

Christian Leuprecht

THE END OF THE (ROXHAM) ROAD

Seeking coherence on Canada's
border-migration compact



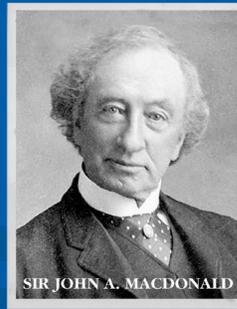
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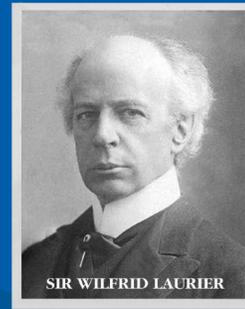
True North in
Canadian public policy



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Executive Summary

A marked increase in irregular border crossers, especially outside of official ports of entry, has put Canada's immigration and refugee system under scrutiny and fuelled an emotionally charged debate with important policy implications for Ottawa, the provinces, and Canada-US relations: Who should qualify for asylum, or refugee protection, under domestic and international law? Proponents defend migrants' unequivocal legal entitlement to lodge a claim as a refugee in Canada; critics deem these irregular crossings to be an end-run around Canada's refugee system by breaking – or at least abusing – the law.

In an immigrant country with a checkered history of immigration policy, to champion the underdog migrant who actually makes it to Canada is par for the course. However, this lenient attitude has effectively turned irregular migration into a back door to Canada: A disproportionate number of refugee claims by irregular migrants turn out to be unfounded yet few rejected claimants ever end up being deported.

A disproportionate number of refugee claims by irregular migrants turns out to be unfounded.

On one hand, irregular migration is a function of a complex interplay of domestic, bilateral, and international factors. On the other hand, the Canadian dislike for US President Donald Trump has given rise to a narrative that attributes the surge in irregular migration to the outcome of the 2016 US presidential election. However convenient and appealing, simplistic explanations also tend to be wrong or, as this study explains, at least inchoate. This study lays out the myriad aggravating political factors in the US that predate the Trump administration.

At the same time, Canada has implemented the electronic Travel Authorization (eTA) for visa-exempt nationals, cracked down on human traffickers, used enhanced technology to reduce fake passports, and improved intelligence sharing on at-risk travellers. While these measures have reduced the number of irregular migrants

arriving by air and sea, they have made crossing by land from the US much more attractive for those who prefer Canada as a destination. Contrary to claims that most of those who are crossing are taking flight from the Trump regime, about two-thirds of asylum seekers crossing irregularly into Canada by land actually enter the United States legally on a visa for the sole purpose of making their way to Canada. By way of example, Saudi nationals have obtained American visas at the embassy in Riyadh under false pretense, intent on entering Canada to claim asylum.

Between 2016 and 2017 irregular migration into Quebec, primarily from New York state across the now infamous Roxham Road, surged by 230-percent. Although not wholly without precedent, these numbers are nonetheless high by historical standards. Through September 2019, 12,080 irregular migrants had been apprehended by the RCMP out of 46,165 total claims, or 26.2 percent of claims, in 2019. The 2019 numbers are a decline from the RCMP apprehensions

of roughly 20,000 irregular migrants in each of the two previous years, although at a rate of 1,200 a month in the fourth quarter, the final tally for 2019 will probably range around 15,700. It appears to be a case of squeezing the snake: total claims from all sources are running close to 6,500 a month in the third quarter of 2019 compared to 4,900 a month during the same quarter in 2018.

Canada's migratory regime is based on a social contract. Recent trends challenge the integrity, sustainability, and legitimacy of that social contract because they undermine the cornerstones of Canada's migratory regime writ large, and especially its approach to refugees:

- the legitimacy of a well-administered migration policy that is grounded in the rule of law and preserves the integrity of Canada's borders;
- the successful political and economic socialization and integration of migrants; and
- migration's collective benefit in fostering Canadian prosperity.

How, then, is Canada to confront the phenomenon of global migration in a way that respects the rule of law while preserving the legitimacy of domestic migration regimes?

As challenges to the integrity of border management and policy have compounded over the past 25 years or so, binational and bilateral cooperation between Canada and the United States has expanded incrementally. After all, open borders depend on extensive cross-border cooperation for their effectiveness and legitimacy. This is the premise that informs a sustainable approach to irregular migration across Canada's land border between ports of entry.

The government is currently exploring extending the *Safe Third Country Agreement* (STCA) beyond ports of entry to cover the entire land border. This is a better option than unilaterally suspending the STCA, as some commentators have prescribed. Yet, given the disproportionate number of refugee claims at inland offices, extending the STCA to cover the land border is unlikely to solve the migration problem facing Canada.

This study lays out a cooperative strategy with the aim of sustaining a coherent border-migration compact that includes:

- weighing the costs and benefits of changing Canada's STCA with the United States;
- obviating the need to cross between ports of entry by reinstating the "Direct Back" provision under Section 41 of Canada's *Immigration and Refugee Protection Regulations*, which would allow claimants to lodge their claims for refugee status from the United States;
- enhancing current bilateral and binational administrative, intelligence and enforcement cooperation; and
- acquiring better data to drive (more) informed and timely decision-making.

The cumulative effect of both regular and back-door immigration risks undermining popular support for migration altogether. Polling data suggest that trend is well underway. These targeted measures are designed to reinforce confidence in Canada's commitment to managing its borders, the integrity of the refugee migration system, the prospects of the political and economic integration of migrants, and consequences for the country's prosperity as a whole.

Sommaire

L'augmentation marquée du nombre de passages irréguliers à la frontière, en particulier entre les points d'entrée officiels, a mobilisé l'attention sur le système canadien d'immigration et de protection des réfugiés et a suscité des débats à forte charge émotive, une situation qui a d'importantes implications politiques pour Ottawa, les provinces et les relations canado-américaines : en effet, qui devrait obtenir asile ou protection en vertu du droit national et international? Les défenseurs clament que les migrants ont, de façon non équivoque, le droit de demander l'asile en sol canadien, tandis que les opposants estiment que les passages irréguliers fragilisent le système de protection des réfugiés du Canada, car ils comportent une transgression – ou du moins une utilisation inappropriée – de la loi.

Se porter à la défense du migrant vulnérable qui parvient à entrer au Canada, pays d'immigrants qui a traditionnellement disposé d'une politique d'immigration aux résultats inégaux, paraît tout à fait normal. Cependant, ce geste clément a en réalité transformé la migration irrégulière en un moyen détourné d'entrer au Canada : alors qu'un nombre disproportionné de demandes d'asile présentées par des migrants en situation irrégulière ne sont pas fondées, peu de demandeurs refusés finissent par être expulsés.

La migration irrégulière est fonction d'un jeu complexe de facteurs nationaux, bilatéraux et internationaux. Or, l'agacement qu'éprouvent les Canadiens pour le président américain Donald Trump est à l'origine d'une fable simpliste qui associe le nouvel afflux migratoire au résultat de l'élection présidentielle américaine de 2016. Les explications isolées comme celle-ci, aussi pratiques et attrayantes qu'elles puissent paraître, ont également tendance à être incorrectes ou, comme on l'explique dans cette étude, pour le moins incomplètes. Cette étude présente la myriade de facteurs politiques aggravants aux États-Unis qui remontent à la période pré-Trump.

En concomitance avec l'arrivée du régime Trump, le Canada adoptait l'exigence d'entrée – Autorisation de voyager accordée par voie électronique (AVE) – pour les demandeurs dispensés de l'obligation de visa; il s'attaquait de front aux trafiquants d'êtres humains; il exploitait une technologie améliorée pour diminuer le nombre de faux passeports; et il améliorait le partage des renseignements sur les voyageurs à risque. Si ces mesures ont réduit le nombre de migrants en situation irrégulière arrivant par avion et par bateau, elles ont parallèlement rendu le passage par la voie des routes américaines beaucoup plus attrayant pour ceux qui préféraient le Canada. Contrairement aux affirmations selon lesquelles la plupart des personnes qui franchissent la frontière fuient le régime Trump, environ les deux tiers des demandeurs d'asile qui entrent au Canada de manière irrégulière, par voie terrestre, sont d'abord entrés légalement aux États-Unis avec un visa dans le seul but de se rendre au Canada. À titre d'exemple, des ressortissants saoudiens ont obtenu des visas américains à l'ambassade de Riyad sous de fausses représentations, avec l'intention d'entrer au Canada pour demander l'asile.

