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6

Gendering Migration, Livelihood and Entitlements: Migrant Women in Canada and the United States

by Monica Boyd
and Deanna Pikkov





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and Entitlements:**
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the United States

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acronyms

AZCADV	Arizona Coalition Against Domestic Violence
GIS	Guaranteed Income Supplement (Canada)
IRCA	Immigration Reform and Control Act (United States)
IRPA	Immigration and Refugee Protection Act (Canada)
IT	information technology
LCP	Live-In Caregiver Program (Canada)
LINC	Language Instruction for Newcomers (Canada)
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
OAS	Old Age Security Program (Canada)
OECD	Organisation for Economic Co-operation and Development
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act (United States)
ROE	record of employment
TANF	Temporary Assistance to Needy Families (United States)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VAWA	Violence Against Women Act (United States)

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SUMMARY

The United States and Canada have long histories of large-scale migration, and they continue to welcome large flows of legal immigrants. Women make up an increasing proportion of these international flows. In both countries, the majority of legal immigrants are eligible for full citizenship rights and entitlements, with rapid or automatic access to both political rights and labour markets, although stratified entitlements are present for temporary and irregular migrants, and in the realm of social provision. Formally, women partake of these rights equally with men, but gender inequality persists both in government policy and in labour markets. In both countries, moreover, recent political and policy environments are influenced by neoliberal ideological principles, contributing to changes in migration policy, labour markets and social provisions that make female migrants increasingly vulnerable to structural inequalities.

In the first part of the paper, migration regimes in the two countries are compared. Women are entering both countries in increasing numbers, though still primarily as dependants of men. Changes to migration policy that increasingly favour admissions of highly educated migrants have been enacted more extensively in Canada; entry in high-skill “economic” categories now exceeds entry through the humanitarian categories of family reunification and refugee asylum. Admission requirements that emphasize human capital penalize women who come from countries in which resources are highly concentrated in male hands. In the United States, humanitarian category entries still predominate, although high-skill temporary entry increasingly functions as a “back door” route to permanent status. In the realm of refugee admissions, changes in rules that govern refugee selection have increased gender sensitivity in Canada, but the numbers affected remain low. In both countries, numbers of migrants within temporary categories of entry have increased over the last decade. Women are present in temporary categories that encompass both high and low skill streams, with very different prospects depending on labour market location. Recent policy initiatives in both countries propose the granting of temporary status to irregular migrants; such proposals have the potential to move North American migration regimes closer to European “guest worker” models, even as these models have proved untenable in Europe.

Next, gendered work environments are examined. In the United States and Canada, deregulation of labour markets has reinforced gendered occupational hierarchies in which immigrant women often hold disadvantaged places. While immigrant women, including those from the developing world, are present among highly skilled workers, they are also disproportionately visible at the bottom rungs of stratified service, retail and manufacturing

sectors. Similar patterns are evident with respect to unemployment, underemployment, working conditions and earnings. Diminished social entitlements that emphasize private provision of care provide abundant, but also precarious, employment opportunities, while increasing women's burdens within their own families. Lack of recognition of credentials acquired abroad by licensing bodies is a serious issue in Canada, contributing to deskilling and underemployment among immigrant women. In both countries, affirmative action and employment equity legislation that seeks to oppose and redress labour market discrimination based on race and sex has been hobbled by waning political commitment, limited enforcement, and restricted reach.

Social entitlements are examined in the final section of the paper. In the realm of settlement services, devolution and decentralization of services have relocated responsibility from federal governments to state and provincial governments, which frequently partner with businesses and non-governmental organizations. Despite changes that recognize women's greater need for language instruction in Canada, funding has remained static since the mid-1990s. One area of diminished entitlements for immigrants that particularly affects immigrant women is eligibility for pensions. Although small, universally awarded pensions are given to the elderly in both countries, migrants who work at home, in informal sectors, or who enter the country late in life are frequently ineligible for government pension plans that are work-related. It is in the United States that stratification of social benefits is most marked, largely as a result of two features of US welfare state provision. The first is the largely private health care system, in which the poor are often uninsured and must rely on means-tested Medicaid benefits, or pay cash for expensive medical care. The second is changes to social assistance that deny welfare access to single, non-working mothers, limit lifelong access to welfare to five years, and deny welfare completely to legal permanent residents who have not become legal citizens. In both countries, the erosion of social provision associated with neoliberal emphases on government fiscal austerity and a reliance on market provision of services is disproportionately felt by the poor, and especially poor immigrants with educational or language deficits. Combined with deregulation of labour markets, such changes both undermine commitment to principles of economic redistribution in North America, and threaten the well-being of women who migrate to these countries.

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RÉSUMÉ

Les Etats-Unis et le Canada ont une longue expérience des migrations à grande échelle et continuent d'accueillir des flux importants d'immigrants réguliers. Les femmes tiennent une place croissante dans ces flux internationaux. Dans les deux pays, la majorité des immigrants réguliers remplissent les conditions requises pour jouir pleinement des droits liés à la nationalité et entrer dans le système de protection sociale. Ils ont un accès rapide ou automatique à la fois aux droits politiques et au marché du travail, bien qu'il existe une stratification des droits pour les immigrés temporaires et clandestins. Officiellement, les femmes jouissent de ces droits au même titre que les hommes, mais l'inégalité entre les sexes persiste, tant dans la politique gouvernementale que sur les marchés du travail. De plus, l'environnement politique et les politiques récentes ont été influencées dans les deux pays par les principes de l'idéologie néolibérale, qui contribuent, par les changements apportés à la politique de l'immigration, aux marchés du travail et aux dispositions sociales, à rendre les femmes immigrées de plus en plus vulnérables aux inégalités structurelles.

La première partie du document compare l'immigration dans les deux pays. Les femmes sont de plus en plus nombreuses parmi les immigrants, bien qu'encore principalement en qualité de personnes à charge. Le Canada, plus que les Etats-Unis, a modifié peu à peu sa politique de l'immigration pour favoriser l'entrée de migrants hautement spécialisés; les immigrants "économiques" hautement qualifiés sont maintenant plus nombreux que les demandeurs d'asile et les migrants accueillis pour raison humanitaire au titre de la réunion des familles. Des conditions d'admission qui privilégient le capital humain pénalisent les femmes originaires de pays caractérisés par une forte concentration des ressources aux mains des hommes. Aux Etats-Unis, les entrées relevant de la catégorie humanitaire prédominent encore, bien que l'immigration temporaire soit pour beaucoup de travailleurs hautement qualifiés "l'entrée de service" qui leur permet de s'établir définitivement. Pour ce qui est des réfugiés, les changements apportés aux règles qui régissent leur sélection ont rendu le Canada plus sensible au sort des femmes, mais le nombre des réfugiées accueillies reste bas. Dans les deux pays, le nombre des immigrés qui arrivent en qualité de migrants temporaires a augmenté depuis dix ans. Il y a des femmes dans cette catégorie de migrants temporaires, dans laquelle entrent à la fois des professionnelles hautement qualifiées et des travailleuses peu qualifiées, et leurs perspectives sont très différentes selon leur situation sur le marché du travail. Dans les deux pays, des initiatives politiques récentes proposent d'accorder un permis temporaire aux migrants clandestins; de telles propositions pourraient rapprocher les régimes d'immigration nord-américains des modèles européens, même si ceux-ci se sont révélés intenable en Europe.

Les auteurs étudient ensuite l'environnement de travail pour chaque sexe. Aux Etats-Unis et au Canada, la déréglementation des marchés du travail a renforcé la hiérarchie des métiers, dans laquelle les femmes immigrées sont souvent défavorisées. S'il existe des femmes immigrées, notamment de pays en développement, parmi les travailleurs hautement qualifiés, elles sont surtout visibles, et en nombre disproportionné, aux échelons les plus bas des services, du commerce de détail et des industries manufacturières. Le même schéma est patent pour ce qui est du chômage, du sous-emploi, des conditions de travail et des gains. Un système où les droits sociaux sont réduits et dans lequel l'accent est mis sur l'origine privée des soins offre de nombreux emplois précaires tout en alourdissant la charge des femmes dans leur famille. Au Canada, la non-reconnaissance de diplômes et qualifications acquis à l'étranger est un problème grave, qui contribue à la déqualification et au sous-emploi chez les femmes immigrées. Dans les deux pays, une volonté politique affaiblie a réduit l'application et la portée des mesures d'action positive et des lois relatives à l'équité dans l'emploi, adoptées pour combattre et compenser la discrimination fondée sur la race et le sexe sur le marché du travail.

La dernière section du document est consacrée aux droits sociaux. S'agissant de l'aide à l'établissement, la décentralisation des services a entraîné un transfert des responsabilités du gouvernement fédéral à celui de l'Etat ou de la province, qui souvent s'allie avec des entreprises et des organisations non gouvernementales. Bien que l'on ait compris au Canada que les femmes avaient plus besoin de cours de langue que les hommes, le financement n'a pas augmenté depuis le milieu de la décennie 90. Si les droits sont parfois réduits pour les immigrants, il est un domaine dans lequel les femmes immigrées sont particulièrement touchées: celui des retraites. Bien que dans les deux pays, de modestes pensions soient versées à toutes les personnes âgées, les immigrés qui travaillent à domicile, dans l'économie informelle ou qui arrivent dans le pays à un âge avancé ne réunissent souvent pas les conditions requises pour bénéficier du régime de retraite public, qui dépend des années de travail. C'est aux Etats-Unis que la stratification des avantages sociaux est la plus marquée, en grande partie à cause de deux caractéristiques du système de prévoyance de ce pays. D'une part, le système des soins de santé est en grande partie privé, ce qui fait que les pauvres sont souvent sans assurance et dépendent des prestations de Medicaid, soumises à des conditions de ressources ou ils doivent payer comptant des soins médicaux coûteux. D'autre part, des modifications ont été apportées à l'assistance sociale, qui ont pour effet d'en refuser l'accès aux mères célibataires qui ne travaillent pas, de limiter à cinq ans la durée totale pendant laquelle on peut en bénéficier pendant sa vie et de la refuser totalement aux résidents établis régulièrement mais n'ayant pas acquis la nationalité du pays. Dans les deux pays, l'érosion de la prévoyance sociale, alliée à l'importance que prend l'austérité budgétaire dans un contexte néolibéral et à la confiance faite au marché pour fournir les services voulus, a des effets disproportionnés sur les pauvres, et plus particulièrement sur les immigrés pauvres peu instruits et handicapés par la méconnaissance de la langue. Avec la déréglementation des marchés du travail, ces changements à la fois ébranlent l'attachement aux principes de la redistribution économique en Amérique du Nord et menacent le bien-être des femmes qui y immigreront.

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RESUMEN

Desde hace mucho tiempo, los Estados Unidos y Canadá tienen experiencia con la migración a gran escala, y siguen acogiendo a grandes flujos de inmigrantes legales. Las mujeres representan un porcentaje creciente de estos flujos internacionales. En ambos países, la mayoría de los inmigrantes legales son elegibles para la plena ciudadanía, y pueden acceder rápida o automáticamente a derechos políticos y mercados de trabajo, aunque los derechos estratificados son una realidad para los inmigrantes temporales e irregulares, también en el ámbito de la protección social. En el plano formal, las mujeres y los hombres disfrutan de estos derechos en igualdad de condiciones, pero la desigualdad de género persiste tanto en la política gubernamental como en los mercados de trabajo. Asimismo, el marco político y de política establecido recientemente en ambos países está influido por principios ideológicos neoliberales, lo que contribuye a la introducción de cambios en la política de migración, los mercados de trabajo y las prestaciones sociales que aumentan la vulnerabilidad de las mujeres migrantes ante las desigualdades estructurales.

En la primera parte del documento se comparan los regímenes de migración establecidos en ambos países. El número de mujeres inmigrantes está incrementándose tanto en Estados Unidos como en Canadá, aunque la mayoría de ellas sigue dependiendo de los hombres. Los cambios en la política de migración que apoyan cada vez más la admisión de migrantes altamente cualificados han tenido lugar a mayor escala en Canadá; en la actualidad, el número de migrantes en ambos países que pertenecen a categorías “económicas” muy cualificadas supera el número de migrantes que ha llegado a estos países en el marco de categorías humanitarias de reunificación familiar y de asilo a los refugiados. Los requisitos en materia de admisión que ponen de relieve el capital humano perjudican a las mujeres procedentes de países en los que los recursos están principalmente en manos de los hombres. En los Estados Unidos, los migrantes correspondientes a la categoría humanitaria siguen prevaleciendo, aunque la competencia profesional es un medio “encubierto” para que un migrante temporal alcance la categoría de permanente. En el ámbito de las admisiones de refugiados, los cambios introducidos en las normas que rigen la selección de refugiados han fomentado la sensibilidad ante la situación de las mujeres en Canadá, pero el número de personas afectadas sigue siendo poco elevado. En ambos países, el número de migrantes correspondientes a categorías de entrada temporales ha aumentado en el último decenio. Las mujeres están presentes en categorías de entrada temporales que abarcan migrantes tanto muy cualificados como poco cualificados, cuyas perspectivas difieren considerablemente dependiendo de la ubicación del mercado de trabajo. Las iniciativas de política emprendidas en los últimos tiempos en ambos países proponen conceder la categoría temporal a los migrantes irregulares; tales propuestas podrían acercar los regímenes de migración norteamericanos a los modelos europeos del “trabajador invitado”, aun cuando estos modelos hayan demostrado ser insostenibles en Europa.

