"Canadian Immigration Policies: Securing a Security Paradigm?"

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Abstract

Security is increasingly becoming a main concern in Canadian society. Post 9/11, the challenge for Canada is to strike a balance between maintaining the flow of immigration necessary for its demographic and economic development and projecting an image of openness at a time when security measures are globally being strengthened. In the post-9/11 context, it is important to assess the extent to which security concerns have infiltrated policy discourse and choices to evaluate whether these concerns are changing the overall objectives and goals pursued by the Canadian government through policy realms such as immigration. We argue that the security logic has become embedded since 9/11. Although security concerns were becoming increasingly prevalent through the 1990s, the post-9/11 period has allowed the security agenda to prevail over the human rights agenda and concerns for civil liberties. The emphasis on criminal law to address terrorism and the use of immigration policy to impose security measures is a step away from upholding goals of social justice, equality, and openness that are still central to its policies. The paper addresses these concerns and examines options to allow human rights and citizenship rights concerns to prevail.

Résumé

La sécurité est devenue une préoccupation importante au sein de la société canadienne. Après les événements du 11 septembre 2001, le défi auquel font face les autorités canadiennes est d'établir un équilibre entre la nécessité de maintenir le niveau d'immigration nécessaire pour répondre aux besoins démographiques et économiques tout en continuant à projeter une image d'ouverture dans un contexte marqué par un renforcement des mesures de sécurité. Il importe d'évaluer dans quelle mesure les préoccupations liées à la sécurité ont infiltré le discours et les choix politiques et ont modifié les objectifs et les buts poursuivis dans le domaine de l'immigration. Nous soutenons que la logique sécuritaire s'est implantée dans le discours et les pratiques depuis le 11 septembre 2001. Bien que les inquiétudes autour des questions liées à la sécurité aient été présentes de manière plus marquée au cours des années 1990, la période qui a suivi le 11 septembre 2001 a fait en sorte que l'agenda sécuritaire a pris le pas sur les préoccupations liées aux droits de la personne et aux libertés civiles. L'accent mis sur le droit criminel pour contrer le terrorisme et le recours à la politique d'immigration pour imposer des mesures sécuritaires éloigne le Canada des objectifs portant sur

des considérations de justice sociale, d'égalité et d'ouverture. Cet article se penche sur ces enjeux et identifie les options permettant de recentrer l'attention sur les droits de la personne et les droits citoyens.

Security is increasingly becoming a main concern in Canadian society. In his 2001–2002 annual report, delivered to Parliament in 2003, Canada's Privacy Commissioner raised profound concerns regarding the protection of the private lives of Canadians with the adoption of security measures that followed the events of 9/11. The Commissioner stressed that, in the name of protection against terrorism, the proposed security measures have considerably reduced civil liberties. The measures that caused concern included such things as surveillance of all forms of communication, monitoring of public places, and the creation of a database of foreign travels (Canada, Privacy 2002). In this context, it is not surprising that questions linked to the mobility of persons, and more precisely to immigration, have come to incorporate in their conception, security measures as they are defined by the state.

Canada's aging population has resulted in a demographic deficit in the labour force that successive governments hoped to rectify through an open immigration policy. In addition, its international reputation deems Canada as a place of choice for many people seeking refugee status. Canada wants to continue to project, both to its own citizens and to the world at large, an image of openness with respect to immigration. Post-9/11, the challenge for Canada is how to maintain the flow of immigration necessary for its demographic and economic development, to project an image of openness by welcoming individuals whose security is at risk, while taking into account the worries of its own population—as well as those of its powerful neighbour, the USA—of the real or imaginary dangers represented by "strangers" at a time when security measures are being strengthened globally. In his 2003–2004 annual report, Canada's Privacy Commissioner stated that smart borders are far from an adequate response to the threat of terrorism and they make the state spend a colossal amount on tracing individual profiles of those engaged in suspicious behaviour (Canada, Privacy 2004). In sum, the response to the new security concerns has been inefficient and likely an impediment to other policy objectives.

In the post-9/11 context, it is important to assess the extent to which security concerns have infiltrated policy discourse and choices to evaluate whether these concerns are changing the overall objectives and goals pursued by the Canadian government through policy realms such as immigration. Several authors have pointed out the fact that immigration policies are increasingly complex, and sometimes contradictory. They mention the irreconcilable goals of such policies: securing labour, reducing social costs, maintaining public order, integrating newcomers in the appropriate institutions, maintaining national identity, etc. (Castles & Davidson 2000; Hollified 2005). Has the Canadian government

fundamentally altered the goals pursued through its immigration policy as a result of emerging security concerns in the post-9/11 period, or have the immigration policies and measures merely been *adjusted* to reflect these new security concerns without affecting the goals previously advocated?

Immigration vs. Security

Three emerging concerns in the post-9/11 context frame the Canadian approach to immigration, citizenship, and security: the identification of new threats to security; continental integration, i.e. a pull towards greater economic integration with the USA, accompanied by pressures for harmonization in security, immigration, and border control; and, most significantly, when confronted with situations that are seen as potentially dangerous, an emphasis on security over human rights and citizenship rights.