De 2016 à 2017, la migration irrégulière vers le Québec, principalement en provenance de l'État de New York via le désormais tristement célèbre chemin Roxham, a augmenté de 230 %. Ces chiffres ne sont pas totalement sans précédent, mais sont tout de même élevés par rapport aux normes historiques. Entre janvier et septembre 2019, la GRC a intercepté 12 080 migrants en situation irrégulière, ce qui correspond à 26,2 % des 46 165 demandes d'asile présentées jusqu'à cette date en 2019. Ces chiffres sont en baisse par rapport aux quelque 20

000 interceptions dénombrées au cours de chacune des deux années précédentes. Toutefois, à un rythme de 1 200 par mois au quatrième trimestre, le total pour l'année 2019 au complet se situera probablement autour de 15 700. Toutes les formes de passage semblent être exploitées au maximum : le nombre total de demandes d'asile, toutes sources confondues, a avoisiné les 6 500 par mois au troisième trimestre de 2019, par rapport à 4 900 par mois durant le même trimestre en 2018.

Le système migratoire canadien dans son ensemble, et tout particulièrement son approche en matière de réfugiés, repose sur un pacte social. Les tendances récentes posent un défi pour l'intégrité, la pérennité et la légitimité de ce pacte social, car elles mettent en péril les fondements de l'ensemble du système migratoire canadien, et en particulier son approche en matière de réfugiés, qui repose sur les principes suivants :

- Légitimité d'une politique de migration bien administrée qui est fondée sur la primauté du droit et préserve l'intégrité des frontières du Canada;
- Réussite en matière de socialisation et d'intégration des migrants sur les plans politique et économique; et
- Migration visant à favoriser la prospérité du Canada, en tant qu'avantage collectif.

Comment le Canada peut-il alors faire face au phénomène de la migration mondiale de manière à respecter la primauté du droit tout en préservant la légitimité de ses systèmes de migration?

Au cours des quelque 25 dernières années, la coopération binationale et bilatérale entre le Canada et les États Unis s'est accrue progressivement, en parallèle avec l'aggravation des difficultés liées à l'intégrité de la gestion et de la politique frontalières. Après tout, le maintien de frontières ouvertes, pour qu'il soit aussi efficace que légitime, exige une coopération transfrontalière substantielle. C'est le principe qui sous-tend une approche durable pour gérer la migration irrégulière entre les points d'entrée officiels le long de la frontière canadienne.

Le gouvernement étudie actuellement la possibilité d'étendre l'application de *l'Entente sur les tiers pays sûrs* (ETPS ou STCA en anglais) au-delà des points d'entrée afin de couvrir toute la frontière terrestre. Cette solution présente un net avantage par rapport à la suspension unilatérale de l'ETPS, de l'avis de certains commentateurs. Cependant, compte tenu du nombre disproportionné de demandes d'asile présentées dans les bureaux intérieurs, l'application élargie de l'ETPS a peu de chances de résoudre le problème de migration auquel le Canada est confronté.

Cette étude présente une stratégie de coopération dont l'objectif est de soutenir un pacte cohérent en matière de migration transfrontalière, qui comporte les éléments suivants :

- l'évaluation des coûts et des avantages d'un remaniement de l'ETPS entre le Canada et les États-Unis;
- l'élimination du besoin de franchir la frontière entre les points d'entrée en rétablissant le mécanisme de renvoi temporaire de l'article 41 du *Règlement sur l'immigration et la protection des réfugiés du Canada*, ce qui permettrait aux demandeurs de déposer leur demande de statut de réfugié aux États-Unis;
- le renforcement de la coopération bilatérale et binationale en matière d'administration, de renseignement et d'application; et
- l'acquisition de meilleures données pour une prise de décision (plus) éclairée et rapide.

L'effet cumulatif des flux migratoires réguliers et non réguliers risque de miner complètement le soutien populaire à la migration. Les données des sondages indiquent que cette tendance est déjà bien engagée. La mise en place de mesures ciblées vise à renforcer la confiance dans l'engagement du Canada à gérer ses frontières, l'intégrité du système d'immigration et de protection des réfugiés, les perspectives d'intégration politique et économique des migrants et les répercussions de l'immigration sur la prospérité dans l'ensemble du pays.

Introduction

“I guess what the Conservatives are saying is maybe we should line up the RCMP at the border, they should all link arms and shoo people away, or maybe [use] fire hoses or whatever, to keep people from crossing at the border.”

– *Former Minister of Public Safety Ralph Goodale, in response to being challenged by Her Majesty's Official Opposition to deploy more uniformed RCMP members to the border (cited in Payton 2017)*

Since 2017, about 20,000 migrants a year have been entering Canada irregularly. Quebec's 230 percent increase in irregular migration between 2016 and 2017 is comparable to the percentage increases for British Columbia and Manitoba, but absolute numbers for the latter two provinces remain negligible: in 2018, 95.3 percent of those roughly 20,000 migrants crossed into Quebec, almost exclusively from New York state across the now infamous Roxham Road. That is about half of the total number of asylum claims processed annually in 2017 and 2018, and a bit less than the total number processed in 2016 (Canada 2019).

The prime minister has been quick to blame the political situation in the United States: “If people are fleeing the United States [...] it is perhaps domestic realities within the political context in the United States that is driving people to move or to make those decisions” (Connolly 2018). That position appears to be supported by anecdotal evidence from migrants (Smith 2019). Indeed, most of the 300,000 medium-to-long term US residents from Haiti, Central America, and other countries will have lost their Temporary Protected Status by 2020 (Smith 2019). Methodologically, however, such policy changes, including the expansion of expedited removal against unauthorized entrants, are neither necessary nor sufficient conditions to explain significant variation in irregular migration into Canada.

That is, the relationship between these changes and flows of irregular migrants into Canada appears indeterminate precisely because, like most phenomena in the social sciences, it is complex. In fact, the timing and implementation of actual changes in regulations initiated by President Trump, which have expanded the remit of migrants who are now at risk of deportation, appear to have had little effect on the flow of irregular migrants crossing into Canada.

This study is skeptical of Trump as the arsonist: his policies are merely an accelerant on a slow-burning fire. A series of factors had affected migration from the United States to Canada prior to the 2016 US presidential election. However politically expedient, misidentifying Trump as a causal rather than an intervening variable is problematic insofar as it leads to a misinformed prescription, such as simply waiting out the current US presidential administration in the misguided belief that Trump and his policies are merely an aberration. To the contrary, there is good reason to believe that we are witnessing a shift in phase: this is the “new normal.”

On the one hand, immigration policy needs to realize the potential for foreigners to have access to equal opportunity while fulfilling the promise of equal citizenship. On the other hand, the supply of potential migrants greatly exceeds the fiscal and social capacity of most receiving countries. Orderly migration, then, is a precondition for a sustainable immigration regime that ensures mutual benefit to migrants and receiving societies alike. The effective management of immigration policies is thus vital to this country's continued prosperity, social cohesion, and democratic legitimacy (Yeates 2018).

These preconditions have long been taken for granted. However, the cumulative effect of regular immigration and a surge in irregular migration risk undermining the current levels of popular support for migration.

Trends observed in Canada are part of a broader pattern, in which governments triage migrants they deem more or less desirable and tighten border policy with the aim of discouraging attempts by the latter to migrate (Maillet, Mountz, and Williams 2018; Marchand 2008; Munck 2008; Varsanyi and Nevins 2007). By way of example, rising irregular migration into Canada by land is merely symptomatic of changes in Canadian border policy that had already made it more difficult to reach Canada by irregular means by air and sea prior to the election of Donald Trump.

As it becomes more difficult to gain entry into their country of choice by regular means, some migrants to North America and Europe have effectively been dispensing with the formalities of national immigration policies. A non-trivial proportion of voters in the United States and other advanced democracies are reacting to this trend by questioning the effectiveness of border security, the integrity of the immigration system, prospects for the effective social and economic integration of migrants, and consequences for the country's prosperity as a whole.¹

Rising irregular migration thus risks eroding popular support for "regular" refugee and asylum immigration that follows established rules: Populist reaction to irregular entrants into the United States and parts of Europe has been to delegitimize not only most forms of in-migration, but also the laws, rules, and regulations that underpin domestic migration regimes (Wilkes, Guppy, and Farris 2008; Wilkes and Corrigan-Brown 2011). However, the way in which this plays out can be quite nuanced (Bilodeau, Turgeon, and Karakoç 2012; Johnston et al. 2018).

The cumulative effect of recent policy changes implemented by Canada, broader policy changes in the United States and elsewhere, and global demographic patterns along with the globalization of human smuggling means that greater numbers of refugees and asylum seekers will henceforth enter Canada from the United States by land: 20,000 of 55,000 claims in 2018, for example. That reinforces the position of the United States as Canada's most important strategic ally in upholding the integrity of Canada's domestic migration regime. These trends have important implications for Canadian policy, cooperation with the United States, and potential revisions of the *Safe Third Country Agreement* (STCA).

A series of factors had affected migration from the United States to Canada prior to the 2016 US presidential election.