A continuación se examinan los entornos de trabajo. En los Estados Unidos y Canadá, la liberalización de los mercados de trabajo ha reforzado las jerarquías profesionales marcadas por la desigualdad de género, en las que las mujeres inmigrantes están con frecuencia en una situación de desventaja. Aunque las mujeres inmigrantes están presentes entre los trabajadores muy cualificados, inclusive en los países en desarrollo, también están desproporcionadamente presentes en las categorías más bajas de los servicios estratificados, en el sector manufacturero, y el comercio al por menor. Pueden observarse claramente patrones similares en lo que respecta al desempleo, el subempleo, las condiciones de trabajo y los ingresos. Derechos sociales reducidos que enfatizan la prestación de cuidados en la esfera privada brindan numerosas pero precarias oportunidades de empleo, a la vez que incrementan la carga de las mujeres en su propio ámbito familiar. El hecho de que los órganos competentes en la concesión de licencias no reconozcan los títulos adquiridos en el extranjero constituye un gran problema en

Canadá, y contribuye a las descualificación y el subdesempleo de las mujeres inmigrantes. En ambos países, la acción afirmativa y la legislación relativa a la igualdad en el empleo que tienen por objeto combatir y rectificar la discriminación en el mercado de trabajo por motivos de raza y sexo se han visto perjudicadas por el compromiso político decreciente, la aplicación limitada de la legislación y un alcance restringido.

Los derechos sociales se examinan en la última sección del documento. En el ámbito de los servicios de asentamiento, la devolución y descentralización de los servicios han trasladado la responsabilidad de los gobiernos federales a los gobiernos estatales y provinciales, que en muchos casos se asocian con empresas y organizaciones no gubernamentales. A pesar de los cambios que reconocen la creciente necesidad de las mujeres de recibir educación lingüística en Canadá, los fondos destinados a tales fines no han variado desde mediados del decenio de 1990. Una cuestión que afecta particularmente a las mujeres inmigrantes es lo que respecta a la disminución de los derechos de los inmigrantes es la elegibilidad para recibir una pensión de jubilación. A pesar de que se les otorgan pensiones reducidas, universalmente adjudicadas, a las personas mayores en ambos países; los migrantes que trabajan en el hogar, en los sectores informales, o las personas que llegan al país de acogida en una etapa posterior de su vida, muchas veces no son elegibles para los regímenes de pensión gubernamentales relacionados con el trabajo. La estratificación de las prestaciones sociales es más destacada en los Estados Unidos, en gran parte a consecuencia de dos características del régimen estatal de protección social establecido en este país. La primera es la considerable privatización del sistema de atención de salud, por lo que muchas veces los pobres no están asegurados y dependen únicamente de las prestaciones del programa Medicaid concedidas a personas supeditadas a un tope en los ingresos, o tienen que pagar en efectivo una onerosa atención médica. La segunda característica son los cambios en el ámbito de la asistencia social que niegan el acceso a las prestaciones sociales a las mujeres solteras que no trabajan; que limitan el acceso durante toda la vida a dichas prestaciones a un período de cinco años, y que niegan completamente el acceso a tales prestaciones a los residentes permanentes legales que no han alcanzado la categoría de ciudadanos legales. En ambos países, la degradación de la protección social asociada con el énfasis neoliberal en la austeridad fiscal del gobierno y en una dependencia de la prestación de los servicios en el mercado tiene consecuencias desproporcionadamente negativas en los pobres, en particular en los inmigrantes pobres con un déficit educativo o lingüístico. Combinados con la liberalización de los mercados de trabajo, estos cambios pueden menoscabar el compromiso con los principios de la redistribución económica en América del Norte, y amenazar el bienestar de las mujeres que emigran a estos países.

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introduction

Although women have always migrated, developments in the last quarter of the twentieth century sustain both their presence in international migration flows and their recognition as migrants. In less developed nations, structural adjustment programmes shrink opportunities for male

employment and for traditional forms of profit making, and contribute to declining government revenues. In turn, imperatives of finding alternative means for making a living, making a profit and securing government revenue stimulate the international migration of women and men alike (Sassen 1988). Moreover, growing insecurities cause states, households and individuals to rely increasingly on women's labour for their survival, a phenomenon that has been referred to as the "feminization of survival" (Migration Policy Institute 2003; Sassen 2000). Women, of course, have always been heavily involved in their families' and communities' survival; but the phrase highlights the increasingly public and visible forms of women's contributions to state and household economic strategies in the face of extreme conditions and growing worldwide demand for their services. One consequence is the increasing percentage of women in migration flows to all world regions, including North America (Zlotnik 2003).

Reflecting the broad similarities between Canada and the United States, many aspects of immigrant women's experiences are similar in the two countries. Despite the efforts of the women's movement of the 1970s and 1980s, and the subsequent enactment of affirmative action legislation, gender stratification, defined as asymmetrical relations of power and access to resources that privilege men, persists in both Canada and the United States. Consequently, the modes of entry into North America are gendered, implying that men and women frequently enter under different criteria governing the admission of permanent residents. Migrant women often enter as wives and dependants of men who sponsor their admission, and they are usually less likely than men to enter on humanitarian or economic grounds. However, the effects of gender stratification do not end there. Many migrant women engage in paid work; like their native-born counterparts, immigrant women face a gender-stratified labour market where they are frequently employed in female-typed occupations, stereotypically labelled as "women's jobs".

These jobs held by migrant women occur within similar economies. In both Canada and the United States, the move away from farming and heavy manufacturing began early in the twentieth century, and then escalated so that by the close of the century, employment in both countries was overwhelming in service industries. But in postindustrial economies, both the residual manufacturing and the growing service sectors can provide good and bad jobs. Migrant women in both Canada and the United States have their share of both, with examples ranging from seamstress work to domestic, cleaning and nursing occupations. Overall, the negative impacts of gender combine with those of being an immigrant, with the result that immigrant women are doubly disadvantaged, and most likely to be overrepresented in marginal, unregulated and/or poorly paid jobs.

Both Canada and the United States have undergone similar developments in their immigration policies. From the start, first as areas of settlement, then as British colonies, and finally as independent nation-states, both countries sought migrants as permanent residents. Beginning in the 1960s and continuing throughout the remainder of the twentieth century, both countries dismantled their earlier immigration policies, which permitted migration only for those of European, and thus white, origins. Combined with increasing global economic and political penetration, one result of the new immigration legislation of the 1960s and beyond was a dramatic shift in the origin, and colour composition, of permanent residents. Canadian and US cities now present a vibrant mix of ethnic and racial groups and individuals from every corner of the globe. Despite the very real

opportunities that immigration continues to provide to newcomers in these countries, and despite the remarkable accomplishments and achievements of immigrants over time, it is nonetheless true that outcomes and opportunities are not evenly distributed, especially as regards employment. A very real potential for immigrant women now is to be “triple disadvantaged” in the labour market by virtue of being female, foreign-born and phenotypically “non-white”.

However, contemporary experiences of immigrant women in Canada and the United States do not wholly reflect the effects of gender, immigrant and racial stratification systems and the impacts of altered immigration policies. Stratification systems and immigration policies evolve, and are applied within historical, political and ideological contexts in Canada and the United States. Among its many distinctive historical attributes, the United States shares a long land border with Mexico, thus setting the stage early on for state-regulated migration on a temporary basis. The Bracero Program permitted the legal and temporary entry of Mexicans to work for American farmers. Today, the strong business lobby for temporary labour migration also advocates the recruitment of temporary information technology workers, and provisions are found in American immigration legislation.

Another equally important legacy of shared borders is the development of sustained flows of migrants who entered the United States illegally, without government authorization. As a result, both temporary workers and illegal migrants are key items in any discussion of female migration into the United States. In Canada less attention is paid to these two categories of migrants, partly because the land border is shared with the United States rather than with a newly developed country.

The political systems of the two countries also contain differences which shape the climate within which migrant women enter and live out their lives. At both the federal and provincial levels, the Canadian system is a parliamentary one, in which party leaders typically maintain strong control over their party’s elected Members of Parliament. At the federal level, two governing bodies exist, an elected Parliament and an appointed Senate, with appointments terminated by either resignation or retirement at age 75. Federal–provincial relations are codified and ongoing, achieved by meetings between premiers, and by federal–provincial meetings between representatives of departments. In such a system, regulations are not enshrined in legislation, which instead states major guiding principles. As a result, alterations in immigrant admissions policies can occur with little visibility via bureaucratic guidelines, rather than requiring continual legislative adjudication. Government departments also have some discretion to fine-tune guidelines, as happened with respect to refugee women facing gender-related persecution.

In contrast, the US system of governance is congressional, consisting of an elected House of Representatives and elected Senate. Party control over elected members is more precarious, and energetic politicians can be highly entrepreneurial, sometimes contradicting party platforms on issues. Accompanying the implicit system of checks and balances found in the governing structure (the legislature consisting of Congress and the Senate, plus the Executive and the Judiciary) is the development of a powerful lobbying system comprised of fiercely engaged interest groups. These features of governance affect the development of immigration policies in the United States. Immigration legislation is highly visible, and subject to capture and contest by interested parties. Difficulties in obtaining consensus over many diverse issues contained in a comprehensive immigration bill mean that immigration legislation has been piecemeal from the mid-1980s on, with separate acts or laws focusing solely on refugees, or on temporary workers, or on other issues such as amnesties. Within this context, it comes as no surprise that specific acts combine to produce competing results, and that some issues surrounding immigration

policies are subject to continual revisiting. For example, despite ongoing discourse on the need to have policies that are focused on labour, family reunification remains the biggest component of immigration to the United States. American debates and legislation on temporary workers and amnesties are also recurring events.

In the realm of ideologies and belief systems, Canada and the United States are different yet similar. Despite ongoing devolution of responsibilities to the provinces, the Canadian federal government remains more engaged in the policy and social support arenas than currently holds in the United States. These differences may ultimately reflect fundamental differences in societal values. Individualism is emphasized in the United States and collectivism in Canada, each rooted in the initial principles of nation-statehood, of “life, liberty and the pursuit of happiness” for the United States, and “peace, order and good government” for Canada (Lipset 1990). Consistent with such value differences are the distinctive health care systems of the two countries, with a privatized, user-pay system in the United States versus federally funded, provincially supplied and universal health care coverage in Canada. These differences in turn affect access to health care for migrant women and their children.

Although differences exist in governance, in policy engagement and possibly in values, both countries are similar ideologically in two respects. First, both are described as liberal welfare states, in which safety nets are extended to members on the basis of their attachment to paid work. Second, in both, ideological, political and policy climates have shifted over the 1980s and 1990s to include neoliberal principles that emphasize the importance of an unfettered economy, and a minimally engaged government with respect to regulating the market and providing benefits.

Neoliberal principles and accompanying policy climates have three implications in the field of immigration generally, and for immigrant women in particular. First, the rules and regulations that make up migration regimes bear the imprint of neoliberal discourse. This is seen in debates over whom to admit, which increasingly emphasize the entry of those who can contribute to the market and enhance global competitiveness. It also is evident in the encouragement of growing numbers of temporary workers, many of whom are high skilled, as well as in the increased user fees and administrative surcharges found in both countries, but particularly in Canada.

Second, in both countries, the pull toward free-market policies is consistent with lax enforcement of wage and workplace regulations, the persistence of stratified labour markets in which immigrant women often find themselves in the bottom stratum, and listless affirmative action/employment equity legislation, which in turn also affects immigrant women. Third, in both countries, residents risk diminished entitlements in the wake of the disengagement of governments from the provision of benefits, and the general erosion and privatization of social provision. These changes, which are consistent with neoliberal commitments, have the potential to disproportionately affect the poor, and especially poor immigrants with educational or language deficits.

Immigrant disadvantage, then, occurs within the erosion of entitlements available to all residents in the United States and Canada; stratifying and awarding formal entitlements according to the legitimacy of perceived membership in the nation-state is not as dominant an approach as in Europe. Nonetheless, legal residency, gender and race can operate as stratifying, exclusionary criteria in all societies, and the differences between the United States, Canada and Europe in the sources of immigrant disadvantage are those of degree rather than being absolute. As discussed in the later sections of this paper, the stratification of entitlements appears to have happened with respect to migrant women who are live-in domestic workers in Canada, and with respect to migrant women and men in the United States following Proposition 187 in California and major welfare reform legislation in 1996.

And hierarchical citizenship statuses, as an additional strategy to avoid the high costs of immigrant integration, may increasingly appear on the North American policy horizons. Signs exist in the growing numbers of temporary workers, and in recent proposals in the United States and Canada to hugely augment this group by converting irregular migrants into temporary workers.

Taken together, the migration of women and their livelihoods and entitlements in Canada and the United States reflect the forces of globalization, and country similarities and differences in principles of stratification, in economic structures, in systems of governance, and in adherence to neoliberal principles. As a result, the situation of migrant women in North America defies a simple story, particularly when comparisons are made between Canada and the United States. In some circumstances, the situation of migrant women in both countries is remarkably similar; in other circumstances, differences exist.

Such similarities and differences are evident in the three core sections of the paper, which begins with a look at changes in migration patterns, giving first an overall analysis of new migration regimes and then a close look at their effects on women. The next area of concern is gendered work environments and how these are tied to recent government decisions. Finally, the paper examines immigrant entitlements, showing where government actions regarding social programmes affect all immigrants generally as well as immigrant women specifically.

