 1990s, the Chretien government took measures to ease the entry requirements for undocumented refugees from countries such as Somalia and Ethiopia. In addition, Canada, unlike many European countries, allows refugees to become citizens under certain circumstances. The broad trend politically, however, has been towards enacting legislation that ties humanitarian admission to criminal and security concerns, while continuing to encourage economic immigration.

Following the Liberals' re-election in 1997, a Legislative Review was announced in January 1999 with the intent of developing new policies with respect to family and economic immigration, and refugee protection. The review culminated in the tabling of Bill C-31: The Immigration and Refugee Protection Act. Bill C-31 received a critical response from some lawyers with respect to its redefinition of the status and right of entry of permanent residents; the lack of judicial review for permanent residents and refugee claimants; the "raise" of barriers for access to the refugee determination process; and the increased reliance on administrative discretion. [18].

The *Immigration and Refugee Protection Act* (IRPA) received Royal Assent on November 1, 2001, and came into force on 28 June 2002. Although the IRPA was intended to increase efficiency and refugee protection measures, the government chose to emphasize the national security and public safety aspects of the new legislation. In June 2002, the Government rejected a recommendation to relax landing requirements for humanitarian and compassionate grounds applications for those illegally in Canada, stating that the discretion accorded to decision-makers was sufficient to take into account a range of factors, including an individual's possible risk to Canada. [19]. At the same time, the

Government disagreed with recommendations that no changes be made to the Investor, Entrepreneur and Self-Employed immigrant classes, and strongly defended its decision to reform the Regulations' grids to speed up the entry of economic immigrants.

The debate surrounding the implementation of the IRPA involved portraying issues such as human trafficking as a threat to Canadian national security. Despite the Liberals' promotion of the IRPA as a human rights advance, and despite its name, sociologists such as Pratt argued that one of the main objectives of the IRPA is to protect Canada from those labeled as risky foreign nationals. Pratt's analysis in *Securing Borders: Detention and Deportation in Canada* is that certain issues are tied into refugee law to enable liberal states to govern through a criminal lens by excluding segments of society such as minorities and immigrants. The newly created Department of Citizenship and Immigration became more of an enforcement agency, cooperating with the Royal Canadian Mounted Police (RCMP) in developing risk profiles of international airline passengers entering Canada, although such activity expanded greatly after the terrorist attacks of 11 September 2001 [20].

The IRPA was also intended to create a new division within the Immigration and Refugee Board (IRB) - the Refugee Appeal Division (RAD). In the House of Commons, during the second reading of IRPA's enabling legislation Bill C-11 on 26 February 2001, former Minister of Citizenship and Immigration Eleanor Caplan strongly recommended the implementation of the RAD to streamline refugee processing.. However by the time of Chretien's retirement in late 2003, the RAD had still not been implemented. One year after Chretien's retirement, on 14 December 2004, Paul Martin's minority government supported a Standing Committee on Citizenship and Immigration motion to implement the RAD, but the Opposition Conservative Party, now led by Stephen Harper, successfully delayed the implementation of the RAD during Martin's short-lived government.

The failure to implement the RAD undermined the Liberal government's original commitment to the humanitarian objectives of the Act. In addition, the Liberals also implemented the *Canada-U.S. Safe Third Country Agreement* on 29 December 2004, obliging each country to recognize the other as safe third countries for refugee claimants and oblige refugees to seek protection in the first of the two countries they enter. Subsequently, Canada has turned away one-third of refugee claimants to an American asylum system that according to a Harvard Law School report "violate[s] international legal standards" [21].

Finally, the IRPA was seen by many immigration lawyers as a tool to further enhance the economic imperatives within Canadian immigration law and policy by bringing in more skilled workers, or "human capital," into the country [22]. However, while one part of the government acted to bring in more skilled workers, another part was busy trying to expedite ways to throw temporary workers out. The most significant development in the area of immigration during Martin's short

tenure in the Prime Minister's office was a greater emphasis on both importing temporary foreign workers and on enforcement of overstays and violations of immigration laws. Even as levels of temporary foreign workers entering Canada increased, deportations of domestic workers increased significantly in 2006 and were blamed for a failure of migrant workers to live up to obligations of the Live-In Caregiver Program [23].

IV. IMMIGRATION AND SECURITY

A. 9/11 – A New Paradigm for Immigration

The attacks of September 11th marked the beginning of the shift in the Canadian paradigm towards an emphasis on legislating security through immigration laws. There was no immediate movement away from the economic imperatives initiated by Mulroney and enshrined by the first two Chretien governments, but the speedy passage of anti-terrorism legislation in the wake of 9/11 clearly went against Canadian economic interests, damaging Canada's export based economy [24]. The Liberals accelerated the deportation of Arab refugees and resorted to the use of security certificates to hold suspects indefinitely without trial.

