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Principal contact: **Ms. Karin Milovanovic**, Editorial assistant, Erasmus University Rotterdam, Phone: +31 (0)10 408 21 33, Email: [info@comparativemigrationstudies.org](mailto:info@comparativemigrationstudies.org)

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*Introduction to the Special Issue*

## **Lessons from Canada and Germany**

*Immigration and Integration Experiences Compared*

Harald Bauder, Patti Tamara Lenard & Christine Straehle

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### **Rationale and Objective**

There have been important similarities between Canada's and Germany's policies and approaches towards immigration and integration, ranging from practices of ethnic and racial exclusion in the first part of the last century to the subsequent development of both countries "into de-facto multicultural societies" (Triadafilopoulos, 2012: 2). However, because of significant differences in their historical contexts, as well as in the contemporary political and geographical circumstances that shape immigration and integration discourses and policies, considerable variations remain (Bauder, 2011). This special issue explores recent developments related to the immigration and integration experiences in both countries. Comparisons between Canada and Germany with respect to immigration and integration have become of increasing scholarly interest in recent years (e.g. Bauder, 2006b, 2008, 2011; Bendel and Kreienbrink, 2008; Reitz et al., 1999; Geißler, 2003; Schmidtke, 2010; Schultze, 1994; Triadafilopoulos, 2004, 2006, 2012; Winter, 2007; ZWH, 2009<sup>1</sup>). Apparently, comparisons of Canada and Germany have much to offer to migration research and policy making in that they "can de-center what is taken for granted" and thereby "challenge conventional wisdom" related to immigration and integration (Bloemraad, 2013: 29).

Recent political developments made it necessary to update and expand the existing comparative literature. Canada's immigration system is in the process of a significant overhaul. The Canadian government has lately

altered the rules for admitting refugees; it has drastically expanded Canada's temporary foreign labour migration programs; it has transformed on an ongoing basis the role provinces can play in determining which migrants to admit; it has moved away from a focus on the "well-rounded" immigration towards a focus on migrants with skills that are in demand in the Canadian labour market; and it has begun to retreat from a commitment to accommodating diversity (e.g. Alboim and Cohl 2012). If these trends continue or the existing changes persist, the make-up of the Canadian labour force and the "face" of Canadian society will shift markedly in the next decade. Moreover, these changes come at a time when Canadian society is engaged in two important debates: a debate about Canada's role in the world, and a debate about Canada's social fabric and national identity. Both of these debates are strongly affected by and, in turn, influence Canada's immigration policy.

Germany has also implemented drastic changes in respect to its policies towards immigrants and their integration over the last two decades. These changes include revisions to citizenship legislation; the establishment of Germany's first immigration law; numerous policy initiatives aiming at the social inclusion of immigrants; and attempts to integrate non-Christian religious institutions more deeply in civil society. Nevertheless, it remains a common trope to describe Germany as an "ethnic" nation, which has historically been hostile to receiving and incorporating non-ethnic German migrants. While the "ethnic" understanding of nationhood continues to influence German immigration debates (Bauder, 2011, and this issue), Germany has made enormous progress with respect to accommodating the foreign and foreign-born population and integrating immigrants from around the world.

Yet, motivated by the perceived superiority of Canadian settlement and integration policies, German politicians routinely travel to Canada to learn about Canadian policies and methods of immigrant integration. For example, in 2011, Ryerson University hosted an the *Roundtable on Immigration/Integration* for the visit of Maria Böhmer, Minister of State to the Federal Chancellor and Federal Government of Germany and Commissioner for Migration, Refugees and Integration; a year later the Ryerson Centre for Immigration and Settlement (RCIS, [www.ryerson.ca/rcis](http://www.ryerson.ca/rcis)) organized a similar roundtable for the visit of the Parliamentary Committee on Integration of Ontario's German partner province, Baden-Württemberg. These events propagate the assumption that Germany must do the learning from immigrant-receiving nations like Canada.

This special issue challenges the analytical lens that knowledge on how to design effective immigration and integration policies should only transfer



from Canada to Germany. Rather, this special issue considers what both Germany can learn from Canada as well as what Canada can learn from Germany's vast experience with immigrants, refugees and guest workers. This objective resonates with recent moves made by the Canadian government to transition from established patterns of admitting immigrants and refugees, towards more restrictive policies and practices that mirror the other countries' experiences with migration (Alboim and Cohl, 2012). For example, it can be argued that Canada's growing reliance on temporary foreign workers attempts to incorporate important lessons learned from Germany's experiences with its guest worker program of the 1950s-1970s, by ensuring that most temporary foreign workers cannot easily earn post-national citizenship, including the right to stay in Canada (Bauder, 2010).

The papers in this special issue will demonstrate that there is a great deal that can be learned from comparing the immigration and integration experiences in both countries. The value of this comparative approach lies in juxtaposing important differences and highlighting similarities between two countries that have been situated rather differently in terms of their history and geography, but which have also been part of interconnected global economic, political and migration systems. The learning experience for both countries involves several dimensions:

## National identity

National identities have shaped attitudes, discourses and policies towards immigration, integration and citizenship. Germany has historically been described as fearful of migrants of non-German ethnic background, who threaten to dilute a German sense of nationhood. Yet, the country's recent trajectory has moved away from this historical conception. In contrast, Canada has long identified as being an immigration country and pioneer of multiculturalism. Yet, many Canadians have become fearful of "Others" representing immigrants and/or certain religious groups. In this special issue, Harald Bauder's paper explores the contradictions in immigration debates and policies in Canada and Germany, in an attempt to offer a fuller account of the relationship between national identity, ethnic belonging and immigration. This paper also establishes some of the underlying historical and discursive contexts that inform the subsequent contributions to this issue.

## Citizenship

Canada and Germany are frequently presented as ideal types of different models of national belonging. As a settler society, Canada is often depicted as a pluralistic-civic nation that embodies the prototype of multicultural citizenship. Conversely, Germany is often represented as an ethnic nation that follows the *ius sanguinis* principle (law of blood), passing citizenship on from one generation to the next, independent on where a person was born or migrated to. By examining both countries naturalization practices, Elke Winter contests these depictions of Canada and German as ideal types of citizenship. Rather, her research shows that both countries are facing similar challenges in respect to naturalization. Yet, the responses to these challenges continue to be shaped to a degree by national histories and identities.

## Labour

The need for labour and employment is a driving force of migration to Canada and Germany. Germany's post-war guestworker program was among the largest of its kind and certainly one of the best known. The accumulation of postnational rights, however, enabled many of these "guest" workers to stay permanently in Germany. Today, too, the German economy benefits from an influx of labour from other European Union countries that possess social, economic and political rights as European citizens. Canada also today relies increasingly on both high- and low-skilled temporary labour migrants. Some of these migrants will have the opportunity to remain permanently in Canada, but many others will be required to leave, or they will become non-status migrants if they decided to stay (Lenard and Straehle, 2012). Analyzing recent policy developments, Holger Kolb demonstrates that both Canada and Germany indeed pursue hybrid approaches, although these approaches maintain distinct national characteristics.

## Governance

Over many years, Germany has occupied a central and driving role in European attempts to harmonize immigration policy – a policy change that was adopted in the context of the Schengen agreement implemented in 1995. Canada has not harmonized its migration policies with the United States

and Mexico to the same degree. Oliver Schmidtke observes a scale-shift in the other direction: cities and sub-national regions are being increasingly important actors in the governance of migration and integration. Although this downloading of governance authority can be observed in both Canada and Germany, it is implemented in nationally particular ways.

## Refugees and asylum policy

Germany has historically had one of the developed world's most generous asylum policies, but has recently integrated its refugee and asylum policies with the corresponding European policies and structures. As Canada faces the prospect of rising numbers of asylum applications and is embracing a global discourse of securitization, Germany's and other Europe's experiences have provided Canada with insight into revising its own policies towards refugees. Dagmar Soennecken shows in her paper that Canada may have once been a global innovator in respect to refugee policy and a respected leader of humanitarianism; today, however, Canada's refugee policies increasingly follow and adopt restrictive policy approaches that were pioneered in Europe. Again, while striking similarities exist between both Canadian and European policies, there are also important differences in the manner in which both countries incorporate national and regional contexts.

With their diverse scholarly and disciplinary backgrounds, the contributors to this special issue present multi- and interdisciplinary perspectives on the debate of Canadian and German immigration and integration experiences. Across these diverse perspectives, it becomes clear that Canada is no longer the undisputed innovator of progressive immigration and refugee policies or settlement practices. Likewise, Germany can no longer be dismissed as an antiquated ethnic nation that is ill-equipped to handle the increasing global mobility of populations and that trails behind other nations in developing and implementing effective immigration and integration policies and practices. We hope that the papers in this special issue and the new information they present will prove useful not only to fellow researchers, but also to students, practitioners and policy makers in Canada and Germany, as well as in countries that share aspects of the immigration and integration experience with Canada and Germany.

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## Note

1. In addition, Harald Bauder organized a workshop titled “Canada as an immigration model for Germany?” at the 2008 International Metropolis Conference held in Bonn; and recently, in October 2013, the workshop “Translating Welfare and Migration Policies in Canada and Germany,” organized by Adrienne Chambon, Ernie Lightman, Wolfgang Schröder and Eberhard Raithelhuber, was held in Frankfurt am Main.

## References

- Alboim N and Cohl K (2012) *Shaping the Future: Canada’s Rapidly Changing Immigration Policies*. Toronto: Maytree. <http://maytree.com/wp-content/uploads/2012/10/shaping-the-future.pdf> (last accessed 17 January 2013)
- Bauder H (2006) *Labor Movement: How Migration Regulates Labor Markets*. New York: Oxford University Press.
- Bauder H (2008) Kanada: Zuwanderungsmodell für Deutschland? *Geographische Rundschau* 60 (2): 48-50.
- Bauder H (2010) Foreign Workers Present a Moral Dilemma: Canada has the Capacity, and Obligation to Integrate Guest Workers. *Edmonton Journal*, Nov. 15: A17.
- Bauder H (2011) *Immigration Dialectic: Imagining Community, Economy and Nation*. Toronto: University of Toronto Press.
- Bendel P and Kreienbrink A (eds.) (2008) *Kanada und Deutschland: Migration und Integration im Vergleich*. Nürnberg, De: Bundesamt für Migration und Flüchtlinge.
- Bloemraad I (2013) The Promise and Pitfalls of Comparative Research Design in the Study of Migration. *Migration Studies* 1 (1): 27-46.
- Geißler R (2003) Multikulturalismus in Kanada – Modell für Deutschland? *Aus Politik und Zeitgeschichte*, 26: 19-25.
- Lenard PT and Straehle C (eds.) (2012) *Legislated Inequality: Temporary Labour Migration in Canada*. Montreal-Kingston: McGill-Queen’s University Press.

- Reitz J G, Frick J R, Calabrese T and Wagner G. (1999) The institutional framework of ethnic employment disadvantage: A comparison of Germany and Canada. *Journal of Ethnic and Migration Studies*, 25 (3): 397-443.
- Schmidtke O (2010) Einwanderer als Ware: Wie die Marktlogik Migranten aussortiert. *Blätter für deutsche und internationale Politik*, 10: 51-57.
- Schultze G (ed.) (1994) *Einwanderungspolitik Kanada's und der USA: Beispiele für die Bundesrepublik Deutschland?* Bonn, DE: Forschungsinstitut der Friedrich-Ebert-Stiftung, Apteilung. Arbeits- und Sozialforschung.
- Triadafilopoulos P (2004) Building walls, bounding nations: Migration and exclusion in Canada and Germany, 1870-1939. *Journal of Historical Sociology*, 17 (4): 385-427.
- Triadafilopoulos P (2006) A model for Europe? An appraisal of Canadian integration policies. In: Baringhorst S, Hunger U and Schönwälder K (eds.) *Politische Steuerung von Integrationsprozessen: Intentionen und Wirkungen*. Wiesbaden, DE: VS Verlag für Sozialwissenschaften, pp. 79-94.
- Triadafilopoulos P (2012) *Becoming Multicultural: Immigration and the Politics of Membership in Canada and Germany*. Vancouver, BC: UBC Press.
- Winter, Elke (2007) Bridging unequal relations, ethnic diversity, and the dream of unified nationhood: Multiculturalism in Canada. *Zeitschrift für Kanada-Studien* 1: 38-57
- Zentralstelle für die Weiterbildung im Handwerk (ZWH) (2009) *To Canada Migration nach Deutschland*. Düsseldorf.

## About the authors

**Harald Bauder**, Ryerson Centre for Immigration and Settlement, Ryerson University. Corresponding author.

E-mail: [hbauder@ryerson.ca](mailto:hbauder@ryerson.ca)

**Patti Tamara Lenard**, Graduate School of Public and International Affairs, University of Ottawa.

**Christine Straehle**, Graduate School of Public and International Affairs, University of Ottawa.



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# Re-Imagining the Nation

*Lessons from the Debates of Immigration in a Settler Society and an Ethnic Nation*

Harald Bauder

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## Abstract

In the context of immigration and settlement, Canada and Germany are often portrayed as opposites: Canada represents a settler society and Germany an ethnic nation. The different approaches and attitudes of the two countries towards immigration can be linked to different historical understandings of nationhood. Canada could not be imagined as a country without its immigrants; immigration is an integral aspect of national identity. Conversely, although Germany has always received immigrants, national identity has historically been conceived in ethnic terms. In this paper, I explore some of the contradictions in Canadian and German immigration debates related to national belonging. For example, Canada's identity as a settler society has long marginalized Indigenous populations, while in German debate the narratives of ethnically-belonging Germans and newly-arriving migrants openly engage with each other. By exploring these contradictions, I develop a perspective of the dialectic of migration and ethnic belonging that can be applied to both Canada and Germany.

**Keywords:** immigration, migration, settler society, ethnic nation, national imagination, Indigenous, nationhood, dialectic, Canada, Germany

## 1. Introduction

In a recent speech on the occasion of the 20<sup>th</sup> anniversary of the infamous racially-motivated attacks against foreigners in Rostock-Lichtenhagen, the President of the Federal Republic of Germany, Joachim Gauck, said that

resolving the conflicts between people from different cultures “requires recognizing that our country has now become an immigration country” (Gauck, 2012, my translation). This revelation has been nothing new. In fact, efforts to brand Germany as an immigration country rather than an ethnic nation have long been underway, and German courts and other civic institutions have fostered the social inclusion of immigrants for decades. Yet, politicians and the media continue to debate whether Germany is an immigration country, a non-immigration country, or an integration country (Bauder, 2011b, especially pages 161-181). This ambiguity is related to the fact that national identity is not fixed but developing in light of historical understandings of nationhood (e.g. Anderson, 1991) as well as contemporary material realities of human mobility and membership in the territorial nation state.

Similar to Germany, Canada’s national identity and its associated affirmation of immigration is rooted in a historical context of colonialization and contemporary material circumstances of immigration and multiculturalism. Unlike Germany, however, where different models of national and territorial belonging collide in public and political debate, in Canada the dominant understanding of national identity as a settler society has pushed aside an Indigenous model of ethnic belonging.

In this article, I juxtapose Canadian and German understandings of national belonging and debates of immigration. While I build on the existing literature on migration and settlement comparing Canada and Germany (Bauder, 2006b, 2008a, 2011a; Bendel and Kreienbrink, 2008; Reitz et al., 1999; Geißler, 2003; Schmidtke, 2010; Schultze, 1994; Triadafilopoulos, 2004, 2006, 2012; Winter, 2001; ZWH, 2009), I also add to this literature by outlining important contradictions in Canadian and German immigration debates and by interpreting these contradictions in relation to the dialectic of migration and ethnic belonging. My application of dialectics as an analytical framework involves juxtaposing oppositional positions and revealing contradictions. These contradictions are constitutive elements of the formation of identities and understandings of nationhood and belonging.

Phil Triadafilopoulos (2012) has recently argued that Canadian and German policies towards immigration and integration have been converging in light of overarching common values and political principles. This convergence has been the subject of broader academic debate emphasizing the role of universal principles, global human rights, post WWII decolonialization and the universal rejection of racism in the context of migration and settlement policies and practices (e.g. Castles, 2004; Joppke, 2005; Soysal,



1994). In this article, however, I highlight the lingering historical differences between Canadian and German understandings of nationhood and corresponding attitudes towards immigration. In Canada, the understanding of a settler society has been constructed in dialectical opposition to the Indigenous population; in Germany, the national imagination has tended to exclude immigrants without German ethnic roots. Furthermore, I stress the shortcomings of both countries' approaches towards incorporating migrants and non-migrants into the national imagination. I suggest that both Canadian and German approaches towards immigration harbour irresolvable contradictions. In some respects, the dialectic of immigration debate in Germany may have surpassed the debate in Canada because the German immigration debate engages the contradictions between migration and ethnic belonging while the Canadian debate does not permit such an engagement (Bauder, 2011a). Canadian media commentators, politicians and diplomats, thus, cannot claim moral superiority in matters of immigration while Indigenous populations remain politically and socially marginalized (e.g. Sterling, 2012).

In this article, I draw on empirical data which I collected in the context of a study of the debate of immigration policy in Canadian and German media. In this study, the particular focus was on the development of the 2002 Canadian Immigration and Refugee Protection Act and the German Immigration Law (*Zuwanderungsgesetz*), which came into effect in 2005<sup>1</sup>. This study revealed dialectics that operates at multiple dimensions: a dialectic of juxtaposing opposing positions in media and public debate; a dialectic of national identity formation in relation to non-belonging populations; and a dialectical relation between material context, law and policy, and public debate (Bauder, 2011b). For the purpose of developing a distinct argument and widen the thematic and temporal scope of this article, I complemented material from this study with academic and "grey" literature as well as legal documents on issues of Indigenous and ethnic belonging.

In the sections that follow, I first provide important background information on the identities of Canada as a settler society and Germany as an ethnic nation. Then, I describe crucial differences between Canada and Germany regarding who is included in and excluded from the national imagination. Thereafter follows a discussion of the dialectical engagement between migration and ethnic belonging in both countries. I conclude with pointing towards potential future politics of belonging.

## 2. Background: Settler Society and Ethnic Nation

Both Canada and Germany are liberal democracies with ‘Western’ political traditions and principles and highly-advanced capitalist economies. These commonalities have contributed to the relative convergence of immigration and integration policies and practices in both countries since World War II (Triadafilopoulos, 2012; Joppke, 2005). However, the two countries have also been situated in rather different historical and geopolitical contexts and have framed their national identities in distinct ways. In particular, they long embraced – and to some degree continue to do so – different model of nationhood and national belonging, and have therefore similarly different underlying attitudes towards immigration (Bauder, 2011b). In this section, I briefly review the historical and geopolitical contexts that underlie Canada’s and Germany’s national imaginations and the corresponding places that immigration occupies in these imaginations.

Canada is often called a “classical” immigration country due to its settlement history. This history includes the establishment of New France in the 16<sup>th</sup> Century, the arrival of British settlers, and the subsequent geographical expansion towards the Prairies and the West Coast. The settlement of newcomers and the associated processes of colonization, territorial expansion, and economic and demographic development have been intimately intertwined with Canada’s national identity as a settler society (Knowles, 1997). While this identity historically involved two (i.e. English and French) founding nations, the Indigenous population was sidelined in the national imagination (Winter, 2007). The identity as a settler society entails that newcomers are not treated as outsiders or foreigners but as new members of society. Corresponding naturalization and citizenship policies have facilitated the formal integration of immigrants into the national polity. The Canada Citizenship Act of 1946, for example, gave first-generation immigrants the opportunity to naturalize after five years of residence in Canada, and it automatically granted Canadian citizenship to all persons born on Canadian soil. This citizenship principle, known as *jus soli*, ensures that the children of immigrants are included in the Canadian polity, even if their parents chose not become Canadians. These legal practices reflect the identity of Canada as a settler society.

For much of its history, Canada favoured immigration from Europe. Although non-Europeans were needed as labourers, such as the Chinese who built the Canadian Pacific Railway, these migrants were not always welcome as fellow citizens (Knowles, 1997). Not until 1967 did Canadian law remove racial bias and regional criteria from immigrant selection

procedures. Soon thereafter, Pierre Elliott Trudeau adopted multiculturalism policy in 1971, which Brian Mulroney enshrined into law in 1988. This policy has since recognized the diverse ‘ethnic’ identities represented in Canadian society (Kelley and Trebilcock, 1998). Multiculturalism further reinforced the idea that Canada is a settler society capable of welcoming newcomers of all origins and backgrounds. The Canadian Multiculturalism Act, however, does not apply to Indigenous institutions of governance (Minister of Justice, 2012), recognizing the distinct nature of Aboriginal identity politics. Aboriginal peoples have typically been excluded from consultations on multiculturalism and “do not see themselves in these policies” (Kunz and Sykes, 2007: 9).

