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Gender and Canadian immigration policy: a current snapshot

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Cet article analyse une révision récente commandée par le ministre de la Citoyenneté et de l'Immigration. Canada ainsi qu'un document subsequent qu'il a publié en 1999, dans le contexte de leur implication selon le genre, sur l'immigration dans le futur.

On January 6, 1998, the findings of the Legislative Review Advisory Group were issued in a report entitled, *Not Just Numbers*, also known as the *Immigration Legislative Review (ILR)*.(f.1) The Review was conducted by an independent panel of consultants commissioned by the Minister of Citizenship and Immigration Canada (CIC), the Honorable Lucienne Robillard. Public hearings ensued in the spring of 1998, and some 2,200 written submissions were received by the Minister's office. During the public hearings, strong negative reactions were voiced from a range of immigrant groups, including investors and business class immigrants, domestic caregivers, and refugee advocacy organizations among others. Editorial writers at major Canadian newspapers contributed their own views to what was one of the most avid public debates of the year (*Toronto Star* 1998a, 1998b; *The Globe and Mail* 1998a, 1998b; *The Vancouver Sun* 1998a, 1998b). In the face of considerable public criticism based on the document, the Minister distanced herself from much of the Review. Nonetheless, a number of its elements have been incorporated into a January 1999 document released by the Minister's office, entitled *Building on a Strong Foundation for the Twenty-First Century: New Directions for Immigration and Refugee Policy and Legislation*. This latter document outlines ten general directions for immigration policy and solicits feedback in the form of policy and legislative suggestions as well as practical advice from the public. *Building on a Strong Foundation for the Twenty-First Century* is both a culmination of consultation and public debate based on *Not Just Numbers*, and a precursor to new immigration laws and policies which the government plans to introduce in the near future. The time is thus ripe for a gender analysis of both documents.

In as much as immigration policy is intended to treat men and women equally, the outcomes of its application are often very different for each group. In this short paper, I argue that any effort to separate legislation for immigrants from that of refugees may well create the basis

for a feminized refugee protection system, and a gender-blind system of entry based on "ability to pay" for all other groups of immigrants. The government is interested in increasing access to the Canadian labour market for highly skilled immigrants and their spouses, albeit on a temporary basis for some. Citing increased economic integration and globalization, both reports underscore Canada's role as part of the global village which currently hosts too few highly skilled workers to remain competitive. "Globalization is the code word for the breakdown of traditional boundaries among sovereign nations, economic markets and individuals" (Davis, Kunin, and Trempe, Chp.1.4). Both the independent Review issued in 1998 and the most recent government release propose policies to promote freer trade in high end immigrants. This is no real surprise, given that the United States has adopted exactly such a policy. The question remains, however, are there any gender implications to such a policy?

The Not Just Numbers report advocated recruitment of "modern pioneers" as its self-supporting immigrants, pushing for well-educated, employable candidates who are competent in either English or French. Diversity in culture, class, and source countries, as well as a gender balance, is clearly more elusive and is not mentioned. Economic objectives prevail, as they have throughout much of the history of Canadian immigration. With respect to refugee admissions, economic criteria apply under current immigration policy. One's ability to settle, to find work and become independent are called admissibility criteria and are figured into an applicant's selection. The authors of Not Just Numbers questioned this policy, and suggested that refugee applicants not be subject to admissibility criteria, but that their claims be judged upon humanitarian criteria only. Separate legislation for refugees and immigrants was proposed, as was the selection of refugees overseas-rather than after a person has made a refugee claim at a Canadian port of entry.

The authors of the ILR acknowledge its lack of attention to gender:

[i]n the time available, we were unfortunately unable systematically to check the effect of our recommendations on equality between the sexes. Citizenship and Immigration Canada should undertake such an analysis before formulating its policy, revising the Act and Regulations and establishing its programs. (126)

No such action is evident in the 1999 document, *Building on a Strong Foundation for the Twenty-First Century*. Neither new legislation nor policy can be introduced until such time as a thorough and systematic review of gender implications has been completed.