Patterns in “Irregular” Migration

In a globalized world, transportation and communication are easy and inexpensive. Social media enables the mass dissemination of information on migratory routes and how to leverage or side-step national migration and refugee policies, along with much mis- or disinformation (Smith 2019). Various human smuggling organizations, whose exploitation of migrants generate upwards of \$10 billion in annual revenues, have reinforced opportunities for irregular migration (Ferrier and Kaminsky 2017; see also Shelley 2012, 2014). In their authoritative book, *Global Human Smuggling*, Kyle and Koslowski (2013) observe:

Given that a very high percentage of those illegal migrants who have clandestinely entered the United States and the European Union have been smuggled, it is likely that a sizeable percentage, if not the majority, of the world’s 50 million illegal migrants have been smuggled.

The UN Office on Drugs and Crime estimates that of the three million migrants annually who enter the United States irregularly, most involve human smuggling, a figure that has remained consistent over the years (UNDOC 2016; 2010, 59).

Canadian intelligence has identified organized crime as a facilitator in the human smuggling of undocumented minors, in the use of fake passports and the making of fake refugee claims, in enabling the transit of refugees through Mexico and the US to Canada, and as the source of advice on how to sneak into Canada and what to tell officials upon arrival (CBSA 2012). Human smuggling into Canada from India and China figures prominently, but so does human smuggling from Central America into the United States via Canada – facilitated by the Russian Mafia (Scotti and Young 2017; Fife and Chase 2017; Asmann 2017; Pearson 2017; Galeotti 2014, 35; Grant 2018). Owing to the proliferation of increasingly sophisticated and ruthless practices, the Canada Border Services Agency anticipates that the flow of illegal migrants is poised to escalate (Pearson 2017).

International migration is a fairly objective variable in demography, often understood simply as the process of persons coming to reside outside their country of birth. However, measures imposed by states to “move” borders outwards (such as safe third country agreements) and inwards (such as inland enforcement) have made international migration a security issue (Shachar, 2009; Mountz, 2010; Huysmans 2000; Bigo 2002; Amoore 2006; McDonald 2008; Vaughan-Williams 2015). The spectrum of ways in which migrants can find themselves categorized as “illegal,” “undocumented,” “alien,” or “irregular” is complex (Nevins 2007, Vaughan-Williams 2015).

A migrant’s status is thus determined by the sociopolitical process of “illegalization” which creates the “uncertain sociopolitical predicament” in which an “irregular” migrant may find her- or himself (Slack, Martinez and Whiteford 2018; De Genova 2002). This precarious status exists on a gradient: migrants may enter legally, or legally but overstay their permitted time (Goldring, Berinstein and Bernhard 2009, 239-265). An estimated 25 to 40 percent of illegal migrants in the US initially entered with a legal visa (UNODC 2010, 6). Under Canadian law as well as the international *Convention Relating to the Status of Refugees* (1951) and its 1967 Protocol, genuine refugees may cross the border irregularly though it is arguably illegal for non-refugees to do so. However, under article 31 of the Convention, they may be penalized

for doing so, and a refugee or asylum seeker is required to apply for status in the “first safe country” they reach. The challenge in recent years has been for the United States and Europe to manage migratory flows through a more consistent application of the “first safe country” principle.

However, what constitutes a safe country is controversial and who is a legitimate “refugee claimant” is not immediately obvious; determining that status involves the lengthy and complicated application of criteria established in law, with implications for the relationship between the individual and the state (Canadian Council for Refugees n.d.). Moreover, these criteria are a moving target (Macklin, 2005).

This study adopts terminology used by Canada’s Immigration and Refugee Board: “irregular” crossers, which also appears to be the preferred term among scholars. The term “irregular migrants” predates its Canadian government vernacular in June 2012 (but initially denoted “those who live and/or work in Canada without the required permission or documents that would establish their right to do so” (Ellis 2015, 94)). Although Canadian law recognizes certain modes of entry as “irregular,” it does not label migrants themselves as “irregular” (save under the Designated Foreign National regime, which is beyond the scope of this study). It is, however, a violation of Canada’s *Customs Act* (not the *Criminal Code*) to cross at other than designated ports of entry, which suggests the measure targets evasion of customs and excise duties rather than migration per se.

The data on irregular migration in this study draw on official Canadian and American government statistics, which this study corroborates with secondary sources. Specifically, the study assesses publicly available Canadian data, such as combined data from the Canada Border Services Agency (CBSA), Immigration, Refugees and Citizenship Canada (IRCC), and the Royal Canadian Mounted Police (RCMP). However, longitudinal comparison is difficult because the RCMP has only been collecting data on “interceptions” along the Canada-US border between ports of entry since 2016 (IRCC n.d.). Hitherto it registered asylum seekers, human traffickers, and criminals under a single category: illegal entry. Select data on asylum claims lodged and processed now go back to 2011 (Canada 2019e). The United States Border Patrol (USBP) office, the US Immigration and Customs Enforcement (ICE) unit, and the Department of Homeland Security’s (DHS) Office of Immigration Statistics have more robust data over a longer period of time, from which follow inferences about the nature of North American migratory trends.

The Canada-US border

Demand for irregular passage to Canada is vast: to cite but one indicative measure, between 2008 and 2010, Gallup conducted a rolling survey of 401,490 people across 146 countries and found that Canada was second only to the United States as the destination country of choice (Esipova and Ray 2011). CBSA intelligence assessments had flagged an influx of illegal entrants into Canada from Somalia, Turkey, Haiti, China, Romania, Iran, Iraq, Sri Lanka, and a host of other countries at least as far back as 2014 – which reflects trends identified in the US for migrants outside the Americas (Mossaad and Baugh 2018, 1, 7-8). Iran was long “the number one source country of improperly documented migrants who make refugee claims in Canada” (CBSA 2012).

The introduction and rapid expansion of biometric passports over the past 10 years is partially responsible for the reduction in fake passports; the biometric standard makes them harder to forge (Jain, Ross and Nandakumar, 2011). Since 2016 Canada has also integrated Canadian Police Information Centre (CPIC) data into CBSA's targeting and primary inspection data, known as the Integrated Primary Inspection Line (IPIL), which also draws on data from the Integrated Customs Enforcement System (ICES), the Field Operations Support System (FOSS), and the US National Criminal Information Center (NCIC). Complemented by improved border intelligence exchange among allies, partners, and the Five Eyes intelligence network (which is composed of the US, UK, Canada, Australia, and New Zealand), and with improved data analytics, expanded domain awareness has improved CBSA's ability to flag at-risk travellers, which makes it riskier for known human traffickers and their associates to cross at ports of entry.

In November 2016, Canada added a new requirement for travellers from visa-exempt countries when it implemented the electronic Travel Authorisation (eTA), which requires visa-exempt nationals without legal residency in Canada or the US but travelling to or transiting through Canada by air or sea to obtain eTA pre-clearance before departure.

By “pushing out” border management, “beyond the border” requirements such as Canada's *Safe Third Country Agreement* with the US limit the ability of refugee claimants to lodge a claim upon arrival in Canada. The reduction in the number of travellers who destroy their documentation en route to Canada or who attempt to enter the country with false travel documents in an attempt to lodge a claim shows that the measures are having an effect. In 2016, CBSA seized 415 fraudulent travel documents from individuals attempting to enter Canada (BBC 2018; Broadhurst et al. 2018);² that marks a precipitous decline from the hundreds of passports that were seized years earlier.

In effect, about two-thirds of asylum seekers crossing irregularly into Canada by land actually enter the United States legally with that singular objective in mind: because Canada is likely to deem them inadmissible, they opt for a visitor visa to the United States, which has tended to be more lenient than Canada in issuing visas and whose diplomatic missions are more plentiful and thus more readily accessible than Canada's. They do so for the sole purpose of circumventing the STCA by crossing the border somewhere other than a legitimate port of entry and lodging an asylum claim in Canada (Smith 2019).

By way of example, Saudi nationals have been obtaining American visas from the US embassy in Riyadh with the intent of then entering Canada to claim asylum (Bronskill and Blanchfield 2017).³ In 2016, Operation Northern Watch (ONW), initiated by the Diplomatic Security Service (DSS) (within the Bureau of Diplomatic Security, which is the law enforcement and security arm of the US Department of State) and in cooperation with Canadian authorities, revoked approximately 2,400 US visas that had been issued across 85 different US diplomatic posts (Crawford 2017a). The US Department of State reported that “the vast majority of the individuals referred through Operation Northern Watch are individuals intending to claim asylum in Canada or [who] have already claimed asylum. Included in this group were individuals with ties to designated terrorist organizations” (United States Department of State 2017). Canada's minister for public safety had singled out US diplomatic posts in Nigeria for issuing travel documents to individuals who then transit the United States to Canada (Crawford 2017).