The foundation for today’s immigration policies was established with the 1976 Immigration Act, which created different immigrant classes to meet Canada’s economic interest, goals of demographic development, and humanitarian obligations under international law. The 2002 Immigration and Refugee Protection Act maintained the general structure of selecting immigrants based on immigrant classes but permitted the government to shift relative weight towards the economic class and thereby facilitate neoliberal, economic-utility driven immigration (Arat-Koç, 1999; Simmons, 1999; Bauder, 2008b). My own empirical research has shown that while differences may exist in opinion of how the economic-utility of immigration can be achieved, participants in political and public debate rarely question that immigration and economic gain for Canada go hand in hand (Bauder, 2011b). This perspective represents an overarching national paradigm in public debate that immigration is a necessary element of Canada’s national well-being. The idea that immigration would generally produce harm<sup>2</sup> and therefore should be blocked altogether is incompatible with Canada’s national identity of being a settler society.

Like Canada, Germany is a historical and political construct. Germany’s national identity, however, is not founded on immigration. Rather, Pan-German nationalism emerged as a response to the political fragmentation among the states that comprised the Holy Roman Empire and the discontent with the occupation and domination of German-speaking territories by Napoleon Bonaparte’s army in the early 19<sup>th</sup> Century. In opposition to the French nation, which framed national identity in political terms, proponents of the Romantic Movement, such as Johann Gottfried Herder, Johann Gottlieb Fichte, and Ernst Moritz Arndt, associated German nationhood with a language community that shared a common history and destiny. In this way, Germany was established as an ethnic nation. Correspondingly, the unified German state enshrined *jus sanguinis* into citizenship law in

1913, which grants membership based on blood lineage, rather than place of birth.

The ethnic identity of Germany excluded ethnic non-Germans from the national imagination. The idea that Germany is the “land of the Germans” (i.e. *Deutschland*) prevailed throughout the Wilhelmine Empire, the Weimar Republic, the Third Reich and the Federal Republic of Germany, the latter of which otherwise sought to brake with the country’s anti-Semitic past and racist barbarism of the Nazi regime. The ethnic principle of national belonging enabled, on the one hand, the integration of almost fifteen million ethnic German refugees who had lived in Eastern Europe but fled to West Germany in the wake of the Soviet occupation and the establishment of communist regimes after World War II (Münz et al., 1999). On the other hand, this principle resulted in the exclusion of roughly 13 million non-German migrants who arrived in Germany as “guest workers” between 1955 and 1973. After the discontinuation of the guest-workers program in 1974, many of these workers and their families decided to stay and make Germany their home; yet, many of these families and even their German-born children remained excluded from the national imagination and membership in the national polity (Bade, 1997).

Over time, however, the ethnic identity of Germany came under increasing scrutiny from across the political spectrum. In the late 1970s, the conservative politician Lothar Spät declared that Germany is an “immigration country” (quoted in Meier-Braun, 2002: 46). In the 1990s, the left-leaning politician Oskar Lafontaine voiced concern that newly arriving ethnic Germans are privileged over foreigners who have lived in Germany for generations. By 1998, the major political parties embarked on developing competing models for regularized immigration into Germany.

After the 1998 election, the governing Social-Democratic/Green coalition began implementing citizenship and immigration reforms. Citizenship law was altered to incorporate *jus soli* elements, extending citizenship to the children of established foreign resident in Germany. It also appointed the former president of the lower house of parliament, Rita Süsmuth, as head of a commission to develop the principles of Germany’s first immigration law. After years of debate and political bickering – including a delay due to a procedural error in the upper house of parliament and a ruling by Germany’s Constitutional Court – an immigration law (*Zuwanderungsgesetz*) was passed in 2004, which effectively limited, rather than enabled, large-scale immigration into Germany (Storr and Albrecht, 2005). The public debate of this first immigration law illustrates that the German population and media have not entirely come to terms with the idea that Germany is an

immigration country. For example, unlike in Canada where the notion that immigration will in general produce economic benefits is not questioned, in Germany, public debate of the immigration laws was divided between two opposing positions: one suggesting that immigration should be permitted because the influx of labour and human capital will render Germany's economy more competitive in the global market place; the other proposing that immigration would increase labour competition, put Germans out of work, and should therefore be blocked (Bauder, 2011b). A fundamental debate that seriously considers blocking all immigration would be unfathomable in a settler society like Canada whose identity rests on the positive articulation of immigration.

### 3. Inclusion and Exclusion in the National Imagination

The representations of Canada and Germany as examples of a settler society and an ethnic nation allow me to illustrate important contradictions in the manner in which subjects are included and excluded from the national imagination. While in Canada and Germany migrants and non-migrants are included and excluded based on different criteria, the exclusion of particular groups occurs in both contexts. In this section, I examine the differences in the inclusion in and the dialectical exclusion from the national imagination in light of the material relations that have existed in Canada and Germany.

While Canada has drawn on immigration to frame its national identity, this identity has had an uneasy relationship with Indigenous populations. Although First Nations are now often mentioned as one of the founding peoples in official Canadian documents, this rhetorical and symbolic acknowledgement can be read as a symptom of the political struggles between English and French Canadian interest over multiculturalism rather than an indicator of the material social and political inclusion of Indigenous populations (Winter, 2007). Evidence from my own empirical research suggests that in the contexts of immigration and Canada's identity as a settler society, Indigenous narratives are sidelined. For example, when the Canadian media debated immigration policy reform between the late 1990s and mid-2000s, an Indigenous narrative was conspicuously absent from the debate (Bauder, 2011b). In fact, one could argue that a "parallax gap" (Žižek, 2006) exists between Indigenous and immigration narratives, which discursively separates two issues that, in fact, are historically and materially closely linked with each other (Bauder, 2011a): the settlement of Canadian

territory by Europeans has involved the often violent displacement and subordination of Indigenous populations. The ideological justification for this displacement and subordination was supplied by liberal philosophers, such as John Locke (1812[1689]), enabling the colonizers to portray Indigenous political, economic and land-use practices as inferior and thus unworthy of preservation (Arneil, 1994; Tully, 1993). European immigration, settlement and Indigenous displacement have gone hand-in-hand.

Furthermore, Indigenous peoples have made significant contributions to establishing Canada as a country with a settlement identity. Tom Denton (2011, personal communication) remarks with tongue-in-cheek that Indigenous peoples have provided settlement services to immigrants “for over 400 years”: after the Pierre Dugua *de Monts* und Samuel de *Champlain* arrived in 1604 with their ship and crew on the Isle of St. Croix in the St. Croix River to establish a settlement, members of the Passamaquoddy Nation helped many of the Europeans to survive the harsh winter and later assisted them in moving their settlement across the Bay of Fundy to the Annapolis Basin where the Colonists established Port Royal. In subsequent centuries Indigenous populations continued to play decisive roles in developing the Canadian economy and resource base, warding off foreign intruders, and contributing in many other ways to the well-being of the settlers who lived on the land now encompassing Canada. Despite the intimate connection of Indigenous peoples to Canadian soil<sup>3</sup>, they have remained marginal in the national imagination of Canada as a settler society.

The framing of Canadian national identity reflects the unequal power relations between settlers and their descendants, and Indigenous populations. Since the 17<sup>th</sup> Century, European military power, economic expansion, population growth and ideas of political organization (e.g. ideas that there could be a nation-state like Canada to begin with) dominated in much of the territory that became Canada. Recent political efforts towards greater social and political inclusion of Indigenous populations have produced mixed results. For example, while multiculturalism policy and the Multiculturalism Act of 1988 recognized Aboriginal rights, it has also refrained from including Aboriginal peoples and institutions. Critics have further alleged that multiculturalism is socially divisive, fails to promote a unifying national identity, and reproduces the European gaze at and toleration of the non-European Other (e.g. Bissoondath, 1994; Day, 2000; Foster, 2007; Harles, 1998). In the context of Canadian multiculturalism, Aboriginal Peoples continue to be depicted as racialized Other while Aboriginal peoples themselves emphasize their historical uniqueness and non-belonging in a society of settlers (Légaré, 1995). While non-European and racialized

immigrants may claim a place in a settler society composed of diverse origin groups, Indigenous identities challenge the cherished image of Canada as a country of immigrants who came in search of a better future.

In Germany, the national imagination has been construed around a population that passed its German identity from one generation to the next. Even German-born children of foreign migrants, such as the guest workers, have been excluded from full membership in the national imagination. This understanding of nationhood resonates with Indigenous identities in Canada. However, unlike in Canada where Indigenous and immigration narratives have remained discursively separated, in Germany, these two narratives have collided in the context of ongoing debates of the role of migrants in German society.

Until the middle of the 20<sup>th</sup> Century, this collision manifested itself in blatantly Xenophobic and racist government practices and policies. After World War II, the catastrophe of the Holocaust and the genocides committed by the Nazis, the exclusion of ethnic non-Germans continued, albeit without the overt racist language and ideology of the past. For example, after guest-workers were no longer needed, they were labeled “foreigners” (*Ausländer*), signifying their non-belonging. Likewise, unwanted people seeking refuge were portrayed as “bogus asylum seekers” (*Scheinasylanten*) or “economic refugees” (*Wirtschaftsflüchtlinge*) (Wengeler, 1995). These labels reflect the exclusionary government policies and practices of the late 1970s and 1980s.

Although politically and socially marginalized as “foreigners”, these migrants have made enormous contributions to German society and their labour constituted an essential structural component of the German economy (Bauder, 2006b). For most of Germany’s modern history, foreign labour has filled seasonal and cyclical labour shortages in agriculture and industry (Bade, 2004). Similarly, the “economic miracle” of post-war recovery was fueled by the guest workers program that facilitated the entry of foreign labour into Germany but politically and socially excluded the very people providing this labour. In recent decades, demands have increased to attract highly-skilled foreign workers to overcome skill shortages in the German labour market and make Germany’s economy globally more competitive. I have argued elsewhere that the value of foreign labour lies precisely in the social and political marginalization of the people providing this labour: by not extending political, social and economic rights to foreign workers, they are more exploitable than German citizens and in this way facilitate capital accumulation (Bauder, 2006b).

Like in Canada, the ability to frame national identity in Germany and exclude some groups from this identity is linked to the unequal distribution

of power. In the German case, however, economic, military and political control rested with a population that embraced a mythology of territorial belonging based on language, ancestry and blood-lineage. Laws and policies towards foreigners have been shaped by the interests representing this population. Throughout much of Germany's national history, newcomers without ancestral German connections were not entitled to belong in German society. In the final decades of the 20<sup>th</sup> Century, however, political efforts have attempted to rescript Germany's identity to accommodate foreign residents. An interesting dialectical progression in the context of the debate of the immigration law of 2004 involved the representation of Germany first as an "immigration country", followed by the rebuff that Germany remains a "non-immigration country", and the final resolution that Germany is an "integration country." The identity as "integration country" acknowledges the large foreign population whose presence needs to be accommodated in the national imagination, while new immigration can be blocked. In other words, the "integration country" label satisfies both positions that Germany is neither an immigration country nor a non-immigration country (Bauder, 2011b: 161-181).

Yet, the immigration-nation dialectic (Bauder, 2011b) does not end here: the signatories of a recent petition against immigrant exclusion lamented that "Integration presumes that those who work in this country, have children here, and grow old and eventually die here, must adopt a particular code of conduct before they are allowed to belong" (Kritnet, 2011). Although contemporary integration debate and policies in Germany may seek to be accommodating of people with a "migration background" (*Migrationshintergrund*), these policies continue to reflect unequal relations of power. From this perspective, migration policies and practices in Canada and Germany may be similarly biased and exclusionary – albeit at different ends of the immigration-Indigenous spectrum.

The two case examples of Canada and Germany illustrate how contradictory the relationship between migration and territorial belonging is: migration discourses in both countries "have failed to legitimate the simultaneous *inclusion* of some 'migrants' (i.e. settlers) and some non-'migrants' (i.e. residents born on the national territory), and the *exclusion* of some 'migrants' (i.e. people deemed unworthy of national membership<sup>4</sup>) and some non-'migrants' (i.e. Indigenous peoples) from the national imagination" (Bauder, 2013: 58, emphasis and footnote in original). At the same time, it would be problematic to construe all migrants as colonizers and non-migrants as exploiters of migrants (e.g. Sharma and Wright, 2008-2009).



These contradictions are impossible to resolve in the context of national imaginations of settler society and ethnic nation.

#### 4. Dialectics of Migration and Ethnic Belonging

In both Canada and Germany, migration and ethnic belonging have been constructed as dialectical opposites. German immigration debate has engaged these dialectical opposites and invigorated a discussion that grapples with the different situations and roles of migrants and ethnic Germans in German society. Certainly, the nature of this discussion has sometimes been uninformed, populist, and occasionally leaped into ethnic and religious essentialisms. Furthermore, the changes to citizenship law and migration policy that have been associated with this discussion are problematic from human-equality and social-justice viewpoints (e.g. Bauder, 2006b, 2011b; Kritnet, 2011). Yet, this discussion has been productive in the sense that engagement with different perspectives of migration and ethnic belonging has occurred. For example, the publication of a controversial book in 2010 by a member of the Executive Board of the Deutsche Bundesbank, Thilo Sarrazin, critiquing Germany's policies towards immigration and Muslim populations residing in Germany was met with fierce opposition from politicians and advocacy groups, who presented equally contested counter arguments for tolerance, integration and democracy (e.g. Kritnet, 2011). Even the very category of the migrant and foreigner as the unwanted Other has been rescripted in this discussion. For example, empirical research has shown that neither the French, who were the adversaries of German nationhood in the 19<sup>th</sup> Century and the early 20<sup>th</sup> Century, nor Southern Europeans, who were construed as non-belonging foreigners in the 1970s and 1980s, but the non-European Muslim is now the national Other when the media or politicians debate immigration (Bauder, 2011b; Bauder and Semmelroggen, 2009).

In Canada, discourses of migration and ethnic nationhood are not engaging with each other to the same degree as in Germany. On the one hand, Indigenous groups emphasize the distinction between themselves and the federal state representing the settler society (Macklem, 2002). In addition, Canadian politics towards immigration and Indigenous communities follow different strategic approaches, with immigration policies being developed based on social consensus, while policies towards Indigenous communities tend to be divisive and continue to reflect to politics of colonialism (Leo et al., 2007). On the other hand, multiculturalism – which the Canadian state

has so proudly pioneered – has a fundamentally uneasy relationship with territorial belonging based on ethnicity and blood-lineage.

Multiculturalism and other federal policies, such as Employment Equity legislation, include Indigenous peoples as an ethnic ‘minority’ group and conflate the experiences of Indigenous peoples with those of other ethnic groups. “White Paper Liberalism” suggests that Indigenous peoples should be protected in a similar way as other ethnic ‘minority’ groups because they share similar individual rights of equality and freedom (Turner, 2006). These policies neglect the opposing frameworks of national belonging that apply to Indigenous and immigrant populations. Rather than confronting these opposing frameworks head-on and discursively engaging them in the context of debates of immigration and national belonging, contemporary Canadian political debate side-steps the issue by separating this discourses of immigration and Indigeneity (Bauder 2011a).

The Indigenous and settler frameworks of belonging that co-exist in Canada must not be essentialized; they are political constructs that have enabled both ethnic and settler groups to pursue their material and political interests and claim geographical territory. My point is that these frameworks should not remain discursively separated through a parallax gap that obscures the material relationship between migration, settlement, and the displacement and subordination of Indigenous peoples (Bauder, 2011a).

Recent attempts have been made to bridge this parallax gap. For example, the Assembly of First Nations (2005) passed a resolution demanding

to freeze all immigration coming into Canada until the federal government addresses, commits, and delivers resources to First Nations to improve the housing conditions, education, health and employment in First Nations communities and that the federal government acknowledge and agree they are bringing immigrants into our lands and using our resources without our consent.

Similarly, the federal government has begun in 2012 to include representatives of the Assembly of First Nations and the Congress of Aboriginal Peoples in its public consultations on immigration targets (Cheadle, 2012). Indigenous concerns that were articulated in the consultations related mostly to the admission of temporary foreign workers who compete with Aboriginal youth for jobs; they stopped short of voicing a more fundamental critique of the settler paradigm of belonging. Nevertheless, an expansion of such consultations to include more substantial debate of immigration policy and the national imagination would offer the possibility to narrow if

not close the existing parallax gap. Although such a dialectical engagement is a discomforting political process, as the German debate of immigration illustrated, it would be an important step towards eventually overcoming the antagonistic claims to territorial belonging represented by the models of the settler society and ethnic nation. The recent Idle No More (<http://idle-nomore.ca>) protests and the public responses to these protests (e.g. Coyle, 2013; Saunders, 2013) have demonstrated that the opposing Indigenous and settler narratives of belonging remain deeply entrenched and deadlocked in the minds of their proponents.

## 5. Conclusion

In Germany, Canada is often presented as a model of successful immigration and integration policy. For example, the initial version of the immigration law that was tabled in German parliament in 2001 contained a Canadian-style points system to attract skilled workers. Although the final version of the law did not include a points system because the pendulum of public and political opinion had swung back towards protectionism of the German labour market by the time the law passed both houses of parliament in 2004 (Bauder, 2011b), the initial consideration of the points system signifies that the Canadian model of economic-utility driven immigration was perceived as worthy of imitation. Similarly, the German media and public commentators often present the Canadian settlement system as a role model for Germany, and German politicians frequently visit Canada for guidance and inspiration on effective integration policies (see Introduction to this special issue). Within the context of an immigrant society that is not only open to newcomers but also welcomes newcomers in the community and the national imagination, Canada indeed has had an edge over Germany.

Nevertheless, Canadians should refrain from claiming moral superiority in matters of immigration and integration. In particular, the discursively separated issues of immigration and Indignity have, in my eyes, not been adequately addressed. While in Germany public debate on immigration has engaged with the different roles of ethnic Germans, foreigners and newcomers in the national imagination, a similar engagement between immigration and Indigenous narratives rarely occurs in Canadian debate. Simply acknowledging diversity is not enough. For example, the “visible minority” category that was established with Employment Equity legislation includes Aboriginal peoples as a group that is distinct from Canada’s European-origin population, but it does not address the fundamentally different understand-

ings of nationhood and belonging between the descendants of settlers, immigrants and Indigenous peoples. Instead, it treats racialized Aboriginals similar to racialized immigrant groups. Recent policy developments, such as the federal government's effort to include Indigenous communities in the consultation of immigration targets, signify a movement in the right direction. Expanding the discursive and political engagement between immigration and Indigenous understandings of territorial belonging, and re-connecting the corresponding narratives and policies would foster reconciliation between the populations that now occupy Canadian land.

Neither Canada nor Germany has yet been able to transcend divisive understandings of territorial belonging that are represented by the opposing models of settler society and ethnic nation. A critical political agenda may entail rescripting migrant and Indigenous subjectivities into a unifying collective identity (Anderson, et al. 2009; Bauder, 2013). Along these lines, recent scholarship has questioned whether the territorial nation state is indeed the entity under which such unifying identities can be achieved. After all, the nation state has historically been an instrument for reproducing the unequal power relations between settlers and Indigenous populations, and between populations with ancestral claims to territory and newcomers (Bauder, 2006a). Radical and critical scholarship has therefore sought to fundamentally rethink the relationship between migration, territorial belonging, and the nation state. While the nation state reflects the contemporary geopolitical condition of how migration flows are regulated, how migration is discursively framed, and how polities are territorially organized (e.g. Sassen, 2006; Sharma, 2006; Taylor, 1994), this scholarship is critiquing the taken-for-granted frame of the nation state when researchers, political actors, the media and the public discuss human mobility and territorial belonging (Anderson et al., 2009; Bauder, 2006a; Sharma, 2006; Wimmer and Glick Schiller, 2002). Similarly, critical geographers have been warning against essentializing the national scale (e.g. Delaney and Leitner, 1997; Marston, 2000; Mountz and Hyndman, 2006). For example, territorial belonging can be expressed at the urban scale, which may be better suited to accommodate migrants, non-migrants and Indigenous populations alike (e.g. Bauböck, 2003; Varsanyi, 2006). Grass-roots organizations, such No One is Illegal, are declaring that "Canada is illegal" (NOII, 2011: no page) and are pleading for solidarity between marginalized immigrant and Indigenous populations at the urban scale (Bauder, 2013). In this article, however, I did not pursue such arguments. Rather, I emphasized national identity as a historical and political construct, and explored the dialectical relationship between the concepts of migration and belonging.