The ILR proposes the separation of immigration and refugee legislation, and the combination of the immigration and citizenship acts, arguing that these latter pieces of legislation are part of a continuum. Such a division sets refugees apart, as they are not apparently part of the citizenship trajectory. This is reflected in Recommendation 5 of Not Just Numbers where refugees as people are not mentioned:

The Objectives of the Protection legislation should be to: a) Enable Canada to take leadership in the international community...; b) Fulfil our domestic obligations with respect to international humanitarian and human rights law; and c) Uphold our obligations by ensuring that we extend protection only to those who require and deserve it.

In contrast, the first objective of the immigration and citizenship legislation, as stated in Recommendation 4, is to "Facilitate the entry, whether temporary or permanent, of those persons who will contribute to Canada's prosperity and to the economic well-being of Canadians." The implication is that Canada is obliged to protect refugees, but they will not seriously contribute to the economic prosperity of the country.

Gender and language

A major and controversial feature of the report is a proposed official language requirement. In 1996, 41 per cent of Canada's 224,000 newcomers spoke neither French nor English (Galt). Counting official language competence as a criterion for prospective self-supporting immigrants would have a gendered impact. The Canadian Council for Refugees (CCR) notes that official language ability, education, and professional experience are currently factored into selection procedures to the disadvantage of women who have fewer opportunities to acquire such skills and related experience. Single women with children are also found to be less likely to meet the 'ability to establish' criteria (CCR). Women's access to language training is generally less than that of men due to family responsibilities, societal norms, and economic circumstance.

During the 1997-98 fiscal year, the Federal Government paid Ontario \$95.6 million for adult language instruction; the cost to Ontario for children's language instruction was \$236.2 million (f.2) ("Editorial" Toronto Star 1998b). These figures point to the impetus for ensuring linguistic competence in English or French. While Ontario receives 54 per cent of all new immigrants ("Editorial" Toronto Star 1998a), the Ontario government plans a drastic reduction in financing for adult education (Galt). At the same time as provinces want the Federal Government to pay more of the English as a Second Language (ESL) instruction, especially for children who fall under provincial jurisdiction, the Federal Government wants to reduce its spending, not add to it. The authors of the Immigration Legislative Review acknowledge one trend that influenced their report: "'tax fatigue,' deficits and debt have imposed severe financial constraints on governments." Starting from this assumption, immigrants should pay for themselves--at the very least.

Separate and unequal: immigrants and refugees in the new Canadian order

If the recommendations of the ILR were adopted, a two-tier stream of immigration would emerge: on the one hand, a gender-blind stream of employable, well-educated, and linguistically competent immigrants and their families; and on the other, a very different refugee stream of newcomers whose "ability to establish" is no longer a question. There

are already major differences and inequalities between landed immigrants on the basis of immigrant class, but the changes proposed by the ILR would exacerbate these considerably. Just as Nancy Fraser (1997; 1989) has argued that social assistance is a more feminized stream of government aid than (un)employment insurance, which serves the formerly employed in a given economy, so too would the refugee stream be more feminized and marginal to the economy than non-refugee immigrants.

The Review argues that in order to assist the most needy, namely women and children, the "ability to establish" criteria should be dropped. Recommendation 88 states that "... Canada can focus on assisting the most vulnerable, overwhelmingly women and children, as close as possible to their home country." The assumption that women and children are more needy than men is not proven, nor is the assumption that the most needy (read: most worthy) refugees requiring resettlement are located close to their home country where violence or threat of persecution has occurred, rather than at a port of entry in Canada. The implication is that many refugees who arrive at Canadian borders are fraudulent, and while there is no doubt some truth to this, no evidence is presented or case made.(f.3) Instead, it is assumed that gender is a constant defining quality of bona fide refugee status, a premise which is problematic both in legal and political terms.

Speaking of the proposed Protection Act, the Office of the United Nations High Commissioner for Refugees (UNHCR) states succinctly that the "underlying assumption may be that persons seeking protection overseas are more in need than asylum seekers who arrive directly in Canada... If so, UNHCR would respectfully disagree" (Cheadle). The hierarchy of need for asylum outlined in *Not Just Numbers* is not codified in law nor supported in refugee policy. It represents a political decision to reduce refugee claims on Canadian soil. If so, this should be stated clearly for public debate and not veiled in dubious claims of women and children being more worthy than other refugee claimants. Who is more likely to get to a Canadian border to make a refugee claim: a single man or a woman caring for children? From the perspective of controlling immigration, who is a safer bet?