II.

changed migration regimes: what can we expect?

Both Canada and the United States view migrants as permanent settlers, and admit most migrants with the right to live permanently in the host country.¹ In contrast to settlement countries like Australia, New Zealand, Canada and the United States, European countries sought to limit long-term immigration and bring in temporary workers throughout the third quarter of the twentieth century. That broad distinctions between “settler” and

“guest-worker” and “colonial” migration regimes still apply is seen in the fact that all four “settler” countries still welcome large-scale immigration, and access to both labour markets and citizenship remains strikingly easy in comparison with Europe. Most immigrants to Europe must make lengthy adjustments in status from temporary to permanent residence before becoming eligible for citizenship. In contrast, the overwhelming majority of legal immigrants to North America achieve permanent residence automatically upon entry, and are eligible for legal citizenship within three to five years. Exceptions include visitors, students and temporary workers.

This relatively generous treatment of immigrants is reflected in Canada’s refusal to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which entered into force on 1 July 2003 with 27 signatory nations. Canadian officials argued that “(t)he vast majority of persons who would be considered as migrant workers under the definition of the Convention enter Canada as permanent residents ... [and] ... enjoy legal rights and social benefits as Canadian citizens” (December 18 n.d.). They found that the Convention did not fit the Canadian case, and despite fully supporting the aims of the policy, declined to be party to the Convention.² Nonetheless, the recent ascendancy of neoliberal discourse has been accompanied by a shift in how immigrants are viewed in North America. Specifically, economic rationalization of immigration policy has led to efforts to target the recruitment of highly skilled workers, to reduce obligations to lower-skilled workers, and to reduce the numbers of “expensive” asylum seekers.

The pursuit of policies based on these objectives creates a convergence between most Western European and North American countries in terms of migration regimes, here defined as the sets of rules, regulations and practices that govern the entry and continued residence of migrants. This convergence is based not only on similar neoliberal logics, but also on demographic landscapes, and concerns about national security and sovereign borders. In Europe, the growing similarity is perhaps most clearly seen in debates over whether large-scale immigration will be necessary to counteract Europe’s demographic decline (Power 2003), and by the movement in some regimes towards *jus soli* principles of citizenship in recognition of the need to integrate long-resident third-country nationals.³

1 Such migrants are called “permanent residents” under Canadian immigration legislation and “aliens” in American immigration law. This report uses the term “permanent resident” or “immigrant” interchangeably when referring to those migrants who are admitted with the right to permanent residence.

2 Critics counter, however, that Canada does import temporary migrants for its Seasonal Agricultural Worker Program, and that some aspects of this (admittedly small) programme appear to be in contravention of convention guidelines (Verma 2003).

3 According to *jus soli* principles of citizenship law that are common to “settler states”, citizenship is automatically granted to anyone born in national territory. This contrasts with principles of citizenship based on blood or descent (*jus sanguines*). Most European states, with the exception of Austria, have amended their *jus sanguines* laws and now confer citizenship according to *jus soli* principles. They typically make citizenship available to anyone born on national territory once they reach the age of majority. Meanwhile, Australia and the United Kingdom have begun to interpret their *jus soli* laws more narrowly (Aleinikoff and Klusmeyer 2002).

At the same time, North American governments debate amending their “settler” regimes in ways that either explicitly or implicitly emphasize the relationship between immigration and the market. This relationship is evident in the discourse about the admission of permanent residents on family versus economic criteria, and in growing numbers of temporary residents in both countries in the last 20 years. Despite the generosity towards immigrants seen in North American regimes historically, such trends may foreshadow changes that could threaten this reputation. Enlarged temporary-worker arrangements, discussed in detail in the sections on temporary workers and irregular migrants, have the potential to move North American policies closer to those of “guest-worker” regimes. However, despite these proposed and de facto changes to migration regimes, family reunification remains a pillar of immigration policy in both Canada and the United States, and human rights issues continue to have a bearing on refugee admissions.

II.A.

who gets in: family and economic migration

Historically, both Canada and the United States received migrants primarily from Europe, and enacted legislation that prevented or sharply curbed migration from elsewhere. Country-origin criteria for immigrant suitability were eliminated in Canada and the United States in the

1960s, thereby removing overtly racist approaches to the selection of migrants for settlement. Added to this, the growing prosperity of Western and Southern European countries reduced their residents’ incentives to migrate. As a result of these legislative changes and economic trends, the origins of migrants to North America altered dramatically. By the beginning of the twenty-first century, migrants from Asia were well represented, if not dominant, in the annual flows of permanent residents to Canada and the United States. Migrants from Latin and South America also entered the United States in large numbers, reflecting a long history of a shared border with Mexico and political influence in the Caribbean and Latin America (table 1).

TABLE 1
PERCENTAGE DISTRIBUTION OF IMMIGRANTS BY SOURCE AREA, CANADA AND THE UNITED STATES, 2001

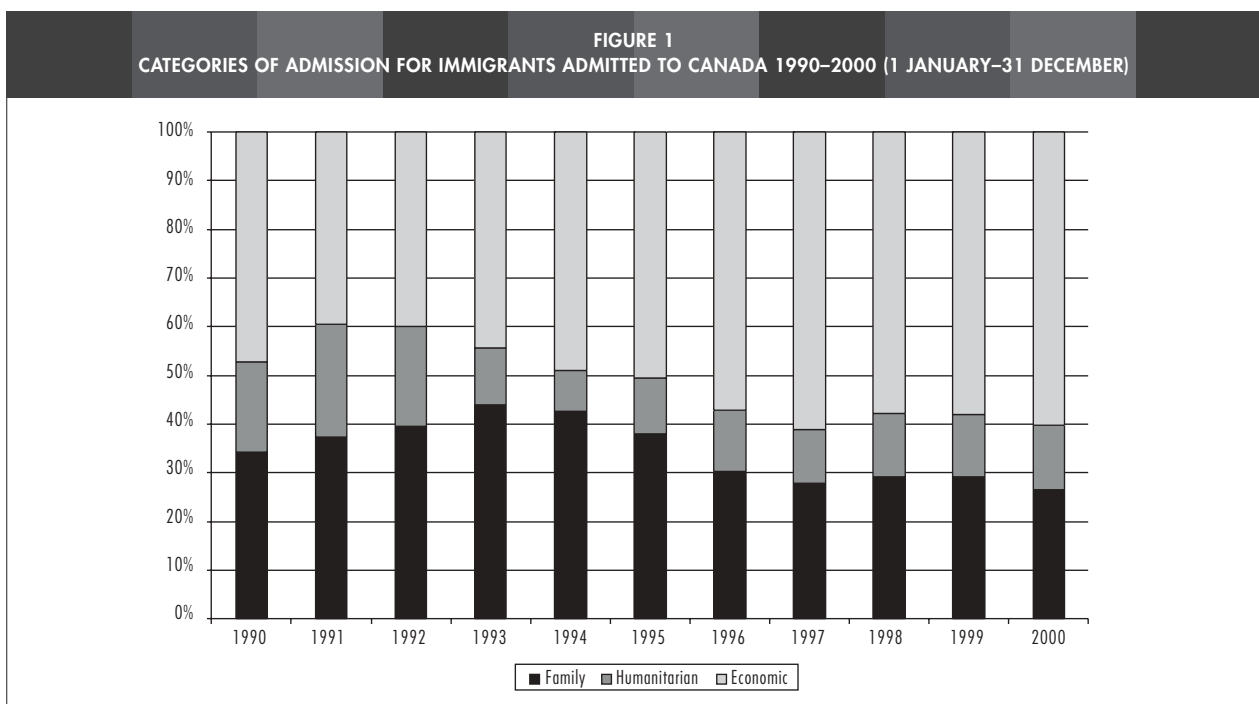
Region	Canada ^(a)	United States ^(b)
Europe and the United Kingdom	17.3	16.7
United States (Canada)(c)	2.4	2.8
South and Central America	8.0	41.6
Africa and the Middle East	19.2	6.3
Asia and Pacific	53.0	30.9
Not stated	0.1	1.7
Total	100.0	100.0

Sources: for Canada, Canadian Government (2002a: 8); for the United States, US Government (2003a: table 2).

Notes: (a) calendar year, 1 January 1–31 December; (b) fiscal year, 1 April 1–31 March; (c) that is, US emigrants to Canada and vice versa.

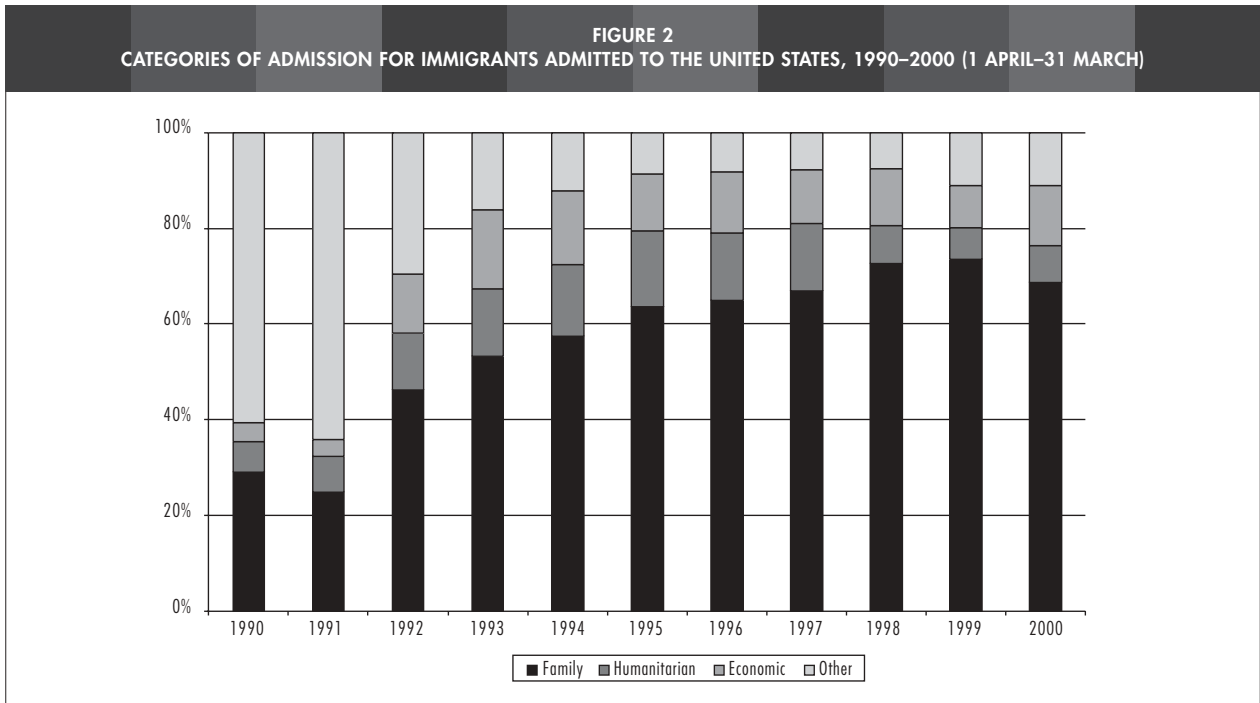
Increasingly, however, neoliberal notions of efficiency and competitiveness are employed to recommend a new kind of discrimination, against those who lack education and language skills. This is motivated by a desire to obtain the immediate benefit of skilled workers, fuelled by the belief that skilled and educated workers will integrate more easily, and by the claim that uneducated immigrants are hard on the public purse. Consequently, policy makers are increasingly urged to tailor immigrant selection to fill long-term demographic needs based strictly on those human-capital characteristics considered most likely to ensure net national advantage.

This discourse occurs within the context of existing principles of admissibility. Starting with legislative changes in the 1960s, and solidified in subsequent legislation in the last quarter of the twentieth century, both Canadian and US immigration policies now admit permanent residents on the basis of three principles: family reunification, economic contribution and humanitarian concerns. The trend towards targeting young, highly skilled entrants for permanent residence is most evident in Canada, while Latin American migration to the United States demonstrates the lesser importance in that country of skill-based admissions (Antecol et al. 2003). A series of Canadian regulatory changes in the 1980s and 1990s quietly restricted immigration based on family reunification, and emphasized the intake of those who would make economic contributions. By the end of the 1990s, the majority of new immigrants to Canada consisted of “economic immigrants” and their immediate families (figure 1).



Sources: Canadian Government 2001, 2000, 1999a, 1999b, 1998, 1997, 1996, 1994, 1992, 1991; US Government 2003c.

In the United States, meanwhile, despite frequent calls from economists and policy makers to implement changes to immigration policy that would result in a better “quality” of immigrant (Lowell 2001), a majority of legal entrants still come in as relatives of legal residents (figure 2).⁴ A variety of political and administrative factors militate against the adoption of more skill-selective entrance requirements in the United States, including backlogs of applications, the bypassing of quotas and queues by sponsors with legal citizenship, and the politicized nature of the debate in the United States, at a time when the electoral importance of the huge Hispanic population is taken very seriously by both the Democrats and the Republicans.