The increasing use of rendition to foreign prisons was based on national security concerns, occasionally resulting from faulty intelligence. The most notorious case involved Maher Arar, an Ottawa engineer arrested in New York in September 2002 while returning to Canada from a family holiday in Tunisia, and subsequently flown by the CIA to Syria, where he was tortured and held in solitary confinement for ten months. The incorrect information that led to his arrest was provided to the FBI by the RCMP, which had put Arar and his wife Dr. Monia Mazigh on an al Qaeda watch-list [25]. The idea that Muslim refugees would present a heightened threat to national security had the effect of perpetuating the fear among those Canadians who wanted to scale back refugee admissions. The same fears were reflected in a 2004 Conservative Party interim policy document, which focused on "attracting immigrants who can best integrate into the 'Canadian fabric'" [26].

B. Stephen Harper and the Conservative Party

Following his re-entry into political life as leader of the Canadian Alliance, Harper's views on immigration continue to have been shaped by a number of prominent conservative writers who have written on the negative effects of American immigration policies. Many of these claim that the United States is in danger of losing its identity as a European nation due to increased immigration from locations such as Africa and the Asian sub-continent, and that these newer immigrants would be harder to "assimilate" into American society than the older wave of European immigrants [27]. When asked his views on immigration policy in a 2002 interview, Harper responded somewhat vaguely, framing immigration in terms of security. He stated that while he was "pro-immigration in principle" the refugee determination process "threatens

national security" by creating a "backdoor immigration stream" [28].

As leader of first the Canadian Alliance and then the Conservative Party, Harper continued to press the party's call for increased limits on humanitarian immigration. Politically, this played well with the party's continuing efforts to expand its base into Quebec. A poll published in Maclean's magazine (21 March 2005) found that a majority of residents in Quebec favored stricter controls on immigration. However, Harper's political instincts are often underestimated. As the efforts to merge right-wing forces in Canada gained momentum he seemed to comprehend that the old Reform party arguments against multi-cultural immigration would not allow a new Conservative party to form a government, a goal that could not be accomplished without significant support from Canada's immigrant community.

During the 2006 federal election, the Conservatives chose to focus on the economic aspects of the immigration process. *Canadian Press* reported on January 4, 2006 ("Reality Check: Harper's Immigration Proposals") that the Conservatives promised to create a new federal agency to recognize foreign professional qualifications and speed up the entry process for professionals immigrating to Canada. In a Conservative Party Press Release dated January 4, 2006, Harper also promised immigrant communities that a Conservative government would cut the unpopular \$975 Right of Landing Fee in half, and eventually eliminate it. That Press Release also contained an appeal to shared Canadian values and ethics, stating that the immigrants wanted by the Conservatives "bring to Canada a strong work ethic, a commitment to family life, an appreciation of higher education, and a respect for law and order."

C. The 2006 Federal Election

The Conservatives won the 2006 federal elections by, in large part, convincing voters including many in Canada's immigrant communities that Harper was not the extremist that the Liberals and New Democratic Party had successfully caricatured two years earlier. While Harper may have succeeded in removing the more obviously xenophobic language left over from the Reform Party's culture and immigration policy platforms, the Conservative party's social conservatives are, to a considerable extent, content with the cautious market liberal policy terminology and emphasis on economic immigration that has replaced it.

The "law and order" component of the Conservatives' immigration policy has been reflected in many of the Conservative government's actions since 2006. Harper's government has accelerated deportation proceedings against illegal workers in Canada. One well-publicized case reported by the *Globe and Mail* on October 27, 2006 ("Ottawa Rules out Amnesty for 200,000 Illegal Workers") involved the deportation of some two dozen Portuguese tradesmen performing skilled construction labour in Toronto. Many of these workers had been in Canada for more than a decade and had young children, which made it politically sensitive for the

Government to act against them. Nevertheless, Harper apparently calculated that any short-lived condemnation by groups such as immigration or human rights activists would be outweighed by appeals to other economic immigrants who entered the country legally.

In the same vein, Harper's government has consistently refused to consider any amnesty for illegal workers in Canada. Instead, the government has increased high profile deportation actions, seemingly making it a point to target immigrants' whose children were in Canadian schools. CTV News carried a report on May 2, 2006 on a brother and sister that were forcibly removed from Dante Alighieri Academy in Toronto on April 27, and escorted to the street by immigration officials. The same news report indicated that the next day, two girls, aged seven and fourteen, were removed from St. Jude School in Toronto by officials who then telephoned their mother, an illegal immigrant from Costa Rica, "and threatened to take them away if she did not turn up within half an hour." Minister of Public Safety Stockwell Day refused to rule out more school raids, and continued to insist that such actions were not part of a new enforcement pattern.