Assuming that the nation state remains the dominant political configuration for the foreseeable future, the dialectical resolution of the two models of belonging will not be accomplished by continuing to embrace national models of settler society and ethnic nation. In the same speech, which I quoted in the beginning of this article, Joachim Gauck (2012, my translation) also remarked: “We will not be able to achieve an entirely unified society, but we can achieve one based on solidarity.” Similar rhetoric is echoed by the organizers of the conference “Encounters in Canada: Contrasting Indigenous and Immigrant Perspectives” held in Toronto in May 2013, featuring former Prime Minister Paul Martin as the keynote speaker. This conference was a rare occasion, which brought together settler and ethnic narratives of national belonging. The conference description suggests that “respect and trust can be fostered through shared difference” aiming to “build bridges [between] Indigenous peoples, descendants of early settlers, and more recent immigrants and refugee communities” (Dalton, 2013). If the nation state persists as the dominant framework of territorial belonging – and this would be the framework that Gauck as the President and Paul Martin as a former Prime Minister of two nation states embrace – then solidarity between newcomers, the descendants of settlers, and people tied to territory through ancestry will be necessary to bridge the parallax gap that exists in both Canada and Germany.

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## Notes

1. A detailed description of the research design is available in the appendix of *Immigration Dialectic* (Bauder 2011b: 211-223).
2. While Canadian public debate endorses immigration *in general*, it does not support *all* immigration. Narratives of bogus refugees, cue jumpers, or safe haven for terrorists exemplify representations of unwanted migrants (Bauder, 2011b).
3. Ironically, the *jus soli* principle of citizenship, which Canada follows, associates membership in the national community with being born in Canadian territory, i.e. being born on traditional Indigenous soil.

4. E.g. 'migrants' denied entry into the national territory and temporary residents denied permanent residency.

## References

- Anderson B. (1991). *Imagined communities: reflections on the origin and spread of nationalism*. Revised edition. London: Verso.
- Anderson B., Sharma N. and Wright C. (2009). Why no borders? *Refuge* 26 (2), 5-18.
- Arat-Koç S. (1999). Neo-liberalism, state restructuring and immigration: changes in Canadian policies in the 1990s *Journal of Canadian Studies* 34 (2), 31-56.
- Arneil B. (1994). Trade, plantations, and property: John Locke and the economic defense of colonialism. *Journal of the History of Ideas* 55 (4), 591-609.
- Assembly of First Nations (2005) Resolution no. 49, Regina. Available at: <http://64.26.129.156/article.asp?id=1946> (accessed 30 December 2012)
- Bade K. J. (ed.) (1997). *Fremde im Land*. Osnabrück: Universitätsverlag Rasch.
- Bade K. J. (2004). *Sozialhistorische Migrationsforschung. Vol. 13*, Studien zur historischen Migrationsforschung, ed. Michael Bommers and Jochen Oltmer, Göttingen: V & R Unipress.
- Bauböck R. (2003). Reinventing urban citizenship. *Citizenship Studies* 7 (2), 139-160.
- Bauder H. (2006a). And the flag waved on: immigrants protest, geographers meet in Chicago. *Environment and Planning A* 38, 1001-1004.
- Bauder H. (2006b). *Labor movement: how migration regulates labor markets*. New York: Oxford University Press.
- Bauder H. (2008a). Kanada: Zuwanderungsmodell für Deutschland? *Geographische Rundschau* 60 (2), 48-50.
- Bauder H. (2008b). The economic case for immigration: neoliberal and regulatory paradigms in Canada's press. *Studies in Political Economy* 82 (Autumn), 131-152.
- Bauder H. (2011a). Closing the immigration-Aboriginal parallax gap. *Geoforum* 42, 517-519.
- Bauder H. (2011b). *Immigration dialectic: imagining community, economy and nation*. Toronto: University of Toronto Press.
- Bauder H. (2013). Nation, 'migration' and critical practice. *Area* 45 (1), 56-62.
- Bauder H. and Semmelroggen J (2009). Immigration and imagination of nationhood in German Parliament. *Nationalism & Ethnic Politics* 15 (1): 1-26.
- Bendel P. and Kreienbrink A. (eds.) (2008). *Kanada und Deutschland: Migration und Integration im Vergleich*. Nürnberg, De: Bundesamt für Migration und Flüchtlinge.
- Bissoondath N. (1994). *Selling illusions: The cult of multiculturalism in Canada*. Toronto: Penguin Books.
- Castles, S. (2004). Why migration policies fail. *Ethnic and Racial Studies* 27 (2), 205-227.
- Cheadle B. (2012). First Nations consulted on 2013 immigration targets as Tories break new ground. Vancouver Sun, September 20. Available at: <http://www.vancouversun.com/business/First+Nations+consulted+2013+immigration+targets+Tories+break+ground/7275078/story.html> (accessed 30 December 2012).
- Coyle J. (2013). Idle No More: a chance to repair a sad legacy. *The Toronto Star*, 12 January. Available at: [www.thestar.com/printarticle/1314325](http://www.thestar.com/printarticle/1314325) (accessed January 15, 2013).
- Dalton J. E. (2013). Encounters in Canada: contrasting Indigenous and immigrant perspectives. Announcement on POLCAN@listes.ulaval.ca (received January 12, 2013).
- Day R. J. F. (2000). *Multiculturalism and the history of Canadian diversity*. Toronto, University of Toronto Press.

- Delaney D. and Leitner H. (1997). The political construction of scale. *Political Geography* 16 (2), 93-97.
- Denton T. (2011). Personal communication. 31 January.
- Foster C. (2007). *Blackness and modernity: the colour of humanity and the quest for freedom*. Montreal and Kingston: McGill-Queen's University Press.
- Gauck J. (2012). Speech at the memorial ceremony of the 20<sup>th</sup> Anniversary of the anti-foreigner riots in Rostock-Lichtenhagen, 26. August. Available at: <http://www.bundespraesident.de/SharedDocs/Reden/DE/Joachim-Gauck/Reden/2012/08/120826-Rostock.html> (Accessed 31 October 2012)
- Geißler R. (2003). Multikulturalismus in Kanada – Modell für Deutschland? *Aus Politik und Zeitgeschichte* 26, 19-25.
- Harles J. (1998). Multiculturalism, national identity, and national integration: the Canadian case. *International Journal of Canadian Studies* 17, 217-248.
- Joppke, C. (2005). *Selecting by origin: ethnic migration in the liberal state*. Cambridge/Mass.: Harvard University Press.
- Kelley N. and Trebilcock M.J. (1998). *The making of the mosaic: a history of Canadian immigration policy*. Toronto: University of Toronto Press.
- Knowles V. (1997). *Strangers at our gates: Canadian immigration and immigration policy, 1540-1997*. Toronto: Dundrun Press.
- Kunz J. L. and Sykes S. (2007). From mosaic to harmony: multicultural Canada in the 21<sup>st</sup> Century – Results of regional roundtables. Ottawa: Government of Canada, Policy Research Initiative.
- Légaré E. I. (1995). Canadian multiculturalism and Aboriginal people: negotiating a place in the nation. *Identities* 1 (4), 347-366.
- Leo C., August M. and Rogers M. D. (2009). Is the federal government dividing the Aboriginal community? Can it stop? A Winnipeg case study. Paper prepared for the Annual Meeting of the Canadian Political Science Association, Ottawa. Available at: <http://blog.uwinnipeg.ca/ChristopherLeo/Cohesion.pdf> (accessed 30 December 2012).
- Macklem P. (2002). *Indigenous difference and the constitution in Canada*. University of Toronto Press, Toronto.
- Marston S. (2000). The social construction of scale. *Progress in Human Geography* 24 (2), 219-242.
- Meier-Braun K.-H. (2002). *Deutschland, Einwanderungsland*. Frankfurt am Main: Suhrkamp Verlag.
- Minister of Justice (2012). Canadian Multiculturalism Act. Available at: <http://laws-lois.justice.gc.ca/PDF/C-18.7.pdf> (last accessed 30 December 2012).
- Münz R., Seifert W. and Ulrich R.E. (1999). *Zuwanderung nach Deutschland: Strukturen, Wirkungen, Perspektiven*. 2nd ed. Frankfurt am Main: Campus Verlag.
- Mountz A. and Hyndman J. (2006). Feminist approaches to the global intimate. *Women's Studies Quarterly* 34 (1/2), 446-463.
- Netzwerks Kritische Migrations- und Grenzregimeforschung (Kritnet) (2011) Democracy not integration. Available at: [http://demokratie-statt-integration.kritnet.org/demokratie-statt-integration\\_en.pdf](http://demokratie-statt-integration.kritnet.org/demokratie-statt-integration_en.pdf) (accessed 26 October, 2012)
- No One Is Illegal (2011). On the justice of tearing down fences and dismantling borders. Thursday, April 28. Available at: <http://noii-ottawa.blogspot.com/> (accessed Jan. 30, 2012).
- Reitz J. G., Frick J. R., Calabrese T. and Wagner G. (1999). The institutional framework of ethnic employment disadvantage: a comparison of Germany and Canada. *Journal of Ethnic and Migration Studies* 25 (3), 397-443.
- Sassen S. (2006). *Territory, authority, rights: from medieval to global assemblages*. Princeton, NJ: Princeton University Press.

- Saunders D. (2013). What kind of nation is a first nation? We need to decide. *The Globe and Mail*, 12 January. Available at: <http://www.theglobeandmail.com> (accessed Jan. 12, 2013)
- Sharma N. (2006). *Home economics: nationalism and the making of migrant workers in Canada*. Toronto: University of Toronto Press.
- Sharma N. and Wright C. (2008-2009). Decolonizing resistance, challenging colonial states. *Social Justice* 35 (3), 120-138.
- Schmidtke O. (2010). Einwanderer als Ware: Wie die Marktlogik Migranten aussortiert. *Blätter für deutsche und internationale Politik* 10, 51-57.
- Schultze G. (ed.) (1994). *Einwanderungspolitik Kanada's und der USA: Beispiele für die Bundesrepublik Deutschland?* Bonn, DE: Forschungsinstitut der Friedrich-Ebert-Stiftung, Apteilung. Arbeits- und Sozialforschung.
- Simmons A. B. (1999). Economic integration and designer immigrants: Canadian policy in the 1990s. In Castro MJ (ed.) *Free markets, open societies, closed borders? Trends in international migration and immigration policy in the Americas* (pp. 53-69) Miami, Florida: North-South Center Press.
- Soysal Y. N. (1994). *Limits of citizenship: migrants and postnational membership in Europe*. Chicago: University of Chicago Press.
- Sterling H. (2012). Two styles of welcoming immigrants. *Calgary Herald*, 21 December. Available at: <http://www.calgaryherald.com> (accessed Dec. 21, 2012)
- Storr C. and Albrecht R. (2005) Kommentar zum Zuwanderungsgesetz, Stuttgart: Boorberg Verlag.
- Taylor P. J. (1994). The state as container: territoriality in the modern world-system. *Progress in Human Geography* 18 (2), 151-162.
- Triadafilopoulos P. (2004). Building walls, bounding nations: migration and exclusion in Canada and Germany, 1870-1939. *Journal of Historical Sociology* 17 (4), 385-427.
- Triadafilopoulos P. (2006). A model for Europe? An appraisal of Canadian integration policies. In Baringhorst S, Hunger U and Schönwälder K (eds.) *Politische Steuerung von Integrationsprozessen: Intentionen und Wirkungen* (pp. 79-94). Wiesbaden, DE: VS Verlag für Sozialwissenschaften.
- Triadafilopoulos P. (2012). *Becoming multicultural: Immigration and the politics of membership in Canada and Germany*. Vancouver, BC: UBC Press.
- Tully J. (1993). *An Approach to Political Philosophy: Locke in Context.*, Cambridge, UK: Cambridge University Press.
- Turner D. (2006). *This is not a peace pipe: towards a critical Indigenous philosophy*. Toronto: University of Toronto Press.
- Varsanyi M. W. (2006). Interrogating "urban citizenship" vis-à-vis undocumented migration. *Citizenship Studies* 10 (2), 229-249.
- Wengeler M. (1995). Multikulturelle Gesellschaft oder Ausländer raus? Der sprachliche Umgang mit der Einwanderung seit 1945. In Stötzel G, Wengeler M and Böke K (eds.) *Kontroverse Begriffe: Geschichte des öffentlichen Sprachgebrauchs in der Bundesrepublik Deutschland* (pp. 711-749). Berlin: Walter de Gruyter.
- Wimmer A. and Glick Schiller N. (2002). Methodological nationalism and beyond: nation-state building, migration and the social sciences. *Global Networks* 2 (4), 301-334.
- Winter E. (2001). National unity versus multiculturalism? Rethinking the logic of inclusion in Germany and Canada. *International Journal of Canadian Studies – Revue Internationale d'études Canadiennes* 24, 171-195.
- Winter E. (2007). Bridging unequal relations, ethnic diversity, and the dream of unified nationhood: multiculturalism in Canada. *Zeitschrift für Kanada-Studien* 1, 38-57.



Zentralstelle für die Weiterbildung im Handwerk (ZWH) (2009) *To Canada migration nach Deutschland*. Düsseldorf.

Žižek S. (2006). *The parallax view*. Cambridge, Massachusetts: The MIT Press.

## About the author

**Harald Bauder**, Department of Geography and Graduate Program in Immigration and Settlement Studies, Ryerson University.

E-mail: [hbauder@ryerson.ca](mailto:hbauder@ryerson.ca)

Harald Bauder is Professor of Geography at Ryerson University and the Academic Director of the Ryerson Centre for Immigration and Settlement (RCIS). His most important books include *Immigration Dialectic: Imagining Community, Economy and Nation* (University of Toronto Press, 2011) and *Labor Movement: How Migration Regulates Labor Markets* (Oxford University Press, 2006).



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# Traditions of Nationhood or Political *Conjuncture*?

## *Debating Citizenship in Canada and Germany*

Elke Winter

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### **Abstract**

If migration studies in the 1990s were marked by the predominance of the “national models” approach, the early 2000s have seen an increasing rebuttal to this approach. This paper contributes to the debate by examining the politics of citizenship in Germany and Canada, two countries that are usually located at opposing poles of the “national models of immigration and citizenship continuum”. The paper combines inductive process tracing and discourse analysis to examine some of the most controversial citizenship legislation in both countries: *Optionspflicht* [the duty to choose] in Germany and the “first generation limitation” in Canada. Overall, the analysis presented agrees with recent critiques of the national models approach in migration studies. However, and in contrast to the latter, it maintains that national trajectories – rather than models – provide a cognitive matrix into which policy changes and their justifications need to be inserted.

**Keywords:** Germany, Canada, citizenship, integration, national models, ethnic/civic nation, dual citizenship

## **1. Introduction<sup>1</sup>**

The beginning of the 21<sup>st</sup> century has witnessed a tremendous shift in the area of comparative migration studies. In the 1990s, it became commonplace in comparative approaches to categorize Western immigrant-receiving societies into different models of nationhood and citizenship. Scholars tended to design their studies in a way that either provided evidence in

favour of the existing models or, increasingly, used empirical data to argue that the proffered conceptual models might exist in some laws and policies but not in others, and even less so in migrants' lived experiences.

In the early 2000s, the adequacy and usefulness of the "national models" approach in comparative migration studies has become increasingly challenged. Some scholars reject the national models perspective and its underlying assumption of path-dependency, because they maintain that we are currently observing a convergence of European policies pertaining to immigration and citizenship; others raise doubts about the epistemological and methodological value of comparing national models, arguing that this approach often misguides scholars by becoming a self-fulfilling prophecy. Concurring with this view, still others have started to develop fine-grained citizenship and immigrant integration indicators *en lieu* of national models.

In this paper, I contribute to this new scholarship in comparative migration studies by examining recent changes in citizenship legislation in Germany and Canada. These countries' policies play important roles in the recent immigration and citizenship debates as they are usually portrayed as occupying opposing poles of the national models of immigration and citizenship continuum (Brubaker, 1989; Bauder, 2011). Constructed as the prototype of the notorious "ethnic nation", Germany is said to be in need of "learning from Canada" in matters of immigrant integration (Bendel & Kreienbrink, 2008; Berlin Institut für Bevölkerung und Entwicklung, 2012). Canada, by contrast, is widely celebrated – and celebrates itself – as a "multicultural nation" and "world leader" in diversity management (Kymlicka, 2003).

Recently, however, both countries have – and, in the case of Canada still is – engaged in major overhauls of their citizenship and immigration policies. Germany's 1999 citizenship reform played a major role in calling into question the national models approach and its underlying assumption of path-dependency. In Canada, multiculturalism remains untouched in law and in practices "on the ground" (Banting & Kymlicka, 2014), but has been considerably scaled back in policy and discourse since the coming to power of the federal Conservatives in 2006. In fact, as Abu-Laban (2014) argues, in order to woo "ethnic voters" the Conservatives have refrained from attacking multiculturalism directly, but diminish its scope through changes to related policies, including immigration and citizenship. Canada has also been actively looking to Europe for inspiration in its ongoing citizenship reform. In this context, it has been claimed that there is increasingly convergence between German and Canadian integration and citizenship policies (Triadafilopoulos, 2012).

These developments raise questions about the nature of ongoing changes pertaining to citizenship legislation in Germany and Canada: are they generic and characterized by increasing convergence or are they primarily determined by specific traditions of nationhood? What are the political solutions proposed, and how (dis)similar are interpretations of “good citizenship” in both countries?

Dual citizenship constitutes an intriguing case in this respect, since the provisions in both countries remain diametrically opposed: Canada tolerates dual citizenship, Germany does not. In this paper, I focus on two specific dimensions of dual citizenship law and their surrounding debates: *Optionspflicht* [the duty to choose] in Germany and the “first generation limitation” in Canada<sup>2</sup>. As I demonstrate below, these two provisions are arguably the most controversial dimensions within these countries’ respective citizenship laws. Furthermore, how these provisions have come into being and how they are debated in the political arena reveal both some particularistic, nation-specific concerns, as well as some general ideological (party-) differences.

In the remainder of this paper, I first review the national models theory in comparative migration studies and its most salient critiques. I then briefly outline the methodology used here. In the main sections of this paper, I discuss the German and Canadian cases, which leads me to identify the salience of the two debates described above and to an analysis of the respective parliamentary discourses. In the conclusion, I show how comparing these two cases contributes to the ongoing debate about national models and explain what both countries could learn from each other.

## 2. Theoretical Perspectives

If the distinction between different types of nationhood can be traced back to the writings of Friedrich Meinecke, Hans Kohn, and Louis Dumont, its importance for contemporary debates on immigrant integration and citizenship was reinstated by Rogers Brubaker (1992, p. 1), who, in 1992, argued that “France and Germany have been constructing, elaborating, and furnishing to other states distinctive, even antagonistic models of nationhood and self-understanding”. According to Brubaker, today’s politics of immigration and citizenship are still (path-)dependent upon these countries’ deeply seated styles of national self-understanding.

Although Brubaker did not use the term “model” systematically (Finotelli & Michalowski, 2012, p. 233) in the wake of his groundbreaking work it

became common to distinguish between two if not three distinct ideal types of nationhood, citizenship, and immigrant integration. First, Germany with its long-standing tradition of blood-based citizenship (*jus sanguinis*) came to be known as both the prototype of the “ethnic nation” and the “exclusionary model” of citizenship as it excluded long-term permanent residents and their children (born on German soil, but not of German descent) from naturalization. Second, France, where the acquisition of citizenship by birth on national territory (*jus soli*) is common, was increasingly depicted as the closest possible incarnation of the ideal type of the “civic nation” and/or the “republican model” of citizenship due to its emphasis on immigrant assimilation. While the ethnic/civic dichotomy was the most widely discussed framework in the study of the ways states deal with ethnic and cultural diversity, a number of scholars have added a third “model”, namely that of the “pluralistic-civic nation”, which encourages multiculturalism, that is the maintenance and public expression of ethnic group identities in addition to a shared national identity (Castles, 1995). The countries that have come to stand for this type of citizenship tradition are Canada and Australia, and to a lesser extent the Netherlands and Sweden.

In the first decade of the new century, the utility of these ideal types for comparative migration research has come under intense scrutiny. Interestingly, it was policy and not primarily academic contemplation that kicked-started an entirely new wave of scholarship and debate. On the one hand, in 2000, Germany introduced conditional citizenship rights based upon birth on its national territory (*jus soli*) and non-discretionary naturalization. It thereby invited debate about the extent in which it had left its previously assumed path of perpetuating a citizenship regime based on the model of ethnic nationhood. On the other hand, scholars observed the emergence of a retreat from multicultural policies (Joppke, 2007) in the late 1990s in the Netherlands, which then spread throughout Europe in the years after the terrorist attacks in New York and Washington on 11 September 2001 (for a critical appraisal, see Banting & Kymlicka, 2014). Both developments sparked the need to reconsider the existence of nationally specific and fairly path-dependent models of dealing with immigrant integration and citizenship. Even with respect to the United States and Canada, past scholarship may have overestimated these countries’ pluralist traditions of nation-building (Bloemraad, forthcoming).