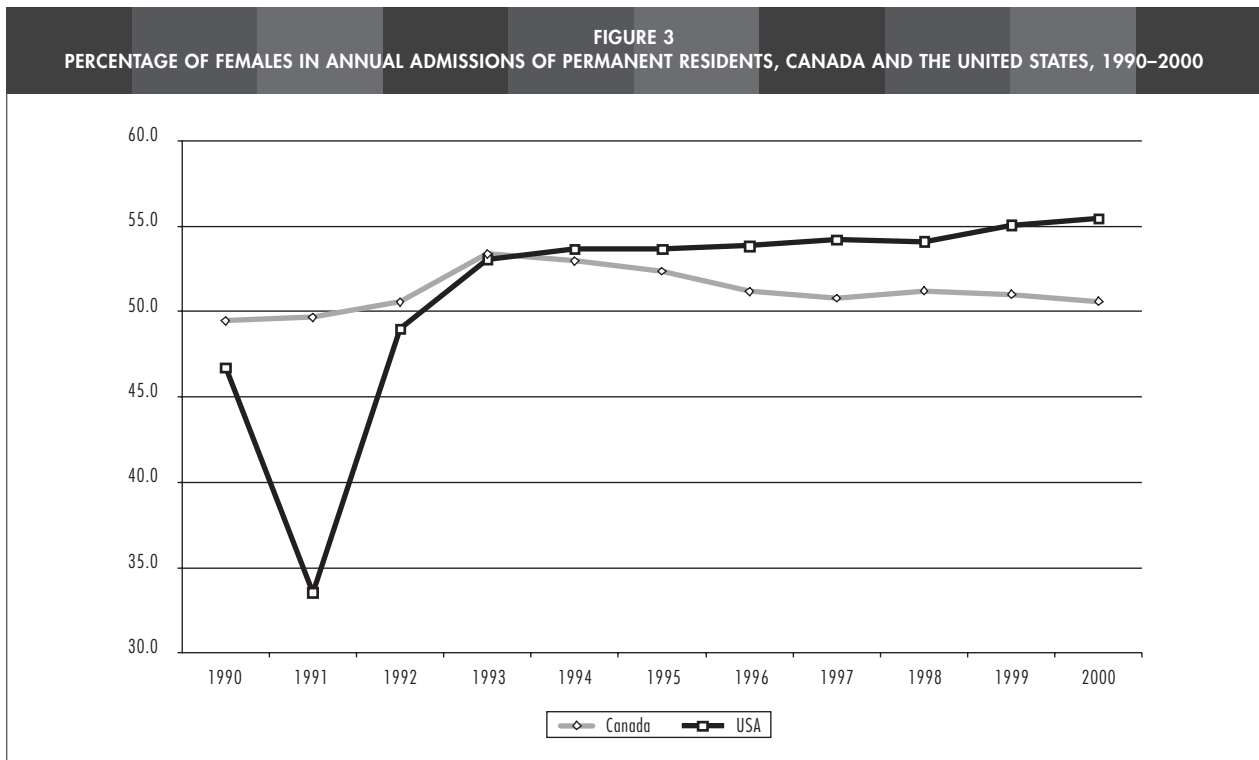
Sources: Canadian Government 2001, 2000, 1999a, 1999b, 1998, 1997, 1996, 1994, 1992, 1991; US Government 2003c.

4 Economic migrants in figure 2 refer to the category used by the United States Office of Immigration Statistics in compiling statistics, plus those admitted under the Nursing Relief Act of 1989, discussed in Section III of this paper.

II.B.

women and modes of entry

From the post-Second World War years on, the number of females in annual immigration flows to Canada and the United States has closely resembled the number of males (Boyd 1992). In the early 1990s, the female share of total migration briefly dropped in the United States as a result of the legalization of workers under the Immigration Reform and Control Act (figure 3). Many of these workers were men. Since then, the percentages of females has climbed to over 50 per cent of the total flow of permanent residents in both countries, with the somewhat higher percentages for the United States consistent with higher levels of migration for purposes of family reunification (see figure 2).



Sources: Canadian Government 2001, 2000, 1999a, 1999b, 1998, 1997, 1996, 1994, 1992, 1991; US Government 2003c.

In principle, women who seek permanent resident status in Canada and the United States enter in ways similar to men. They may be admitted on the basis of their family ties, their economic contributions or humanitarian concerns. Within each of these three categories of “admissibility”, they may enter as independent, or autonomous migrants who are bureaucratically defined as “principal applicants”, or they may enter as “tied movers” who are members of a migrating family or household unit. But gender—defined here as those social and cultural ideals, practices and displays of masculinity and femininity that constitute gender roles, relations and hierarchies (Hondagneu-Sotelo 1994)—determines the modal category. In both Canada and the United States, females

predominate among migrants entering on the basis of family reunification criteria, whereas they frequently make up less than half of those entering on the basis of economic criteria (table 2).⁵ Not surprisingly perhaps, only where labour flows are destined for female-typed jobs, such as nurses or domestics, do women predominate as economic migrants. For example, women constituted 84 per cent of workers in the 2001 statistics for the Canadian Live-In Caregiver Program (LCP), discussed later in this paper (Canadian Government 2002a). Thus, the mode of entry for women would seem to reflect their stereotypical roles as wives, daughters and caregivers.

TABLE 2
PERCENTAGE OF TOTAL ADMISSIONS OF IMMIGRANTS IN THE FAMILY AND ECONOMIC CATEGORIES WHO ARE FEMALES^(a), 1990–2000

Year	Canada ^(b)		United States ^(c)	
	Family	Economic	Family	Economic
1990	54.9	49.2	54.2	50.9
1991	56.0	50.2	54.8	50.3
1992	57.1	50.1	56.5	48.6
1993	58.0	51.6	56.4	47.7
1994	57.5	50.7	56.6	49.0
1995	58.3	49.5	56.9	49.5
1996	58.8	48.3	57.1	49.9
1997	59.8	47.8	57.6	49.2
1998	60.9	47.5	56.8	48.1
1999	61.2	47.1	57.4	49.5
2000	61.6	46.7	58.5	49.4

Sources: Canadian Government 2001, 2000, 1999a, 1999b, 1998, 1997, 1996, 1994, 1992, 1991; US Government 2003c.

Notes: (a) for example of all persons admitted to Canada in 1990 as immigrants (permanent residents) on the basis of family ties, 54.9 per cent were female; (b) calendar years, from 1 January–31 December; (c) fiscal years, from 1 April 1–31 March.

Gender stratification also influences how women migrants are admitted into North America in other ways. Petitioning fees, in which applicants must pay for the processing of applications, and entry fees are good examples. The Canadian fees for applications and for entry originated in the mantra of “cost recovery” which began in the late 1980s under the Conservative federal government; they are considered to be high, and certainly more than those charged in the United States.⁶ It might be argued the high fees are explicitly designed for, or at least

5 These conclusions are derived from data on all females and males regardless of age or whether they enter as principal applicants or as family members of a principal applicant. However, earlier research shows that when women enter on the basis of humanitarian or economic criteria of admissibility, they are most likely to be the spouses or dependents of male principal applicants (Boyd 1992).

6 In Canada, a principal applicant who is applying in the family class, and who is age 22 or older, must pay a C\$475 processing fee, an additional C\$575 for each accompanying family member age 22 or older, and a fee of C\$150 for each accompanying family member under age 22. These fees are non-refundable once the assessment process begins. If the application is approved, an additional fee of C\$975 is levied for principal applicants and family members, unless these family members are dependent children, or children to be adopted by the sponsor, or orphans. Similar charges apply for applicants in the skilled worker class, except that the application fees for principal applicants are set at C\$550 (Canadian Government 2004a, 2004c). In the United States, fees are either not levied or are more modest, depending on the service requested (US Government 2004a). However, in February, 2004 the US Government Accounting Office proposed to increase fees to a level that would require applicants to pay on average an additional US\$55 for an immigrant application as well as US\$20 for biometric requirements (Jachimowicz and Margon 2004).

have the unintended consequence of, dampening the ardour of persons seeking migration on the basis of family ties, especially those persons from countries with low standards of living. By extension, the fees specifically deter women from initiating migration attempts. Since gender hierarchies in source countries are usually associated with low earnings of women compared with men, women who seek to immigrate as principal applicants or as autonomous migrants bear a higher relative financial burden than their male counterparts.

In the receiving countries of Canada and the United States, government policies to minimize social spending can also dampen the extent to which women, once admitted as permanent residents, facilitate subsequent migration under the principles of family reunification. In both countries, family members are admissible if they meet health and security criteria and are “sponsored”. Although the specifics vary by country, sponsors are relatives who agree to undertake responsibility for the basic requirements of those seeking to enter on the basis of family ties (Canadian Government 2003b; US Government 2004b). The intent is to provide a family-based safety net and to ensure that persons admitted under the auspices of family reunification do not make demands on government social assistance programmes for a number of years. Proof regarding the financial capacity to undertake sponsorship obligations is required. Although incomes from spouses and common-law partners may be pooled in Canada, and while incomes from relatives by birth, marriage or adoption who reside in the household of the sponsor may be pooled in the United States, gender differences in earnings dictate that a female who is the sole sponsor has a higher risk of being rejected than her male counterpart.

Gender biases in immigration regulations have the potential to be minimized by the implementation of gender-based analysis. As developed over the years, and articulated in Canada’s Federal Plan for Gender Equality presented to the United Nations (UN) Conference of Women, gender-based analysis is consistent with the emphasis in the Beijing Platform for Action on the importance of mainstreaming a gender perspective in all policies and programmes in order to determine the impacts on women and men (Canadian Government 2000b). Critics observe that the impact of gender-based analysis can be minimized by limited leadership capacity, and neoliberal policies accompanied by the absence of resources⁷ and by the narrow focus on gender alone (Grace 1997; Hankivsky 2004). Nevertheless, following the representation of several non-governmental organization (NGO) women’s groups (Walton-Roberts 2004), gender-based analysis did provide a framework for more gender-sensitive changes in several sections of Canada’s recent Immigration and Refugee Protection Act (IRPA), effective June 2002 (Canadian Government 2002c). Starting in 1995 in the United States, a President’s Interagency Council on Women was mandated to encourage gender mainstreaming; this agency was replaced in 2001 with the Office of International Women’s Issues. Despite these administrative structures, critics charge that the concept of gender mainstreaming lacks visibility and impact in the United States (Hankivsky 2004).

7 Burt and Hardman 2001; Grace 1997; see also Teghtsoonian 2004.

II.C.

gendering refugees

In addition to admissions for permanent residence which are based on family reunification and economic criteria, humanitarian-based admissions occupy a significant place in policies in both Canada and the United States, and have been incorporated into post-1960s legislation.⁸ But

laws and procedures for admitting persons on humanitarian principles that are gender neutral in wording and appearance do not necessarily lead to gender parity in outcomes.

In the past, the equal representation of women in refugee settlement programmes has been of concern (Keely 1992; Martin 1992). Although provisional statistics for United Nations High Commissioner for Refugees (UNHCR)-assisted refugee populations in camps or centres show that women aged between 18 and 59 equal or outnumber their male counterparts (UNHCR 2002, 2001), it cannot be assumed that women are as likely as men to be selected for resettlement to Canada or the United States. Published information by gender and age for admissions under humanitarian auspices is notoriously scarce, and does not effectively demonstrate inequalities. Nevertheless, throughout the 1990s, females of all ages represented less than half of refugee and asylum-seeker admissions in the United States, and of Canadian admissions in the refugee class (table 3). The gender gap in admissions is larger when using data on principal applicants, since such data exclude spouses and dependants, including children: in 2000, 33 per cent of the principal applicants in the refugee class admissions in Canada were women (Canadian Government 2002a).

TABLE 3
PERCENTAGE OF TOTAL ADMISSIONS OF IMMIGRANTS ON THE BASIS OF HUMANITARIAN CRITERIA WHO ARE FEMALES^(a), 1990–2000

Year of admission	Canada ^(b)	United States ^(c)
1990	40.3	46.7
1991	38.5	48.1
1992	38.7	48.2
1993	42.6	49.0
1994	43.7	49.1
1995	43.1	48.5
1996	45.7	47.6
1997	44.6	46.8
1998	46.0	46.6
1999	45.9	48.7
2000	46.4	48.0

Notes: (a) for example, of all persons admitted to Canada in 1990 as immigrants on the basis of humanitarian concerns, 40.3 percent were female; (b) calendar years, from 1 January 1–31 December; (c) fiscal years, from 1 April–31 March.

Sources: Canadian Government 2001, 2000, 1999a, 1999b, 1998, 1997, 1996, 1994, 1992, 1991; US Government 2003c.

8 The 1980 Refugee Act in the United States conformed to the definition of UN Convention on Refugees. It removed refugees from the preference system set in place in earlier legislation, set numbers on those to be admitted each year, to be fixed by the President in consultation with Congress, and provided a procedure to adjust a certain number of asylum seekers to permanent resident status annually (US Government 1991). For its part, starting with the 1976 Immigration Act, effective in 1978, Canada incorporated the admission of refugees and those deemed to require humanitarian consideration in immigration legislation. But increasing numbers of within-Canada refugee claimants during the late 1980s and throughout the 1990s prompted successive pieces of restrictive legislation, resulting most recently in the IRPA.

The potential and actual under-representation of women in various humanitarian-based modes of entry reflects the gendered nature of criteria associated with resettlement and the definition of a refugee associated with the UN 1951 Convention Relating to the Status of Refugees (Boyd 1998). In order for resettlement to occur, a person must usually be defined as a refugee, and in this way claims of persecution have been validated through the refugee determination process. However, industrial countries that agree to resettle refugees often add admissibility criteria to the basic eligibility criteria. These additions derive from concerns that resettled refugees should not pose health or security threats to the host population, and that they will not require extensive and long-term social assistance. For the most part, eligibility is a necessary, but not sufficient, criterion of admissibility; assessments of education, job skills and income potentials must be made as well.