The US has since cut the number of tourist visas issued to Nigerians by 10 percent (Cossette 2018). Nigerian nationals, many from middle-class origins seeking a better life, are known to make their way from the United States to Canada (Symons-Brown 2016; Nasser 2019). Contrary to Canadian claims that “none of this activity amounts to smuggling under U.S. or Canadian law,”

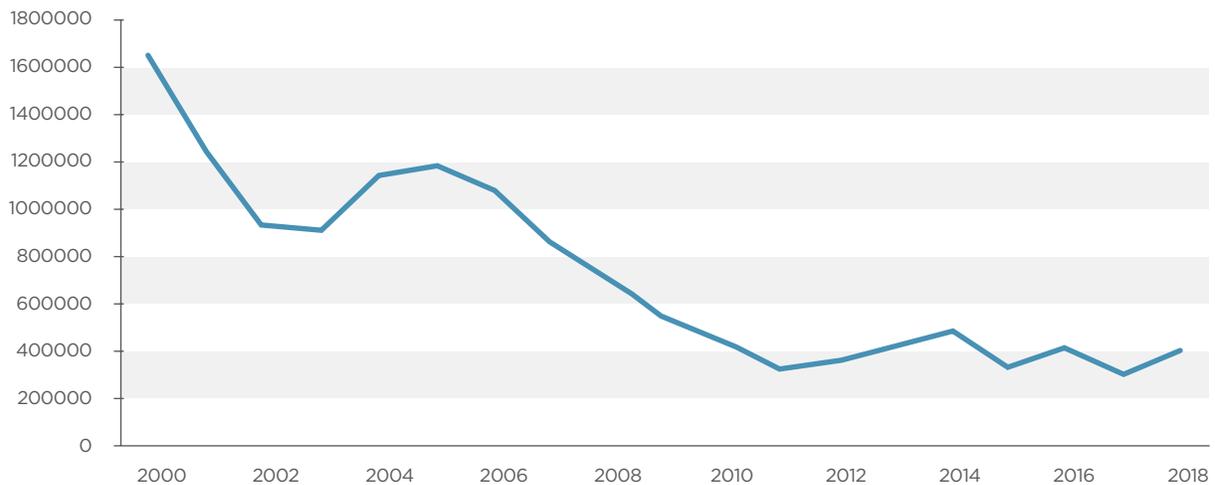
(Smith 2019) in 2017, US authorities arrested two Canadians and a Nigerian national; the latter and his spouse pleaded guilty in Canada of running a cross-border human-smuggling ring that preyed on Nigerian citizens and asylum seekers (Soloducha 2018).

Cross-Border Cooperation

Canada and the United States entered the *Smart Border Agreement* in 2001, the *Container Security Initiative* in 2002 (although it deals with freight only), the *Security Prosperity Partnership* in 2005, and the *Beyond the Border Action Plan* in 2011. These agreements have further “securitized” immigration and travel (Kent 2011, 804). The Canada-US border has undergone an extensive expansion of digital surveillance capabilities: radars, sensors, cameras, and scanners that have effectively created a digital border wall (Topak et al. 2015). The “Mexicanization” of the Canada-US border was precipitated by the 9/11 attacks (Andreas 2003, 2005). On the one hand, the Open Borders Paradox holds that borders depend on extensive cross-border cooperation both for their effectiveness and legitimacy (Flynn 2003). On the other hand, the Hard Border Paradox holds that greater security in border zones may actually exacerbate insecurity insofar as it encourages the professionalization of border-crossing by necessitating migrants to have greater expertise in order to cross the border successfully (Payan 2006).

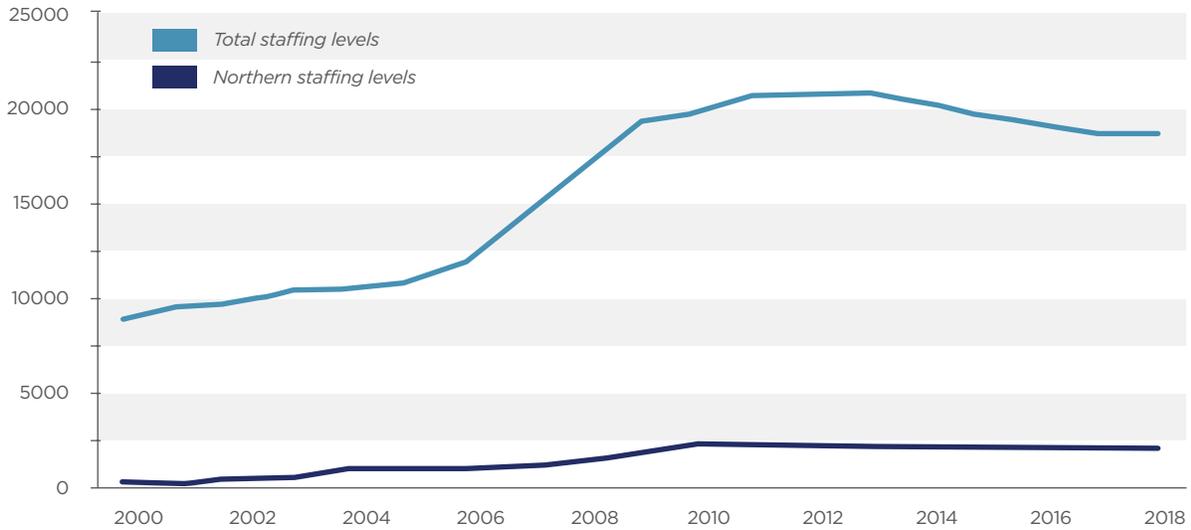
Although the United States has exponentially increased both the numbers and sophistication of the material and personnel allocated to managing migration and travel, for years US apprehensions along the country’s southern border have been in decline: from 1.6 million in 2000 to around 400,000 annually since 2010 (see figure 1) – but are on track to exceed 1 million in 2019.

FIGURE 1: UNITED STATES BORDER PATROL APPREHENSIONS ALONG THE US SOUTHERN BORDER, 2000-2018



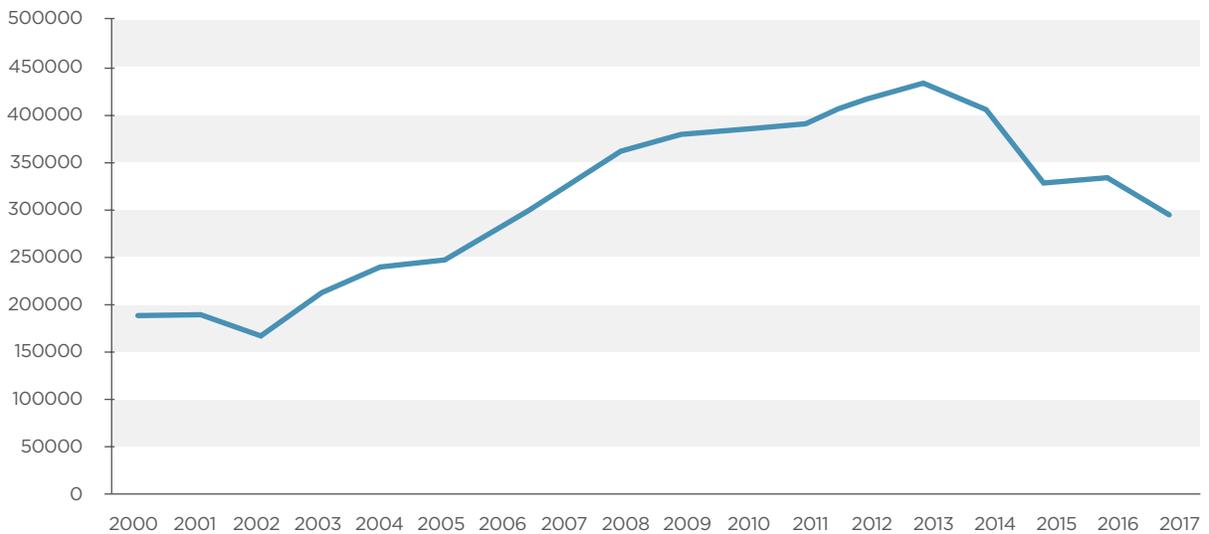
Source: USCBP 2019a.

FIGURE 2: TOTAL UNITED STATES BORDER PATROL STAFFING LEVEL VERSUS STAFFING LEVEL ALONG THE NORTHERN BORDER, 2000-2018



Source: USCBP 2019b.

FIGURE 3: US DEPARTMENT OF HOMELAND SECURITY REMOVALS BETWEEN FY 2000 AND FY 2017



*The data shown are from August 2019, the most recent available from the DHS.

Source: US DHS 2019.

Until 2019, USBP apprehensions had been in decline along both borders, notwithstanding Operation Jump Start (2006-2008) which put military boots on the ground before the eventual doubling of the US Border Patrol’s resources (National Guard 2008).

Figure 2 shows a spike in staffing levels after 2008, which coincides with the Obama administration ratcheting up border security (Topak et al 2015, 880-899): a vastly stepped-up removal tempo, along with more physical deterrents to crossing between ports of entry into the United States.