Regarding humanitarian immigration, Harper claimed that his own views on immigration evolved along with Reform/Canadian Alliance/Conservative Party policy. Towards the end of its first year in office, the Harper government had adopted some of the methods of the former Liberal government in dealing with refugee policy. On November 7, 2006, Solberg, then the Minister of Citizenship and Immigration, stated before the Standing Committee on Citizenship and Immigration that he was "not closing the door on anything. But if we're going to have a discussion about the refugee appeal division, we have to have a larger discussion about the refugee determination system in general."

D. Strengthening the link between Immigration Law and Security

Harper's Minority government has fulfilled a campaign promise to cut the Right of Landing fee, reducing it to \$490 [29]. The change was accomplished through amending the Regulations accompanying the IRPA and thus did not require Parliamentary debate or consent. However, the Conservatives have thus far not fulfilled their campaign pledge from their 2006 Election Platform ("Stand Up for Canada!") to create a "Canadian Agency for Assessment and Recognition of Credentials" that would provide pre-assessment of international credentials and experience to immigrants. This would require Parliamentary approval and could not be accomplished through executive fiat. Despite some Opposition support for the idea in the Minority Parliament, Harper's government effectively scrapped the idea in May 2007, creating instead a referral office for perspective immigrants outside of Canada that redirects applicants to established provincial agencies.

With respect to Refugee Determination, the Conservatives created a new Selection Advisory Board, replacing the old IRB Advisory Panel. The new selection process gives the

Immigration Minister the power to jointly appoint three of seven IRB members, and also alters the standards in IRB written qualification exams from a percentage to a pass/fail marking system. A Liberal Media Release (10 July 2007) criticized the move, stating that it left the IRB open to political influence.

E. Departmental Integration

The Conservatives entered office clearly intending to increase the integration of security, intelligence and immigration agencies. In their 2006 Election Platform, the Conservatives promised a government that would name a National Security Commissioner with the responsibility to provide the government with recommendations on coordinating the work of a variety of agencies: the RCMP; CSIS; the Canada Border Services Agency; a "revitalized" Coast Guard; a reinstated Ports Police; and a "new" Canadian Foreign Intelligence Agency, as well as the security aspects of the Departments of Immigration and Transport. A "National Security Commissioner" is perhaps a not-too-subtle allusion to the image of the American Homeland Security Czar. The motivation for this would seem to be part of the Conservatives' overall goal to improve relations with the United States, particularly on border security issues.

F. Refugees and Security

And the Conservatives policy on refugee settlement has continued to be dogged by old Reform Party opposition to multiculturalism. On February 13, 2008, the *Port Hope Evening Guide and Cobourg Star* published a controversial letter written by former Progressive Conservative MP Gordon Gilchrist. Gilchrist wrote that "Most immigrants do not bring even a modest understanding of Canadian history or values. . . call your M .P. and tell him to turn off the immigration tap before it's too late!" Gilchrist's remarks caused a predictably strong outcry from immigrant rights groups and social activists, who called for his removal from the Kawartha Pine Ridge District School Board in Peterborough.

Potentially the most significant criticism of the Conservatives conduct of Immigration policy is the use of ministerial discretionary powers for political purposes. Specifically, the Liberals charged in a Media Release on September 7, 2007 ("Harper Government Uses Human Trafficking Laws to Target Refugee Advocate") that the Conservative government was using sections of the IRPA designed to combat human trafficking against a refugee rights activist. US refugee advocate Janet Hinshaw-Thomas was charged on September 27, 2007, under Canada's Immigration and Refugee Protection Act (IRPA) for allegedly trying to help 12 Haitian asylum-seekers enter Canada illegally. The section of the Act under which Ms. Hinshaw-Thomas was arrested was designed to combat human trafficking. In order to ensure the law was not used against "good Samaritans" trying to help legitimate refugees, a condition was added stipulating that charges could not be laid without the express consent of the federal Attorney General. The Harper

government's use of the clause against a human rights activist is unprecedented.