Security concerns were not new to states. Indeed, following the collapse of the Soviet Union, the mujahedeen, who had been encouraged, supported, and even trained by the CIA, turned their attention to new targets, including their former allies; several American interests and consulates worldwide were attacked in the 1990s. More specifically to Canada, both the Smart Border Agreement—a bilateral agreement with the United States that was signed on December 12, 2001—and the *Immigration and Refugee Protection Act* (*IRPA*), the new immigration legislation that obtained royal assent on November 1, 2001 but was first presented in the House as Bill C-31 on April 6, 2000, had been developed much before 9/11 (Abu-Laban & Gabriel 2003, 291). The events of 9/11 simply hastened their formal adoption.[1] Moreover, with respect to border control issues, some consider the Ahmed Ressam Affair (the arrest on New Year's Eve 2000 of the "Millennium Bomber," an Algerian national who had been living in Canada for five years when he was arrested while attempting to enter the USA with a trunk full of explosives intended for the Los Angeles airport) as the beginning of the politicization of the Canada–US border (Andreas 2005, 454). From that point on, Canada was often pointed out by US politicians and media as having lax immigration policies and soft laws on political asylum, hence the politicization of the border issues.

Following 9/11, governments in Western countries rushed to find new ways to address a threat that was now seen as much closer to home than before. The fact that the attacks of September 11 took place on American soil changed the pre-9/11 perspective. This new context legitimized security measures that would have been viewed as intrusive otherwise. Public opinion polls taken in 2001 and 2002 repeatedly showed that people were willing to give up some freedom in exchange for security (Ipsos-Reid 2001; Adelman 2001, 15). We note that this new public mood was, in part, a reflection of the way the danger was conceptualized in official circles; a perception that was in turn disseminated and popularized by the mass

media. The resulting popular mood allowed the fast-track adoption of anti-terrorist legislation that gave government access to increased surveillance mechanisms.

Migration controls have become increasingly understood as part of the securitization agenda (Bigo 2002, 63). As Crépeau and Nakache explain, securitization "as a process means that the sphere of internal and external security are merging after a period of polarization in which those two areas of activity had hardly anything in common" (Crépeau & Nakache 2006, 4). In this new context, states have come to associate new threats with migrants: terrorism, international criminality, and unemployment (Crépeau & Nakache 2006). Furthermore, when assessing how the anti-terrorism law has been used in Canada, it becomes evident that the security agenda has been tagged onto the immigration policy realm. Kent Roach, a legal scholar who has closely studied the impact of the anti-terrorism law from its development on, has argued that immigration laws have been used to respond to the threat of terrorism, rather than the provisions set out in criminal law by the adoption of the anti-terrorist law (Roach 2003, 21; Roach 2004, 64; Roach 2005). For example, Canada has become less accessible to certain categories of refugee claimants through the adoption of the Safe Third Country agreement. The Canadian Council for Refugees (CCR) estimates at approximately 2500 the number of Colombian nationals who did not make a refugee status claim in Canada in 2005, the first year of implementation of the agreement (Canadian Council for Refugees 2005, 8). Moreover, Canadian authorities have used immigration laws as a way to detain individuals suspected to be involved in terrorist activities. The use of immigration laws is appealing to authorities, for it allows for a degree of secrecy and administrative leniency that is not standard in criminal law (Roach 2005). Since 2001, five of the six security certificates issued (a measure used to detain refugees or permanent residents indefinitely without charge on secret evidence) have been against individuals of Muslim faith. Several civil rights organizations (e.g. CCR, *Ligue des droits et libertés*, Amnesty International) as well as Arab and Muslim organizations (e.g. Canadian Council on American–Islamic Relations in Canada, Canadian Muslim Civil Liberties Association, Canadian Arab Federation) have denounced the use of security certificates, which are perceived as evidence of religious profiling.[2] A review of the use of security certificates and detentions enacted under the *Immigration and Refugee Protection Act* (*IRPA*) demonstrates that "the *IRPA* provides much broader powers to arrest and detain foreigners on security grounds" (Crépeau & Nakache 2006, 22). In contrast, the preventive arrest and detention measures set out in the *Anti-terrorism Act* of 2001 have not been used and, in February 2007, the Canadian House of Commons voted against extending these measures for a longer period of time. In this respect, it has been argued that the anti-terrorism laws have been merely symbolic in the fight against terrorism (Roach 2003, 15), while immigration laws have been

used for the practical end of controlling borders and migrants, attempting to keep out refugees and illegal immigrants, who have been perceived as one of the new threats in the post-9/11 era.

A second concern with respect to post-9/11 changes has to do with the pressures for continentalization and economic integration. Again, these are not new phenomena. We need only think of the Free Trade Agreement signed by Canada and the US in 1988 and the North America Free Trade Agreement (NAFTA) signed in 1993. These agreements created pressures for lifting border controls perceived as barriers to cross-border trade. However, post-9/11, the deepening of this integration is accompanied by pressures to harmonize policies with the USA for security purposes. As Macdonald described it, a new stage of regionalism has been reached in North America. Whereas the first phase of integration was one driven by the discourse of neo-liberalism and marketized citizenship, the current phase "is based on distinctly different assumptions about the respective role of the state, citizen, and market" (Macdonald 2005, 9; Adelman 2001, 20). Post-9/11, with renewed interests for a common North American security perimeter (Abu-Laban & Gabriel 2003, 300), increased securitization of regional integration is what is driving the agenda. The overall consequence of this state of affairs is to jeopardize Canada's ability to develop its own policies in the fields of immigration, military defense, foreign affairs, and other areas important to Canada's sovereignty. By attempting to comply with demands for harmonization on the security front, Canada is compromising its international reputation for peacekeeping, and for respect for human rights and international law. Despite the fact that Canada's compliance with the security demands of the US was driven by the economic imperative of keeping the border open, its participation as a military force in the "war against terrorism," its contribution in the capture of prisoners turned over to the Americans and transferred to Guantanamo Bay and more recent transfers of prisoners to Afghan security forces, and its stricter refugee policy resulting from its compliance to the Safe Third Country Agreement, are but a few examples of how security has been used to comply with American pressures and how it resulted in a failure to protect human rights.