In 2002, there were 165,168 DHS noncitizen removals. By 2013, however, during the Obama administration, that number had almost tripled to 432,448 (see figure 3), before declining for the rest of the Obama administration and continuing this downward spiral through the first year of the Trump administration. Meanwhile, due to Immigration and Customs Enforcement in the US interior, the nationwide expansion of expedited removal, and other measures, removals are once again on the rise. DHS figures show that during the first half of the 2019 fiscal year, 282,242 migrants had been deported (Mark 2019).

The term “noncitizen removals” refers to those who have already entered the United States, not the migrants who are returned to their country of origin upon being apprehended at the

TABLE 1: ASYLUM CLAIMS – GENERAL CLAIMS VS. THOSE OUTSIDE PORTS OF ENTRY, 2011-18

YEAR	Total Asylum Claims/month	vs. 2012-15 Average (=100)	RCMP Interceptions beyond Ports of Entry	RCMP as percent of total
2011	2,109.6	167.8	- no separate data -	
2012	1,705.8	135.7	n/a	n/a
2013	863.8	68.7	n/a	n/a
2014	1,120.0	89.1	n/a	n/a
2015	1,338.3	106.5	n/a	n/a
2016	1,989.2	158.2	n/a	n/a
1-2 Q/2017	3,074.2	244.6	729.2	23.7
3-4 Q/2017	5,323.3	423.5	2,703.0	50.8
1-2 Q/2018	4,203.3	334.4	1,790.7	42.6
3-4 Q/2018	4,966.7	395.1	1,445.8	29.1
1 Q/2019	4,313.3	343.2	899.3	20.8

Source: Canada 2019e.

border. The economic downturn post-2008 that made it more difficult for illegal aliens to make a living in the US, the accelerated pace of removals under Obama as “Deporter in Chief,” and surging Border Patrol resources all predate Donald Trump’s election in 2016 (Helleiner, 2013; Mossaad and Baugh 2018). While these effects are difficult to disentangle, we can draw two definitive conclusions: over the years, the United States has implemented multiple, complex changes affecting migrants, so President Trump is an intervening, not a causal, variable. The numbers bear this out.

Table 1 outlines average monthly asylum claims in Canada from all sources since 2011. They increased from 1,338 in 2015, slightly above the 2012-15 average, to 5,323 in the second half of 2017, before subsiding slightly in 2018-19. The proportion of RCMP interceptions of irregular migrants between ports of entry – data for which were not collected before 2017 – peaked at 50.8 percent of total inland refugee claims in Canada in the second half of 2017, before declining somewhat in 2018-19. However, even when migrants detained by the RCMP are excluded, the total number of asylum seekers has more than doubled since 2015.

The data bear out the consequences: compared to previous years, since 2017 the RCMP has been intercepting a significant number of irregular migrants crossing the border from the United States into Canada (see tables 1 to 4).

TABLE 2: IRREGULAR BORDER CROSSINGS FROM THE US INTO CANADA (I.E., BETWEEN PORTS OF ENTRY), 2017

RCMP INTERCEPTIONS													
PROVINCES	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
New Brunswick	0	0	1	0	0	0	0	0	0	0	0	0	1
Québec	245	452	654	672	576	781	2,996	5,530	1,720	1,755	1,539	1,916	18,836
Ontario	0	0	0	0	0	0	0	0	0	0	0	0	0
Manitoba	19	142	170	146	106	63	87	80	78	67	38	22	1,018
Saskatchewan	5	0	0	9	0	0	0	0	0	0	0	0	14
Alberta	0	0	1	0	0	1	0	0	4	0	0	0	6
British Columbia	46*	84	71	32	60	39	51	102	79	68	46	40	718
TOTAL – RCMP	315	678	897	859	742	884	3,134	5,712	1,881	1,890	1,623	1,978	20,593

*Due to a data error, the previous count for January had been over-reported as it included interceptions for previous months.

Source: Canada 2019b.

TABLE 3: IRREGULAR BORDER CROSSINGS FROM THE US INTO CANADA (I.E., BETWEEN PORTS OF ENTRY), 2018

RCMP INTERCEPTIONS

PROVINCES	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
New Brunswick	0	0	0	0	0	0	0	0	0	0	0	0	0
Québec	1,458	1,486	1,884	2,479	1,775	1,179	1,552	1,666	1,485	1,334	978	1,242	18,518
Ontario	0	0	0	0	0	0	0	0	0	0	0	0	0
Manitoba	18	31	53	50	36	31	51	39	44	23	23	11	410
Saskatchewan	0	0	0	0	0	0	0	0	0	0	0	0	0
Alberta	0	0	0	0	5	0	0	3	4	0	0	0	12
British Columbia	41	48	33	31	53	53	31	39	68	37	18	27	479
TOTAL - RCMP	1,517	1,565	1,970	2,560	1,869	1,263	1,634	1,747	1,601	1,394	1,019	1,280	19,419

Source: Canada 2019d.

TABLE 4: IRREGULAR BORDER CROSSINGS FROM THE US INTO CANADA (I.E., BETWEEN PORTS OF ENTRY), 2019

RCMP INTERCEPTIONS

PROVINCES	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	TOTAL
New Brunswick	0	0	0	0	0	0	0	0	0	0	0
Québec	871	800	967	1,206	1,149	1,536	1,835	1,712	1,701	1,595	13,372
Ontario	0	0	0	0	0	0	0	0	0	0	0
Manitoba	1	1	13	15	27	26	23	26	19	18	169
Saskatchewan	0	0	0	0	0	0	1	2	0	1	4
Alberta	0	1	0	0	0	0	0	0	0	0	1
British Columbia	16	6	22	25	20	5	15	22	17	8	156
TOTAL - RCMP	888	808	1,002	1,246	1,196	1,567	1,874	1,747	1,762	1,622	13,702

Source: Canada 2019c.

TABLE 5: US BORDER PATROL ILLEGAL ALIEN APPREHENSIONS IN THE NORTHERN SECTOR, 2008-2018

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total Apprehensions	7,925	6,806	7,431	6,143	4,210	3,230	3,338	2,626	2,283	3,027	4,216
Other than Mexican apprehensions	3,681	3,130	3,665	2,978	1,904	1,558	1,673	1,189	1,114	1,538	2,071
Mexican apprehensions	3,809	4,244	3,76	3,145	2,306	1,672	1,665	1,437	1,169	1,489	2,245
Percentage of Total Mexican Apprehensions	48%	62%	50%	51%	55%	51%	50%	55%	51%	49%	52%

Note: Percentages are rounded to the nearest whole number.

Source: USCBP 2019c.

US Border Patrol apprehensions of migrants (see table 5) trying to cross into Canada at the British Columbia-Washington border are in decline, though in Blaine (located in northwest Washington) “other than Mexican apprehensions” have stayed constant, whereas in Spokane (northeast Washington) “other than Mexican apprehensions” have been on the rise. That may be a function of Canada lifting visa restrictions on Mexican nationals. Structural determinants thus appear to be depressing the number of irregular migrants from Mexico while the number of non-Mexican irregular migrants remains unchanged. However, some irregular migrants of Mexican origin have been displaced to the Manitoba-North Dakota border.

Michigan and New York, both of which border Ontario, have seen a precipitous decline in apprehensions over the course of 2011-2016: a 58 percent decline along the Michigan border (including a 59 percent decline in apprehensions of Mexicans) and an 89 percent decline along the border with New York (including an 88.6 percent decline in apprehensions of Mexicans).

In short, apprehensions of irregular migrants in general, and Mexicans in particular, had been in sharp decline prior to 2017.

Policy Options

Canada’s approach to migration has been successful for three reasons: by design it celebrates multiculturalism in a society that had hitherto been overwhelmingly European in origin; the immigration policy is skills-based and so welcomes well-educated people who have a good chance of assimilating quickly and contributing to society; and the number of refugees accepted are readily manageable on a per-capita basis relative to the Canadian population as a whole. Canadian exceptionalism on migration is commonly attributed to this combination of factors

(e.g., Adams 2008). Yet Canada may not be such an outlier after all. Banting and Soroka (forthcoming) find that Canadian attitudes to immigration are shaped by the same factors that are at play in other countries: the integrity of borders and the legitimacy of the immigration regime; effective political, economic, and societal socialization and capacity to absorb migrants; and migrants' subsequent contribution to a country's economic prosperity and social well-being.

The conventional explanation for the comparatively high support for immigration in Canada is grounded in these three factors. First, geographical isolation has created relatively secure borders and maximized Canada's discretion in designing and managing immigration policies that are grounded on principle. Second, the points system for skilled immigrants, adopted in 1967 and adapted periodically to changing socio-economic conditions, is designed to encourage public expectations that most immigrants will provide ongoing economic benefits to Canada. Third, Canada's culture and identity are thought to celebrate diversity, reinforced by policy measures such as multiculturalism.