G. *The March 2008 Proposed Amendments to the IRPA*

In March 2008, Citizenship and Immigration Canada announced plans through its website (www.cic.gc.ca) to reduce the backlog of immigration applications, estimated at over 900,000 in December 2007, with approximately 600,000 of those applications waiting in the skilled worker queue. Immigration Bill C-50, tabled by Harper's government on March 14, 2008. The bill was promoted by Immigration Minister Diane Finley, and in a *Globe and Mail* article on March 15, 2008 ("Bill Expands Minister's Control over Immigration) she noted that it would fulfill two of the government's two key objectives: "The first is to bring more newcomers here to file the jobs and be reunited with their families. The second is to do it faster."

The first objective announced by the Minister represents an expansion of the policies begun by the Mulroney administration two decades earlier. In fact, it can be argued that the Harper administration has gone further and completely removed any linkage between labour force levels and immigration levels. Instead, the proposals in Bill C-50 represent a linkage of immigration levels to the demands of Canadian employers.

The second objective, the reduction of the immigration backlog and the reduction of waiting periods, reflects a desire to avoid parliamentary debate and bureaucratic delays by expanding the discretionary powers of the Immigration Minister. Specifically, Bill C-50 would modify S. 87.3 of the *Immigration and Refugee Protection Act* as follows:

"87.3...

(2) The processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

(3) For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions

(a) establishing categories of applications or requests to which the instructions apply;

(b) establishing an order, by category or otherwise, for the processing of applications or requests;

(c) setting the number of applications or requests, by category or otherwise, to be processed in any year; and

(d) providing for the disposition of applications and requests, including those made subsequent to the first application or request."

Bill C-50 was strongly attacked on a variety of fronts. The manner in which the legislation was introduced was problematic and clearly tailored to political considerations. On March 26, 2008 an article in the *Asian Pacific Post* ("Immigration Overhaul") alleged that major changes to the IRPA were "hidden deep inside the Conservatives' budget implementation act." The tactic utilized by the Conservatives in this instance continued a game of Parliamentary

brinkmanship by Harper's minority government, forcing the Opposition to either accept the changes or defeat the budget and trigger an election.

To critics of the changes, Bill C-50 illustrates a government that favors efficiency at the expense fairness. The immigration queue could be reduced by simply and speedily rejecting more applications to prevent any future backlog. Interestingly, the Opposition Liberal party did not object to increased immigration to fill perceived labour shortages, or challenge the basis for these labour shortages. The Liberals thus ignored a fundamental critique of the proposed changes, namely that they perpetuate a system that favours economic values over human rights. Under existing provisions of the IRPA (S.11), any applicant meeting the criteria to enter Canada under the worker, student or visitor categories, or to become a permanent resident, will be granted that status. However, under Bill C-50, the Minister will have the discretion to arbitrarily reject such applications. In the *Immigration Overhaul*" article mentioned above, immigration lawyer Zool Suleman commented that the proposed bill gives too much discretionary power to the Immigration Minister, creating a closed and non-transparent system, with no way to challenge "bad policy choices" by the Minister other than through an election. An additional power given to the Minister under Bill C-50 is that of deciding the order in which new applications are processed, regardless of when they were originally submitted. This means prioritizing immigration applicants based on their ability to fulfill the needs of the Canadian job market.

The proposed s. 87.3 contained in Bill C-30 will allow the Minister to issue "instructions" setting quotas on the "category" of person that can enter Canada, including quotas based on country of origin. This would represent an unprecedented revision of the IRPA and could potentially result in immigration policy decisions effectively, if not explicitly, based on racial considerations. Although it would perhaps be going too far to compare this provision to explicitly racist immigration legislation in Canadian history, there are obviously sensitive historical considerations here including the Chinese Exclusion Act of 1923, or the "None is too many" rule applied to Jewish refugees fleeing Nazi-occupied Europe during Second World War. Moreover, the revised Sections 87.3 (4) and (5) of the IRPA would enable the Minister to dispose of a Visa application without any opportunity for judicial review. This is an extremely disturbing precedent, particularly within the context of the lack of an appeals process within the immigration system.

H. *How Will the New Discretionary Powers Be Used?*

The Harper government remains elusive in outlining specific cases where it will use its expanded powers. The official public information available from the Citizenship and Immigration website (above) states that the Minister will have "authority to issue instructions to officers on the categories and numbers of applications to process" but not to "reject an application that had been processed and accepted." With

V. CONCLUSION

respect to the exercise of Ministerial discretion, the CIC public statement emphasizes that the Minister's instructions "must be consistent with the overall objectives of the IPRA." CIC also indicated that both the instructions and the "flexibility" of ministerial powers would be conducted in an "open and transparent" manner. These are vague and somewhat unspecific reassurances, inasmuch as it is the government that sets the objectives for the IRPA, and transparency can be interpreted through a multitude of political lenses.