Finally, the two points made above indicate that, since 9/11, Canada has chosen the security agenda over the human rights and citizenship rights agenda. Crépeau and Nakache speak of opposing paradigms that need to be reconciled: the human rights paradigm that lends itself to being more inclusive and serves to protect the rights of citizens and non-citizens alike, versus the security paradigm used to exclude people through stricter immigration and refugee policies, as well as through border controls. There is a need to assess government decisions and policy choices in light of both sets of concerns to ensure that security concerns do not become the sole determinant of government responses at the turn of the 21st century.

Immigration and the Internationalization of Politics: A Preoccupation of the 1990s

Over the course of the 1990s, three processes underlay the politics of managing diversity: the implementation of neo-liberal policies, centralization, and internationalization. These processes span three domains and play a role in structuring and redefining them: immigration and asylum policy; citizenship; multiculturalism and Canadian identity (Labelle & Salée 1999, 125–144; Labelle & Rocher 2006, 152–153).

The main themes of governmental discourse by federal authorities reference national and international debates on public policies, partnership, security, the flexibility and quality of economic immigrants in the context of information and knowledge societies, membership, Canadian identity and unity, individual responsibility, and social cohesion (Citizenship and Immigration Canada, Permanent Committees of the House of Commons and the Senate, Privy Council Office, etc.) (Labelle & Rocher 2006, 152).

In the course of the 1990s, the Canadian state made immigration and citizenship a priority. The Immigration Law of 1976 was considered obsolete. Issues of national security increasingly became a concern in the selection process of immigrants. Although it is post-9/11 that international migration came to be reframed as a problem of "national security," in the period leading to 2001, immigration was raised from being an issue of *low politics* (demographics, and labour) to one of *high politics* (international relations, security) (Abu-Laban & Gabriel 2003, 293). During this period, the Canadian state focused on a rigorous selection process, favouring individuals able to contribute significantly to the economy (investors, entrepreneurs, skilled workers); on gauging the truthfulness of demands for political asylum; on assessing the ability of newcomers to adhere to Canadian institutions and values; and on the valorization of Canadian citizenship (Labelle & Salée 1999, 135).

According to Lisa Maria Jakubowksi, this immigration policy aimed at reassuring the population, worried by an increasingly "visible" immigration, by the presumed abuse of Canadian generosity by migrants from Third World countries, and by the threat that exotic cultural and religious expressions could possibly pose to the cohesion of Canadian society (Jakubowksi 1997).

In the course of the 1990s, Canada developed a number of partnerships with industrial countries with the objective of limiting "the flux of irregular migration." This translated into a harmonization of policies with the United States and increased security at airports and at borders (Crépeau 1996, 18). The documents produced by the federal government focus on punishing abuses of the social services of the welfare state, on repressing the

internationalization of crime and the trafficking of labour, and on welcoming "real" refugees (Canada, Citoyenneté 1994a, 1994b).

The new *Immigration and Refugee Protection Act*, which came into effect in June 2002, replaced the *Immigration Act* of 1976. In 1996, the federal government named a Legislative Review Advisory Group to revise the existing legislation. In its 1997 report, it announced the values and principles that would serve as a base for immigration and refugee protection policies. The group proposed 172 recommendations that touched upon almost all aspects of the politics and legislation of immigrant and refugee selection (Canada, Immigration 1997).

The Group's propositions revolve around the following elements: a legislative framework that ensures clarity, transparency, and the participation of the provincial governments and other responsible key players; the reinforcement of the category of family as the cornerstone of Canadian immigration, with elements of liberalization and restriction; a method of selection of independent immigrants based on the necessary qualities for success in a fluctuating labour market, rather than on the basis of a specific profession; a program of immigration for business people that can contribute to the Canadian economy; a more open policy towards temporary foreign workers; the creation of an agency in charge of the protection of refugees to Canada and abroad and measures to ensure protection and minimize abuse; the application of laws that focus on detention to ensure the respect of rules and a system of technological control resting upon a system of smart cards for those targeted by the measures stated in the law.

In 1997, the Immigration Legislative Review Advisory Group (the Trempe Report) suggested favouring the entrance of individuals able to make an immediate contribution to the Canadian economy and the enrichment of Canadian culture, the building of favourable conditions for immigrants to enjoy full citizenship, the sanctioning of family, and the preservation of health and the security of the whole country (Canada, Immigration 1997, 12). It advocated a more restrictive set of criteria for the selection of the economic segment of the Canadian immigration program, a larger set of responsibilities for sponsors of immigrants, and greater financial autonomy of immigrants. The Group also called for a reduction in the costs of integration of immigrants (notably the costs tied to learning an official language and social assistance).

These general orientations were revised in 1998 in a document entitled *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation,* which proposed new directions leading to the formulation of a new *Immigration Act*. The new immigration policy aimed at attracting a specialized and mobile population to coincide with the needs associated with the technological and economic

transformations of Canadian society. It was also designed to undermine the soaring numbers of illegal immigrants and limit the trafficking of women and children (Canada, Citoyenneté 1998, 1–2 & 10–11). Security measures aimed at stopping people who could potentially engage in criminal activities from coming to Canada; these were not focused on denying access to individuals who could be tied to "terrorist" activities, but to criminals (Canada Citoyenneté et Immigration 1998, 10).