Another important observation relates to the geographical "spacing" implied in *Not Just Numbers*. The most needy refugees, assumed to be women and children, should be assisted as close to their home countries as possible. This attests to a preference to manage the refugee problem "over there," rather than provide resettlement places "over here" in Canada. This vindicates a trend identified by refugee scholars: as states nominally respect their international obligations in refugee law but reduce their resettlement numbers, they increase financial contributions to multilateral organizations-like the United Nations High Commissioner for Refugees-so that they may manage "the refugee" problem far from their own borders (Frelick; UNHCR). This begs the rather obvious question, "protection for whom"--refugees or Canadian borders?(f.4)

Anthropologist Wenona Giles contends that refugees are spatially and

institutionally divided on the basis of gender. She presents evidence to illustrate that the small group of refugees resettled in Canada is biased towards men, and that refugee women and children tend to be helped in a different way and in a different place, namely through international aid in camps near to their home countries (Giles). Using this gendered socio-political map as a heuristic tool, the ILR proposes shifting emphasis from current refugee resettlement to Canada to refugee women and children abroad. While this proposition may sound more gender-sensitive, it is a defensive and rhetorical move to maintain "the refugee problem" at a distance. As Rosalyn Kunin, co-author of the ILR, states, "we have no obligation, no legal obligation to protect refugees who are not in Canada. But Canada is a rich and a compassionate country ... we certainly can solve problems for some refugees abroad" (Kunin). To assist refugees abroad is to prevent them from becoming legal obligations to the Government of Canada in Canada under international refugee law.

Research to discern any gender bias in refugee selection procedures at Canadian visa posts would be a helpful start in addressing this issue. Another way to address this problem is to consider the application of Canada's gender guidelines developed for refugee determination in Canada to overseas selection procedures for refugees. The Immigration and Refugee Board of Canada released these guidelines in 1993, so that women refugees fearing gender-related persecution would be given due consideration in the inland refugee determination process.

To be fair, the 1999 *Building on a Strong Foundation for the Twenty-First Century* document does outline special consideration for particular groups of refugees, including "Women At Risk," victims of torture and violence, the elderly, and unaccompanied minors. These groups tend to be under-represented in mainstream refugee population for obvious reasons, but rather than generate policies to ensure "special treatment" for specific categories of refugees, how can refugee policy in general be rendered more sensitive to the needs of these groups without categorizing or separating them as "special"? One of the most progressive elements of both *Not Just Numbers* and *Building on a Strong Foundation for the Twenty-First Century* is the expansion of the definition of "family" to include common law and same-sex couples, and to include adult children of a greater age. From a feminist perspective, this is a welcome move which reflects the existing and changing nature of Canadian households today.

Globalization and immigration: who gets in?

One can argue that the best immigrants are those that can integrate well and contribute financially to the prosperity of the country in the context of a global economy—a difficult claim to counter. However, when economic productivity prevails as the defining criterion, the diversity of other characteristics such as gender, social class, and cultural background can be compromised.

One very controversial element of *Not Just Numbers* was the proposal to eliminate the Domestic Caregivers from Abroad Program currently in place.

While this program sets lower labour standards for these predominantly female migrants, its elimination would result in more restricted immigration opportunities for this highly gendered stream of prospective immigrants while leaving untouched the problem of replacing these caregivers with more subsidized child care places across the country. Many domestic workers from the Philippines, for example, are highly qualified as accredited teachers, nurses, and accountants in their own countries (Boti and Bautista). Should the domestic caregiver program end however, it is unlikely that they would be eligible for immigration in other categories. Their education and qualifications would likely not be applicable to offers of employment in Canada, a requirement for immigrant skilled workers (see Recommendation 50 in *Not Just Numbers*). They would fall under the "Foreign Worker Program" (see Recommendation 75 in *Not Just Numbers*), proposed by the ILR, or the "Temporary Highly Skilled Foreign Workers" category outlined in the 1999 document issued by the Minister.