So what can be expected from increased discretionary powers for the Immigration Minister? The general attitude of the current government seems to point towards inaction to prevent deportation, and intervention only in cases where it would help facilitate deportation. One clue may lie in the case of Amirthalingam Amirthalingam, a Malaysian gay man who claimed refugee status in Canada. In its 2008 "Travel Report for Malaysia" Foreign Affairs and International Trade Canada (<http://www.voyage.gc.ca>) warns travelers that homosexuality is illegal in Malaysia and that "Convicted offenders may face lengthy jail sentences and fines." In an Asian Pacific Post Article dated March 26, 2008 ("Malaysian Police Probe Gay Deportee") Amirthalingam alleged that he was physically and sexually abused under police detention some five years ago. Following a lengthy court battle to stay in Canada, it was reported in a CanWest article on March 15, 2008 ("Gay Refugees Have Difficulty Proving They Are Gay") that an Immigration and Refugee Board panel made up of one adjudicator decided that Amirthalingam was not gay, and a pre-removal Risk Assessment also failed to find any reason to avoid deportation back to Malaysia. Amirthalingam made a final appeal through MP Thomas Mulclair for Immigration Minister Diane Finley to intervene in the case and prevent the deportation. Immigration Minister refused to intervene in the case, and Amirthalingam was ultimately deported back to Malaysia on March 6, 2008, where it was reported by the Asian Pacific Post ("Malaysian Police" above) that he immediately went underground to avoid a nationwide police hunt.

The fact that Finley decided not to intervene in this case is not comforting in the context of new Ministerial Discretionary powers afforded under Bill C-50. Finley decided not to use her ministerial discretion in a case where an error in assessment of homosexuality would possibly condemn the deportee to punishment in his homeland which according to Amnesty International in its country reports includes being stripped naked, strapped to a ladder and caned until caned on the buttocks until raw flesh is exposed. This is circumstantial evidence indeed on possible future ministerial courses of action, and it is possible that a future Minister would use increased discretionary powers to intervene to prevent deportations. But all indications are that the current Conservative government has designed the ministerial discretionary powers within Bill C-50 as part of a package of streamlining future deportation backlogs by intervening mainly to facilitate deportations.

This paper has argued that the changes proposed by Prime Minister Harper represent less of a radical change than an accelerated evolution of laws and policies introduced by previous administrations. In the previous two decades, the concept of immigration to Canada has been evolving from building citizenship to importing economic capital, to protecting sovereign state security. Prime Minister Harper's government has been, and continues to be, influenced by portions of old Reform Party ideology with respect to its emphasis on linking law and order and security issues to immigration reform. In this paradigm, long immigration backlogs are unacceptable not necessarily because they are inhumane, but because they threaten both state sovereignty and economic growth.

Traditional considerations of political advantage seem to be in play here. In addition to attempting to appeal to certain aspects of the immigrant community through increased economic immigration, Harper is appealing to a different kind of politics, an emphasis on security that at its worst caters to fear and resentment. The fear is based on a supposed national security threat, and resentment is stoked between illegal immigrants and "legal" Canadians. As Catherine Dauvergne commented in her analysis of issue of the "securitization" of immigration law: "At the core of any successful securitization – of any movement of an issue into the realm of exceptional politics demanding extraordinary action – is the acceptance of an issue as a threat" [30]. Framing the immigration system within the context of terrorist threats creates a sense of urgency in crafting immigration law, and in carrying out immigration policy.

Government policy is thus tied to the "long war" on terrorism, and has most likely permanently shifted away from encouraging immigration to build a Canadian multi-cultural nation, towards emphasizing the business case for immigration within acceptable security concerns. Besides being a dehumanizing conception of immigration, (i.e. portraying immigrants as human capital or mere commodities) this also caused the government to create new threats of terrorist plots to replace previous economic anxieties caused by increased immigration. Of course, the issue that is then raised is the permanence of the new threat.

At what point does an exceptional period become a near-permanent state of affairs? Agamben in *Homo Sacer* outlined the ongoing crisis, the exception that becomes the norm.¹ The paradox evident in *Homo Sacer*, a figure taken from Roman Law, who is meant to define the situation of the individual exiled from law but given identity by law. The permanence in the state of exception is seen in the operation of decision-making during law's suspension. Agamben's rule of law continues to apply in the exception by longer applying to it – in other words, it functions by withdrawing. Thus he argues that the exception is not chaos that precedes order but a situation that results from the order's suspension. The

suspension of normal laws governing immigration on the grounds of a vague war on terrorism may indicate a permanent shift in the nature of the Canadian government's actions in this area.

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