Gender stratification and gender hierarchies heighten the probability that women will not meet the refugee admissibility criteria necessary for permanent settlement in an industrial country. For one thing, gendered hierarchies in refugee camps can result in refugee men occupying important mediating positions which, in turn, increase their chances of selection for settlement elsewhere (Martin 1992). Gender stratification in most societies, particularly less industrialized ones, also means that women often have less education than men, and exhibit different or non-existent labour market skills and experiences, suggesting that women are likely to experience greater difficulty in meeting the self-sufficiency criteria invoked by industrial countries for admission. In addition, many women have children and other dependants for whom they have responsibility. This fuels concern that women refugees will take longer than men, particularly single men, to acquire self-sufficiency. Finally, gender inequalities in earnings in the host country may contribute to the potential economic difficulties faced by women. As a result of all these concerns over self-sufficiency, selection procedures may favour the overseas selection of men for permanent settlement (Boyd 1998).

Yet it is widely acknowledged that women are extremely vulnerable to the violence and abuse that occurs both in flight and in temporary settlement areas, including camps, in areas near to countries of origin. Women who are single heads of family, or whose adult male relatives are unable to support them, are at risk of expulsion, refoulement (forcible return), sexual harassment, rape, torture, prostitution and other forms of exploitation. Added to these risks are the difficulties associated with uprooting, deprivation of a normal family life, and an absence of community or family ties. Sadly, such vulnerabilities frequently coexist with low chances for permanent settlement, since these women are also likely to be assessed by potential settlement countries as requiring a great deal of assistance, because of trauma, their number of children and generally low levels of education.

Starting in 1987, the UNHCR requested assistance in protecting such vulnerable women through permanent settlement. In response, the Canadian department in charge of immigration developed a “Women at Risk” programme, which was followed by similar initiatives in Australia and New Zealand. “Women at Risk” lack the normal protection of a family unit, and find themselves in situations where the local authorities cannot assure their protection (Canadian Government 2004b). They do not have to have the same potential for settlement as do other refugees or humanitarian-based cases. Although the programme is premised on principles of gender-based justice, admission numbers are small, with only about 2,250 women and their dependants settled since admissions began in 1988. The numbers reflect the extended time required for economic integration, if any such integration occurs, and the high cost of caring for these individuals from private and state funds.

The United States does not have a formal “Women at Risk” programme. Rather, its first priorities are compelling protection cases, or refugees for whom no other durable solution exists, and who are referred for US resettlement by either the UNHCR or a US embassy. Although women are included within the P-1 category, NGOs question

whether such inclusion properly identifies women in need of protection. Moreover, they ask whether it provides full access to the resettlement system, and if women receive appropriate services once settled (Refugee Council USA 2004; Lawyers Committee for Human Rights 2002).

By and large, women may be more handicapped than men in having their claims for refugee status recognized if they first enter Canada or the United States and then seek admissibility as refugee claimants. Disadvantages arise in part because the definition of a refugee, which should be gender neutral, is in fact androcentric.⁹ According to Article 1 of the 1951 UN Convention Relating to the Status of Refugees, a refugee is a person who:

owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.

The UN definition of a refugee, which emerged in the aftermath of the Second World War and the Cold War, drew attention to violations committed by the state against individuals (Connors 1997). Critics observe that the focus on the actions of the state and the violation of civil and political rights privileges the public side of the public/private divide. Such foci, it is argued, mean that the UN Convention's definition of a refugee fails to acknowledge forms of persecution which occur within private settings, which represent violations of human rights, and/or in which the state fails to protect individuals from harm.

Building on these arguments, a central concern of feminist writings is that the UN Convention definition privileges the recognition of refugee status for men. Embedded in this concern are two core themes. First, in most societies, gender roles and gender stratification prescribe that men are the key participants in the public arena, while women are restricted to the private sphere. As a result, the forms of persecution experienced by women in more private settings are less likely to be recognized as grounds for asylum. Second, the indirect role of the state in generating and/or sustaining harmful acts is not likely to be acknowledged. Moreover, the emphasis on the violation of civil and political rights both deflects attention away from the affirmative duty of the state to ensure rights and ignores the existence of society-wide discrimination against women (Connors 1997).

On International Women's Day 1993, the Chairperson of the Immigration and Refugee Board of Canada released guidelines for women refugee claimants who feared gender-related persecution. These were the first guidelines drafted by any country to specifically address gender-related persecution. Since then, guidelines have also been adopted by the United States (Scialabba 1997). Despite their differences (Macklin 1999), both American and Canadian guidelines note the need to be gender sensitive when considering the grounds for persecution, as well as the need to make special efforts for women claimants during the refugee determination process (such as having female interviewers). However, both stop short of declaring gender to be a determinant of a social group and thus an explicit basis for persecution.

9 For other difficulties see Boyd 1998; Lawyers Committee for Human Rights 2002.

II.D.

Temporary workers

Notwithstanding the predominance of legal immigrants who are admitted as permanent residents on family, economic or humanitarian admissibility criteria, some migrants are permitted entry into Canada and the United States on a temporary basis. These migrants include stu-

dents and refugee claimants or asylum seekers whose appeals for permanent residence are awaiting adjudication. Others are admitted for purposes of employment on a short-term basis. In recent years, the number of temporary workers has increased substantially in both Canada and the United States, in somewhat different ways. On the one hand, immigration experts in Canada enthusiastically promote fine-tuned “management and monitoring of the increasingly lucrative flow of temporary entrants” (Rekai 2002:1). On the other hand, in the United States, the growing “backdoor” permanent immigration via the temporary system has increased skill levels among permanent immigrants (Lowell 2001).

The term “temporary workers” requires clarification, as it refers to disparate categories of entrants, with different prospects under immigration rules. In both Canada and the United States, temporary worker categories address labour shortages in “skilled” (meaning desirable and well-paid) sectors and “lower skilled” (meaning undesirable and poorly paid) sectors. In Canada, the categories break down broadly into two groups. The first subgroup includes managerial and professional workers coming in under the auspices of the North American Free Trade Agreement (NAFTA), and workers admitted under information technology (IT) programmes. Most of the highly skilled workers come to Canada from the United States and Europe. The second group includes live-in caregivers, seasonal agricultural workers and others. Most of the women in this group are from the Philippines, and most of the men are from Mexico and the Caribbean.

In Canada, the temporary worker category has doubled since the 1980s (Canadian Government 2002b). The total number of foreign workers admitted¹⁰ to Canada temporarily in 2000 was 89,000, which is about 0.03 per cent of the Canadian population (Rekai 2002). Women account for a little less than 30 per cent of this total, but show small, steady gains (Canadian Government 2002b). The top country of origin for women temporary workers in 2002 was the United States, with the Philippines coming second. Large numbers of women also came from Japan, Australia, the United Kingdom and France, with smaller numbers coming from Germany, Mexico, China, Ireland and India (Canadian Government 2002b). The evidence, albeit limited, indicates that women temporary migrants are more likely than men to be in low-skilled work,¹¹ a feature consistent with the recruitment of women as domestic workers and the traditional devaluation of domestic skills.

In general, temporary workers in Canada face entry barriers in obtaining permanent residency. When applying under the current “point system”, they receive credit for employment and connections in Canada, but these are generally insufficient if the applicant lacks higher education and good language skills. Such disadvantage is evident in the development of Canadian programmes admitting women as live-in domestic workers during the last 30 years. There is a longer history associated with the recruitment of women as domestic workers, whether they were admitted as permanent migrants and whether they were required to live in. However, programme changes in

10 It should be noted that estimates of temporary workers usually are based on number of visas issued and cannot be equated with individuals spending long periods of time in a country. In Canada for example, visas may be issued for only a few days. A person entering Canada five times during a year for a week each time would generate five temporary visas.

11 Calculations based on Ruddick nd:14.

1973 mandated living in and conferred only temporary status. Subsequent political pressure applied by a number of groups resulted in a special provision for live-in domestic workers: revisions in 1981 allowed live-in domestic workers to apply for permanent resident status, although they imposed additional criteria from those used to initially admit these temporary workers, most of whom are women. The LCP, established in 1992, increased the initial admissibility requirements for would-be live-in domestics, emphasizing education, training and language skills, but discontinued subsequent requirements upon application for permanent residence. Women may now apply for permanent residency for themselves and their immediate families living abroad after successfully fulfilling a two-year contract.¹² Arguably the ongoing political pressure by NGO groups demonstrates a degree of resistance within Canada to the idea of second-class citizenship.

In the United States, the total number of temporary workers in 2002 was 1,200,000 which, at 0.04 per cent of the US population, is comparable to the Canadian percentage (Rekai 2002). Large increases followed after 1992, when the Immigration Act of 1990 came into effect. This Act, which attempted to increase the number of high-skilled immigrants to the United States, nearly tripled the number of employment-based admissions in the permanent stream and expanded the number of visas for temporary workers (Lowell 2001). Most of the recruitment of temporary workers in the United States is in high-skill categories, with only about 8 per cent admitted in low-skill categories, as labour shortages in lower-skilled sectors are filled by the large pool of irregular immigrants, making specific provision unnecessary. The H-1B visa is the largest category of entry for temporary high-skilled workers. These workers are professionals and other highly skilled individuals, who usually hold a baccalaureate or higher degree. Computer-related and engineering occupations account for 70 per cent of these visas.

Detailed breakdowns of the composition of these flows are difficult to locate. However, in (fiscal year) 2000, almost half the H-1B petitions approved by the United States were granted to persons born in India. It would appear that women are most likely to predominate in the H-1A (expired in 1995) and H-1C visa categories, which target nurses (Jachimowicz and Meyers 2002). While not synonymous with temporary visas, census data for the United States indicate that Asians are over-represented as engineers, scientists and health care professionals. While men dominate in most of these fields, women are also well represented. In 1990, 5 per cent of female college graduates in the US workforce were Asian women, but they accounted for 10–15 per cent of female engineers, architects, computer scientists and researchers. Similarly, nearly 25 per cent of health care workers in public hospitals in large US cities are Asian, and 90 per cent of Asian–American nurses are foreign born (Espiritu 2003).

II.E.

irregular migrants

Irregular migrants are often simply excluded from discussions about migratory regimes. Quite simply, the issue is a thorny one, exacerbated by the sheer enormity of the irregular migrant population, and the many legal and human rights contradictions and tensions inherent in

their status. The category of irregular migrant includes those who enter a country legally with valid documentation but who violate the terms of their admissions (for example, those on visitors' visas); those who enter a

12 Arat-Koc 1997; Macklin 1992; Stasiulis and Bakan 2003.

country legally but with fraudulent documentation; and those who enter a country illegally, that is, without undergoing formal admission. In popular American parlance, as well as in research documents, terms such as “non-status” or “undocumented” also refer to these “irregular” migrants.

The irregular population in the United States is estimated at about 9.3 million, representing a little over one-quarter of all the foreign-born individuals in the country. Backlogs are thought to be responsible for a good part of this population, as family members, a majority of whom are women and children, can wait for as long as 10 years for a visa (McKay 2003). Women are estimated to comprise about 41 per cent of this group. Undocumented immigrants who work are estimated to number six million, and they account for 5 per cent of the work force. They earn less than other workers, with two-thirds making less than twice the minimum wage. Ninety-six per cent of undocumented men are in the work force, and an estimated 62 per cent of women from this population participated in the labour market, despite the fact that they were more likely than US citizens to have children (Passel et al. 2004). In sum, the IMF reports that work performed by undocumented workers accounts for 10 per cent of the US economy (Jimenez 2003a).

Employers and other advocates point out that many sectors of the US economy (and many US households) have come to rely on a ready supply of cheaper, undocumented workers to maintain profitability and competitiveness. There are numerous examples of this. The “nannygate” scandal in 1993, when Zoe Baird withdrew herself from consideration for US Attorney General after she was found to have illegally employed an undocumented Peruvian woman as a housekeeper, highlighted the widespread middle-class employment of non-status women as domestic workers. Raids on retail giant Wal-Mart resulted in the arrest and deportation of 300 undocumented workers in 2003. And about half of all farm workers are reported to have irregular status.

While some commentators maintain that the United States bears little moral responsibility for people who have entered the country illegally, and despite concern about encouraging illegal flows into the country, a shaky political consensus has formed in favour of policy reform that confers some kind of legal status to at least some part of the undocumented population. President George W. Bush’s 2004 immigration policy reform proposal and its programme for legalization reflect this thinking. This proposal is best seen against the recent history of amnesties in the United States, especially the 1986 amnesty that was part of the Immigration Reform and Control Act (IRCA). The 1986 amnesty resulted in the legalization of 2.7 million persons. It was accompanied by new laws that set a precedent in making the hiring of undocumented workers illegal (although these laws proved unenforceable). However, the 2004 proposal, though described often in the press as an amnesty, differs significantly from the 1986 amnesty under IRCA. The proposal is designed to encourage return by means of a limited number of renewals of the visa. Nor is a transition from temporary to permanent status a realistic hope in the vast majority of cases. Currently, only 5,000 of the 140,000 green cards issued annually under employer sponsorship are set aside for unskilled workers to obtain naturalization, and there is no plan to increase this allowance substantially (Jachimowicz 2004). Overall, the programme bears a striking resemblance to European guest-worker programmes, and it appears that President Bush’s proposal marks a step towards institutionalizing a class of legal residents with second-class status (Abraham 2004).