Overall, we can differentiate between three critiques of the national models perspective and their respective bodies of literature. First, the underlying path dependency of national models approach has come under attack by scholars who argue there is a weakening with respect to national

distinctiveness. If, as the concept of path dependency predicts, the choices and institutional arrangements of the past determine political responses of the present, convergence of radically different national models is precluded. This, however, is exactly what scholars observe in the early 2000s: “Western European states’ policies on immigrant integration are increasingly converging” (Joppke, 2007, p. 1; for critical perspectives on the “convergence” thesis, see Jacobs & Rea, 2007; Michalowski, 2011; Mouritsen, 2012). If this observation is correct, national models alone no longer provide sufficient explanation.

Searching for alternative explanations of said convergences, scholars have pointed to the impact of a globally shared normative context (Triadafilopoulos, 2012), as well as to a global flow of knowledge and “best practices” (for an example of “best practices” being spread, see Entzinger, 2004). It has also been argued that the influence of party politics and ideologies on shaping political responses should not be underestimated (Gerdes & Faist, 2006; Triadafilopoulos, 2012). From this perspective, political *conjuncture* rather than persistent traditions of nationhood seem to be the determining factor in shaping contemporary politics of citizenship.

A second set of scholars critiques the epistemological and methodological value of using a national models approach for the comparative study of immigrant integration and citizenship (Duyvendak & Scholten, 2011; Finotelli & Michalowski, 2012). They are particularly concerned by the fact that scholars often mistakenly take ideal types at face value, and shape their analyses in a way that either confirms or contradicts the national model (see contributions to a forum debate in Council for European Studies, 2010).

Third, and as a consequence of the two aforementioned critiques, scholars are developing alternatives to the national models approach. In recent years, we have seen a number of cross-country analyses involving fine-grained citizenship and immigrant integration indicators (Howard, 2009; Goodman, 2010; Helbling & Vink, 2013, forthcoming). These studies go beyond comparing national ideologies and citizenship acquisition rules in law and in practice; rather they also take into consideration requirements such as legal residence, language skills, and citizenship tests. Although the results of the present study speak mostly to the first two critiques of the national models approach, they will also shed some light on the use of citizenship and integration indicators.

### 3. Methodology

German and Canadian policies have played important roles in the recent immigration and citizenship debates. While they are usually situated at opposing poles with respect to immigration and citizenship policies, as well as discourses (Bauder, 2011), it has recently been claimed that their national imaginaries and citizenship policies have become characterized by increasing convergence (Triadafilopoulos, 2012).

In order to probe the extent that traditions of nationhood have an effect on current citizenship debates, two methodological approaches are used. For each country, applying inductive process tracing (Beach & Pedersen, 2013) as a first step, the most salient challenges pertaining to citizenship legislation are detected and situated within the overall political context. Process tracing aims to identify causal effects; specifically, I am interested in how and why some of the most controversial citizenship legislations were implemented.

In a second step, the revival of doubts over *Optionsregelung*<sup>3</sup> in the German *Bundestag* (Lower House of the German Parliament) and *Bundesrat* (Upper House of the German Parliament) in the summer of 2013, and the debates over the “first generation limitation” in the Canadian Parliament in the spring of 2008, will be examined. The transcripts of the relevant debates were collected from the respective government websites. For Germany, three documents were chosen, namely transcripts of one debate in the *Bundestag* (on 5 June) and of two debates in the *Bundesrat* (on 7 June and 5 July). For Canada, six documents have been identified, namely transcripts of debates in the House of Commons (three meetings of the Standing Committee on Citizenship and Immigration in February 2008) and the Senate (one senate meeting and two meetings of the Standing Senate Committee on Social Affairs, Science and Technology)<sup>4</sup>.

All documents were analysed by using inductive conventional qualitative content analysis (Hsieh & Shannon, 2005) to identify the most important themes brought forth in the debate. The coding scheme included country-specific themes, such as “*Optionsregelung* discriminates against Turks” or “First generation limitation risks causing statelessness”, as well as shared themes like “multiple citizenship is/should be a normality in the 21<sup>st</sup> century”. The analysis will show that some country-specific themes translate into similar concerns in the other country; compare for example the following themes: “*Optionsregelung* avoids legal problems related to dual citizenship” and “first generation limitation avoids legal problems”.



## 4. Germany

### 4.1 Coming to terms with dual citizenship

Hotly debated at the time of its implementation on 1 January, 2000, *Optionsregelung* reappeared on the political agenda in June 2013, when media began to report statistics showing that “every three days a German youth turns into a foreigner” (MiGAZIN, 2013).

*Optionsregelung*, officially known as §29 of the German Citizenship Act (*Staatsangehörigkeitsgesetz*, StAG), stipulates that upon adulthood (between the ages of 18 and 23), individuals who acquired citizenship through the newly introduced principle of *jus soli* must choose between their German citizenship and the citizenship handed down to them through *jus sanguinis* by their non-German parents. Failure to provide evidence of the revocation of the citizenship obtained through *jus sanguinis* results in the loss of German citizenship.

In fact, *Optionspflicht* was retroactively extended to all children who were born on German soil by non-national parents since 1990. Thus, 2013 was the first year when the first young Germans (approximately 3400 individuals in 2013) holding dual citizenship were turning 23 years of age. As the first generation affected by *Optionspflicht*, they are forced to renounce their second citizenship or they are told, upon their 23<sup>rd</sup> birthday, that they are no longer German citizens. As a consequence of this stipulation, Germany lost 68 citizens through automatic citizenship revocation in the first five months of 2013 alone (MiGAZIN, 2013). In November 2013, this number had increased to 176 (anonymous, 2013). The political debates triggered by these losses are examined further below. I first situate this particular stipulation pertaining to dual citizenship within the wider legal and political context of the German citizenship law.

Germany owes its notorious reputation of being an “ethnic nation” in part to a centralized citizenship law, the 1913 *Reichs- und Staatsangehörigkeitsgesetz* (RuStAG). The RuStAG made the principle of descent (*jus sanguinis*) the only basis of citizenship (Brubaker, 1992, pp. 165-167). This afforded refugees and displaced persons of German background (*Auslandsdeutsche*) settlement rights. According to the same logic, migrant workers from Italy, the former Yugoslavia, Greece and Turkey that arrived in the Federal Republic between 1955 and 1973 remained “foreigners”. After the demise of the German Democratic Republic (GDR) in 1989, the RuStAG allowed *Übersiedler* (Germans from the GDR) and large numbers of *Ausiedler* (resettlers of German background) from Eastern Europe and the

former Soviet Union to receive German citizenship automatically, while long-term “foreigners” of non-German background could only be included as “denizens” (Hammar, 1989).

In 1998, a new coalition government of Social Democrats (SPD) and the Green Party (Bündnis 90/Die Grünen) acknowledged that Germany had become a *de facto* “country of immigration” and proposed a reform of the citizenship law in which citizenship would be granted to children born in Germany through the introduction of *jus soli*, and dual citizenship would be tolerated for those wishing to naturalize (Howard, 2008). The government’s proposal was vehemently rejected by the opposition of Christian Democrats (CDU/CSU) who maintained that dual citizenship would privilege migrants over Germans, lead to a dramatic increase of immigration, and undermine the *Ausländers’* loyalty to Germany, thereby hindering their successful integration. The party’s resistance was channelled through a signature campaign against dual citizenship coinciding with the provincial election in the *Land* Hesse in February 1999. This tactic proved to be successful: it helped the Christian Democrats to win the *Land* election and subsequently the majority in the *Bundesrat* (Klärner, 2000). The bill that finally emerged out of subsequent negotiations was passed by the *Bundestag* on 7 May 1999, cleared by the *Bundesrat* on 21 May 1999, and became law on 1 January 2000.

Despite having been watered-down from the original proposition, the German Citizenship Act (*Staatsangehörigkeitsgesetz*, StAG) represented “a seismic shift in German citizenship law and a firm change of direction away from its previous ethno-cultural emphasis” (Green, 2000, p. 114; see also Gerdes & Faist, 2006; Howard, 2012, p. 40; Palmowski, 2008, p. 560; Heckmann, 2003, p. 45). First, the new law introduced the territorial principle (*jus soli*) to the existing German citizenship law based on descent (*jus sanguinis*)<sup>5</sup>. Second, it reduced the mandatory residence requirement for naturalization from 15 to eight years. Third, despite maintaining Germany’s long tradition of rejecting dual citizenship, the Act introduces some exceptions to this rule, covering recognized refugees, individuals over 60 years of age, and nationals of certain EU member-states. It also provides for dual citizenship on a temporary basis: According to §29 StAG, children born on German soil are granted dual citizenship. However, as already mentioned, at the age of 23 they have to decide whether to remain Germans or take up the citizenship passed down by their parents (*Optionsregelung*).

While there is no doubt that the 2000 Citizenship Act was a step in the right direction, many scholars also express reservations. In the words of Howard (2012, p. 39), “Germany’s major ‘liberalizing change’ was also tempered by a significant ‘restrictive backlash’”. Clearly the most controversial

element of the new law is the stipulation that new citizens give up their previous citizenship (for details on the *Optionsregelung*, see Schönwälder & Triadafilopoulos, 2012; Worbs, Scholz, & Blicke, 2012).

In the following years, two sets of amendments were implemented that reinforced the Citizenship Act's assimilatory naturalization requirements and its dual standards regarding dual citizenship (Green, 2012, p. 177). The first amendment, the Residence Act (*Aufenthaltsgesetz*), is part of Germany's first ever Immigration Act (*Zuwanderungsgesetz*), which came into effect on 1 January 2005. The most important changes were the introduction of integration courses for immigrants and citizenship candidates (Winter & John, 2009), and a mandatory criminal background check (*Regelanfrage*) of all citizenship candidates by the Federal Office of the Protection of the Constitution (*Bundesverfassungsschutz*) to determine whether applicants constitute a threat to Germany's constitutional order (Bundesministerium des Inneren, 2008; Hailbronner, 2006, p. 241)<sup>6</sup>.

The second amendment of the Citizenship Act came into effect in August 2007 as part of the transposition of 11 EU directives into German law (*Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union*). Among other things, the amended Citizenship Act introduced a mandatory federal citizenship test as a prerequisite of naturalization (Winter & John, 2009)<sup>7</sup>, and permitted the toleration of dual citizenship for all citizens of EU member-states and Switzerland.

Overall, it seems adequate to say that the high hopes that were associated with the reform of Germany's citizenship law have only modestly been fulfilled. Specifically, there was a widespread expectation – even anxiety for some – that there was going to be a significant increase in naturalizations. In fact, the opposite has been the case. While there was a surge of 187,000 naturalizations in total in 2000, the year the new act came into effect, naturalization rates have since fallen even though the average residence period was on the rise (Green, 2012, p. 179). In 2012, for example, only 112,300 individuals naturalized (this amounts to a naturalization rate of 1.46 %; cf. Statistisches Bundesamt Deutschland, 2014).

Indeed, Germany is now facing a situation in which “long-term resident non-nationals are increasingly *choosing* not to naturalize” (Green, 2012, p. 180, emphasis in original). According to the Immigrant Citizens Survey, the main reasons for this “choice” are, in decreasing order: the required renunciation of previous citizenship, the perception of little difference between holding German citizenship and residency status in the country, no plans to settle indefinitely in Germany, and perceptions that the naturalization procedure is too difficult (Huddleston & Dag Tjaden, 2012, p. 76;

see also Weinmann, Becher, & Babka von Gostomski, 2012)<sup>8</sup>. Furthermore, as mentioned above, since 1 January 2013, Germany is also losing citizens through automatic revocations of citizenship.

## 4.2 Debating *Optionspflicht*

In spring 2013, the opposition parties in the German *Bundestag* introduced motions proposing the abolishment of *Optionspflicht* (Bündnis 90/Die Grünen), the acceptance of dual citizenship (SPD), and the facilitation of naturalization (Die Linke). These were voted down by the then governing coalition of Christian Democrats (CDU/CSU) and Liberals (FDP) (Deutscher Bundestag, 2013). The debate continued in the German *Bundesrat* where seven of the 16 German *Länder* introduced a bill on the abrogation of *Optionsregelung* (Deutscher Bundesrat, 2013a). After having been further discussed in the respective committees, the proposition of the bill was accepted in the *Bundesrat* in July, where the majority of *Länder* was governed by the SPD alone or in coalition with the Green Party and/or the Left Party. It was then forwarded to the *Bundestag* (Deutscher Bundesrat, 2013b).

Taken together, the debate in both Houses was dominated by six themes clearly split along party lines: the opposition parties (SPD, Bündnis90/Die Grünen, and Die Linke) argued in favour of dual citizenship and the abrogation of *Optionsregelung*, while the governing coalition of Liberals (FDP)<sup>9</sup> and Christian Democrats (CDU/CSU) insisted upon the status quo. Let us take a look first at how members of the opposition parties framed the issue<sup>10</sup>. A reoccurring theme views *Optionsregelung* as discriminatory, and this specifically against Germans of Turkish origin. *Optionsregelung* is portrayed as an example of “targeted discrimination against migrants, especially against Turkish citizens in Germany” (Sevim Dağdelen, Die Linke, Deutscher Bundestag, 2013, p. 30597)<sup>11</sup>. This is because 18.5 percent of Germany’s almost 16 million *Menschen mit Migrationshintergrund* (persons with a migratory background) are of Turkish origin (bpb, 2010). By contrast, citizens of European Union member states are exempt from the requirement to renounce their previous citizenship:

Currently, 300,000 young Germans are subjected to *Optionszwang*, whereby they have to decide between one citizenship or the other. Seventy percent of them have Turkish roots. This demonstrates that *Optionszwang* is being deliberately applied one-sidedly (Renate Künast, Bündnis 90/Die Grünen, Deutscher Bundestag, 2013, p. 30597).

The opposition has repeatedly argued against the logic of turning German-born citizens into foreigners. “We turn people, of whom the majority is even born here and therefore are born Germans, into foreigners in their own country. This is absurd” (Renate Künast, Bündnis 90/Die Grünen, Deutscher Bundestag, 2013, p. 30597). According to the opposition parties, dual citizenship does not hinder integration but rather promotes it. The view taken here is that citizenship acquisition is a starting point for the integration process and not its end; the integration of newcomers is said to be likely more successful when they are part of the citizenry.

Integration is more successful when one possesses the citizenship of the respective country. Why do we want to force people to cut their familiar social and cultural roots in order to receive German citizenship? There are no rational reasons for this requirement. Rather, [we are dealing with] a totally antiquated law that needs to be eliminated (Guntram Schneider, SPD, Minister of Labour, Integration and Social Affairs in Nordrhein-Westfalen, Deutscher Bundesrat, 2013a, p. 305)

The second part of the latter quote above speaks to one of the weaker themes that can be found in the opposition parties' discourse, namely the representation of dual or even multiple citizenship as a normal state of affairs in the 21st century (Bilkay Öney, SPD, Minister of Integration in Baden-Württemberg, Deutscher Bundesrat, 2013a, pp. 301-302).

In the examined debates, the government and members of the ruling parties vehemently oppose these positions. They maintain that the toleration of dual citizenship would lower immigrants' efforts to integrate and “devalue German citizenship” (“deutsche Staatsbürgerschaft verramschen”, Ole Schröder, Christian Democrats, Parliamentary Secretary of State at the Ministry of the Interior, Deutscher Bundestag, 2013, p. 30592). The most important themes used by the Christian Democrats and Liberal Party are “only single citizenship promotes integration” and “*Optionsregelung* avoids legal problems related to dual citizenship”. Specifically, dual or multiple citizenship is framed as entailing a conflict of loyalty – split between the “home country” and the country of settlement. Secondly, dual or multiple citizenship is viewed as causing legal ambiguities. Both dimensions are present in the citation below:

Multiple citizenship entails conflicts of loyalty. Many times, this kind of cherry-picking leads to great dilemmas, for instance in the penal law and the right to vote. It cannot be possible that a person is allowed to vote for

the national parliament in two countries [...] or to collect social benefits [...] in two countries. Concrete cases of conflict also exist with regards to the purchase of property or with respect to inheritance law, [as well as] diplomatic protection (Stephan Mayer (Altötting), CDU/CSU, Deutscher Bundestag, 2013, p. 30607).

If dual citizenship is perceived as causing conflicts of loyalty and identity, only single citizenship is viewed as being a guarantor for successful integration:

The persons concerned, who have a German passport, do not decide against their social and cultural origin, [...], but rather for a future in Germany. They can continue to practice their mother tongue, to keep in touch with their family, and they can always visit their parents' country of origin. The introduction of *Optionsmodell* does not change this. Cultural and societal diversity is not dependent on multiple citizenship (Ole Schröder, CDU, Parliamentary Secretary of State at the Ministry of the Interior, Deutscher Bundestag, 2013, p. 30593).

Despite Christian Democrats' strong positions against dual citizenship for young German's "with a migratory background", the outcomes of the federal election may have introduced change: the new coalition contract signed by the Christian Democrats (CDU/CSU) and Social Democrats in November 2013 stipulates the abolition of *Optionspflicht*: "Immigrants shall become citizens. Those born and raised in German shall keep their German passport and shall not be forced to choose [between one citizenship or the other]" (Bundesregierung Deutschland, 2013, pp. 9-10). However, for everyone else, the general intolerance of dual citizenship remains unchanged (Bundesregierung Deutschland, 2013, p. 74).

## 5. Canada

### 5.1 Circumventing "citizens of convenience"

In January 2006, after 13 years of Liberal rule, the Conservative Party of Canada was voted into office, first as a minority government (in 2006 and 2008) and then as a majority government in 2011. The shift from a Liberal to Conservative government coincided with the defeat of the separatist Parti Québécois by the Quebec Liberals in 2003 and other crucial events,

such as the Lebanon war in 2006, the subsequent evacuation of Canadian expatriates, and the implementation of the Western Hemisphere Travel Initiative in 2007, which stipulates that Canadians and Americans provide passports, rather than drivers' licences or birth certificates, when crossing their shared border.

These events were crucial. The fear of Québécois separatism was partly to blame for the fact that citizenship reform had been kept on hold for more than 20 years (Garcea, 2006; Winter, 2013). Once this obstacle was removed, the other two events became catalysts for a series of citizenship reforms, beginning in 2007 and having yet to end. The first legal change pertains to an amendment to the Canadian Citizenship Act, which was passed by Parliament in the spring of 2008 and took effect on 17 April 2009.

The amendment contains two clauses, one of which had been a long time in the making and highly publicized in official discourses, the government's website, and the media. The so-called "repatriation clause" was intended to bring Canada's citizenship law in line with its 1982 Constitution, and specifically its Charter of Rights and Freedoms. It rectifies a number of odd and even discriminatory provisions of the 1947 Citizenship Act (e.g. citizenship determination based on wedlock, distinction between foreign-born and native-born in cases of citizenship revocation) that had already been addressed in Canada's Citizenship Act of 1977, but not retroactively.

The second clause is commonly known as the "first generation limitation". It implements a post-2009 citizenship category for the first generation of Canadians born abroad stipulating that they can no longer pass citizenship on to their children if the latter are also born abroad. In other words, it restricts the inheritance of Canadian citizenship to the first generation of children born abroad to Canadian citizens. This is a significant departure from Canada's previous citizenship law, under which Canadians could pass on their citizenship to future generations born abroad, on the condition that those foreign-born Canadians affirm their desire for Canadian citizenship by their early 20s.

While not introduced as a circumscription of dual citizenship, the "first generation limitation" is effectively linked to dual citizenship: Canada is a signatory of the 1961 United Nations Convention on the Reduction of Statelessness, and in cases where individuals born abroad to Canadians in the second generation became stateless (e.g. both parents are Canadians and the child is born in a country that does not provide for *jus soli*), special provisions will come into play (see also Brouwer, 2012).

Compared to its sister clause, the "first generation limitation" came as a surprise to many observers. It was hardly debated in Parliament and

received little public attention by either the government or the media. The few debates in Parliament between the proposition of the bill in December 2007 and its acceptance in April 2008 are examined further below. I first situate this particular clause within the wider legal and political context of the Canadian citizenship law.

Independent Canadian citizenship was first introduced in 1947. The first Citizenship Act altered the status of the Canadian people from British subjects to Canadian citizens and introduced formal criteria – in addition to *jus sanguinis* and *jus soli* – of how one could become a naturalized Canadian. It also instituted formal citizenship hearings and citizenship ceremonies. Dual citizenship was not tolerated.