On 21 February 2001, when *Bill C-11* was introduced in the House of Commons, the Minister of Citizenship and Immigration, Ms. Elinor Caplan, "reaffirm[ed] her commitment to be tough on criminals while strengthening efforts to attract skilled immigrants." On the same occasion, she specified that the *Bill* allowed the imposition of severe penalties up to one million dollars and life imprisonment for individuals who illegally brought people to Canada or who engaged in the trafficking of human beings. The *Bill* also focused on accelerated reunification of families and the maintenance of the Canadian humanitarian tradition of welcomeing people who need to be protected: "By saying 'No' more quickly to people who would abuse our rules, we are able to say 'Yes' more often to the immigrants and refugees Canada will need to grow and prosper in the years ahead" (Canada, Citizenship 2001).

These new directions confirm the complementary nature of the political and normative objectives of immigration and Canadian citizenship (Labelle & Rocher 2006, 154). Thus, the document stated that on top of the fact that immigration is deeply embedded in national consciousness, its nature and function must from now on respond to the need for economic prosperity and social cohesion (immigrants are expected to share the values of equality and respect for diversity, which form the basis of a vision of Canadian society—one based implicitly on the concept of multiculturalism) (Canada, Citoyenneté 1998, 9). In this way, the new immigration policy would have to put forward the idea of responsible citizenship (an equilibrium between rights and responsibilities). The new orientations reflected the concerns of Canadian political authorities with respect to security (like those of the principal industrialized countries). Several bills were introduced in the House of Commons in the period between 1998 and 2001. Finally, *Bill C-11* or the *Immigration and Refugee Protection Act (IRPA)* was adopted in November 2001. It is worth mentioning that although the measures from *IRPA* came into effect on 28 June 2002, these measures were developed before September 2001.

The Minister of Citizenship and Immigration did not fail to mention that the *IRPA* contained measures that are more severe in the case of individuals suspected to be a threat to public security. Estibalitz Jimenez and François Crépeau outline these stricter controls. They mention strengthened powers of detention, the expansion of inadmissibility categories (e.g., security concerns, human rights violations, health reasons, etc.), restrictions to the

rights of migrants to appeal decisions, tougher penalties for persons who break the immigration law, strengthened removal orders, and tougher penalties against trafficking regardless of whether humanitarian concerns are at play (Jimenez & Crépeau 2002)

Some of these measures did not go uncriticized. Organizations defending refugees denounced the strengthening of the rules and mechanisms of protection that would affect their entry into Canada. They were particularly shocked by the link established by the Minister between asylum seekers and criminality, or threats to national security (Sinha & Young 2002, 49.). The legislation was therefore criticized by some for being overly insistent on the notion of criminality rather than highlighting the welcoming nature of Canada's immigration and refugee programs.

However, in its entirety, the tone of *Bill C-11* and the political rhetoric surrounding *IRPA* stressed the fact that Canada remains a welcoming country for immigrants and refugees, and the necessity of maintaining the nation's humanitarian tradition. This insistence was instrumental in shaping the objectives and character of the immigration policy: enlarging the human resources pool (attracting skilled workers and business people) and stimulating economic, social, and cultural development (responding essentially to the needs of the market). Nevertheless, this tone hid the fact that the *IRPA* privileged security concerns (Canadian protection, border control, battles against migrant "threats," and "false" refugees) over imperatives linked to the settlement and integration of immigrants (Nakache 2003). A relative erosion of the legal protections accorded to migrants accompanied the restrictions to immigration brought about by this new policy. The erosion of the rights of migrants is not particular to Canada, but rather common to all receiving countries. Canada, due to its geographical isolation, is likely better protected from irregular immigration. Moreover, as a result of its *Charter of Rights and Freedoms* (which imposes limits on certain policy choices), it is less likely to enact the harshest control measures. Regardless, the more recent international security agenda has reinforced pre-existing restrictive tendencies within the Canadian context (Crépeau & Nakache 2006, 18).

Among the elements of the new legislation that were well received by groups defending the rights of refugees was the provision for a Refugee Appeal Division (RAD). The refugee determination procedure was to include a quasi-judicial mechanism for appealing negative refugee decisions. Since the elaboration of a system of determination of the status of refugees in the 1980s, groups that defend the rights of refugees have continually criticized the absence of such a mechanism.

Nevertheless, in spite of obligations imposed on the government in the legislation, the RAD was never implemented. In November 2005, during a meeting of the Standing Committee on Citizenship and Immigration

concerning the estimates of refugees admitted to Canada, the Minister justified the decision of not having the RAD by highlighting the fair character of the system in place. The main objective of the current system is to guarantee protection to those in genuine need. Mr. Volpe, at the time Minister of Citizenship and Immigration under the Martin Liberal government, claimed that the first-level decisions are made by trained decision-makers with solid institutional support. Moreover, safeguards are built into the system, whereby refugee claimants can bring forward new evidence or changes in their circumstances to the attention of the Pre-Removal Risk Assessment Officer. Adding an appeals division to the system would be inefficient, he claimed. As the Minister explained: "Canada's refugee system is by no means perfect. It still takes too long for decisions to be made and too long for decisions once they are made to have any effect. Simply adding another layer of review or appeal to what we already have will do little to address this shortcoming. In fact, it may make it worse" (Canada, Citizenship 2005).