Additional possible complications include the fact that the informal and flexible nature of much undocumented women’s employment will make their participation in this programme less likely, further stratifying mixed-status households, and increasing women’s dependence on male family members. Indeed, researchers have found this kind of gender bias in the legalizations that occurred under IRCA in 1986, which were easier to obtain for men (Powers et al. 1998). And on a practical level, the reality of mixed-status families, where US-born

children have full citizenship, heavily complicates any requirement that workers return to countries of origin. Currently, it is estimated that there are three million US-citizen children whose parents have irregular status (Passel et al. 2004).

In Canada, meanwhile, the issue of irregular immigrants has recently surfaced after two decades of neglect following the amnesty-based federal “Long Term Illegal Program” between August 1983 and July 1985. Statistics for those who had resided in Canada illegally for five years and sought admission reveal that women represented about half the total number of applicants, with the proportion rising to 70 per cent for applicants from the Caribbean. Nearly two-thirds worked as domestics (Boyd 1989). Current estimates of undocumented immigrants range from 20,000 to 200,000, and little is known except what has been reported in small case studies. It is clear, though, that women have a strong presence among irregular-status residents. Most achieve their irregular status as a result of failing to leave the country after a rejected application for refugee status, or as a result of overstaying tourist or student visas. Little is known about livelihoods, or countries of origin, though Latin Americans are well-represented.¹³

One specific sector, the Canadian construction industry, has been actively lobbying for an enlarged temporary worker programme to regularize the status of what it claims are 76,000 undocumented workers within the Ontario construction industry alone. Accordingly, federal immigration officials are planning the introduction of a pilot project within this industry, which would grant two-year visas to participants, based on labour market demand and on the language and job skills of applicants, as well as on the likelihood of successful integration. Application could be made through regular channels to gain landed immigration status after this period (Jimenez 2003b). The programme, which would not be of immediate benefit to undocumented women workers, might at some point be extended to the textile and service industries, but given that a majority of undocumented women are thought to be engaged in domestic work, they are unlikely to be reached by such initiatives.

Finally, no discussion of the presence of women among the irregular population in either country would be complete without acknowledging trafficked workers. The vulnerability of women to trafficking is attributed variously to individual circumstances, such as living in dysfunctional families, to systems of gender discrimination and gender practices, to displacement processes resulting from natural and human-instigated catastrophes, and to the disruptive effects of development processes. In particular, the existence of a supply of women to be trafficked for sex work is associated with the feminization of survival, which derives from the disruptive and unstable economic conditions associated with development, and is linked to international neoliberal monetary policies (Sassen 2000).

Although trafficking in women can refer to the movement of women as domestic workers, as “mail order” brides, and as sex workers, it is the latter which commands the most attention. The epicentre of trafficking women for sex work is within Asia, and fans out from Asia and the former USSR countries to Europe. Precise numbers are impossible to obtain (Hughes 2000), but annual estimates on the total numbers trafficked for both sexes and for a variety of work range from 18,000 to 20,000 in the United States (US Government 2003b). In Canada, annual estimates range from 8,000 to 16,000, and include some who may eventually enter the United States. During the mid to late 1990s, over 1,000 temporary work authorizations a year were issued for exotic dancers, but these figures are not a reliable indication of the number of women transported across national boundaries into

¹³ Luin Goldring, email, 3 February 2004.

Canada for sex work for at least two reasons. First, the correspondence between exotic dancers and sex workers is not exact, and second, many women in the sex trade enter in other ways, either as family members, as visitors who overstay their visas, or as irregular migrants (McDonald et al. 2000).

One of the harshest realities for undocumented immigrants is that they are vulnerable to deportation at any time for any infraction of the law. While this has grave implications for trafficked women, undocumented immigrant women who suffer physical abuse at the hands of their spouses are also vulnerable. In response to this susceptibility, battered women's advocates pressured the US Congress to create a provision in the 1994 Violence Against Women Act (VAWA), which reserves green cards for undocumented immigrant women who have been physically abused (although the abuse must be suffered at the hands of a citizen or lawful permanent resident spouse), and allows them to petition for permanent residency without the knowledge or support of their husbands (Arizona Coalition Against Domestic Violence n.d.). By 2001 17,907 women had applied under the provision (Kaneya 2002).

III.

gendered livelihoods

The impacts of neoliberal economic regimes are seen in the recent restructuring processes of many countries. Among these are various short-term strategies which are meant to enhance competitiveness and efficiency, and encourage foreign investment. They include the privatization of public enterprises and institutions, deregulation of labour markets, and reductions in social spending. One consequence of such restructuring is that reductions in funding allocated to health and care work have not only re-emphasized women as the providers of care, but redirected, wherever possible, the site of care activities out of the public arena and into private settings. Neoliberal strategies also often intensify pre-existing markers of gender, racial and immigrant stratification. North American scholars frequently allude to the “double disadvantage” of being a female and a foreign-born participant in the economy. Building on the intersection of race, gender and migrant status, many note the triple disadvantage in which migrant women of colour are the most disadvantaged of all in terms of labour market location.

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III.A.

inequalities in the labour market

1990s, nearly 75 per cent of total formal employment was in service industries. Women are disproportionately present in this service economy, filling half of all positions within producer¹⁴ and distributive service subsectors, while more than twice as many women as men are employed in personal and social services (OECD 2000). Moreover, women’s participation rates have risen in all OECD labour markets, while rates for men have declined (Hobson 2002). While men still have higher rates of labour market participation than women in all countries, the gap continues to narrow.

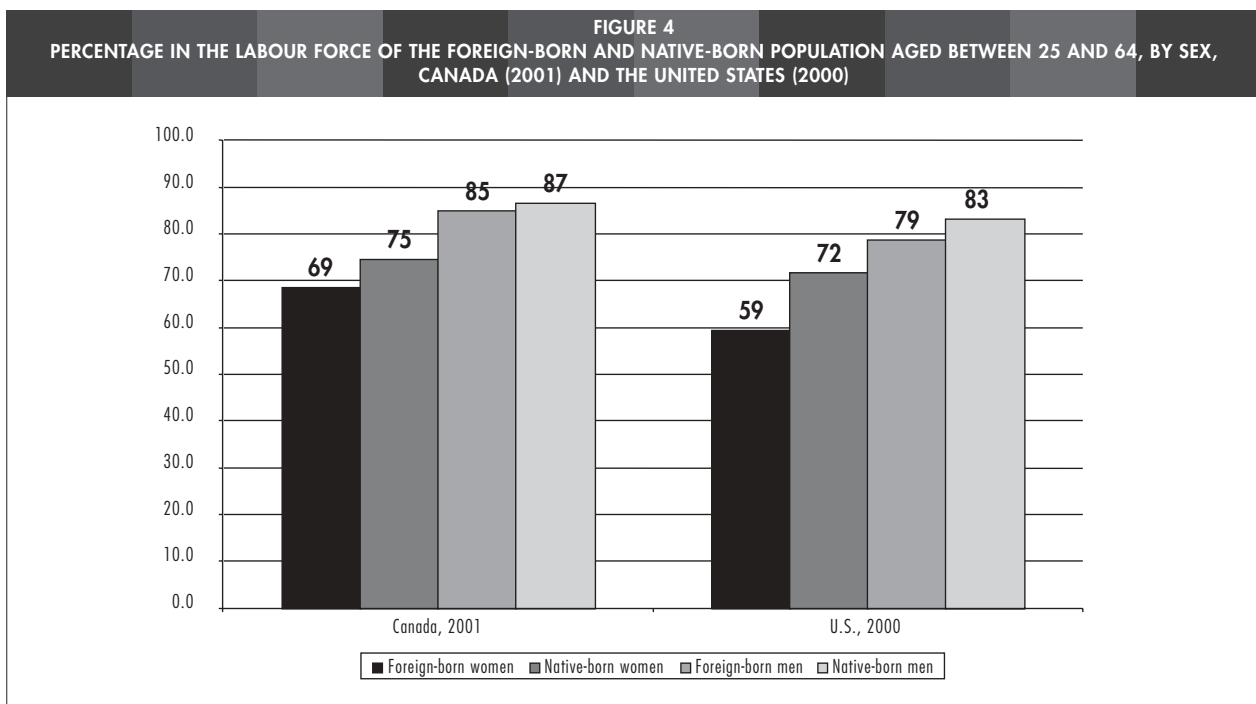
Opportunities within North American labour markets have recently been transformed by the growth of the service economy. While this growth has occurred across the developed world, nowhere is the trend more marked than in Canada and the United States, where by the end of the

These shifts in participation rates by gender and economic activities are partially explained by a decline in traditionally male extraction and manufacturing industries. The use of a ‘flexibilized’ female labour force to break the monopoly of male unions is also important (Sassen 2000). And while much of service sector growth is fuelled by growing use of information technology within the ‘knowledge economy’, the concept of care provides another key to understanding structural change (Hobson et al. 2002; Leira and Saraceno 2002). A care deficit, which occurs when women are incorporated into the labour market on the male model, creates a need for social services (Hochschild 1995). In North America, high and ever-increasing numbers of working women, their choices conditioned by increasing freedoms and declining real household incomes, have fuelled this demand. Unfortunately, the sectors of the service economy in which the majority of jobs are created are prime generators

14 Producer services include business, professional, financial, insurance and real estate services. Distributive services include retail and wholesale trade, transport and communications. Personal services include hotels, bars and restaurants, recreation, amusement and cultural services, and domestic and other personal services. Social services include civil and military government jobs, and health and educational services.

of insecure and low-waged employment, especially within the context of government privatization and off-loading of social services. In essence, the domestic and political social contracts on which capital accumulation and growth are premised are being rewritten in North America, and new contracts appear to maintain immigrant women's more marginal location in the workforce.

With respect to economic livelihood, the term “doubly disadvantaged” highlights the labour market marginality that results from the combined liabilities of being both immigrant and female. Indicators of such marginality include lower labour force participation, low-status occupations and jobs, poor working conditions and low earnings. Foreign-born women were the least likely of all groups, defined by birthplace and gender, to be in the formal labour force in North America in the 1990s (figure 4; see also Bean and Stevens 2003; Schoeni 1998). While some of the disparity between groups may be explained by such factors as greater numbers of children in immigrant families and culturally conditioned choices with regard to female employment outside the home, these rates are also partly reflective of both difficulties in finding employment among recently arrived women, and the quality of employment on offer.



Sources: Statistics Canada 2001, United States Census Bureau 2000. Analysis conducted especially for this paper by first author.

In the United States and Canada, structural change to labour markets has reinforced gendered occupational hierarchies in which immigrant women hold disadvantaged places. While immigrant women, including those from the developing world, are present among highly skilled workers, they are also disproportionately visible at the bottom rungs of stratified service, retail and manufacturing sectors. Variations exist by ethnicity or race, with African, Latin American and Hispanic groups the most likely to be in low-skilled jobs.¹⁵

Similar patterns are evident with respect to unemployment, underemployment, working conditions and earnings. Along with poor non-immigrant women, many migrant women hold non-unionized, contract and part-time jobs with low wages and few benefits in the “new economy” (Neysmith and Chen 2002). Undocumented migrant women appear to be the most vulnerable to employment in unsafe working conditions, and because of their status, they are limited in their ability to organize or denounce workplace abuses.¹⁶

III.B.

irregular migrants, livelihood and protection

As discussed previously, little research exists with respect to irregular workers in Canada, although a common belief is that many women are employed in domestic or sex work. In the United States, labour market participation is overwhelmingly in the following sectors: manufacturing, whole-

sale and retail trade (including restaurants), services provided to private households and businesses, agriculture and construction. There is a marked occupational segregation by gender, with nearly half of newly arrived undocumented men finding work as agricultural labourers, in food preparation or food service occupations, as gardeners or janitors, while 37 per cent of newly arrived undocumented women work in private households, and another 8 per cent work as textile machine operators (Powers et al. 1998).

The employment of non-status workers in the United States became illegal in 1986, although enforcement is close to non-existent. Indeed, until recently, undocumented workers managed to hold on to many formal labour relations entitlements despite their illegal status. In 2002, however, the Supreme Court denied back pay and reinstatement to an undocumented worker, despite wrongful dismissal for union organizing, on the grounds that awarding such rights trivialized immigration laws and encouraged future violations. This ruling called into question other rights won by undocumented workers over the years, such as the right to remedy for discrimination on the basis of national origin, and the right to worker’s compensation in the case of accidents (Mailman and Yale-Loehr 2002; Rosenfield 2002). These threats to legal rights are symbolically important, and undercut the efforts of non-status workers to organize and demand rights.

On a substantive level, the enforcement of labour protections in the United States has experienced a steep decline which began during the term of President Ronald Reagan and which, although temporarily reversed during the term of President William J. Clinton, continues today. President Bush has made major cuts to agencies

15 Boyd 2001; Shumway and Cooke 1998; Wright and Ellis 2000.

16 Gammage 2003; De Anda 2000; DeJong and Madamba 2001; Schoeni 1998.

that implement and enforce National Labor Relations Act laws and guidelines, and the staffing of the National Labor Relations Board with anti-union Bush appointees will almost certainly see reversals of recent board decisions, such as one made in 2000 that made unionization of temporary workers easier (Robbins 2001). This steady deregulation of labour markets has made many question whether granting temporary workers “the same protections American workers enjoy” is worth the risk of deportation once temporary visas expire. Difficulties in conducting research among the undocumented population mean that studies that look at this group’s labour force experience have been small and inconclusive. Still, while many studies find that being undocumented has significant costs, others report that legalization makes little difference to labour market advancement.