If the first two decades of Canadian citizenship were characterized by a strong nationalization of citizenship, driven by the desire to become distinct from Britain, they were followed by two decades of de-ethnicization (Winter, 2013). It is the second phase of Canada's citizenship regime between the mid-1960s and mid-1980s to which Canada owes much of its international reputation as a “world leader” in immigration, diversity accommodation, and multiculturalism. In 1967, the Canadian federal government implemented a supposedly “race blind” immigration policy. In 1971, Prime Minister Pierre Trudeau declared that “multiculturalism within a bilingual framework” not only constituted an official state policy, but was also the essence of Canadian identity (House of Commons, 1971, p. 8545). Multiculturalism was recognized in the Canadian Charter of Rights and Freedoms in 1982; it became law through the 1988 Multiculturalism Act.

The Citizenship Act of 1977 can be seen as a corollary of the aforementioned policies. Reducing the residence requirement for citizenship candidates from five to three years, entirely removing all special treatment of British nationals in the citizenship application, and, most importantly, allowing dual citizenship, the 1977 Citizenship Act modernized Canada's citizenship regime and complemented its new pluralist approach to immigration, integration, and national identity transformation. As Nyers (2010, p. 52) puts it, “With the passage of the 1977 legislation, Canadian citizenship was redesigned to allow for multiple allegiances and forms of belonging”. Canadian citizenship had become, almost literally, “multicultural”.

In 1995, the format of the Canadian citizenship test was changed from an oral citizenship hearing to a “pencil and paper” standardized multiple-choice test<sup>12</sup>. A multiple choice exam taken simultaneously by a large number of citizenship candidates presented itself as a low-cost alternative to time-consuming individual interviews with citizenship judges.



The 11 September 2001 terrorist attacks and subsequent American-led global “war on terror” prompted a number of policy initiatives in the security realm<sup>13</sup>. Canadian citizenship legislation, however, remained unchanged, and this during a time when Germany and other European countries were heavily invested in reshaping their citizenship policies. Hence, in the early 2000s, citizenship acquisition continued to be seen as part of immigrants’ integration process (and not as its “first price”, cf. Paquet, 2012). Canada’s exceptionally high naturalization rates of over 75% (OECD, 2012, p. 134) were viewed as a sign of successful settlement and integration policies (Bloemraad, 2006). Dual citizenship was interpreted in both neoliberal and multicultural terms, namely as fostering the prospects of business opportunities by Canadian transnational entrepreneurs.

The amendment to the Citizenship Act passed in 2008 was the first major citizenship reform in 30 years, with the first requests for change having been brought up under Progressive Conservative Prime Minister Brian Mulroney in 1987 and pursued unsuccessfully under Jean Chrétien’s Liberal government in the subsequent years (Garcea, 2006). It remains the only major legal reform to citizenship to date. While there has been an unprecedented number of policy and legal changes in the areas of immigration and refugee protection (Alboim & Cohl, 2012), as well as significant modification to Canada’s citizenship rules, the vast majority of the latter are located at the policy level or have taken effect only through bureaucratic changes (Winter, 2014a).

## 5.2 Debating the “first generation limitation”

The two clauses to amend the Canadian Citizenship Act passed on 17 April 2008 gain their meaning from very different political contexts. The “repatriation clause” had been in the making for a long time. When certain stipulations of Canada’s first Citizenship Act were addressed in 1977, but not retroactively, Canadian officials were soon confronted with so-called “Lost Canadians”. Lost Canadians is the shorthand for individuals who lost or never gained Canadian citizenship due to what is now seen as discriminatory stipulations of the 1947 Citizenship Act based on gender, marital status, place of birth, and non-toleration of dual citizenship. In order to bring Canadian citizenship law in line with the Charter of Rights and Freedoms, these injustices needed to be addressed in policy and not only through the courts (Anderson, 2006). Hence, the long-term aim for citizenship reform that had been stalled by national unity considerations for over 20 years.

In addition, many of these Lost Canadians lived or live in the United States and/or considered themselves to be dual American-Canadian citi-

zens. When the Western Hemisphere Travel Initiative came into effect in January 2007 it required Canadians and Americans to provide passports when crossing their shared border. When applying for a Canadian passport many individuals were surprised to learn they were not entitled to hold Canadian citizenship due to the aforementioned stipulations in the 1947 Citizenship Act. The “repatriation clause” helps these individuals to gain or regain Canadian citizenship regardless of dual citizenship considerations (Winter, 2014b).

In marked contrast, the “first generation limitation” does not address a long-standing concern in Canadian policy. Rather, it is widely seen as a swift political move in response to public outcry in the wake of the 2006 Israel–Hezbollah war in Lebanon. Attempting to protect their citizens trapped in a foreign country, many states spent considerable resources evacuating their stranded citizens. Approximately 15,000 Canadians (which is only a fraction of the 40,000 estimated Canadians residing or visiting Lebanon at the time) were evacuated to Canada on ships, chartered commercial flights and Canadian Forces aircraft at a total estimated cost of CAD 85 million.

After the evacuation, it was alleged that many of the evacuees were dual citizens of Canada and Lebanon and that many had never lived in or even visited Canada. In the course of the public debate, the term “citizens of convenience” was coined. The term suggests that immigrants and their children obtain and maintain Canadian citizenship without having meaningful ties to Canada (Worthington, 2006). They use Canada as a “hotel” where they can check in and out when it suits them in order to ensure access to social benefits, economic opportunities, and a safe place in times of war or economic recession (Kent, 2008).

Contrary to the German debates on abrogating *Optionspflicht*, the Canadian debates are dominated by the positions put forth by the Conservative government. The most important theme relates to the “first generation limitation” ensuring that Canadian citizens have “a real connection to this country” (The Hon. Diane Finley, P.C., M.P., Minister of Citizenship and Immigration, Standing Senate Committee on Social Affairs, 2008)

The position argued is that Canadian citizens should genuinely identify with Canada and that the “legacy of Canadian citizenship should not continue to be passed on through endless generations living abroad” (Wilbert J. Keon, Conservative, Senate, 2008), since it would produce “Canadian citizens without any knowledge of our country, its history, and its values” (Wilbert J. Keon, Conservative, Senate, 2008). Hence, the clause is presented as key to “protecting citizenship for the future” (Wilbert J. Keon, Conservative, Senate, 2008). Although two different types of citizens are at stake

here – those born within the country in the case of *Optionsregelung* and those born in the second generation outside the country in the case of “first generation limitation” – the “integration” argument from the German context translates easily into the “real connection” theme in the Canadian context.

Furthermore, Conservative MPs hold that legal ambiguities can be avoided by introducing the first generation limitation. While this reasoning resembles the position of the members of Germany’s then-governing parties on not tolerating dual citizenship, it is far less frequently used in the Canadian context. This is understandable since dual citizenship itself continues to be an option for Canadians – at least for the time being.

The most important concern of Canada’s opposition parties is that the new legislation, if passed, might lead to statelessness, which, as mentioned above, is to be avoided not merely for humanitarian reasons, but also in order to respect Canada’s international obligations. The evidence brought forth suggests that many Canadians, and specifically those of the political class, feel concerned by the new law since they – or someone they know – live(s) fairly international lives<sup>14</sup>. In addition, it is also argued that it might be unfair to deny Canadians born abroad in the first generation to pass on their citizenship. The scenario cited most often is that of a child born “by accident” outside of Canada in the second generation to a family that previously lived in Canada and/or returns to Canada soon after the birth of the child:

Suppose, for example, a Canadian couple are spending a few years working abroad and give birth outside Canada to a baby. Let’s call her Anna. It [sic] could actually be a soldier. She is a Canadian citizen through her parents. The family returns to Canada when Anna is six months old and she grows up in Canada. [...] As a young adult, she chooses to study abroad and finds herself pregnant. If she gives birth to her child outside Canada, the child is not a Canadian citizen under the terms of Bill C-37 (Hon. Andrew Telegdi, Liberal, Standing Committee on Citizenship and Immigration, 2008a).

Cases of children “accidentally” and “unfairly” losing Canadian citizenship are also at the sources of another theme, which describes the first generation limitation as potentially creating “a whole slew of new Lost Canadians” (Hon. Jim Karygiannis, Liberal, Scarborough – Agincourt, Standing Committee on Citizenship and Immigration, 2008b). Members of the opposition parties maintain that some individuals who are denied Canadian citizenship for being born in the second generation abroad may

actually have or eventually develop a genuine connection to Canada. This is likely to happen when they or their parents continue to embrace and practice Canadian values and traditions.

Finally, as in the German debates, one of the least frequent arguments brought forth in favour of dual or multiple citizenship is that it has become “a normality” in the 21st century (e.g. Donald Galloway, Standing Senate Committee on Social Affairs, 2008).

In February 2014, the Canadian government introduced a new citizenship bill. If passed, this reform will ease the provisions of citizenship revocation for some dual citizens, namely those convicted of terrorism. Some observers also predict the some kind of “two-tier citizenship” for Canadian dual citizens who “have limited connection to Canada” (Morse, 2014).

## 6. Conclusion

What can specific provisions of citizenship law, such as *Optionspflicht* and the “first generation limitation”, as well as the way they are publically debated, teach us about the usefulness of “national models” in comparative migration studies? I first summarize the results for each case individually and then draw lessons from the comparison.

Germany, which has been marked by a long-standing quest for national unity – at the time of Herder and Fichte as well as after the Second World War – continues to struggle with the toleration of what is seen, by some, as split allegiance, namely dual citizenship. Thus, Germany has chosen to impose loyalty through exclusivity: as a rule, dual citizenship will not be tolerated. Many of its long-term permanent residents, who are eligible for citizenship, are therefore “choosing” not to naturalize. Even worse, in the case of *Optionspflichtigen* the law may force German-born youth to decide against maintaining German citizenship and to become legal foreigners in their own country.

The dominant theme in favour of *Optionspflicht* is about “loyalty and integration”, which – as the comparison with Canada shows – is not unique to countries emerging from the tradition of “ethnic nationhood”. Rather, it seems to be a staple of citizenship politics and, in the German case, a political strategy aimed at Germans of Turkish background – the second most important theme brought forth in the debate. While this discriminatory position is certainly rooted in ethno-religious stereotypes, the latter are nourished more by the contemporary climate of Islamophobia than romanticist traditions of nationhood. It is interesting to note that dual

citizenship for EU citizens has come to be tolerated without much political uproar (Green, 2012, p. 177) and that similar ethno-religious stereotypes can also be traced in the Canadian debate on dual citizenship (Nyers, 2010).

The current debate about *Optionspflicht* clearly runs along party lines, with all political actors seeming to be more responsive to party constituencies than to ancient ideas about what it means to be German. Furthermore, the new coalition contract signed by the governing parties of Christian Democrats (CDU/CSU) and Social Democrats in November 2013 stipulates the abolition of *Optionspflicht*; it remains thus to be seen if and when this SPD election promise is to be fulfilled within the next four years.

The conundrum that Canada faces at the beginning of the 21st century is the following: Canada has a history of turning the multiple origins of its citizens into the “glue” of its national unity, climaxing, in the 1990s, in the consolidation of a multicultural national ethos (Winter, 2011). Having rigorously pursued this path, arguably a little too naively, it is now struggling to contain the diversity of its (dual) citizens, to reduce the liability of the state for its citizens abroad, and to instil national loyalty and commitment in its citizenry.

In fact, Canadian authorities are not only worried that too many immigrants are taking up Canadian citizenship for the wrong reasons (Winter, 2014a), but also that members of its highly mobile citizenry might produce “off shore” Canadians in the second, third and subsequent generations who no longer have any “meaningful connection” with their country of (second or third) citizenship. Hence, while the permission of dual citizenship remains unchanged since 1977, the “first generation limitation” stipulates that Canadians born in the second generation abroad to parents who are also born abroad are barred from holding Canadian citizenship (Winter, 2014b).

Interestingly, in the Canadian context, the themes used in the German debate, namely “loyalty and integration”, translate into a concern about citizens having “a real connection to the country”, essentially meaning the same thing: a “thick” neo-communitarian understanding of citizenship (Etzioni, 2007), offering rights and privileges in exchange of patriotism, shared cultural values (rather than merely principles; Pélabay, 2011), and a commitment to citizenship duties. As in the German case, we can see that the dual citizenship of some categories of citizens seems to be a concern to the governing Conservatives more so than it is to the opposition parties. Granting dual citizenship to Lost Canadians living in the United States, for example, was not considered problematic (Winter, 2014b). However, and contrary to the German debate about *Optionsregelung*, in the Canadian case there was no substantial opposition against the implementation of

the “first generation limitation” when the law was adopted unanimously by the House of Commons in February 2008.

Furthermore, although the Canadian citizenship debate is ongoing – a new bill is currently under review – the governing Conservatives do not attack dual citizenship directly. This is not because they are buying into Canada’s tradition of multicultural nationhood (Abu-Laban, 2014), but rather because their electoral success is dependent upon the support of immigrant voters, many of whom have come to cherish the possibility of dual citizenship<sup>15</sup>. As a consequence of party ideological and electoral considerations, we are therefore more likely to see “small-scale” attacks on dual citizenship in the near future, such as the proposed bill to revoke Canadian citizenship of dual nationals committing treason, “acts of war”, and terrorism (Winter, 2014a), as well as the recent proposition to restrict consular services to “citizens of convenience” (Morse, 2014). The political strategy at work here is to avoid alienating large numbers of so-called “honest” immigrant voters, while also pleasing the Conservative Party’s traditional white, evangelical, social-conservative constituency. This attempt to square the circle has little to do with “multicultural” traditions of nationhood.

In sum, the analysis conducted in this paper leads me to share the widespread scepticism vis-à-vis the utility and adequacy of the national models approach in comparative migration studies. Taking ideal types at face value and associating the abstract model too closely with any particular country leads to flawed analyses. As seen here, the contemporary debates in Germany and Canada seem to be more driven by political *conjuncture* – be it party ideology, electoral considerations, or the global fear about all things (rightly or wrongly) associated with Islam – than with ancient traditions of nationhood.

Specifically, the analysis suggests that when it comes to considerations of “good citizenship” both countries struggle with very similar challenges and share concerns across party lines, namely how to build a egalitarian and cohesive society in times of globalization. Rather than arriving at these challenges and concerns from opposing directions – as the distinct national models approach would predict – it seems more accurate to say that both countries are travelling in the same direction, but do so at different speeds and, due to different historic starting points and conditions, are currently located at different locations along the way.

In this sense, the impact of national traditions and imaginaries on contemporary politics of citizenship should not be fully discarded. However, it may be better to replace the term “traditions” of nationhood with that of “trajectories”. As Mouritsen (2012, p. 89) puts it, “reactions to crises (i.e.

perceived deficiencies of citizenship) are significantly shaped [...] by what has gone before, and political actors do the shaping in ways that reflect the shifting balances of left and right” (2012, p. 89). Political actors in Germany and Canada share common concerns about legislating “good citizenship” in times of globalization, but their responses vary because of their countries’ respective trajectories and contemporary circumstances. These trajectories, while not path-dependent in a deterministic sense, provide a cognitive and discursive matrix into which policy changes and their justifications need to be inserted. Hence, while citizenship indicators allow for fairly accurate snapshots and country comparisons, the specific meanings and inherent challenges of generic concepts and instruments that spread as “best practices” from country to country can only be understood in relation to the national trajectories from which they emerged or into which they were injected.

What then can both countries learn from each other? What can we learn from both countries? In both cases, policy makers are aiming to infuse citizenship with meaning by restricting its availability. In the Canadian provisions, the place of one’s birth is being used as a proxy for one’s attachment to Canada; only those born within the country (or who have undergone naturalization) are granted the privilege to have Canadian children, even if the latter are (also) born outside the country. In the German case, loyalty is being measured by one’s decision to renounce formal ties to other countries, by the proxy of having only German citizenship. Both provisions are out of touch with a world where people become more mobile *and* more globally connected. In this world, it is increasingly likely that people who are born abroad will have a connection to their parents’ birth country. Chances are also great that they will marry someone holding a different citizenship and that their children will develop loyalty for both countries.

In both countries it is also not dual citizenship *per se* that poses a problem, nor the place of birth<sup>16</sup>. As the analysis has shown, there are double standards at work that need to be eliminated. Citizens’ emotional attachment, loyalty, and commitment to a given country need to grow organically; they cannot be imposed through bureaucratic means. While proxies may facilitate the bureaucratic management of citizenship, they can only approximate, but never adequately assess, these admittedly desirable characteristics. That is why nation-building remains a multi-faceted and ongoing task specifically at times of globalization.

## Notes

1. I gladly acknowledge the helpful comments by two anonymous reviewers, the research assistance provided by Annkathrin Diehl and Shawn Jackson, and funding received from the Social Sciences and Humanities Research Council of Canada. The usual disclaimer applies: I am solely responsible for all remaining errors of fact or interpretation.
2. Strictly speaking, the “first generation limitation” is not a dual citizenship provision as it prevents all Canadian citizens born abroad from passing on Canadian citizenship to their offspring if equally born outside Canada. In practice, however, there are provisions in place to assure that this measure is not producing stateless persons.
3. The words *Optionspflicht* [the duty to choose] and *Optionsregelung* [the regulation requiring a choice] refer to the same legal provision; they will be used interchangeably. Members of the German opposition also refer to this provision as *Optionszwang* [the obligation to choose].
4. Documents were chosen based on relevance. The quantitative difference in documents is justified since the German documents were longer and richer in qualitative content.
5. Children born in Germany of non-German parents are to be granted German citizenship from birth, on the condition that one parent: a) had been legally resident for a period of eight years, and b) held either an unlimited resident permit (*unbefristete Aufenthaltserlaubnis*) for at least three years, or a residence entitlement (*Aufenthaltsberechtigung*) (Green, 2000, p. 113).
6. Interpreting the new naturalization provisions at their discretion, in 2006, the conservative-governed *Länder* Baden-Württemberg and Hesse introduced highly controversial provincial citizenship exams to “test” a candidate’s “internal dispositions” and loyalty to the constitution (Palmowski, 2008, p. 559; van Oers, 2010).
7. While the integration courses and German language instruction have been welcomed by immigrants (Will, 2012, p. 12), the content and questions of the citizenship test have triggered much controversy (Michalowski, 2011; Orgad, 2009; for different positions, see Goodman, 2010; van Oers, 2010).
8. The notion of “choice” has to be treated carefully here as the individual cannot choose freely as he or she may wish. Rather, the possibilities for choice are embedded within the surrounding legal stipulations. Thanks to one of the anonymous reviewers for alerting me to this issue.
9. The FDP changed its position in the subsequent election campaign.
10. Themes are here discussed in order of quantitative strength within the debate, beginning with the most powerful.
11. All translations are mine.
12. Before 1996, citizenship applicants met initially with a citizenship officer and were then scheduled for a hearing or a personal interview with a citizenship judge.
13. Examples are the Anti-terrorism Act, technologically enhanced permanent resident cards, and the Smart Border declaration.
14. It is important to note that the members of the diplomatic corps and of the armed forces are exempt from the “first generation limitation”. Furthermore, the law contains provisions to avoid statelessness, such as by allowing (the parents of) individuals born abroad in the second generation to apply for Canadian citizenship on the condition that they have returned to Canada and resided there legally for at least three years.
15. Exact numbers of how many Canadians possess dual or multiple citizenship do not exist. In the 2006 Canadian census, 870,255 of 31 million respondents reported dual citizenship (Statistics Canada, 2011).



16. And this even for the second generation born abroad, as shown by the new provision for Lost Canadians who can pass on Canadian citizenship to their offspring retroactively, even if the latter are the second generation born abroad (Winter, 2014b).