Although these factors matter, they don't fully explain a dramatic transition that began in the mid-1990s: rising popular support for and broad acceptance of high levels of immigration, which levelled off in 2006 (Turgeon and Bilodeau 2014, 324; Banting and Soroka 2019). Irregular migration, by its very nature, calls all three factors into question. Initial indications are that support for immigration may have peaked. Surveys show floundering domestic support for immigration across Canada as Canadians have grown more indisposed towards immigration since 2017 (Angus Reid 2018a; Wright 2018; Ipsos 2019; Vomiero and Russell 2019; Abedi 2019).

Internationally, the government of Canada has limited leverage when it comes to the possible supply of migrants seeking asylum in Canada and other countries. Simply put, poverty, conflict, authoritarianism and human-rights abuses fuel a steady flow of those intent to migrate. Such trends tend to have generally destabilizing effects on regional neighbourhoods, partners, and allies, and thus fundamentally run counter to Canada's strategic interests. That being said, it is beyond the scope of this paper to explore how Canada should best approach supply-side mitigation.

Administrative and legislative changes

Domestically, the government has been pursuing a range of immigration strategies. Aside from the aforementioned biometric travel documents, eTA, and incentives for airlines to enforce such measures stringently by burdening them with the cost when the reason for return lies with the airline, the government has also introduced efficiencies across the refugee system. However, the Auditor General (2019) has deemed these insufficient and maintains that the system is still ill-equipped to deal with the backlog in refugee cases, let alone a surge.

The Liberal government has proposed a number of changes to the *Immigration and Refugee Protection Act*, including an absolute ban on sequential refugee applications (applying for

*Poverty, conflict,
authoritarianism and
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fuel a steady flow of
those intent to migrate.*

refugee status in Canada after already having done so in the United States or another safe country) and ministerial discretion to enforce reciprocity in the application of national immigration laws. On the latter point, the government could deny entry to Canada of nationals of countries that unreasonably refuse to cooperate with Canada in issuing travel documents to claimants who Canada is looking to deport. Yet Bill Blair, in his previous capacity as minister for border security and organized crime, admitted that such changes would affect at most 10 percent of irregular migrants to Canada (Blair 2019).

Options under the US-Canada *Safe Third Country Agreement*

That leaves bilateral cooperation with the United States as the principal strategy to affect change, especially as it becomes ever more difficult to travel to Canada by air for people without adequate documentation.

By way of example, Osaah Ahmed fled Ghana to Togo whence he travelled to Ecuador – which allows visa-free entry for up to 90 days from almost anywhere in the world, including Ghana, except for a dozen countries – through Central America into Texas, eventually crossing Canada’s border irregularly at Emerson, Manitoba (Markusoff 2017). In *Singh v. Canada* (1985), Justice Wilson found that foreigners have the right to protection under the Charter once on Canadian soil.⁴ Authorities colloquially refer to this as the “big toe touch.”

Under the STCA, however, Charter protection would not necessarily be the case had that migrant crossed at a port of entry, as opposed to between ports of entry. The bulk of migrants who cross between ports of entry strive to be intercepted because to lodge a claim, they must first be registered by Canadian authorities. This also explains the spike in people lodging claims inside Canada, away from an official port of entry, where the STCA does not apply either. In other words, the more migrants work around the STCA, the more the agreement is de-legitimized, forcing the government to amend it, abandon it altogether, or find other means to deter migrants from crossing between ports of entry.

While the *Customs Act* (1985) and *Immigration and Refugee Protection Act* (2001) are the Canadian statutes that deal directly with irregular migration, the STCA between Canada and the United States shapes the interaction between a migrant and these laws. The STCA was signed in 2002, came into force on December 29, 2004, and has been upheld by Canada’s Federal Court of Appeal. Modelled on the European Union’s Dublin III Regulation (whose predecessors date back to 1997), the STCA contains features that, by design, prove problematic for refugees and migrants seeking asylum in either North American country (Cowger 2017). It requires claimants to lodge their refugee claims in the first safe country in which they set foot, and, with some exceptions, prevents them from lodging a claim in the other country. In addition, the STCA requires Canada and the United States to take back claimants who try to lodge a claim in the other country and to assume responsibility for adjudicating the refugee’s claim.

This creates a dynamic of exclusion by virtue of which refugees who *regularly* enter either Canada or the United States disqualify themselves from ever filing a claim in the other country. If a refugee’s claim is denied in either country, it usually now makes them inadmissible to either country.

To date, however, the STCA only applies to regular land ports of entry; so, it is still possible to lodge a claim by crossing irregularly “inland.” Concomitantly, it is “virtually impossible for land-bound claimants who do not satisfy one of the STCA’s exceptions to enter Canada, unless doing so clandestinely” (Arbel 2013, 78; also see Arbel and Brenner 2013). Although the STCA

is necessarily premised on the relative symmetry of refugee policies, it inadvertently heightens asymmetries between Canadian and American immigration law by forcing would-be claimants who are not subject to an exemption to enter between official ports of entry.

As a result, the greater the asymmetries between US and Canadian immigration laws, the greater the incentives to engage in irregular northbound migration along Canada's land border. Former minister of immigration and citizenship, Chris Alexander, along with advocacy groups such as Amnesty International and the Canadian Council of Refugees and hundreds of law professors from across Canada, wrote to the then minister of immigration, citizenship and refugees in February 2017 asking for the Agreement to be suspended (Alexander 2018). Doing so would obviate the need to lodge a refugee claim outside of an official port of entry.

However, suspending the STCA unilaterally would have administrative and political implications: "If you suspend the Agreement then [claimants] can come across at regular border crossings, so forget 30 here, 20 there that are going through Minnesota into Manitoba, now you're starting to deal with thousands of people," surmises Canada's former deputy prime minister John Manley, who had contributed to various "smart border" initiatives (MacDonald 2017). Manley's judgment is borne out by an average decline of 23 percent in the number of claims made at ports of entry and inland offices between 2005 and 2015, compared to the number of claims made between 1989 and 2004 (Proctor 2017, 6). By way of comparison, were it not for the STCA, Canada would have been processing about 13,000 more claims a year at an OECD-estimated average cost of about \$14,000 per year per refugee claimant in Canada, amounting to about \$200 million a year. Suspending the STCA would thus strain both resources and Canada's relationship with the United States.

Suspending the STCA unilaterally would have administrative and political implications.

Alternatively, the government could extend the STCA. One option is to include other ports of entry, notably air and sea. The advantage for arrivals by air is that the claimant's immediate origin is largely known (albeit with the possibility that they could be travelling with fraudulent documents, etc.). For example, such a measure could deter irregular migration from Haiti to Canada, by way of other countries such as Brazil (Pearson 2017). The payoff, however, would be limited: IRCC data show that some claimants do still arrive at airports. However, travel controls noted above have depressed those numbers.

Another option is to extend the STCA beyond ports of entry to cover the entire land border. In effect, that is the mandate Prime Minister Trudeau gave to Bill Blair, then minister for border security and organized crime to renegotiate the STCA with the United States. Under the proposed amendment, Canada could immediately deport most asylum seekers coming from the United States: they would be taken to an official crossing where they would be denied entry.

However, that has long been known to be no obvious panacea either (United States Citizenship and Immigration Services 2006), given the disproportionate number of refugee claims at inland offices (see table 6).

TABLE 6: INLAND ASYLUM CLAIMS PROCESSED BY CANADA BORDER SERVICES AGENCY (CBSA), 2011-2018

PROVINCES/TERRITORIES	2011	2012	2013	2014	2015	2016	2017	2018
Newfoundland and Labrador	0	0	-	-	0	0	-	0
Prince Edward Island	0	0	0	0	0	0	0	0
Nova Scotia	0	0	0	0	0	0	0	-
New Brunswick	0	0	-	0	0	0	-	-
Québec	70	75	35	55	95	240	5,140	1,140
Ontario	365	345	220	190	145	140	185	150
Manitoba	20	75	10	100	40	10	5	-
Saskatchewan	-	-	0	0	0	-	0	0
Alberta	15	10	15	15	15	5	5	-
British Columbia	205	180	125	170	210	510	905	525
Yukon	0	0	0	0	0	0	0	0
Northwest Territories	0	0	0	0	0	0	0	0
Nunavut	0	0	0	0	0	0	0	0
TOTAL – Inland Offices	675	690	410	525	505	910	6,245	1,820

Source: Canada 2019a; Canada 2019b; Canada 2019c..

The discrepancy between apprehensions of irregular migrants along the border and those making claims inland is significant. Individuals filing inland claims were intercepted neither by the RCMP on the border nor by CBSA at a point of entry; yet they entered from “somewhere” and are now making a claim. By contrast, the RCMP witnessing most irregular crossings at Roxham Road is sufficient to trigger US responsibility under the STCA.