One such study (Powers et al. 1998) was conducted on over 4,000 previously undocumented immigrants legalized under IRCA. Respondents were surveyed for labour force participation and occupational status upon their arrival in the United States, then again later when they were experienced undocumented immigrants, and a final time after they received documentation. The study found that increases in occupational status or upward mobility were greatest in the undocumented period and more modest thereafter. In other words, length of residence in the United States was more important than legal status, suggesting that undocumented workers have labour force experiences similar to those of other immigrants. Gender differences were marked, with women experiencing less and slower upward mobility. While some of this might have been the result of the women’s lower level of labour force experience, a more powerful explanation is found in the concentration of women in household work, which offers no chance of upward mobility and isolates workers, discouraging the development of informal networks that might help with the search for better jobs. Interestingly, there was some evidence that legalization might benefit women more than men. The authors hypothesized that greater access after legalization to occupations that require some kind of licensing or certification, such as nursing, teaching and using medical equipment, may be significant.

III.C.

regulating inequalities

The work profile of migrant women in Canada and the United States suggests that they are disproportionately in jobs which, because they involve part-time, contract or home work, are less well protected. A wide variety of labour laws (such those governing minimum wages, hours

and overtime provisions, union recognition and pay equity) limit coverage to full-time, well-paid or unionized workers. Even these latter workers experience uneven protection, as evidenced by recent union actions. On the one hand, construction unions in Canada have demanded that construction workers entering the country on temporary visas receive the same wage as native workers. On the other hand, compliant private sector unions have accepted crippling pay cuts to workers when taking over from public sector unions, as nursing homes and other sections of the public health care system are privatized (Hasselriis 2004).

Not all foreign-born women are employed in jobs that are low skilled or represent non-standard forms of employment, defined as work that is part-time, temporary, or own-account self-employment (Townson 2003). In fact, the recruitment of nurses from outside North America may be seen as explicit recruitment of high-skilled labour. Moreover, in Canada, some of the women entering for a two-year temporary period under the LCP received training as nurses (Pratt 1999). Marital homogamy, in which partners are of similar educational backgrounds, means that many women whose partners enter as skilled workers also have valuable labour market skills.

However, the entry of highly skilled women is not necessarily synonymous with their employment in high-skilled work, or with equality in the workplace. Immigrant nurses are a case in point. In response to the diminished number of native-born women who seek training in nursing, the migration of their own nurses elsewhere, the impending ageing of their populations, and the increasing demands for nurses in their changing health care systems (Kline 2003; Stasiulis and Bakan 2003), both Canada and the United States encourage the migration of nurses in their immigration laws and regulations. In Canada, nurses enter under the skilled worker provisions found in various immigration acts. They may also enter on a temporary basis if Human Resources Development Canada determines that the jobs offered will not have a negative economic effect on the Canadian labour market. In the United States, efforts to recruit nurses have been very explicit. Congress passed the Nursing Relief Act of 1989, which provided for the adjustment from H-1 of the non-immigrant status of nurses who met certain conditions. Slightly over 7,200 women entered between 1990 and 1994 as principal applicants under this act.¹⁷ Subsequently, Congress passed the Nursing Relief for Disadvantaged Areas Act of 1999 which established a new non-immigrant class of admission (H-1C) for temporary admission of up to 500 nurses a year for four years as a means of producing a short-term solution for nursing shortages in under-served areas (US Government 2003b).

If the migration of nurses from countries such as the Philippines reflects a feminization of survival, it is equally true that their experiences in settlement countries are often of downward job mobility. Although foreign-trained nurses may receive higher salaries in Canada and the United States than they would in their countries of origin, the potential for exploitation is great (Kline 2003). Numerous case studies indicate that nurses may be employed as nurse's aides rather than as registered nurses; they may experience discrimination on the job in the form of lower pay and fewer promotions; and they can readily be fired.¹⁸ As well, recent demand for foreign-trained nurses coincides with the restructuring of the health care system, raising the possibility of deteriorating work conditions for many. Hospitals in the United States that have a shortage of nursing personnel and recruit foreign-born nurses are municipally run and located in inner-city areas (Brush 1995). Immigrant nurses also faced the same conditions as American-born nurses during the 1990s: deteriorating wages, and health care restructuring that generates negative views regarding the climate for patient care (Clark et al. 2001; Schumacher 2001).

In Canada, meanwhile, during the 1990s, conservative provincial governments reduced or stabilized financial transfers to hospitals for health care (Burke 2000) and precipitated work conditions that included substituting medical technology or other workers for tasks previously done by nurses, and intensifying managerial control (Flynn 1998; Stasiulis and Bakan 2003). A recent review of the use of temporary migrant nurses in Canada noted that temporary status reduced the capacity to move freely in the labour market, to receive competitive wages, and that such workers were frequently assigned to high-stress units (Stasiulis and Bakan 2003). Furthermore, in Canada, shifting countries of origin, different modes of entry, deteriorating conditions of work and workplace practices routinely handicapped immigrant nurses of colour. Throughout the 1990s and beyond, racially based discrimination meant that black women from the Caribbean were highly vulnerable to differential and unequal treatment: case studies indicate that much of the discrimination was intentional (Das Gupta 1996; Stasiulis and Bakan 2003).

17 Personal communication with Linda Gordon, US Department of Homeland Security, 12 February 2004.

18 Calliste 2000; Das Gupta 1996; Espiritu 1999; Stasiulis and Bakan 2003.

Two other factors affect all highly trained immigrant workers in Canada, including nurses: the devaluation of educational credentials received abroad, and licensing and recertification requirements of professionals. Regulated occupations, such as those in certain trades, law, engineering and health areas, require certification and/or licensing, primarily through professional associations, often based on government statutes. While the purpose of licensing and certification is to assure public health and safety (Mata 1999; McDade 1988), these practices are also the defining characteristics of occupational internal labour markets which create monopolies on products and/or services by controlling the labour supply. In Canada, certification requirements are often described as a form of systemic discrimination, in that criteria are created which are applied to the Canadian-born and foreign-born alike, but which disproportionately restrict the access of the foreign-born to trades or professions (Bolaria 1992; McDade 1988). Devaluation of education credentials becomes part of this systemic discrimination when professional associations do not recognize foreign degrees as equivalent to those obtained within the country.

It appears that in the United States, deregulation has worked to the advantage of immigrant professionals, who are less hobbled by industry and professional association restrictions (Rekai 2002). However, the accreditation of immigrant professionals is of growing concern in Canada, stimulated in part by the growing share of skilled workers in the total intake of permanent migrants. Recent developments include: 1) the creation of several provincial task forces on the recognition of credentials obtained outside Canada (see: Ontario, Government of 1989); 2) the generation of reports by policy institutes and federal government departments on the under-recognition of foreign credentials;¹⁹ 3) the establishment in 1992 of a federal interdepartmental group; 4) a major conference in October 1999 in Toronto; and 5) a federal budget allocation of C\$13 million over two years to address the issue of foreign credential recognition, highlighted in the Speech from the Throne made by the governor general at the opening of parliament.²⁰ Nonetheless, foreign-trained professionals must still make their way through a quagmire of specific professional association requirements, and the topic of immigrant women is virtually absent from these discussions.

A more general concern with discrimination based on race and sex underlies anti-discrimination legislation passed in Canada and in the United States. In both countries, legislation targets unintentional discrimination, seeking to remedy race and sex-neutral conventions and workplace practices that disadvantage persons of colour and women. Yet an exhaustive review of US legislation reveals few significant results, partly because of the lack of funding during the neoliberal political regimes of the 1980s and 1990s (Reskin 2001). Similarly, Canadian legislation passed in 1986, and replaced in 1995, has had limited results, particularly for women of colour (Agocs 2002; Lum 1995). In seeking to explain the 1995 Canadian legislative reconfirmation of a progressive policy in the context of a growing neoliberal political agenda, one study described the new legislation as “more teeth, less bite”, noting the small or non-existent monetary penalties, the latitude granted to employers over goal setting, and equity exemptions for seniority and collective bargaining agreements under downsizing (Lum and Williams 2000). Most pertinent for migrant women, in both countries, affirmative-equity legislation covers limited sites of employment, such as federal contractors and the public service, and although it targets discriminatory outcomes by race and sex, it excludes outcomes based on foreign birth or immigrant status.

19 McDade 1988; Mata 1999; Wright and McDade 1992.

20 The governor general is the representative of the (British) crown whose role is to ensure, under a parliamentary system, that Canada always has a prime minister and thus a political executive. The Speech from the Throne is given at the opening a session of Parliament and outlines the government's legislative plans (Guy 1995).

IV.

altered entitlements

Immigrant experiences in the labour market are affected by government actions that go beyond the modest effects of affirmative action and equity-based legislation. Economic and social integration are influenced by at least two additional factors associated with governance: 1) immigrant settlement policies, and 2) legislatively or administratively set rules and regulations, most often governing eligibility

to mainstream social programmes, but also those specifically targeted at immigrants (Fix and Zimmermann 1994). These government actions determine what resources and entitlements of a society are available to migrants, thereby creating the potential for stratified citizenship.

Most generally, in the T. H. Marshall sense of the term, citizenship refers to the set of civil, political and social rights that are bestowed upon members of a nation-state (Marshall 1981). In particular, the concept of social citizenship implies that all members of a society have rights to full participation in a society and to avail themselves of social services and programmes. Full social citizenship includes unrestricted access to the labour market, to social investments such as education and language training, and to contributory and non-contributory social benefits, including publicly provided health care and welfare benefits. The underlying premise of universality contrasts with neoliberal agendas, which seek to reduce the social and economic obligations of states to their citizens by differentiating among their members as to who shall receive specific entitlements. Such exclusionary actions go hand in hand with the emergence of stratified citizenship.

In such a context, migrants may be the most prone to experience reduced or no entitlements. This is because the underlying premise of full social citizenship—that recipients are members of a nation-state—is challenged by contemporary migration (Boyd 1997; Stasiulis and Bakan 2003). The large numbers and diverse phenotypical, social and economic characteristics, along with manifold entry and legal statuses, of migrants today elicit questions of who belongs, and who shall be considered to hold membership, or be entitled to such membership, in the nation-state.

IV.A.

settling in: implications for immigrant women

North American governments have never shouldered a comprehensive responsibility for settlement. Immigration policies of the 1960s and beyond incorporated the view that legal immigrants entering as family members or as workers should not be the responsibility of the state, but

there have always been acknowledgments of the need to offer some assistance to refugees and other migrants. Major areas of assistance typically include host country language(s) acquisition, employment-related services, orientation services and naturalization-related initiatives. Current descriptions imply an extensive and generous package of entitlements in both countries (Canadian Government 2004f; US Government 2003b). Yet by the mid-1990s, both American and Canadian governments had disengaged themselves from providing well-funded settlement assistance. Analyses of federal immigrant settlement policies in the United States report limited numbers of programmes, reduced funding and limited out-reach, accompanied by devolving federal authority and responsibility to individual states (Fix and Zimmerman 1994).

A similar pattern of devolving federal responsibility occurred in Canada. In the 1994 budget, the Canadian federal government indicated that it was no longer prepared to be in the business of managing immigrant settlement policies and programmes, including direct funding for language training. Following a pattern of decentralization found in other policy domains, the goal now is to “partner” with agencies that include provincial, territorial and municipal governments, businesses, not-for-profit groups, community groups, educational institutions and individuals (Canadian Government 2004d). Under various agreements, the provinces of Quebec, British Columbia and Manitoba now assume direct responsibility for the design, administration and delivery of services to newcomers settling in those provinces. Most notable in this change is the stability of funding during a time of high immigration: settlement funding for language training, immigrant settlement, adaptation and mentoring programmes outside Quebec has remained constant since 1996–7 (Canadian Government 2003a).

These changes in *modus operandi* and in levels of funding obviously affect both women and men, but the impact of devolving services and funding levels may have a greater impact on women because of gender differences in need. Language training in Canada illustrates the potential for inequity. It is well understood that reduced language skills usually have negative consequences for immigrants, as language proficiency in the host country language(s) is an important resource in the integration process. Being able to converse and/or read in a host country language facilitates learning about the institutions and customs of a new land, not to mention learning how to navigate transportation systems, interface with bureaucracies and seek assistance when required. Language proficiency also shapes economic integration. Compared with those who are proficient in English or French, women who are not proficient have reduced labour force participation, higher rates of unemployment, and greater employment in production and processing occupations, in low-skilled occupations, and in the goods-producing sector of the economy. These correlates of low language proficiency are felt more severely by foreign-born women of colour (Boyd 1999).