This position is shared by the Harper government. In December 2006, Citizenship and Immigration Canada published a series of fact sheets on refugee issues. One specifically addresses the question of the Refugee Appeal Division. It reiterates that the costs of implementing the RAD would be considerable and that the resulting delays in the refugee determination process would be greater. Moreover, despite the absence of RAD, it is claimed that "the Government of Canada continues to meet its international and domestic obligations with respect to refugee protection. The system focuses on getting the decision correct at the first level, with highly qualified and well-trained decision-makers" (Canada, Citizenship 2006). Opposition to the missing Refugee Appeal Division continues to be heard.[3]

The *IRPA*, while expanding the list of motives that could not be invoked to deny a refugee claim, has also allowed the majority of hearings to take place in front of a single judge rather than a panel of two judges. This is also problematic with respect to ensuring a fair process. Moreover, recent events around the nomination of members to the Immigration and Refugee Board (IRB) have put into question the legitimacy of the Board. The IRB president and the five remaining members of the board that oversaw the nomination of members to the IRB (based on a revamped merit system implemented in 2004) resigned in March 2007 in protest over changes brought about by the Harper government. Despite the fact that the 2004-revised appointment system was implemented to fix patronage accusations faced by the Liberals, in February 2007, the Harper government has announced that the Immigration minister would appoint half the members on the advisory panel that selects IRB members (Jiménez 2007). The nomination process is once more being compromised through renewed politicization of the system. The fairness of the refugee determination process must be

considered when assessing the primacy of security over human rights concerns. Although it is too early to tell what the impacts of the changes to the advisory panel will be, this is something that should be included in future evaluations.

Immigration and Security Post-9/11: An Integrated Approach

Although the immigration and security portfolios are attached to different ministries, the problems involved therein are definitely interlinked. More specifically, the 9/11 attacks, like the upsurge of incidents aimed at US targets abroad, have led many Western states to not only strengthen their borders against enemy intrusions, but also to adopt a series of measures against the "enemy" hiding within their own walls. Canada is no exception to this. After 9/11, many security measures were adopted: the *Anti-Terrorist Bill* (C-36) of December 2001; The Smart Border Declaration, and its 30-point action plan, signed by Canada and the US on 12 December 2001; the creation of the Public Safety and Emergency Preparedness Canada portfolio (PSEPC) on 12 December 2003[4]; the adoption of a new foreign policy called *Securing an Open Society,* launched in April 2004[5]; The *Safe Third Country Agreement,* an element of The Smart Border Agreement that came into effect on 29 December 2004; the Security and Prosperity Partnership of North America of 23 March 2005 negotiated between the leaders of Canada, the US, and Mexico; and, *The Department of Public Safety and Emergency Preparedness Act,* that came into effect on 4 April 2005.

Several measures had an impact on racialized minorities, refugees, and immigrants. A willingness to change how refugees and asylum seekers are treated can be noted. For example, the Minister of Foreign Affairs and International Trade insisted on the necessity of "[r]eview[ing] refugee/asylum practices and procedures to ensure that applicants are thoroughly screened for security risks and take necessary steps to share information on refugee and asylum claimants" (Canada, DFAIT n/d). Also noted was a willingness to establish, conjointly with the US, a database to facilitate information sharing on refugee and asylum seekers.

The Smart Border Action Plan Status Report, dated 17 December 2004, highlights the progress achieved on several aspects of the plan. It signalled, among other things, the signing of a protocol between Canada and the United States that would make the exchange of information related to immigration, including information concerning asylum seekers, more efficient. This measure should make it easier to identify individuals who pose a criminal threat to security or are inclined to criminal activities. Moreover, Canada and the US agreed to develop common standards for the biometrics.

Canada deployed a network of migration integrity officers in 39 key countries to combat illegal migration. The work of these officers consists of intercepting people intending to enter Canada with false documents before their actual arrival. The Smart Border Action Plan Status Report estimated that the officers have intercepted 72% of the individuals who tried to access Canada illegally, before they arrived in Canada. This amounts to 6000 individuals (Canada, DFAIT, n/d). It is also important to highlight that the government has increased the funds allotted to improving the screening of immigrants, refugees, and visitors, in order to reinforce its capacity to refuse and/or place under surveillance people who represent a threat to Canada. It created the Immigration Intelligence Network (part of the Canada Border Services Agency) to better filter out possible suspects involved in terrorism. Indeed, border controls, security measures, and immigration procedures come together to help the government in the selection of genuine refugees. The *IRPA* called for the strictest penalties and new sanctions against clandestine immigration. In addition, in the case of 10 countries, new demands were placed upon those wishing to obtain a visa (Canada, Privy Council 2005, 45–48).[6]

All these measures, however, did not create a decline in the number of applications for Canadian immigration. Canada welcomed more than 200,000 newcomers each year during the 1990s (with the exception of 1998 and 1999), as shown in Figures 1 and 2. By the same token, one can note a small decline until 2004 between different categories of immigrants, economic immigrants (skilled workers, business people, etc.) always being dominant over the other categories. Thus, in 2004, Canada admitted 235,824 new permanent residents. Among those, 57% were economic migrants and their dependents, 26% fell in the family reunification category, 14% were refugees and other protected persons (including 15,901 asylum seekers recognized as refugees), and 3% were admitted on humanitarian grounds.