The most promising proposition is to reinstate Section 41 of the *Immigration and Refugee Protection Regulations*. “Direct Back” was suspended in 2004 when the STCA took effect. It allowed border officials to schedule asylum seekers for hearings while the latter remained in the United States. This is effectively the approach the European Commission is looking to formalize under a draft “humanitarian visa” for migrants from across the Mediterranean. The United States’ “Stay In Mexico” policy towards migrants from Central America is similar.

Blair's proposal does not include Section 41 of the *Immigration Protection Regulations*. Its reinstatement would require a "stand still" agreement with US officials to avoid deportation proceedings against irregular migrants in the US awaiting hearings for Canada. However, Section 41 remains a potentially feasible alternative to existing measures – broadening the proverbial "front door" to facilitate the orderly processing of asylum seekers, maintain their due process guarantees, and use public resources more effectively than at present. Canada could provide incentives to the US to extend temporary reprieves for prospective refugees who lodge their claims this way by conceding to have the United States refer a capped number of refugee claimants to Canada for resettlement under the STCA.

Although not ultimately included in the final agreement, a diplomatic note that accompanied the STCA specified that Canada may accept up to 200 refugee referrals from the United States, provided they live outside of the United States (Proctor 2017, 10). Applied broadly, for instance, that proviso could capture individuals in the US under Temporary Protected Status.

Enhanced coordination between Canada and the United States

To achieve greater symmetry in the spirit of the STCA, Canada could also reduce vulnerabilities for exploitation that arise from inconsistencies in the processing of refugee claims requirements for visa applications. Canada, for instance, has a broader number of (mainly Commonwealth) countries in its visa waiver program than the US and could discourage "asylum shopping" through increased coordination of visa policies with the United States. "Selecting a new home based on personal preferences or for economic reasons [should] fall within the domain of immigration and does not properly belong in the asylum context," one parliamentary report concludes (Standing Committee on Citizenship and Immigration 2002). Nonetheless, there is a benefit to maintaining some national discretion to impose temporary limits on travel visas from jurisdictions with high or surging proportions of rejected refugee claimants.

Canada and the United States already have pre-departure travel authorization for visa-waiver countries: the electronic Travel Authorization (eTA) and the electronic System for Travel Authorization (eSTA) respectively. However, without more harmonized visa policies, would-be asylum claimants can obtain a visa to the United States and then cross irregularly into Canada where they can file a claim.

Since Canada's then public safety minister Ralph Goodale called out some US diplomatic missions (Crawford 2017b), Canada and the United States have been cooperating on this particular issue, and intelligence sharing on visa applicants to flag individuals who may be at disproportionate risk of violating their conditions of entry has improved. The promising initial results of Canada's cooperation with the US Department of State Diplomatic Security Service's aforementioned and ongoing Operation Northern Watch is but one example of how cooperation can help overcome vulnerabilities created by policy differences on either side of the border. Such cooperation has already depressed migrant flows: from 87 a day between May and August 2017 to 42 a day by mid-2018 (Grant 2018).

Concerns that intelligence sharing on visa applicants constitutes a loss of sovereignty are fundamentally misguided when, in fact, this measure demonstrably enhances Canada's ability to manage its own territory (Crawford 2017). By contrast, to question the sovereign application of immigration laws by Canada's most important strategic ally is fundamentally misguided. The fact that improved intelligence sharing and cooperation with the US on vulnerabilities such as the abuse of visitor visas has reduced the flow of migrants by about half over the course of 12 months shows that the US is as indispensable a partner as ever.

Canada and the United States could coordinate their timing and the substance of rescinding and granting temporary protected status to citizens of select countries. After both countries had designated Haitians as protected in 2010, Canada rescinded that protection in 2015, whereas the United States did not. Canada and the United States also stand to benefit from European Union precedent: harmonize what they judge to be a designated country of origin (colloquially referred to as “safe” countries) and countries whence claims for refugee status are deemed “manifestly unfounded” (Bissett 2010, 7). The surge in Haitian irregular migrants subsequent to the United States rescinding their Temporary Protected Status, but after Canada had already done so unilaterally, however, gives pause for thought (Smith 2019).⁵

The Canadian regulatory process is frequently more efficient in introducing new regulations because the US has extensive requirements for consultation and response under the *Administrative Procedure Act*. So full harmonization would actually reduce Canada’s capacity to respond to spikes in asylum claims, especially asymmetrical ones. Given significant disagreement between both parties on granting protected status, coordination and implementation pose a challenge; harmonization should be strategic, rather than full.

Canada can also cooperate even more closely with US Border Patrol. Notwithstanding the Fourth Amendment, which addresses unreasonable search and seizure, federal regulations authorize US Customs and Border Protection to operate within 100 miles of any US external boundary. That effectively grants USBP limited extra-constitutional powers of roadside detention and search. Since those who cross into Canada irregularly are driven to the border and only walk the last bit of the way, CBP could expand roadside detention and seizure within legal limits: roads to the Canadian border are relatively few; roads to crossings at Roxham Road, Quebec, and Emerson, Manitoba, even fewer. While legal residents of the US would remain unaffected, such measures would add a deterrent for individuals without legal status in the US to make their way to the Canadian border and would deter the abuse of US visitor visas.

Better data

Canada’s weak data threaten policy coherence as well as cooperation with Canada’s border security partners. In the aftermath of 9/11, the United States started driving an international effort to expand the collection and sharing of data on citizens who migrate to ensure that no migrant who arrives in the United States or in an allied or partner country is a “stranger.” Travel documents with durable identifiers, notably biometrics, are one component of that effort, along with better intelligence screening.

In 2008, Canada’s Bill C-50, the *Budget Implementation Act*, provided for biometric information to be taken from all migrants to Canada, for vetting through an intelligence screen that includes the United States, United Kingdom, France, Singapore, Israel, and intelligence agencies from other allied and partner countries. Any intelligence agency can raise a flag on an individual and provide Canada with details about its concern. Canada can then make a sovereign decision, but it informs the other country of the outcome. Data sharing between Canada and the United States is particularly comprehensive: it includes not just migrants but encompasses entry and exit data for citizens and third-country nationals crossing at air, sea, and, since summer 2019, land borders. At the same time, migrants from countries that are unable or unwilling to share information on nationals can now find themselves at a significant disadvantage, as illustrated by the Trump administration’s executive order placing temporary moratoriums on migrants from select countries.

Better and more consistent Canadian data will also allow researchers and policy-makers to be better informed about the actual scale and nuances of trends they confront. Goldring, Berinstein, and Bernhard (2009, 242) have highlighted the deficiency in data for scholars looking at the Canadian case and point to this lack of sufficient government data to explain why most Canadian literature has to rely largely on anecdotal evidence. Specifically, Canada would do well to collect demographic statistics on irregular migrants – as the United States has been doing for over a decade.

Initially, the response in the US to a request for better data was similar to that in Canada: agencies insisted that they did not have time, money, or personnel resources to do so. But questions from Congress and others kept on coming, which took a lot more time, money, and resources to answer than if agencies had made the investment up front. Eventually the US added variables to their processing programs to facilitate ready and systematic data collection. Canadian government agencies are only starting to allocate resources to improve data collection. Lessons from the US experience are telling: better data would not only benefit research but Canada's government would be better positioned to spot emerging trends, identify patterns, and save money in the long run because pulling data manually consumes valuable time and resources.

However, bureaucratic inefficiency is the more likely explanation for Canada's failure to improve data collection. The inference to draw from lack of good data is that the efficacy of Canada's migration intelligence function has been eroded; the diffusion of roles between an inexperienced party in migration control (the RCMP) and the more expert CBSA/IRCC is undermining robust and consistent data collection. This is leading to a comparative erosion of investment in Canada in migration controls compared to the US. Canada's data issues are merely symptomatic; they indicate that the federal government is failing to provide domestic leadership and investment. Yet robust data are now a prerequisite for Canadian migration policy coherence and cross-border cooperation with allied security partner states.

Conclusion

President Donald Trump's election and subsequent migration policies are but aggravating factors in an antecedent causal chain driving irregular migration. The hardened border paradox and the evolving processes of migration had already curtailed the ability of migrants to reach Canadian ports of entry by sea or air, diffusing irregular access to the land border.

The complex interplay of American and Canadian policy effects complemented by structural and political conditions and decisions that predate the Trump administration will persist for the foreseeable future, beyond the horizon of the Trump presidency. A sustainable policy approach must adapt to broader shifts in migration patterns to and from the United States and optimize cooperation; the evidence in this study emphasizes that the United States is an integral partner in the application of each country's immigration laws and thus is critical in safeguarding Canadian sovereign decision-making.