Currently, these domestic caregivers (mostly women of colour) subsidize our economy by providing time and energy for many Canadian women and men to participate in the labour force at higher rates of pay. In some sense they liberate Canadian women and men to participate in their communities and to volunteer their time if they so choose. They do so at a very high price, however: most domestic caregivers forfeit their own professional development and post-secondary education to gain experience as a caregiver and learn English working for an employer in Singapore or Hong Kong, so that they can qualify for the current Canadian program. Note the "temporary" status of this proposed group of employable immigrants. Domestic caregivers would lose their access to permanent residence and citizenship despite the fact that many are well-educated, employable, and competent in an official language.

Never before have the state and the corporation been so indistinguishable. Both view human capital as a gender-blind commodity. *Not Just Numbers* declares that

The movement towards a global economy has altered the nature of demand for human capital. Once blocked by both structural and institutional barriers, individuals now seek maximum return for their knowledge, skills and experience, as well as for their accumulated financial resources. Countries (and even large multinational corporations) are competing globally to attract people who can contribute to economic development and growth. This global competition has exposed the shortage of highly skilled workers, crucial to the expansion of vital economic sectors. (Chapter 6, 6.1)

Both the ILR and *Building on a Strong Foundation for the Twenty-First Century* propose that designated employers sponsor employees for immigration to Canada directly, bypassing the previous layers of governmental regulation. Case-by-case determination is deemed inefficient and inconsistent, and does not maximize the net economic benefits of immigration. It may well be true that this option would save time and

lawyers' fees in navigating a heretofore micro-managed and occupation-based set of immigration laws and regulations:

We are proposing a major shift in the identification of labour market needs from the government to the private sector... We propose a process whereby the prospective foreign workers of these companies could apply directly to visa offices abroad and receive decisions within days rather than weeks or months. (Chapter 6, 6.6).

There is, however, no consideration of whether this desire to attract highly skilled human capital is gendered. Rather, the one predominantly female immigration stream is on the chopping block, while an open door is proposed for other, more highly skilled sources of human capital.

Designer immigrants only?

Responding to charges that the language proficiency requirement is racist, Susan Davis, a co-author of the Review said "[i]t's not that we want designer immigrants, it's not that we want them from English speaking countries only" (qtd. in Galt). Nonetheless, it is clear from this short analysis that such requirements will weed out some women and people in non-English and French-speaking countries from the proposed self-supporting class. The proposals outlined in both the ILR and the more recent CIC document may well create a two-tier system of immigration to Canada: on the one hand, a wave of highly qualified immigrants who are more likely to be male than female given the prerequisite education, language, and skilled employment experience; and on the other, a small marginal group of refugees which will not be assessed on their "ability to establish," but will be chosen from embassies and consulates overseas, rather than accepted from ports of entry here in Canada. This distinction between the best and brightest versus the vulnerable and deserving could not be more starkly drawn.

Not Just Numbers proposed very gendered streams of masculine expertise and feminized need. Building on a Strong Foundation for the Twenty-First Century suggests very much the same arrangement. Self-supporting immigrants and their families will be worth Canada's while, whereas the handful of refugees accepted for resettlement will be worthy of Canada's shrinking humanitarian hospitality. The least desirable group is that which is not chosen by either Canadian immigration authorities nor designated employers, namely refugee claimants. Refugees, who are predominantly women and children, should be helped as close to home as possible where they are little burden to the Canadian economy and the taxpayer.

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2000.

Footnotes

(f.1) On-line access to both reports is available from the Citizenship and Immigration Canada (CIC) homepage:
http://www.cicnet.ci.gc.ca/english/about/policy/legrev_e.html.

(f.2) For British Columbia, ESL students, the province paid "about \$70 million" annually ("Editorial," *The Vancouver Sun*, Feb. 27, 1998).

(f.3) Citizenship and Immigration Minister Lucienne Robillard made her point regarding fraudulence in a recent report to a House of Commons committee ("Grit Tough on Aliens, More Getting the Boot: Minister"). She noted that the deportation of illegal immigrants and refugees is up 36.5 per cent in 1997 as compared to 1996; "4,800 bogus refugees got the boot, and increase of more than 95 per cent..." Robillard was responsible for creating an immigrant centre that works with police to hunt down illegal immigrants and bogus refugees.

(f.4) I am grateful to Dan Hiebert for this particular phrasing of the issue.

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