This shows that the flow of immigrants has not diminished post-9/11, and the facts tend to show that Canada has remained "open" to it. However, since the Safe Third Country agreement between Canada and the US was put into effect on December 29, 2004, an important decrease in the number of demands from asylum seekers can be noted. It has become quasi-impossible to demand refugee status at Canadian borders. In fact, the Accord requires Canada to return to the US those coming from a third country and presenting themselves at the Canadian–American border. To be able to fly to Canada, the seekers must obtain a vacation visa from the Canadian embassy. Once at the airport, they must show identification before boarding the plane. These measures have made it so difficult to claim refugee status that the difference in the number of asylum seekers between

Figure 1: Total Immigration to Canada, 1962—2004
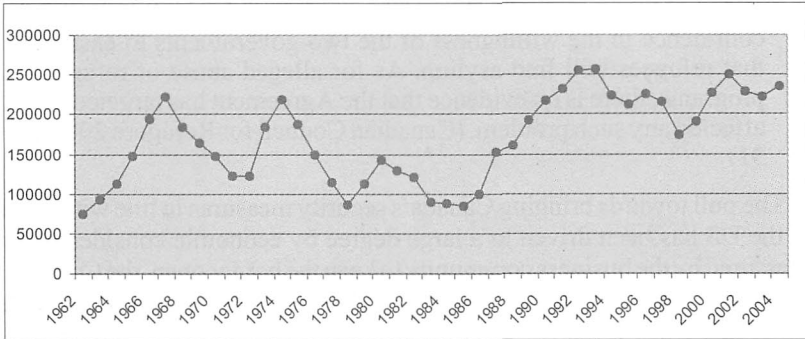
Source: Stastics Canada

Figure 2: Immigration Admissions — New Permanent Residents, 1999-2004
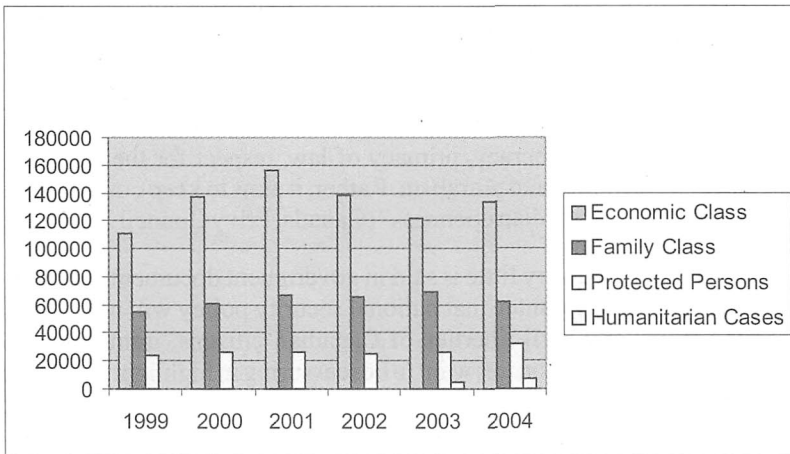
Source: Citizenship and Immigration Canada, Annual Reports, Various years.

2001 and 2005 has decreased by 56%, from 44,714 in 2001 to 19,624 in 2005 (Perreault 2006, A16) . The Canadian Council for Refugees denounced this situation in the following terms:

> The Canadian and US governments have stated that the purpose of the Agreement is to "enhance the orderly handling of refugee claims, strengthen the public confidence of our asylum systems and help reduce abuse of refugee programs." In these respects, we maintain that the Agreement has failed. The orderly process of making claims at the border has been replaced by a disorderly situation where people are ill-informed and, when they do have

> information, often find that saving their lives may mean risking their lives—by having to seek recourse to smugglers. We represent at least one section of the public that now has a weakened confidence in the willingness of the two governments to ensure that refugees will find asylum. As for alleged abuse of refugee programs, there is no evidence that the Agreement has targeted or affected any such problem. (Canadian Council for Refugees 2005, 31)

The pull towards bringing Canada's security measures in line with those of the US has been driven to a large degree by economic considerations. Pressured by the business community to keep the border open, the Canadian government feared that the tightening of border controls would hurt trade between the two countries, a trade on which the Canadian economy greatly depends (Doern 2003a & 2003b; Hale 2003; Whitaker 2003a). In this regard, according to government documents, the goals of this policy were to ensure "that North America remains the most economically dynamic region of the world and a secure home for its people [...]" (Canada Privy Council 2005, 50). By the same token, it is said in *Canada's International Policy Statement* that "[s]ince 9/11, the security dimension has received more emphasis, leading to unprecedented levels of cooperation between Canada, the United States and Mexico on border management, asylum and refugee policy, and counter-terrorism efforts" (Canada, DFAIT, 2005, 6). Canadian security policy is said not to conflict with fundamental values of Canadian politics: democracy, primacy of law, respect for the rights and fundamental freedoms, and pluralism. Rather, it aims to keep out the people who would "abuse Canadian openness" (Canada, Privy Council 2005, 5).

On the other hand, very little is said in government documents about the measures that will guarantee that national security policy will not infringe upon the rights and civil liberties of Canadian citizens, immigrants, or refugees. Canadian authorities want to be reassuring in highlighting the fact that the state is equipped with mechanisms that would prevent such abuse, most notably with the establishment of the Security Intelligence Review Committee, which oversees the activities of the RCMP, making sure it exercises its power in accordance with the laws and politics of Canada. However, the Arar Commission (Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar)[7] brought to light a different reality when it put forward a call to set up a mechanism for examining the national security activities of the Royal Canadian Mounted Police. The objective is to create a new mechanism to track down abuses of power and incidents of racial profiling. The findings of the Commission are evidence of the state's failure to balance security concerns and human rights issues.