## References

- Abu-Laban, Y. (2014). Reform by Stealth: The Harper Conservatives and Canadian Multiculturalism. In Jack Jedwab (Ed.), *The Multiculturalism Question: Debating Identity in 21st Century Canada*. Montreal: McGill-Queen's University Press.
- Alboim, N. & Cohl, K. (2012). Shaping the Future: Canada's Rapidly Changing Immigration Policies. In Maytree Foundation (Ed.), (pp. 85): The Maytree Foundation.
- Anderson, C.G. (2006). *A Long-standing Canadian Tradition: Citizenship Revocation and Second-class Citizenship under the Liberals, 1993-2006*. Paper presented at the Annual Meeting of the Canadian Political Science Association, Toronto.
- Anonymous (2013, 18 November). Optionspflicht 2013: 176 Personen haben schon ihren deutschen Pass verloren, *Deutsch Türkische Nachrichten. Unabhängige Zeitung für Politik, Wirtschaft und Kultur*. Retrieved from <http://www.deutsch-tuerkische-nachrichten.de/2013/11/494266/optionspflicht-2013-176-personen-haben-schon-ihren-deutschen-pass-verloren/>
- Banting, K. & Kymlicka, W. (2014). Is there really a retreat from multiculturalism policies? New evidence from the multiculturalism policy index. *Comparative European Politics*, 1-22.
- Bauder, H. (2011). *Immigration Dialectic: Imagining Community, Economy, and Nation*. Toronto: University of Toronto Press.
- Beach, D. & Pedersen, B.R. (2013). *Process-Tracing Methods: Foundations and Guidelines*. Michigan: The University of Michigan Press.
- Bendel, P. & Krienbrink, A. (Eds.) (2008). *Kanada und Deutschland. Migration und Integration im Vergleich*. Nürnberg: Bundesamt für Migration und Flüchtlinge.
- Berlin Institut für Bevölkerung und Entwicklung (2012). Nach Punkten vorn. Was Deutschland von der Zuwanderungs- und Integrationspolitik Kanadas lernen kann [Winning Points: What Germany can learn from Canada's Immigration and Integration Policy]. Berlin: Robert Bosch Stiftung.
- Bloemraad, I. (2006). *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada*. Berkeley, Los Angeles, London: University of California Press.
- Bloemraad, I. (forthcoming). Re-imagining the Nation in a World of Migration: Legitimacy, Political Claims-making and Membership in Comparative Perspective. In Nancy Foner & Patrick Simon (Eds.), *Fear and Anxiety over National Identity*, . New York: Russell Sage Foundation Press.
- bpb (2010). Die soziale Situation in Deutschland: Bevölkerung mit Migrationshintergrund I. *Bundeszentrale für politische Bildung*.
- Brouwer, A. (2012). Statelessness in the Canadian Context. An updated discussion paper. (UNHCR, Trans.). In UNHCR (Ed.), (pp. 89). New York: United Nation.
- Brubaker, R. (1992). *Citizenship and Nationhood in France and Germany*. Cambridge (MA): Harvard University Press.
- Brubaker, R. (Ed.) (1989). *Immigration and the Politics of Citizenship in Europe and North America*. Lanham, London: University Press of America.
- Bundesministerium des Inneren. (2008). Zuwanderungsgesetz Retrieved 10 October 2009, from [http://www.zuwanderung.de/cln\\_115/nn\\_1068334/DE/Zuwanderung\\_\\_geschichte\\_\\_jetzt/Zuwanderungsgesetz/Zuwanderungsgesetz\\_\\_node.html?\\_\\_nnn=true](http://www.zuwanderung.de/cln_115/nn_1068334/DE/Zuwanderung__geschichte__jetzt/Zuwanderungsgesetz/Zuwanderungsgesetz__node.html?__nnn=true)

- Bundesregierung Deutschland (2013). *Deutschlands Zukunft gestalten. Koalitionsvertrag zwischen CDU, CSU und SPD*. Berlin: Retrieved from <https://http://www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf>.
- Castles, S. (1995). How Nation-States Respond to Immigration and Ethnic Diversity. *New Community*, 21 (3), 293-308.
- Council for European Studies (2010). FORUM: How are Europeans Made? Debating a National Models Approach to Immigrant Integration. *Perspectives on Europe*, 40 (2), 35-55
- Deutscher Bundesrat (2013a). *Plenarprotokoll. Stenographischer Bericht der 910. Sitzung*. Retrieved from <http://dip.bundestag.de>.
- Deutscher Bundesrat (2013b). *Plenarprotokoll. Stenographischer Bericht der 912. Sitzung*. (P. 389-391), 5 July.
- Deutscher Bundestag (2013). *Plenarprotokoll. Stenographischer Bericht der 242. Sitzung der 17. Wahlperiode*. Bonn: Retrieved from <http://dip.bundestag.de>.
- Duyvendak, J.W. & Scholten, P.W.A. (2011). Beyond the Dutch "Multicultural Model". The Coproduction of Integration Policy Frames in The Netherlands *Journal of International Migration and Integration*, 12, 331-348. doi: DOI 10.1007/s12134-010-0161-5
- Entzinger, H. (2004). Integration and Orientation Courses in a European Perspective. Expert Report written for the Sachverständigenrat für Zuwanderung und Integration (pp. 31): Sachverständigenrat für Zuwanderung und Integration.
- Etzioni, A. (2007). Citizenship Tests: A Comparative, Communitarian Perspective *The Political Quarterly*, 78 (3), 353-363.
- Finotelli, C., & Michalowski, I. (2012). The Heuristic Potential of Models of Citizenship and Immigrant Integration Reviewed. *Journal of Immigrant & Refugee Studies*, 10 (3), 231-240.
- Garcea, J. (2006). The Third Phase of the Canadian Citizenship Reform Project: Objectives and Obstacles. In Hans J. Michelmann & Cristine de Clercy (Eds.), *Continuity and Change in Canadian Politics: Essays in Honour of David E. Smith* (pp. 195-244). Toronto: University of Toronto Press.
- Gerdes, J. & Faist, T. (2006). Von ethnischer zu republikanischer Integration. Der Diskurs um die Reform des deutschen Staatsangehörigkeitsrechts. *Berliner Journal für Soziologie*, 16 (3), 313-335.
- Goodman, S.W. (2010). Integration Requirements for Integration's Sake? Identifying, Categorising and Comparing Civic Integration Policies. *Journal of Ethnic and Migration Studies*, 36 (5), 753-772.
- Green, S. (2000). Beyond Ethnoculturalism? German Citizenship in the New Millennium. *German Politics*, 9 (3), 105-124.
- Green, S. (2012). Much ado about not-very-much? Assessing ten years of German citizenship reform. *Citizenship Studies*, 16 (2), 173-188. doi: 10.1080/13621025.2012.667610
- Hailbronner, K. (2006). Germany. In Rainer Bauböck, Eva Ersböll, Kees Groenendijk & Harald Waldrauch (Eds.), *Acquisition and Loss of Nationality. Volume 2: Country Analyses: Policies and Trends in 15 European Countries* (pp. 213-251). Amsterdam: Amsterdam University Press.
- Hammar, T. (1989). State, Nation, and Dual Citizenship. In William Rogers Brubaker (Ed.), *Immigration and the Politics of Citizenship in Europe and North America*, Lanham, New York, London: University Press of America (pp. 81-95). Lanham, New York, London: University Press of America.
- Heckmann, F. (2003). From Ethnic Nation to Universalistic Immigrant Integration: Germany. In Friedrich Heckmann & Dominique Schnapper (Eds.), *The Integration of Immigrants in European Societies: National Differences and Trends of Convergence* (pp. 45-78). Bamberg, Stuttgart: European Forum for Migration Studies (EFMS), Lucius & Lucius.

- Helbling, M. & Vink, M. (2013, forthcoming). From Models to Indices and Beyond: Tracking Citizenship and Diversity (special issue). *Comparative European Politics*.
- House of Commons (1971). *Debates*. Ottawa: Queen's Printer.
- Howard, M.M. (2008). The Causes and Consequences of Germany's New Citizenship Law. *German Politics*, 17 (1), 41-62.
- Howard, M.M. (2009). *Citizenship Politics in Europe*. New York: Cambridge University Press.
- Howard, M.M. (2012). Germany's Citizenship Policy in Comparative Perspective. *German Politics and Society*, 30 (1), 39-51.
- Hsieh, H.-F. & Shannon, S.E. (2005). Three Approaches to Qualitative Content Analysis. *Qualitative Health Research*, 15(9), 1277-1288. doi: 10.1177/1049732305276687
- Huddleston, T., & Dag Tjaden, J. (2012). Immigrant Citizens Survey: How immigrants experience integration in 15 European cities. Brussels: King Badouin Foundation and Migration Policy Group.
- Jacobs, D. & Rea, A. (2007). The End of National Models? Integration Courses and Citizenship Trajectories in Europe. *International Journal on Multicultural Societies (UNESCO)*, 9 (2), 264-283.
- Joppke, C. (2007). Beyond National Models: Civic Integration Policies for Immigrants in Western Europe. *Western European Politics*, 30 (1), 1-22.
- Kent, T. (2008, 26 April). Canada is much more than a hotel. If they are not ready to commit to a citizenship that has real consequences, immigrants should move on. *Globe and Mail*, p. A25.
- Klärner, A. (2000). Aufstand der Ressentiments: Einwanderungsdiskurs, völkischer Nationalismus und die Kampagne der CDU/CSU gegen die doppelte Staatsbürgerschaft. Köln: PapyRossa.
- Kymlicka, W. (2003). Being Canadian. *Government and Opposition*, 38 (3), 357-385.
- Michalowski, I. (2011). Required to assimilate? The content of citizenship tests in five countries. *Citizenship Studies*, 15 (6-7), 749-768.
- MiGAZIN (2013, 13 June). Optionspflicht: Alle drei Tage wird aus einem deutschen Jugendlichen ein Ausländer.
- Morse, E. (2014, 21 January). Two-tier Citizenship Is a Terrible Idea. *Ottawa Citizen*, p. A9.
- Mouritsen, P. (2012). The resilience of citizenship traditions: Civic integration in Germany, Great Britain and Denmark. *Ethnicities*, 13 (1), 86-109.
- Nyers, P. (2010). Dueling designs: The politics of rescuing dual citizens. *Citizenship Studies*, 14 (1), 47-60.
- OECD (2012). *Settling In: OECD Indicators of Immigrant Integration 2012*: OECD Publishing.
- Orgad, L. (2009). Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe. *American Journal of Comparative Law*, 58 (1).
- Palmowski, J. (2008). In search of the German nation: citizenship and the challenge of integration. *Citizenship Studies*, 12 (6), 547-563.
- Paquet, M. (2012). Beyond Appearances: Citizenship Tests in Canada and the UK. *Journal of International Migration and Integration*, 13(2), 243-260. doi: 10.1007/s12134-011-0233-1
- Pélabay, J. (2011). L'Europe des valeurs communes et le recul du multiculturalisme: la diversité supplannée par l'unité. *Revue philosophique de Louvain*, 109 (4), 747-770.
- Schönwälder, K. & Triadafilopoulos, T. (2012). A Bridge or Barrier to Incorporation? Germany's 1999 Citizenship Reform in Critical Perspective. *German Politics and Society*, 30 (1), 52-70. doi: 10.3167/gps.2012.300104
- Senate (2008). *Debates (Hansard)*. Retrieved from [http://www.parl.gc.ca/Content/Sen/Chamber/392/Debates/038db\\_2008-03-04-e.htm](http://www.parl.gc.ca/Content/Sen/Chamber/392/Debates/038db_2008-03-04-e.htm).

- Standing Committee on Citizenship and Immigration (2008a). *Evidence*. Ottawa: Parliament of Canada Retrieved from <http://www.parl.gc.ca/HousePublications/Publication.aspx?DoId=3267682&Language=E&Mode=1&Parl=39&Ses=2>.
- Standing Committee on Citizenship and Immigration (2008b). *Evidence*. Ottawa: Parliament of Canada Retrieved from <http://www.parl.gc.ca/HousePublications/Publication.aspx?DoId=3278686&Language=E&Mode=1&Parl=39&Ses=2>.
- Standing Senate Committee on Social Affairs, Science and Technology (2008). *Proceedings*. Ottawa: Parliament of Canada, Retrieved from [http://www.parl.gc.ca/Content/SEN/Committee/392/soci/05cv-e.htm?Language=E&Parl=39&Ses=2&comm\\_id=47](http://www.parl.gc.ca/Content/SEN/Committee/392/soci/05cv-e.htm?Language=E&Parl=39&Ses=2&comm_id=47).
- Statistics Canada (2011). *Single and Multiple Citizenship Responses*. Retrieved from <http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/tbt/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=89450&PRID=0&PTYPE=88971,97154&S=0&SHOWALL=0&SUB=0&Temporal=2006&THEME=72&VID=0&VNAMEE=&VNAMEF=>.
- Statistisches Bundesamt Deutschland (2014). *Bevölkerung und Erwerbstätigkeit: Einbürgerungen*. Wiesbaden: Statistisches Bundesamt Retrieved from <https://http://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/MigrationIntegration/EingebuergetePersonen/Tabellen/EinbuengerungenEinbuengerungsquoteLR.html>.
- Triadafilopoulos, T. (2012). *Becoming Multicultural: Immigration and the Politics of Membership in Canada and Germany*. Vancouver: University of British Columbia Press.
- van Oers, R. (2010). Citizenship Tests in the Netherlands, Germany and the UK. In Ricky van Oers, Eva Ersbøll & Dora Kostakopoulou (Eds.), *A Re-definition of Belonging? Language and Integration Tests in Europe* (Vol. 20, pp. 51-105). Leiden, Boston: Martinus Nijhoff Publishers.
- Weinmann, M., Becher, I. & Babka von Gostomski, C. (2012). Einbürgerungsverhalten von Ausländerinnen und Ausländern in Deutschland sowie Erkenntnisse zu Optionspflichtigen. Ergebnisse der BAMF-Einbürgerungsstudie 2011. (Vol. Forschungsbericht 15). Nürnberg: Bundesregierung Deutschland; Bundesamt für Migration und Flüchtlinge.
- Will, A.-K. (2012). Deutsche Integrationsmaßnahmen aus der Sicht von Nicht-EU-Bürgern. Die Ergebnisse des Immigrant Citizens Survey für Deutschland. Berlin: Sachverständigenrat deutscher Stiftungen für Integration und Migration.
- Winter, E. (2011). *Us, Them and Others: Pluralism and National Identity in Diverse Societies*. Toronto: University of Toronto Press.
- Winter, E. (2013). Descent, Territory, and Common Values: Redefining Citizenship in Canada. In Dina Kiwan (Ed.), *Naturalization Policies, Education and Citizenship: Multicultural and Multi-nation Societies in International Perspective* (pp. 95-122). London, New York: Palgrave Macmillan.
- Winter, E. (2014a). *Becoming Canadian – Making Sense of Recent Changes to Citizenship Rules. IRPP Study (Montreal Institute for Research on Public Policy)* (44), 1-28.
- Winter, E. (2014b). (Im)Possible Citizens: Canada's 'Citizenship Bonanza' and its Boundaries. *Citizenship Studies*, 18 (1).
- Winter, E. & John, K. (2009). German Citizenship in the Context of the European Union: Recent Changes. *SSHRC Strategic Knowledge Cluster Canada-EU Transatlantic Dialogue Policy Brief*, from <http://www.carleton.ca/eurocluster/publications.html>
- Worbs, S., Scholz, A. & Blicke, S. (2012). Die Optionsregelung im Staatsangehörigkeitsrecht aus der Sicht von Betroffenen. Qualitative Studie. In Bundesregierung Deutschland; Bundesamt für Migration und Flüchtlinge (Ed.) (Vol. Forschungsbericht 16). Nürnberg.
- Worthington, P. (2006, 21 July). Convenient Canadians, *Toronto Sun*, p. A18.

## About the author

**Elke Winter**, Department of Sociology and Anthropology, University of Ottawa  
E-mail: [elke.winter@uottawa.ca](mailto:elke.winter@uottawa.ca)

Elke Winter is a professor of Sociology at the University of Ottawa and research director of the research group on “Migration, Ethnic Pluralism and Citizenship” at the Centre for Interdisciplinary Research on Citizenship and Minorities (CIRCEM).



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# When Extremes Converge

## *German and Canadian Labor Migration Policy Compared*

Holger Kolb

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### **Abstract**

Not only but particularly in terms of labor migration policy Germany and Canada are widely perceived as being situated at opposite ends of the spectrum. Whereas Canada has for a long time been enjoying a reputation of being one or even the role model for countries seeking to develop a flexible and welcoming immigration scheme that is nonetheless responsive to shortages and demands of specific sectors of the national labor market, the German system has been suffering from the suspicion of being not only structurally hostile towards immigrants but also of featuring a structural one-sidedness in terms of its steering, control and recruitment instruments. Against the background of major immigration reforms in the segment of highly skilled labor migration in both countries the paper describes and analyzes the core elements of these recent policy reforms, arguing that Canada and Germany as of 2013 increasingly display more similarities than differences in their high-skilled labor immigration policy. Both countries have departed from extreme and one-sided steering approaches and now run 'hybrid systems' that aim at making use of the advantages of different steering and recruitment approaches.

**Keywords:** Immigration Policy, Canada, Germany, Point Systems

## **1. Introduction: Labor migration policy in Canada and Germany: Opposite ends of the spectrum?**

Canada and Germany constitute – at least as far as public perception is concerned – the most differing cases in terms of labor migration policies,

in particular with regard to national schemes to attract highly skilled migrants. The Canadian approach, which first and foremost is based on a point system, is widely appreciated as a flexible, welcoming and efficient tool to attract highly qualified migrants from across the world. Jacoby (2010, p. 3) describes the Canadian point system as having “become a lodestar in international discussions of immigration – a model and an inspiration for policymakers around the world seeking to recruit high-skilled migrants for the sake of national competitiveness.” The popularity of Canada as an efficient labor recruiting country has also spread in Europe. Academics and policy-makers in Germany are among those who joined the camp of the fans of Canada some years ago. In its first and final report<sup>1</sup> the official state-funded Sachverständigenrat für Zuwanderung und Integration (Expert Council on Migration and Integration) (2004, p. 171, my translation) emphasized that countries that established immigration point systems in the past (particularly Canada, but also Australia and New Zealand) act politically reasonably and clear-sightedly, because the “straightforwardness and at the same time high functionality, the comparatively modest bureaucratic costs and [...] the flexibility, which makes this instrument particularly responsive to recent changes on the labor market” would explain to a large extent why countries with such systems outperform other countries with regard to the average level of migrant skills. Shachar (2006, p. 129) even goes as far as arguing that the “Canadian point system [...] represents an almost ideal example of how a smaller-economy jurisdiction can use immigration policy to establish a significant share of the overall worldwide intake of highly skilled migrants, even when it must directly compete with a neighboring economic giant like the United States.” In German parliamentary debates about labor migration and shortage of workers it has meanwhile become commonplace to refer to Canada and the Canadian point system with praise and admiration.<sup>2</sup>

Germany on the other hand is at least in the public perception the opposite of Canada and has unfortunately become quite infamous for being a notoriously passive, narrow-minded and restrictive country in terms of labor migration in general and of its attempts to become an attractive destination country for skilled and highly skilled migrants (from non-EU countries) in particular. In an international survey among business executives, conducted 2012 on behalf of the World Competitiveness Yearbook, German respondents – in comparison to executives in most other OECD countries – very often expressed that the German “immigration laws prevent their company from employing foreign labour” (OECD, 2013, p. 120) because of their restrictiveness and inflexibility. In a statement for



the Committee on Internal Affairs of the German Bundestag, one of the most prominent legal scholars in the field of migration and asylum law, Daniel Thym (2012, p. 3, my translation), reports that despite the recent comprehensive and liberal reforms “even on international scientific conferences [...] many colleagues act on the assumption that Germany regulates economic migration restrictively”.

The above depicted diverging images of the German and Canadian skilled labor migration regime build the foundation for contrasting the public and political perception of both countries concerning the general political approach towards labor migration with the respective policies in place to attract highly skilled migrants. The following considerations thus largely ignore the respective political discourses and instead focus on the description and comparative analysis of a specific segment of labor migration policy. The analysis also needs to block out many other aspects of immigration and integration policies such as naturalization, asylum and refugee policy, anti-discrimination policy, family reunion or integration measures.<sup>3</sup> In this paper, the sole common reference point when comparing Canada and Germany is the development of the respective approaches of screening and selecting highly skilled migrants who in the case of Canada can immigrate and settle right from the start or in the case of Germany are first granted access on a temporary basis with the possibility to get a permanent residence after a certain period of time. Given the very recent changes in both countries it is furthermore not possible to say much about the desired effects of the respective new measures. This applies even more as volume and composition of immigration also depend on the supply side. For the German case it is also necessary to clarify that citizens of member states of the European Union are not subject to any German immigration legislation since they enjoy freedom of movement and have a (nearly) unlimited right to migrate to and live in any EU member state.

After briefly introducing a typology of recruitment schemes in Part 2, which is thought to be needed as an analytical template, Part 3 provides a brief review of the main elements of each country’s system of highly skilled labor recruitment and indicates the different starting points and initial trajectories of both countries. Based on this, Part 4 highlights recent policy developments in Germany and Canada and provides the necessary empirical material to support the hypothesis of a convergence process in the policy dimension. Finally, in Part 5 some preliminary considerations about the potential drivers and dynamics of this convergence process are introduced.