Three patterns prevail among irregular migrants to Canada: 1) they are often foreigners already in the United States at risk of deportation, 2) they are citizens of countries who obtain visas for the United States for the purpose of then crossing into Canada irregularly, and 3) among them

are some who cannot obtain either a Canadian or an American visa. The latter fly into a Central or South American country where they are admissible without a visa, or where they can obtain an entry visa, and then make their way to Canada. These patterns suggest that those who manage to find their way to Canada usually have sufficient economic means to cover the costs of doing so. Yet the test for refugee status is fear of persecution – not economic means, however limited, to make it to Canada. In fact, many of those deserving protection – women, children, the elderly and frail – have the least economic means to make the journey.

Indeed, during the last quarter of 2018, fewer than half of finalized refugee claims by applicants who crossed between official ports of entry were approved (Immigration and Refugee Board 2019) – and only 10 percent of those qualified for Temporary Protected Status in the United States (Paperny 2017), which is a rate substantially lower than for refugee claims overall.

A sustainable policy approach must adapt to broader shifts in migration patterns to and from the United States.

That reinforces what 47 percent of Canadians believe anyway: that most refugee claimants are not genuine refugees (Ipsos 2019). Since 2016 the backlog of refugee cases doubled to 71,675 in December 2018, and despite efficiencies that have recently been introduced to the system, the Auditor General of Canada (2019) has concluded that the system remains unequipped to deal with a surge in asylum seekers. This is also reflected in public opinion: one poll found that 65 percent of respondents opined that Canada has received “too many” irregular crossers for the country’s authorities and service providers to handle, and 67 percent call the situation a crisis (Angus Reid 2018b). The surge is stressing federal government resources and provincial social services (PBO 2018; Zilio 2018).

The integrity of the system is being stretched further by claimants who go underground to avoid removal – over 200,000 migrants already toil illegally in Canada’s underground economy (Jimenez 2003, 2006) – as does the general lack of resources to remove people. Before 2016, CBSA already had warrants out for 44,000 inadmissible individuals for failing to comply with removal orders (Senate of Canada 2015, 7) and 15,000 deportation orders for foreign nationals from 180 countries (Harris 2017). At the same time the number of deportations has consistently declined since 2012-13, from 18,992 to 7,364 in 2016 (Harris 2017). Although deportations rose to 9,584 in 2018/19, that falls short of CBSA’s own national target of 10,000 removals for that fiscal year. Among those who have crossed into Canada irregularly, only 1 percent or fewer have been removed (Harris 2018; Zilio 2018).

The government asserts that removal of irregular asylum seekers whose claims have been denied is a priority, but during fiscal years 2017/18 and 2018/19, the agency deported a total of 723 failed claimants from a total of 68,000 asylum seekers who have crossed into Canada irregularly since 2017 (Forrest 2019). Currently, Canada’s deportation inventory is about 18,000 cases, composed overwhelmingly of failed refugee claimants. Yet fewer than 3,000 people (down from 5,300 in October 2018) currently have an actionable removal order with no known impediment to deportation (Forrest 2019). That discrepancy is a function of legal recourse, proceedings, and appeals, temporary stays of removals to countries that are experiencing armed conflict or

environmental disasters, court sentences, medical issues, Pre-Removal Risk Assessments, and recalcitrance by some countries to issue travel documents. That applicants who are denied refugee protection are not aggressively pursued for deportation is a long-standing issue, with the net effect that the refugee system now has a track record of effectively having become a back door to (im)migrate to Canada (cf. Smick 2006).

Canada already has the highest per capita rate of immigration among OECD countries. Nonetheless, the government of Canada is planning for regular immigration to rise by over 15 percent over four years: from 300,000 to 350,000 by 2021 – a target intake proportional to 1 percent of Canada's population annually. That still falls short of the rate of 450,000 per annum recommended by the Advisory Council on Economic Growth, which is chaired by Dominic Barton, who was hand-picked for the role by the prime minister (2016). The cumulative effect of both regular and back-door immigration gives rise to an exponential overall surge that risks undermining popular support for migration per se – including among recent immigrants.

With Canadian attitudes on migration as fickle as elsewhere – and disenchantment looming – such developments are giving voters cause to question border security, the integrity of the refugee migration system, the prospects of the political and economic integration of migrants, and consequences for the country's prosperity as a whole. Eroding popular support may be delegitimizing domestic migratory policies and the integrity of the rule of law that underpins them.

The sustainability of Canada's refugee regime is premised on a prevailing social contract: the migration system must be well-managed to ensure the integrity of Canada's borders, the successful political and economic socialization and integration of migrants, and their synergistic contribution to advancing Canadian prosperity and well-being.

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Endnotes

- 1 The literature offers competing explanations for this phenomenon: competition over scarce resources, including the threat out-group populations may pose to the collective identity and the cultural, national, and ethnic homogeneity of a society (Semyonov et al. 2006: 428); chauvinist in-group favouritism (Sides and Citrin 2007; Johnston et al. 2018) with a negative view of out-groups (Sniderman et al 2004); and the mobilization of exclusionist attitudes among nationalist movements (Koch 1991; Ignatieff 1994).
- 2 The introduction and expansion of permanent identities, such as biometric passports, notwithstanding, the illicit use of legitimate passports issued by Western democracies remains prolific. People seeking to impersonate the citizen to whom the passport was originally issued legitimately can obtain them from physical and online criminal brokers for around US\$700. Interpol maintains a database that keeps track of roughly 700,000 stolen and lost travel documents annually.
- 3 The misuse of methods to enter North America also affects southbound migrant traffic: Now that Canada has lifted visa requirements for Romanians, some have promptly been apprehended trying to enter the United States illegally (Associated Press 2018).
- 4 At the same time, she explained that any right to a refugee hearing is context-specific.
- 5 Haitians leaving the US also went to other countries, such as Chile, which received 43,898 Haitian migrants in 2016, but 44,289 in just the first seven months of 2017 (Haitian Internet 2017).

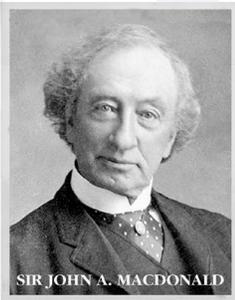
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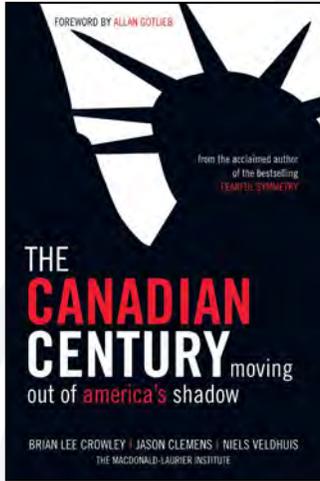
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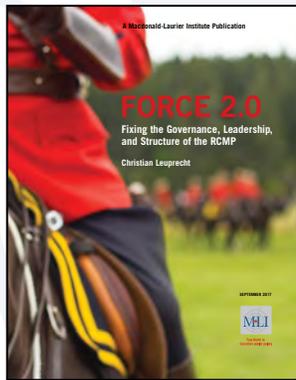


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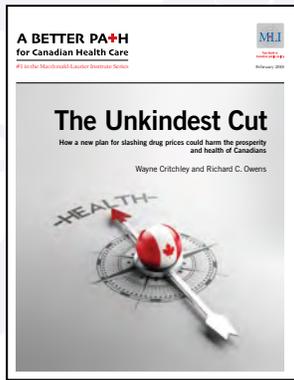
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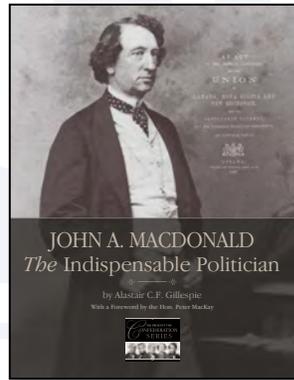
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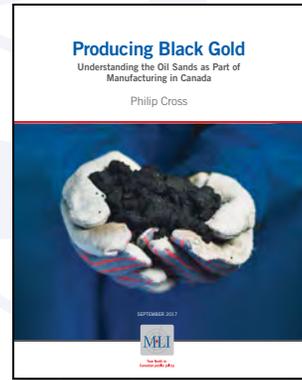
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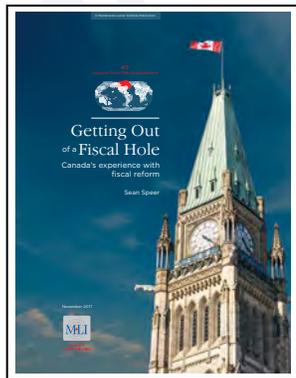
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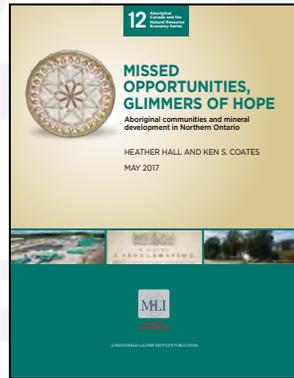
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