As the Council of the European Union states, terrorism constitutes a threat not only to security, but also to the principles of openness and tolerance. Macleod and Ricard-Guay concluded that the models of

integration (the institutional responses to diversity: multiculturalism and the republican [in the French sense] model of integration) in France and Great Britain have failed. As they said, in this context, it seems paradoxical that governments would proudly announce their willingness to fight against racism and exclusion, that they finance action plans in these domains, without, however, putting into question security and immigration measures that feed anti-immigration sentiments (2006). This comment highlights questions that also need to be asked about the Canadian situation. As it was pointed out in one of the interviews with a person from CIC, Canada has yet to put into question multiculturalism as an integration model. This is something soon to come. Similar to the European cases mentioned above, Canada has enacted an Action Plan Against Racism without so much as recognizing how security measures impact differently certain categories of people or how the civil rights of certain groups are more likely to be compromised.

As a result of the prevalent security discourse in North America, Arab and Muslim communities have been put under surveillance. During this period, stereotypes were reinforced by American government talk about "dormant cells" linked to terrorism, "the axis of evil," and the clash of civilizations thesis, inspired by Samuel Huntington (Huntington 1993). This thesis claims that the conflicts that will dominate the "global politics" of the future will be between cultures and civilizations, that cultural and religious differences are not changeable, and that, consequently, cultural conflicts are less easy to resolve than political and economic differences (Labelle 2006). This discourse propagates the idea of an "internal enemy" and lends itself to justifying the need for smart borders to combat terrorism and even the need for torture on the basis of a faulty argument.

The Canadian Council on American-Islamic Relations (CAIR-CAN), relying on a pan-Canadian survey of Muslim communities, has documented the prevalence of incidents of religious profiling (2005b). In this respect, Canada has reinforced its ties to the US as it defends the integrity of its borders. The idea of a smart border has become an integral part of these new measures associated with the fight against terrorism. Several Arab and Muslim associations have denounced the security provisions put in place since 9/11. For example, CAIR-CAN claims that the "*ATA* [*Anti-terrorism Act*] invigorated security agencies to investigate Muslim and Arab citizens" (CAIR-CAN 2005a, 7). The problems associated with the *ATA* are not limited to abuses of power. As they explain, "introducing 'ideology and religion' into discussions of terrorism legitimizes intrusive and witch-hunt type questions" (CAIR-CAN 2005a, 7). This happens as the Canadian authorities continue to deny that racial and religious profiling have become more prominent as a result of these security measures, particularly profiling that targets Arabs and Muslims.

With respect to security, it is possible to think that Canadian policies are geared to quickly respond to the pressures coming from the United States. For example, after 9/11, the Chrétien government responded to the expectations of the Americans and declared that the Canadian military would take part in the international coalition, a policy which has also been pursued by the Harper government. It also understood, as a result of pressures exercised by the business community, that it must put in place mechanisms to ensure border safety without impeding the flow of merchandise at the border (Whitaker 2003b, 254). In this way, the Canadian agenda was not centered on security as much as on fulfilling American expectations towards Canada with respect to its role in the international coalition against terrorism and its efforts towards border controls (Whitaker 2003a).

All of this indicates that the events of 9/11 brought questions related to security and border control to the forefront of public discourse. But these questions were already being debated by political authorities in Canada and the US. September 2001 thus permitted the acceleration of a process that was already in motion. As Reg Whitaker reminds us, there are no doubts that the US profited from the incertitude about security, which allowed them to reinforce their corrective measures by obtaining the support of a large segment of society. A process of readjustment between the imperatives linked to security and those related to the protection of civil rights has thus taken place (Whitaker 2003b, 252). But if the context in which the politics of security had changed, the content of these politics remained rather static. In other words, well before 9/11, the issue of border control had preoccupied political authorities. In the framework of NAFTA or FTAA, the stakes linked to deregulation of borders and the establishment of a security perimeter had already been the topics of discussion (Hale 2003, 35).

Critics of the *Terrorism Act* are not limited to Arab and Muslim groups. They come from a variety of actors: the Canadian Bar Association, the Canadian Council for Refugees, the Canadian-Arab Federation, the Association of Muslim Lawyers, and the Bloc Québécois and New Democratic Party, to name only a few (Labelle & Rocher 2006, 158). They claim that the *Act* restricts civil liberties, tramples the right to privacy, and encourages stigmatization and stereotyping of certain immigrants and refugees who are seen as a "threat" to national security.

According to Abu-Laban and Gabriel, "this has prompted some to suggest that public attitudes in the immediate aftermath of disaster are akin to the conditions that gave rise to McCarthyism in the US during the 1950s and to the internment of Japanese Canadians during World War II" (Abu-Laban & Gabriel 2002, 476; Abu-Laban 2002). For example, citizens of Iraqi origin feared incarceration as "internal enemies" during the war in Iraq in 2003. For example in the case of Quebec, to dissipate these fears and

address acts of racism and racial intolerance, the former Premier of Québec, Bernard Landry, the Council for Intercultural Relations in Quebec, and the Minister of Relations with Citizens and Immigration opened a series of dialogues between state actors and targeted communities immediately after 9/11 and during the war in Iraq. This resulted in the adoption of preventive measures to counter incidents of racism and xenophobia (Labelle & Rocher, 2006).

Conclusion

The security logic has become embedded since 9/11. Although security concerns were becoming increasingly prevalent through the 1990s, the post-9/11 period has allowed the security agenda to prevail over the human rights and civil liberties agendas.

Various circumstances have contributed to upholding the idea of an "enemy within." The fact that a number of the perpetrators of the attacks on the World Trade Center had been in the US for some time, that the individuals arrested for the 7/7 London bombings were British citizens of Muslim faith, and that the arrests of the "Toronto 17" (17 individuals of Muslim faith arrested in June 2005 on presumption that they would be involved in terrorist activities) were all Canadian citizens, gives credence to this logic.