## 2. Employer-based programs, occupation-driven schemes, human capital-approaches: A typology of labor migration schemes

In order to support the hypothesis that the Canadian and the German labor immigration policy systems, which have for a long time been perceived as very different in structure and often even as structurally too different for any approximation, are now converging towards a hybrid system, it is necessary to analyze both cases under the same analytical framework. While the past years have seen an increase in public approaches to attract highly skilled migrants, various scholars have been striving to develop a systematic and relatively general framework to categorize and compare these migrant recruitment schemes. The most widespread approach to classify different state approaches to recruit labor migrants is to distinguish between demand- and supply-driven systems: whereas the central feature of the first approach is that “the initiative for the migration comes from the employer, who has a perceived need for a worker with a particular skill”, the second approach refers “to situations in which a host country advertises its willingness to take applications for immigration directly from potential candidates, independently of a specific job offer” [...]; “candidates [in such systems] are usually assessed for admission on the basis of characteristics deemed to facilitate labor market integration such as language proficiency, educational attainment, age, work experience, the presence of family in the host country [...]” (Chaloff & Lemaître, 2009, p. 17).<sup>4</sup> Another and for the purpose of this paper heuristically more useful differentiation comes from Papademetriou & O’Neill (2004, p. 9) who propose a more fine-grained approach identifying three ways to screen and select labor migrants:

1. Employment-based systems admit “workers who have been hired by duly registered corporate entities for a specific job” and make admission first and foremost dependent on the question whether an applicant has found an employer and signed a work contract<sup>5</sup>,
2. Occupation-driven mechanisms admit “people who are qualified in occupations that the government decides are in short supply”, capitalizing on the identification of labor shortages in specific occupations and/or sectors of the national economy and establishing ‘fast track schemes’ with eased access for persons with qualifications in these occupations and/or sectors without necessarily requiring a work contract.
3. Fundamentally different from these approaches are human capital schemes that usually not only refrain from any built-in requirement of arranged employment but are also not restricted to specific occupa-

tions and/or sectors of the economy. This philosophy of screening and selecting applicants is rather based on an assessment of the observable characteristics of any individual applicant. A very popular method to do this assessment is the allocation of points.

### 3. Employer-based vs. human capital-driven: German and Canadian strategies of labor recruitment

The above-mentioned typology of labor migration schemes easily shows that for a long time Germany and Canada have indeed followed fundamentally different tracks with regard to labor immigration policy in general and to the recruitment of highly skilled migrants in particular. A very brief comparison of the institutional backbones, that have been forming the labor migration systems in both countries, indicates that the differences between the very principles of labor recruitment were not of gradual but of categorical nature.

Germany has a long experience of recruiting labor migrants. Between 1955 and 1973 more than four million immigrants, who were recruited under the assumption that their stay in Germany would be of temporary nature and thus politically and publically were addressed as “guest workers”, came to Germany (Triadafilopoulos & Schönwälder, 2006, p. 1-19). This immigration and the subsequent processes of family reunification are still influential for patterns of immigration to contemporary Germany. The German recruitment efforts seemed to be inevitable at that time in view of a significant labor supply problem which itself emerged out of a bundle of reasons: increasing demand as a consequence of economic growth, the reduction of labor supply induced by the establishment of armed forces, the building of the Berlin wall, the expansion of secondary and higher education which delayed the labor market participation of younger persons and finally successful efforts of trade unions to reduce the number of hours worked per week which had the same detrimental effect on labor supply. After nearly two decades of active labor migration policy Germany closed the door to ‘third country’ immigration in 1973, categorically refused to be a ‘country of immigration’ and only started to carefully change its stance towards labor immigration at the end of the 1990s.

In Germany the attraction of highly skilled migrants from outside the European Union was traditionally either based on the provisions of the ordinance on exemptions from the recruitment ban (Anwerbestoppaus-

nahmeverordnung – ASAV) or on the employment ordinance (Beschäftigungsverordnung – BeschV) respectively, which replaced the ASAV after the enactment of the immigration law of 2005. These ordinances served as a kind of exception list for circumstances under which the recruitment ban of 1973, which bars the recruitment of labor migrants from outside the European Union, could be abrogated (Schönwälder, 2013). For most of these exceptional cases, however, the respective conditions were formulated in a very strict way with a high level of discretionary power for the immigration bureaucracy with the result that Germany experienced a quasi-zero labor migration until the late 1990s. The German Green Card of 2000, a special arrangement for third country nationals with professional expertise in the field of information and communication technology<sup>6</sup>, and the immigration act of 2005 did also not fundamentally change the very nature of the German system (OECD, 2013, p. 64). Both schemes, the Green Card and the immigration act, only provided an increasing list of exceptions to the rule and cautiously liberalized the conditions for recruitment and labor immigration instead of changing the underlying rationale and rules. The common feature of ASAV, the Green Card and the options codified in the immigration act was the centrality of the requirement of a work contract (SVR, 2011, p. 71), which turned the German system into a model for an employer-based recruitment model, even though some provisions of the BeschV additionally required an affiliation to a specific sector of the economy or a particular educational degree, thereby including sector-specific or occupation-driven aspects.

The history of Canadian labor immigration policy could not be more different. Its self-understanding as a country of immigration which for many reasons is in need of and welcomes permanent immigration belongs to the country's political and societal DNA (Reitz, 2013, p. 154). This positive stance towards permanent immigration, moreover, seems to be disconnected from the business cycle and also holds for times of economic problems or even hardship. Even during the recent economic downturn no serious and/or influential political and societal voices arguing for reduced immigration emerged. The immigration outlook series of the OECD constantly ranks Canada as one of the top receivers of permanent immigration relative to its population.

Given the differences in the political and historical appreciation of immigration policy it cannot be surprising that the technical implementation of labor migration policy in Canada followed an entirely different approach than in Germany. In the same way as German labor migration policy has long been fixed exclusively on employer-based considerations, the Canadian philosophy of screening and selecting immigrants – particularly as

institutionalized in the Federal Skilled Worker Program (FSWP) – reflected the human capital approach. Even though the FSWP is not the only labor migration scheme to Canada<sup>7</sup>, it is a very or even *the* most important one. Especially after the major reform of 2002 (Immigration and Refugee Protection Act – IRPA) this scheme solely relied on the human capital approach (Langenfeld & Waibel, 2013 and O’Shea, 2009). Whereas Germany used the existence of a work contract that secured and guaranteed successful labor market integration as the central necessary (but not sufficient) condition for granting access, Canada pursued a strategy that only checked the characteristics of the individual applicant and barely took into account the specific needs of the domestic labor market. It relied on the assumption that in the long run highly qualified immigrants will find their way into the different realms of society, including the labor market, anyway (Hailbronner & Koslowski, 2008, p. 7).

#### 4. The triumph of hybrid models and a process of convergence in Canada and Germany

Recently both the German and Canadian government introduced major reforms of their migration policy instruments, reflecting a change in the general strategy on how best to attract high skilled migrant workers. These reforms significantly changed the traditional principles in both countries but remain barely known on the respective other side of the Atlantic so far. Whereas in German media and politics the Canadian point system of 1967 is still being praised for – among other things – its openness and flexibility<sup>8</sup> ministerial instructions in 2008 tentatively removed the ‘human capital core’ of the system (which is defined above as exclusive consideration of individual characteristics such as education, age, work experience etc.) and severely restricted access to the system by installing and preceding two ‘entry conditions’: in order to be considered as applicant to the point system at all, potential immigrants must now prove a job offer or job experience in a specific, state-defined shortage occupation.<sup>9</sup> Belonging to a specific occupational group is not a completely new feature in the Federal Skilled Worker Program (FSWP). Before the Immigration and Refugee Protection Act (IRPA) had removed occupational points entirely from the system, occupation was just one selection criterion among others. The ministerial instructions of 2008 turned occupation into “a preliminary screen”, stipulating that only after “applications [have] pass[ed] through the “gate” established by the ministerial instructions they continue to be assessed

against the IRPA human capital factors” (O’Shea, 2009, p. 22). This means that unless applicants “have Canadian job offers in hand, new applicants who do not qualify for the posted list of occupations in demand are not eligible for processing; their files are returned and their application fees refunded” (Picot & Sweetman, 2012, p. 20).

These conditions also constitute the essence of the new FSWP that came into effect in spring 2013; just in order to get to the assessment stage candidates must pass one of three possible ‘gates’: 1) having a record of one year’s work in one of the (now) 24 designated occupations; 2) having a qualifying offer of employment; 3) being eligible through the PhD stream for international students or graduates who are or were enrolled in a PhD program of a Canadian university. After having passed through this filter candidates are still assessed according to a revised points system. In addition to this, a minimum language requirement (Canadian Language Benchmark (CLB) 7) was introduced which categorically excludes applicants without sufficient language proficiency in English or French. In the older versions of FSWP the disadvantage of limited language proficiency could have been compensated by a high scoring among the other selection factors.

For 2015 the Canadian government plans the introduction of an “Expression of Interest (EoI)” selection system similar to the ones already implemented in Australia and New Zealand. Both countries constitute the main countries of reference with regards to the advancement of Canadian recruitment schemes. An EoI serves as a kind of preliminary stage for applicants and enables the public and private sector of a particular immigration country to identify at an earlier stage those candidates who are deemed to have the potential to pass the thresholds of the latter phases of the selection process. Particularly the possibility to involve employers early in the process indicates the new emphasis of labor market suitability and shrinking relevance of classic human capital-based considerations.

The trigger for this renunciation of the Canadian human capital-tradition on the one hand was a massive backlog of applications within the FSWP<sup>10</sup> that was meant to be reduced by the introduction of these new entry conditions. On the other hand the unsatisfactory labor market integration of highly-skilled immigrants in Canada and a resulting Brain Waste (see O’Shea, 2009, Reitz, 2013; Picot & Sweetman, 2012) may have been contributing to a further emphasis of the actual needs of the Canadian labor market in the system. As a matter of fact these ministerial instructions diversified the Canadian steering principles by adding employer-based and occupation-driven considerations to the formerly one-sided Canadian human capital system with the result “that the program as a whole is now

more connected to labor market demand than was the case with the original IRPA scheme” (O’Shea 2009, p. 22). What is more, the way the individual level of education is taken account of in the point system has changed. The new system makes the assessment of foreign educational credentials mandatory, thereby requiring checking for the comparative value of the degree obtained abroad. Against this background it is no overstatement to describe the Canadian development in the last decade as a comprehensive one. After the IRPA reform, the ministerial instructions of 2008 meant nothing less than a certain renunciation of human capital principles and a conversion to a mix of employer-based (arranged employment) and occupation-driven (work experience in certain occupational categories) steering, which indeed continued to make use of the principle of allocating points on the basis of human capital considerations, but just as a secondary filter.

The recent German history of labor immigration policy is by no means less comprehensive in content than the Canadian one. Milestones during the last fifteen years were the Green Card program that is widely appreciated as an important icebreaker for the political debate, which had previously been stuck for many years (Ette, 2003, p. 34; Jurgens, 2010, p. 345-355; OECD, 2013, p. 64). The German Green Card paved the way for the successor of the aliens’ act of 1991 – the immigration act of 2005 – that, despite receiving justifiable criticism on single issues, is widely accepted as the first systematic legal attempt to make Germany more attractive for an increasingly sought after global mobile elite. The last reform step in the area of labor migration so far was the implementation of the EU directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (so-called Blue Card). At least for the time being, the implementation of the directive can be interpreted as one further significant step in a long process of liberalization of the labor migration rules that had entered into force with Germany’s immigration act in 2005. Conditions for obtaining the EU Blue Card are: a German, a recognized foreign or a comparable foreign higher education qualification, evidence of an annual minimum gross salary of currently EUR 46.800 or in the case of an EU Blue Card being awarded to scientists, mathematicians and engineers, doctors and IT specialists evidence of a minimum gross salary of 36.200 €. <sup>11</sup> The Blue Card is a temporary permit which can be converted into a permanent permit after 33 or (in case of German language skills) 21 months. What is worth noting in the way the German government implemented the directive is a generally “migrant friendly” (Thym, 2012, p. 6, my translation) and generous approach. This applies to the general abolishment of a labor market test for Blue Card holders, wage ceilings at

the lowest edge of what the EU has defined as minimum requirements and unlimited labor market access for family members of Blue Card holders (Langenfeld & Waibel, 2013). The implementation of the European Blue Card directive thus resulted in a new round of liberalization of the existing system of employer-based and occupation-driven labor migration. Yet, these changes remained within the limitations of that system, i.e. without changing its structural foundations.

Of greater relevance for comparing Canada and Germany and arguing for the existence of a process of structural convergence is an entirely new feature of the German immigration system. Even though not stipulated by the EU directive it nonetheless fundamentally changed the very nature of the formerly one-sided employer-based system (Strunden & Schubert, 2012; Steller, 2013; Langenfeld & Waibel, 2013): The new article 18c of the immigration act in its version of August 2012 introduced for the first time in the history of German immigration legislation a residence permit for job-searching. This is not only a departure from the 'No immigration without labor contract'-dogma, that in a nutshell has been the center of the German labor immigration philosophy for decades. It is also nothing less than the introduction of a very basic, frugal and binary (yes/no) point system with just two accession criteria: an academic qualification and adequate means of subsistence for the planned duration of the stay.<sup>12</sup> Thus, Germany now runs a labor migration system that still puts a heavy emphasis on employer-based steering principles, which is fine-tuned by occupation-driven considerations as the reduced wage requirements for certain shortage occupations laid out by the German implementation of the Blue Card directive indicate. Article 18c of the immigration act, however, added a new legal option, that leaves the German tradition of labor migration policy behind and instead carefully employs the Canadian principle of a human capital model. It uses individual characteristics such as level of education and the existence of sufficient financial means for screening and selecting applicants. It is important to mention though that this new scheme remains closely linked to the so-far prevailing employer-based philosophy since access is only granted on a temporary basis (up to six months) until the migrant finds a job. He or she may then convert the temporary status into a permanent one.

A process of convergence on the modalities of recruitment schemes between Canada and Germany thus becomes apparent in the diversification of the respective steering principles and the emergence of hybrid models (Papademetriou & Sumption, 2011) in both countries that tend to combine the screening and selecting mechanisms of different labor migration policy



approaches. This is not the only development that indicates an increasing convergence between both countries. What furthermore deserves attention but is beyond the scope of this paper and cannot be explained in greater detail is the growing importance of the Canadian Temporary Foreign Worker Program (TFWP)<sup>13</sup> which in the same way as the EU Blue Card directive first provides only a temporary permit which at a later point of time can be converted into a permanent one. This paper, however, concentrates only on the steering principles for recruitment schemes of highly skilled migrants. Both countries in this regard abolished a one-sided strategy and today rather aim at a flexible combination of elements of all three basic strategies – human capital, employer-based and occupation-driven. In this regard Canada and Germany are coming from very different starting points, the ‘pure’ human capital-approach in one country and the similarly one-sided employer based-model in the other, but are now in a process of convergence and approximation.

Considerations about possible changes of migration policy do not imply full congruence between the countries discussed here as the mere respective quantitative dimension of labor or economic migration indicates: Whereas in Canada about two-thirds of the total immigration intake (about 249.000 persons) come under the category of economic immigration (about 156.000 persons), for which the FSWP is just one (albeit the most important) element, labor migration to Germany constitutes a much smaller piece of the total immigration ‘pie’: In 2011 only 14 percent (about 37.000) of all immigrants from third countries registered in the central register of foreigners (about 266.000), which statistically covers immigrants with a minimum period of stay of three months and thus does not include seasonal workers, came as labor migrants. The new entry gates for highly qualified non-EU citizens are not being used to a great extent so far (as also the monthly migration monitor of the Federal Office for Migration and Refugees indicates). The specific situation of Germany being the most important net receiver of immigrants from other EU member states, however, aggravates the quantitative comparison of both countries. Although it is statistically impossible to detect the actual underlying motives of EU immigrants to Germany it has a lot to commend that a significant share of the 500.000 EU migrants in 2011 came to Germany as labor migrants (SVR, 2012, p. 49-66). The free movement of EU-citizens, who are largely well educated (SVR, 2012, p. 99-104), to Germany thus serves de facto as a functional equivalent and complementation to recruitment schemes for highly skilled immigrants.

Whereas the numbers of high-skilled immigrants remain unequal so far, which, however, not only can be explained by the fact that Germany only

recently changed and opened its recruitment schemes (which apply to a rather small part of total migration to Germany), but also by the existence of a huge pool of mobile Europeans, which legally and statistically cannot be counted as ‘immigrants’ in the same way as third country nationals, the legal provisions in both countries show some tendencies of convergence. Canada diversified its formerly one-sided human capital model by utilizing instruments known and proven in employer-based systems. The German system, that traditionally featured a structural one-sidedness due to its categorical requirement of a work contract for all labor migrants, largely remains an employer-based system since the core of the German system, the temporary options of article 18 immigration act and the ‘Blue Card options’ of article 19 continue to be bound to a work contract. Yet the new article 18 c, which was not required to introduce by the EU Blue Card directive, added a second structural tier and thus resulted in an important diversification and hybridization of the German portfolio of labor market schemes.

## 5. Causes of congruence and an emerging debate about rapid policy changes

The market for highly skilled migrants is increasingly becoming an asymmetrical market in the sense that power is shifted from the now mutually competing immigration states (demanders) to a mobile and highly skilled workforce (suppliers), which aggravates analyses of the interrelation between policy changes and their desired effects and results in an institutional “race to the top” (Shachar, 2006). As far as the legal and institutional design of the approaches in Canada and Germany is concerned the differences are smaller than what could be assumed on the mere assessment of their respective reputation. In this process of convergence Germany undoubtedly went through greater changes than Canada, since in a rather short time it not only rigorously liberalized an existing employer-based labor migration scheme but also added an entirely new steering element based on human capital considerations to the overall set of measures to attract highly skilled migrants. This process resulted in a rather quick transformation of Germany from a country with a cautious and restrictive approach towards immigration policy as an instrument of labor market policy to a country that can be characterized by a new openness and generosity to labor migration. In a recent report on German labor immigration policy the OECD (2013, p. 15) came to a clear and unambiguous conclusion: “Recent reforms have put Germany among the OECD countries with the fewest restrictions on

labour migration for highly skilled occupations”, in fact “Germany’s policy for highly skilled migration is among the most open in the OECD.”

The assessment that something unexpected happened – and the claim that a process of convergence between Canada and Germany in the realm of migration policy is taking place undoubtedly belongs to this category – automatically raises the question of possible explanations. Particularly Germany’s transformation from a “reluctant” (Martin, 1994, p. 189-225) and “undeclared” (Thränhardt, 1995, p. 19-35) country of immigration to a country which according to the recent assessment of the OECD nowadays – at least as far as recruitment schemes for highly skilled are concerned – belongs to the liberal pioneers, demands further explanation. The theoretical literature on policy change is rich (see for many others Hall, 1993 and Sabatier & Jenkins-Smith, 1993). In a recent overview on theoretical explanatory offers for radical policy changes Rüb (2014, p. 13-15, my translation) differentiates between “external or internal shocks”, “evolutionary learning” and “electorate-driven adjustment dynamics”. Particularly the notion of “evolutionary learning” might serve as a fruitful starting point to dive into an explanation of why the development towards convergence took place, because this concept can easily be linked to the mentioned international trend towards the emergence of hybrid models of screening and selecting highly skilled migrants. The term “hybridization” generally describes a process of diversification of state portfolios of labor migration policy in such a way that systems that initially were based exclusively on employer-based considerations are now combined with human capital elements of screening and selecting (and vice versa). The policy-variation that has been described and analyzed as significant policy change for Germany (and to a lesser extent also for Canada) thus could be interpreted as part of a cross-country “tendency of policies to grow more alike, in the form of increasing similarity in structures, processes, and performances” (Drezner, 2001, p. 54). The common denominator of the here compared cases is an eclectic combination of different steering principles and selection instruments.

The reasons for an observed growing approximation of national policies and institutions are a central topic in various neoinstitutionalist studies. As a prominent and fruitful explanation within this stream of literature serves the concept of institutional isomorphism, which is described in general terms in the spadework of DiMaggio & Powell (1983, p. 149) as a “constraining process that forces one unit in a population to resemble other units that face the same set of environmental conditions”. The concept was originally developed for the analysis of processes within organiza-

tions (“organizational fields”), but can nevertheless also be applied to the analysis of processes of political convergence (Holzinger & Knill, 2007, p. 89). A ‘competitive’ version of isomorphism refers to adjustment processes triggered by market forces (see for such an account Shachar, 2013, p. 85-104). In contrast to this understanding “institutional isomorphism” analyses processes of adjustment and convergence beyond market-based reactions and competitive imperatives and puts a stronger emphasis on the significance of “political power and institutional legitimacy” (DiMaggio & Powell, 1983, p. 150). Within the concept of institutional isomorphism three different mechanisms need to be differentiated.<sup>14</sup> The form of isomorphism that contains specific importance for the case study of German and Canadian labor migration policy is mimetic isomorphism, understood as a specific strategy chosen by organizations and/or states in order to cope with insecurity or ignorance and to create legitimacy for political decisions by imitating political action of other states. Applying this analytical concept allows for avoiding mere functionalist explanations which tend to explain adjustment processes mainly or exclusively as a result of increasing international competition and a resulting similarity of societal conditions. Instead, political strategies for dealing with insecurity and creating legitimacy are used as the analytical focus.