Compared with males, females are less likely to know English and/or French, Canada’s two official languages, upon arrival in Canada, thus increasing the likelihood of integration difficulties. During the 1980s in Canada, language training was provided to enhance the eligibility of immigrants for citizenship (funded through the Secretary of State) and to maximize economic productivity (funded by Employment and Immigration). Such programmes, developed on labour market principles, risked excluding certain groups, notably women not destined for the labour force or not considered to need English or French in their paid work. During the late 1980s and 1990s there were two important policy developments. First, language knowledge increased in importance within the bundle of admissions criteria for skilled workers, thereby deflecting the cost of language training to other nations. Second, inside Canada, Language Instruction for Newcomers (LINC) was introduced, and gradually replaced previous programmes. Compared with earlier programmes, LINC can be considered woman-friendly in that it may include full- or part-time training, self-assisted and distance learning, or community or institutionally based programmes, according to the newcomer’s abilities and needs. Childminding is provided on site. However, as indicated above, funds have stabilized, and with inflation and large numbers of new immigrants, the per capita allotment has actually declined. There is a real risk that the immigrant women outnumber the existing slots (Boyd 1999). Since immigrant women are often employed in language training, reductions in language training also impact upon employment opportunities. Also, the programme is free only for newcomers, leaving uncertain the participation of women who have lived in Canada for longer than three to five years and who are not proficient in English or French.

IV.B.

entry status and partial entitlements

well as time spent in the host country may restrict immigrant access to societal resources and entitlements. Migrant women can be disadvantaged both if they perform care work in an employer's home, and if they enter the country later in life.

In principle, both Canada and the United States readily extend civic and social citizenship rights to legal immigrants, and allow them to acquire political citizenship through the acquisition of legal citizenship after three to five years. However, in both countries, modes of entry as

Canada and the United States are considered examples of welfare regimes in which entitlements are closely linked to economic “productive” activities rather than care-oriented tasks. Further, care is increasingly gendered, as government budgets shrink with respect to care performed at market prices. As a result, in the United States, many migrant women who perform care work in an employer's home operate in the invisible, or informal, economy. Paid in cash with no employer-paid benefits, they are vulnerable to abuse, as they can claim neither worker protection rights nor government work-related benefits, such as unemployment insurance and pension benefits. There are no reliable estimates of the number of women employed in such circumstances, but as has been noted, for some origin groups, and for those who are in the country illegally, numbers are suspected to be high.²¹ In Canada, migrant women also may work in the shadow economy, and earlier amnesties suggest that many of these workers are irregular migrants. Concern over prorated citizenship entitlements is expressed with respect to those who enter under the Canadian LCP; indicatively, although the numbers admitted have been steadily declining, and while current numbers are small, the vast majority are women.

The LCP retains three elements of programmes in place from 1973 onwards: the temporary authorization to be in Canada, the requirement that workers live in the homes of their employers, and the option of applying for permanent resident status after working as a live-in domestic worker for two out of three years while in Canada. One consequence is that workers, mostly women, who enter Canada under the LCP do not have the same rights of changing employers as do other residents. Although changing employers is permitted, women caregivers often are reluctant to do so except in exceptional cases of abuse, fearing that too many changes will jeopardize their future applications for permanent residency. In addition, when changing employers women employed as live-in caregivers must obtain a record of employment (ROE) from their employers. The formal reason given by the Canadian government for this requirement is that it provides records of weeks worked and earnings, necessary to apply for employment insurance benefit and to prove that the caregiver has worked the necessary length of time to apply for permanent residence as set out in the LCP regulations. However, case studies show that the necessity of negotiating and obtaining an ROE acts to deter changes in employment. Taken together, these difficulties in changing employers and the requirement that workers stay in live-in domestic employment for two out of three years while in Canada on a temporary work permit are considered to be indicators of stratified citizenship (Stasiulis and Bakan 2003). Further, although the Canadian government under LCP now requires a contract between employer and the LCP employee, it indicates that it has no legal authority to enforce it, and that workers must rely on provincial labour protection regulations. In many instances, these provincial regulations are substandard.²²

21 Hondagneu-Sotelo 2001; Parreñas 2001; Repak 1994; Romero 2002.

22 Canadian Government 2004e; Arat-Koc 1997; Stasiulis and Bakan 1997, 2003.

Stratified citizenship entitlements for workers in the LCP are a migrant women's issue, because at least 95 per cent of these workers are women. The same is true for partial entitlements extended to elderly immigrant women in the form of pension benefits and access to income security programmes. In both Canada and the United States, financial support of the elderly rests on three pillars. The first is government income security programmes which include flat-rate benefits and income subsidies for impoverished elderly, as well as government pension benefits such as the Canada/Quebec Pension Plan and Social Security (in the United States), which are work related. The second pillar consists of private occupational plans, to which employers as well as employees may contribute. The third pillar rests on personal retirement actions such as personal savings, wealth accumulation and personal retirement savings plans.

Elderly immigrants, particularly those who are recent arrivals, are most at risk of diminished or non-existent benefits from those government income programmes that rest on work-related contributions. This risk occurs because both the Canada and the United States pro-rate pension benefits according to the length of time that benefits have been paid. In the United States, all employed persons are required to pay Social Security premiums, although this requirement is most likely to be enforced in the formal economy. In order to be eligible for Social Security benefits, payments must be at or above a minimum level, and payments must have been made over 10 years, although they need not be consecutive years.

The major pension system in Canada consists of three federal programmes to which are added various provincial supplements. Like other Canadian residents, immigrants who are in Canada legally may receive income from three federal programmes: the Canada/Quebec Pension Plan; the Old Age Security Program (OAS); and the Guaranteed Income Supplement (GIS). But benefits may be reduced or even denied to immigrants who have fewer than 10 years of residence in Canada. The only exception to this 10-year residency requirement is for those elderly immigrants from countries who have signed an International Social Security Agreement with Canada. Most signatories are developed countries, and no agreements exist between Canada and Asian countries, from which close to two-thirds of all immigrants now come (Boyd 1991; Canadian Government 2004g).

Reflecting the longer life expectancies of women, elderly immigrants in the United States and in Canada are disproportionately women. Some will have aged in North America, and if they have paid benefits or have spouses with paid benefits, they may not be hampered by rules and regulations governing access to benefits. But of those who have immigrated later in life, many will not meet the conditions for receiving benefits, relying instead on the safety net provided by the families that sponsored them. Such partial or non-existent entitlements not only have the potential to create dependency and elder abuse, but also demonstrate the disadvantages associated with neoliberal welfare regimes in which entitlements are closely linked to economic "productive" activities rather than care-oriented tasks.

IV.C.

diminished entitlements

It is in the realms of health care and social assistance or welfare that the most dramatic changes to immigrant entitlements have occurred, particularly in the United States. The welfare states of both countries operate mainly on a residualist, or means-tested, model of delivery. The most

significant difference between the two countries is in their health-care systems: a large proportion of poor people are medically uninsured in the United States, paying cash for expensive services or reliant on means-tested Medicaid benefits, while public health insurance is almost universally available to legal Canadian residents, after three months of residence. Exceptions to universal coverage in Canada include some classes of temporary foreign workers, visitors, foreign students and irregular immigrants (Goldring and Berinstein 2003). Consistent with neoliberal precepts, there have been both a steady reduction in, and restrictions on, cash welfare benefits in both countries, and an exhortation towards a renewed work ethic, seen most dramatically in the welfare-to-work strategies pursued aggressively in the United States and some provinces in Canada. Under US reforms, caregiving by single mothers has been completely removed as a legitimate basis for laying claim to support, replaced by tax credits granted to poor working parents (Orloff 2001).

Studies show that in the United States, poor Hispanic women, many of whom are migrants, and their children receive far less than optimal health care. Surveys conducted of service use in community clinics open to low-income and irregular-status residents show, for instance, that undocumented migrant women receive fewer months of care during pregnancy (Norton et al. 1996), and that Medicaid enrolment of children of irregular migrants (despite eligibility) is very low, with only 40 per cent of eligible children receiving continuous coverage since birth (Halfon et al. 1997). Nevertheless, fears of escalating and uncontrolled social service costs kindled California's infamous ideologically motivated "tax revolt" of 1994, in which a decisive majority of Californians, including quite a few Latinos (Newton 2000), voted in favour of Proposition 187. The proposition sought to cut off health and social services, including access to public education, from undocumented migrants and their children.

The Proposition 187 initiative, though barred by the federal court, set off a national debate that set the stage for the passing by Congress of a major welfare reform in 1996. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was a thorough reform of all aspects of the US welfare system, and contained important changes which applied to everyone, such as a five-year maximum lifetime entitlement to welfare. However, many of its provisions were aimed squarely at the foreign-born population. The most dramatic of these entailed an unprecedented differentiation of legal permanent residents according to whether they were naturalized or not. Legal non-citizens were barred from public assistance, although eligibility would be reinstated upon naturalization. This stratification of entitlements among legal residents has been identified as a watershed by critics, who point out that it is a novel and unwelcome departure from not only substantive, but also formal equality among legal immigrants with regard to entitlements.

Entitlements for irregular migrants were even more dramatically targeted in PRWORA. Although the right to public education guaranteed in a 1982 Supreme Court decision was upheld, the 1996 legislation barred access to all non-emergency health and welfare programmes for irregular migrants and "aliens" paroled into the United States for one year (Fragomen 1997). The only health care services authorized at community clinics for those without legal documents of permanent residency are treatment of communicable disease, services for abused children and women, and immunization. In practice, only San Diego county, bordering with Mexico, has followed the federal law. In other jurisdictions with large immigrant populations, health care providers have quietly

ignored it. Nonetheless, the provision of all other services is now discretionary, and thus vulnerable to legal and political challenge (Landa 2001), and there is some limited evidence of the reduced use of clinics post-1994 (Fenton et al. 1996).

While a great deal has been written about consequences for migrants of the United States' 1990s reforms,²³ scant attention has been paid to the specific impacts on immigrant women of these reforms. Much of the impact is undoubtedly indirect, occurring when households or family members are no longer eligible for welfare and/or health care services, or choose not to claim benefits and utilize services as a result of fear that they will be turned away. This "chilling effect" is thought to be responsible for reductions in welfare use.²⁴ Additional indirect outcomes have arisen from increases in deportations and family separations, and loss of services to US-born children of non-citizen parents (Hagan et al. 2003).

The direct effects of these legislative changes on migrant women are not easy to determine. Shortly after the passage of PRWORA, several studies speculated on the likely implications of select regulations such as the new Temporary Assistance to Needy Families (TANF) provisions for the health and well-being of immigrant women (O'Campo and Rojas-Smith 1998) or the potential impact of PRWORA and the Illegal Immigration Reform and Immigrant Responsibility Act on immigrant women's access to medical services (Ivey and Kramer 1998). The most recent study to date investigates the impact of PRWORA and the Illegal Immigration Reform and Immigrant Responsibility Act on the use of health-care services in immigrant communities in five Texas counties (Hagan et al. 2003). Seventy-three per cent of the respondents in this study are women. The narratives reported are testimony to the hardships incurred. One woman reported loss of Medicaid services to various family members as a result of the legislation, followed by immense difficulties in having health care reinstated for an eligible child, and over-the-counter drugstore treatment for other family members because of the high cost of user-pay medical services. Another delivered a child at home, and resorted to treating a second asthmatic child with herbal remedies, again because of an inability to pay for private medical care.

23 Bean and Stevens 2003; Fix and Passel 1999, 2002; Espenshade 1998; Zimmermann and Tumlin 1999.

24 Borjas 2003; Fix and Passel 1999, 2002; Kretsedemas 2003.

V.

conclusion

Concurrent with the increasing presence of women in international migration in the latter decades of the twentieth century are two developments affecting migrant women. First, as demand for entry has risen, governments in North America, as elsewhere, have attempted to stabilize or reduce the numbers of migrants, and to impose increasingly demanding criteria to determine who gets in.

The resulting alterations in migration policy have changed who is legally admitted; they have stimulated the entry of irregular and temporary migrants; and in Canada they have enlarged the share of highly skilled migrants during the 1990s.

Second, coinciding, if not underlying these migratory changes, is a North American neoliberal agenda which emphasizes an extensive deregulation of the labour market, a downsizing, decentralizing and erosion of the welfare state, and privatization of services. Together, these measures create the potential for a post-Marshallian citizenship in which social provision no longer seriously seeks to bridge the chasm between formal rights and substantive access to resources among the poor. In Europe, scholars note that proliferating legal citizenship statuses, which correspond with stratified entitlements, are a dominant government strategy to limit costs, while at the same time preserving the welfare state for a core constituency of full-status citizens (Kofman 2002). Such formal stratifications are present in North America, as evidenced in Canada's LCP, in growing numbers of temporary workers in both countries, and in US welfare reform restricting entitlement for new immigrants. However, despite this, formally sanctioned exclusionary or stratified citizenship statuses have not been adopted as extensively in North America as in Europe. Erosion of social services and assistance as part of an attempt to reduce government responsibility for poverty among both native- and foreign-born, the growing income inequality that follows from the adoption of labour market deregulation as a principal strategy to fight unemployment, non-recognition of foreign credentials (especially in Canada) and persisting systems of gender and racial stratification that affect all citizens are more central in understanding migrant women's disadvantages with respect to livelihoods and entitlements in these two countries.

The future of North America's foreign-born residents, especially women, is uncertain. On the one hand, scholars point optimistically to an admirable record of socioeconomic mobility and success of most immigrant groups over time and into the second generation. Gender awareness, if not sensitivity, also exists, as seen in the development of gender-related persecution guidelines, and in a more limited context in Canada, with respect to language training programmes. On the other hand, growing labour market inequality, deteriorating social provision, and fraying safety nets appear to threaten a continuation of this historic pattern for the majority of today's newcomers. Of particular concern is the trend toward a growing reliance on temporary categories of entry and residence, as well as increasing inequality in social provision. Such trends have the very real potential of maintaining and enlarging the struggles of migrant women to find permanent and legal residency and to keep a secure foothold in the North American postindustrial economies.

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