The "enemy within" mentality is used to justify racial profiling and increased surveillance by police and by the security apparatus of the state. It also justifies stricter refugee policies, closing borders, and violating principles set out in international law—illustrated by the role of Canada in the Maher Arar case, in handing over Afghan captives for detention in Guantanamo Bay and, more recently, to Afghan security forces; in both cases violating Canada's obligations under the Geneva Convention to safeguard transferred detainees from torture and abuse. These actions contradict Canada's reputation of being respectful of international law, being a welcoming state, and playing a role in peacekeeping and upholding human rights.

Moreover, because Canada has relied on its immigration policies rather than its anti-terrorism law to pursue its security objectives, one can question whether the security agenda is being upheld at the expense of human rights and civil liberties. It could be argued that the immigration policies have not merely been adjusted, but rather that the adoption of a security agenda has fundamentally compromised the goals pursued by the Canadian government through its immigration policy: economic prosperity and social cohesion.

If Canada still wants to present itself as an open society, then Canada's post-9/11 response is problematic. Its emphasis on criminal law to address

terrorism and the use of immigration policy to impose security measures is a step backwards from upholding the goals of social justice, equality, and openness that are still central to its policies. There is a wake-up call to be made: Canada will be better off in the long-term if it emphasizes equality and openness as objectives rather than favouring security concerns and closure (stricter immigration policies). The promotion of equality, openness, and anti-racism programs are all part of the solution. When security is too often played as a trump card, government and society must be reminded that social justice, equality, tolerance, civil liberties, and human rights are equally important to ensure the security of Canadians (Gross-Stein 2005, 72–77).

What can be done? While it is clear that Canada has been quick to respond to US demands for cooperation with respect to border control and security matters, Canada need not give in to pressures to harmonize its immigration and refugee policies with the US. Canada has always had a more open immigration policy; its multiculturalism policy is an indication of the government's commitment to facilitate the integration of newcomers (Keeble 2005, 366). Those concerned with such matters must remind the government of its commitments, spelled out in the *Canadian Charter*. In this respect, a closer analysis of the impact of the Safe Third Country Agreement is needed. This analysis should focus not on how successfully the agreement has been implemented, but rather on accounting for why the faith of individuals is the mechanism by which the door to Canada is closed (Canadian Council for Refugees 2006).

Moreover, it is necessary to stress that emphasis must be put on integration of immigrants and anti-racism programs to ensure that there is inter-ethnic and inter-community dialogue. The purpose is to not alienate newcomers, but rather to ensure the participation of ethnic and racialized minorities in all aspects of social and political life, including the implementation of Canada's security policy (Keeble, 2005, 371; Antonius 2002). This is particularly important if we consider how certain groups may be affected differently by such a policy. It requires that Canada stand behind initiatives such as the Action Plan Against Racism and expand the work it does with communities.

Finally, when addressing terrorism, Canada must reconsider its approach. Its emphasis on combating terrorism through harsher punishment and by using the law as a deterrent moves Canada away from goals of social justice and respect for human rights to which it clearly adheres. This is all more the reason to focus less on a law-and-order agenda, but rather to consider security within a human rights framework, one in which dialogue between newcomers and citizens is encouraged.

Notes

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1. This understanding of how policy changes occurred was also confirmed in interviews done with public servants from Citizenship and Immigration Canada for the purpose of this project.

2. A recent judgement of the Supreme Court upheld the use of security certificates. In Charkaoui *v.* Canada (Citizenship and Immigration), the Supreme Court upheld the constitutionality of security certificates. However, it held that the use of secret evidence had to be reviewed within a one year period. See: http://scc. Lexum.umontreal.ca/en/2007/2007scc9/2007scc9.html (consulted March 30, 2007).

3. In May 2006, the Bloc Québécois introduced a private member's bill. Bill C-280, *An Act to Amend the Immigration and Refugee Protection Act,* aims to have the appeal section set up. In April 2007, it passed the committee stage and is expected for third reading in the House of Commons shortly after. If successful, it will be sent to the Senate, the last step before receiving Royal Assent.

4. This ministry replaces the Ministry of the Solicitor General, the Office of Critical Infrastructure Protection and Emergency Preparedness and the National Crime Prevention Centre. As Canada's lead department for public safety, PSEPC works with six agencies (Canada Border Services Agency, Canada Firearms Centre, Canadian Security and Intelligence Service, Correctional Service Canada, Royal Canadian Mounted Police, and National Parole Board) and three review bodies (Commission for Public Complaints Against the RCMP, Office of the Correctional Investigator, and RCMP External Committee Review). They are united in a single portfolio and report to the same minister (Canada Sécurité publique et de la Protection civile 2005).

5. This policy outlines the key interest of the Canadian government with respect to the issue of security. It proposes a framework to allow the government to respond to threats to which Canadians could potentially be exposed. The proposed measures take into account and even uphold Canadian values: "It does so in a way that fully reflects and supports key Canadian values of democracy, human rights, respect for the rule of law, and pluralism" (Canada, Privy Council 2004, iii).

6. The document does not list the ten countries for which these measures apply.

7. Maher Arar is the Syrian-born Canadian who was detained by the United States Immigration and Naturalization Service on a stopover in New York en route from Tunis to Montreal in September 2002. Despite his Canadian citizenship, Arar was deported to Syria. He was held in solitary confinement in a Syrian prison and tortured for almost a year. He was returned to Canada in October 2003. The Arar Commission was set up to examine the role played by Canadian authorities in this affair.

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