For this case study of labor migration policy the notion of institutional isomorphism is assumed to have greater explanatory power than a reference to market dynamics and resulting adjustments because of the fact that the overall effectiveness of migration policies in general, including that of schemes to attract highly skilled immigrants, should not be exaggerated. A specific design of selective immigration policies seems to be only loosely coupled with the political outcomes defined for this policy area, which are the number and the human capital of labor migrants. Ambiguity and insecurity with regards to the interdependencies between legal migration rules and actual immigration outcomes prevail. The impact of state migration policy on immigration patterns tends to be overestimated, well-documented self-selective processes of immigrants point to the importance of general socio-economic (see for example Cohen, Haberfeld & Kogan, 2008, p. 185-201) and sociocultural conditions such as return on human capital, net wages, language and density of ethnic networks (see for example Boeri, Brücker, Docquier & Rapoport, 2012) in the decision of where to migrate. As the outcome of specific policy options is hence vague, a policy of “modeling” and “mimetic behavior” turns out to be an attractive political option as “response to uncertainty” (DiMaggio & Powell, 1983, p. 151). In this process of policy isomorphism the real effect of the policy measures is of secondary

importance since the main goal of the measure is the reduction of political uncertainty. The basic point of reference of this “model copying” (Bommes, 2006, p. 70) for the case study analyzed here is the idea of hybrid systems of labor migration policy which have (seemingly) the potential to combine the specific (expected rather than proven) advantages of different steering approaches. In the face of the impossibility to describe the volume and composition of the immigration population solely as a result of a specific technique of screening and selecting and a corresponding chronic insecurity, imitating and following international trends, as Germany did by the adoption of a point system and Canada did by re-implementing arranged employment and the affiliation to a specific sector of the economy as a main category for selection and plans to do by adopting EoI-systems, appears to be a particularly attractive political reaction. The reference to institutional practices in other countries – this is referred to as the “ritual aspect” by DiMaggio & Powell (1983, p. 151) – promises to maintain or even increase the legitimacy of political reforms. In Germany the necessary implementation of the Blue Card directive provided a politically convenient window of opportunity for model copying in the shape of a hybridization of labor migration policy. In this time frame the sudden renunciation of a fixation on a work contract as *conditio sine qua non* for immigrating seemed to be manageable. In Germany this change furthermore was easy to legitimize as a possible solution to the problem that Germany for a long time seemingly attracted mainly low qualified and therefore the ‘wrong’ kind of migrants.

Moreover, this discussion of German migration policy can be related to an emerging theoretical debate within political science in Germany. In two recent papers Rüb (2012; 2014) pointed to an increasingly puzzling phenomenon to be observed in Germany that he calls “rapid policy changes”. The most striking and publicly most debated examples for these changes took place in the realm of social and labor market policy (massive social cuts in welfare benefits, enacted by a center-left government), energy policy (abandoning nuclear energy, enacted by a center-right government) and defense policy (abolition of compulsory military service, enacted by a center-right government). These political U-turns are particularly startling in Germany because the country has for a long time been perceived “in international comparative as well as in German policy-research as a prototype of a political regime, in which policy changes are unlikely and which notoriously leads to a backlog of reforms” (Rüb, 2014, p. 3; my translation; see also the spadework on Germany by Katzenstein, 1987). These changes challenge political science to develop a new typology and taxonomy of rapid policy changes that have the analytical potential to explain the recent ac-

cumulation of unexpected changes. The current history of migration policy may fit very well into the list of policy fields that underwent such a change.

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## Notes

1. After original plans to introduce a point system already with the immigration act of 2005 were skipped and thus a key part of the mandate of the council, the setting of a maximum quota of labor migrants to be admitted, ceased to exist, the budgetary committee of the federal parliament withdrew all funds and thus de facto dissolved the council.
2. See for example the proposition 17/3862, discussed in the German Bundestag in November 2010 and the proposition 16/8492 from March 2008. See for an analysis of the German parliamentary debate on this topic Schönwälder (2013, p. 273-286).
3. In most of these areas the two countries remain rather different or processes of convergence are slow and unsteady. See e.g. Koopmans, Michalowski & Waibel (2012, p. 1202-1245).
4. A similar theoretic distinction is made by a recent study of the Berlin-Institut (2012, p. 35-36) that differentiates between “human capital-oriented models” vs. “labor market-driven methods” to emphasize the different philosophies of Germany and Canada in the past and by Papademetriou & Sumption (2011, p. 2-3). Their differentiation of methods of “points-based selection” that are predicated on a “list of attributes or characteristics that [governments] deem important for prospective foreign workers to possess to be admitted” and “employer-led systems” that “rel[y] on employers to choose workers” largely corresponds to the distinction between supply- and demand-driven systems as proposed by Chaloff & Lemaître (2009).
5. Arranged employment is thus a necessary but not a sufficient condition for access.
6. Originally the government planned to attract up to 20.000 IT specialists. Particularly the economic downturn of the IT industry shortly after the launch of the Green Card severely reduced the demand for foreign workers, so that finally only about 15.000 work permits were issued.
7. Other important elements of the Canadian system of labor migration are the Provincial Nominee Program (PNP) that allows the Canadian provinces to nominate persons for immigrating to the respective province, the Canadian Experience Class (CEC), which eases access for persons who have already lived in Canada before, and the Temporary Foreign Worker Program (TFWP).
8. See for a very benevolent analysis of the Canadian approach the study of the Berlin-Institut (2012).
9. The list of occupations contains mainly engineers and medical professionals.
10. According to the official evaluation of the Federal Skilled Worker Program (CIC, 2010, p. 3) some applicants had to wait up to six years for the final handling of their application

- with the consequence that “these processing times certainly make Canada a less attractive destination for potential immigrants” (O’Shea, 2009, p. 15).
11. Average starting salaries for young academics are reported to range between 30.000 € for architects or social pedagogues and more than 50.000 € for engineers. Given an average starting salary for all academics of 41.000 € the wage requirements of the Blue Card must be considered as moderate. It is further interesting to know that the initial annual minimum gross salary for obtaining a high-quality residence permit was above 80.000 € when the German immigration act for highly skilled immigrants first entered into effect in 2005.
  12. If a person is able to meet these two criteria he/she is allowed to look for a job in Germany for up to six months. In case of being successful his/her permit will be renewed, extended and if applicable converted into a permanent permit. Translated into the point-system logic, this implies a maximum number of two points needed for admission.
  13. In her comparison of Spain and Canada Finotelli (2012, p. 1-18) particularly highlights the increasing relevance of the TFWP as new feature in the Canadian immigration system. The number of temporary foreign workers in Canada increased from less than 50.000 in 1988 to more than 210.000 in 2012 and is almost as high as the number of permanent immigrants (Worswick, 2013, p. 5).
  14. In contrast to mimetic isomorphism coercive isomorphism describes a process when an organization is compelled to adopt structures or rules (through laws, regulations or accreditation processes). Finally, normative isomorphism is associated with professional values.

## References

- Berlin-Institut für Bevölkerung und Entwicklung (2012). *Nach Punkten vorn. Was Deutschland von der Zuwanderungs- und Integrationspolitik Kanadas lernen kann*. Berlin.
- Boeri T., Brücker H., Docquier F. & Rapoport H. (2012). *Brain Drain and Brain Gain. The Global Competition to Attract High-Skilled Migrants*. Oxford: Oxford University Press.
- Bommers M. (2006). Integration durch Sprache als politisches Konzept. In U. Davy & A. Weber (Eds.), *Paradigmenwechsel in Einwanderungsfragen? Überlegungen zum neuen Zuwanderungsgesetz* (pp. 59-86). Baden-Baden: Nomos.
- Chaloff J. & Lemaître G. (2009). *Managing Highly-Skilled Labour Migration: A Comparative Analysis of Migration Policies and Challenges in OECD Countries*. Paris: OECD Social, Employment and Migration Working Papers No. 79.
- Citizenship and Immigration Canada (2010). *Evaluation of the Federal Skilled Worker Program*. Ottawa.
- Cohen, Y., Haberland, Y. & Kogan, I. (2008). Jüdische Migranten aus der ehemaligen Sowjetunion. Ein natürliches Experiment zur Migrationsentscheidung. In F. Kalter (Ed.), *Migration und Integration (Sonderheft der Kölner Zeitschrift für Soziologie und Sozialpsychologie)* (pp. 185-201). Wiesbaden: VS Verlag.
- DiMaggio, P.J. & Powell W.W. (1983). The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields. *American Sociological Review*, 48, 147-160.
- Drezner, D.W. (2001). Globalization and Policy Convergence. *Journal of European Public Policy*, 12, 53-78.
- Ette, A. (2003). *Germany’s Immigration Policy, 2000-2002. Understanding Policy Change with a Political Process Approach*. Bremen: Center on Migration, Citizenship and Development.
- Finotelli, C. (2012). Change of Paradigms? A Comparison of Canadian and Spanish Labour Migration Models. *Journal of Comparative Policy Analysis*, 15, 1-18.

- Hailbronner, K. & Koslowski, R. (2008). *Models for Immigration Management Schemes: Comparison and Analysis of Existing Approaches and a Perspective for Future Reforms*. Washington DC: Immigration Paper Series.
- Hall, P.A. (1993). Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain. *Comparative Politics*, 25, 275-296.
- Holzinger, K. & Knill, C. (2007). Ursachen und Bedingungen internationaler Politikkonvergenz. *Politische Vierteljahresschrift*, 38, 85-106.
- Jacoby T. (2010). *Selecting For Integration – What Role For A Point System?*. Washington DC: Policy Brief for the German Marshall Fund of the United States.
- Jurgens J. (2010). The legacies of labor recruitment: The guest worker and green card programs in the Federal Republic of Germany. *Policy and Society*, 29, 345-355.
- Katzenstein P. (1987). *Policy and Politics in West Germany: The Growth of a Semisovereign State*. Philadelphia: Temple University Press.
- Koopmans R., Michalowski, I. & Waibel S. (2012). Citizenship Rights for Immigrants in Western Europe. *American Journal for Sociology*, 117, 1202-1245.
- Langenfeld C. & Waibel S. (2013). Von der Begrenzung zur Steuerung: Deutschlands Abkehr vom „widerstrebenden“ Einwanderungsland. In W. Fritzemeyer, G. Jochum & M. Kau (Eds.), *Grenzüberschreitendes Recht – Crossing Frontiers. Festschrift für Kay Hailbronner* (pp. 169-184). Heidelberg: C.F. Müller.
- Martin P.L. (1994). Germany – Reluctant Land of Immigration. In W.A. Cornelius, P.L. Martin & J.F. Hollifield (Eds.), *Controlling Immigration: A Global Perspective* (pp. 189-225). Stanford: Stanford University Press.
- O'Shea E. (2009). *Missing the Point(s). The declining fortunes of Canada's economic immigration program*. Washington DC: Transatlantic Academy Paper Series.
- OECD (2013). *Recruiting Immigrant Workers: Germany*. Paris.
- Papademetriou D.G. & O'Neill K. (2004). *Efficient Practices for the Selection of Economic Migrants*. Hamburg: HWWA Working Paper.
- Papademetriou D.G. & Sumption M. (2011). *Rethinking Point Systems and Employer-Selected Immigration*. Washington DC: Migration Policy Institute.
- Picot G. & Sweetman A. (2012). *Making It in Canada: Immigration Outcomes and Policies*. Montreal: IRPP Study.
- Reitz J. (2013). Closing the Gaps Between Skilled Immigration and Canadian Labor Markets: Emerging Policy Issues and Priorities. In T. Triadafilopoulos (Ed.), *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective* (pp. 147-163). New York: Springer.
- Rüb F. (2012). Rapide Politikwechsel in der Demokratie: Gründe, Akteure, Dynamiken und Probleme. In J. Kersten & G.F. Schuppert (Eds.), *Politikwechsel als Governanceproblem* (pp. 15-44). Baden-Baden: Nomos.
- Rüb F. (2014). Rapide Politikwechsel in der Bundesrepublik: Mögliche Gründe, Akteure, Dynamiken und Probleme. *Zeitschrift für Politik* (forthcoming).
- Sabatier P.A. & Jenkins-Smith H.C. (1993). *Policy Change and Learning: An Advocacy Coalition Approach*. Boulder: Westview.
- Sachverständigenrat für Zuwanderung und Integration (2004). *Migration und Integration – Erfahrungen nutzen, Neues wagen*. Berlin.
- Schönwälder K. (2013). Germany: Reluctant Steps Towards a System of Selective Immigration. In T. Triadafilopoulos (Ed.), *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective* (pp. 273-286). New York: Springer.
- Shachar A. (2006). The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes. *New York University Law Review*, 81, 148-206.



- Shachar A. (2013). Talent Matters: Immigration Policy Setting as a Competitive Cramble Among Jurisdictions. In T. Triadafilopoulos (Ed.), *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective* (pp. 85-104). New York: Springer.
- Steller B. (2013). Deutschland auf dem Weg zu einem Willkommensrecht? Zur Umsetzung der EU-Hochqualifiziertenrichtlinie in deutsches Recht zum 1.8.2012. *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 33, 1-11.
- Strunden M. & Schubert M. (2012). Deutschland gibt sich „Blue Card Plus“ – EU-Richtlinie genutzt für Meilenstein der Arbeitsmigration. *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 32, 270-275.
- SVR (2011). *Migrationsland 2011*. Berlin.
- SVR (2012). *Erfolgsfall Europa? Folgen und Herausforderungen der EU-Freizügigkeit für Deutschland*. Berlin.
- Thränhardt D. (1995). Germany – An Undeclared Immigration Country. *New Community*, 21, 19-35.
- Thym D. (2012). *Stellungnahme für die Öffentliche Anhörung des Innenausschusses des Deutschen Bundestags am Montag, den 23. April 2012 zum Gesetzentwurf der Bundesregierung zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union* (BT-Drs. 17/8682 v. 15. 02. 2012). Berlin.
- Triadafilopoulos, T. & Schönwälder K. (2006). How the Federal Republic Became an Immigration Country. Norms, Politics and the Failure of West Germany's Guest Worker System. *German Politics and Society*, 24, 1-19.
- Worswick, C. (2013). *Economic Implications of Recent Changes to the Temporary Foreign Worker Program*. Montreal: IRPP Insight.

## About the author

**Holger Kolb**, Expert Council of German Foundations on Integration and Migration.

Email: kolb@svr-migration.de

Holger Kolb is a senior researcher working for the office of the German Expert Council of German Foundations on Integration and Migration. His research interests are labor migration policy, migration theory and the politics of highly skilled migration.



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# Beyond National Models?

*Governing migration and integration at the regional and local levels in Canada and Germany*

Oliver Schmidtke

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## Abstract

This comparison of Canada and Germany focuses on a particular dimension of these countries' respective approaches to governing migration and integration. It is guided by a key conceptual assumption: Cities and regions have become important laboratories for deliberating, developing, and implementing immigration and, in particular, integration policies. With this analytical lens, the article investigates the form and degree to which subnational levels of government have come to play a more prominent role in this policy field. Both Canada and Germany show a comparable diffusion of governance authority across different levels of government. Yet the factors driving this development vary considerably across national contexts. While Canada's multicultural policy has set a comprehensive national framework for addressing the task of migrant integration, in Germany the momentum in this policy field has moved decisively to regions and cities.

**Keywords:** migration, integration, regions, municipalities, multi-level governance, Canada, Germany

## 1. Introduction

When it comes to governing migration, Canada and Germany seem to constitute fundamentally different national contexts: On the one side of the Atlantic, Canada represents for many the ideal “settler society,” whose sense of collective identity is constituted by the widely shared experience

of migration. More than forty years of endorsing cultural diversity under the auspices of the public policy of multiculturalism has arguably moved Canada decisively away from the legacy of social exclusion of newcomers that (still) plagues many European nation states. On the other side of the Atlantic, until the turn of the century, Germany relied on a primordially defined notion of citizenship and defined itself categorically as not being a “country of immigration” (Green 2000). A coherent integration policy is still in its infancy and, according to a recent statement by Chancellor Angela Merkel, multiculturalism has “utterly failed” in Germany.<sup>1</sup>

At first glance, assessing both countries in a comparative study might demand the evaluation of rather lopsided bodies of information – from the “champion of multiculturalism” and a country still struggling to find an effective approach to governing migration and integration. Yet, such simple categorization of both countries would be misleading in two essential ways: First, the concept of Canada as a “champion of multiculturalism” would be historically inaccurate. Canada’s approach to governing migration was originally rooted in a genuinely European legacy of nation-building. Only gradually has Canada separated its immigration policies from any notion of an ethnically rooted national identity and simultaneously developed an ethos of diversity, fundamentally opposed to the exclusive concept of nationhood cultivated in the European tradition.<sup>2</sup> Second, the argument that we are confronted with profoundly different national contexts is based on an important, yet increasingly doubtful supposition: that it is appropriate to refer to distinct and homogenous national models when it comes to regulating migration and diversity. In this respect, any misgivings regarding the feasibility of a trans-Atlantic comparative study are due in part to a more general tendency in the field of migration research: a disproportionate focus on national models of integration and accommodation of diversity (Entzinger & Biezeveld 2003; Parekh 2006).

By looking at how issues of migration and integration are addressed in systems of multi-level governance, I will develop a more comprehensive comparison between Canada and Germany. To do this, I focus on the empowerment of the subnational level: In both countries we see a momentous decentralizing shift in governing migration and integration manifesting the broader downloading of public policy responsibilities from the federal to regional or local governments. First, I briefly develop the analytical perspective for this transatlantic comparison and argue in favor of a more nuanced interpretation of how issues of migration and integration are addressed in the two national contexts under investigation. Second, in the main part of the empirical analysis, attention shifts to the factors that have promoted

decentralizing trends in governing migration in both countries. Third, in the concluding section, I interpret the findings with respect to the markedly different dynamics that have driven the empowerment of the subnational level of governance in Canada and Germany.

## 2. An analytical perspective beyond national models

An empirical observation that has considerable analytical implications informs this comparative perspective on immigration and integration in Canada and Germany. Traditionally migration research has widely been driven by a methodical approach almost exclusively focused on national models (suffering from the fallacies endemic to what Wimmer and Glick-Schiller 2003 have termed ‘methodological nationalism’). Yet, there is mounting empirical evidence of a growing heterogeneity of immigration and integration policies, not only across but within nation-states (Baraulina 2007). An emerging literature points to how regional and municipal outcomes differ significantly from national ones (Caponio & Borkert 2010; Poppelaars & Scholten 2008; Scholten 2013). With respect to integration policies at the national and local levels in the Netherlands, Poppelaars and Scholten (2008) speak about distinctly “divergent logics of national and local integration policies.” In a similar vein, Duyvendak and Scholten (2011) show how scholarly and political discourse popularizes notions of coherent national models that are characterized empirically by a much greater internal diversity in policy formation and program development (see also Bertossi & Duyvendak 2012).

The sub-national level of governance has become a meaningful arena of political debate and policy formation in the field of integration policy. Thus, we need to move beyond a conceptualization that is restricted to national politics, its institutional arrangements and its actors. It is both conceptually misleading and factually incorrect to speak of a single – national – model responsible for the formation of immigration and integration policies. Rather, from a broader governance perspective, regions and cities have become important laboratories for deliberating, developing and implementing integration policies (Vasta 2007). As such, they have become significant sites of innovation in the European context often in open contrast to the lack of coherent policy formation at the national level (Schmidtke & Zaslove 2014b). The field of integrating newcomers into the fabric of society is particularly conducive to the growing emphasis on place, and community-based governance approaches and social policy development (Bradford 2005). In this

respect, the emergence of municipalities and regions as significant policy innovators in governing migration and integration denotes a more general trend specific to this arena of public policy making.

The methodological implications of such claims are substantial: While it is manifest that there are important institutional, political and cultural structures characterizing national contexts in systems of multi-level governance, it becomes imperative to conceptualize the subnational level as constitutive of public policy formation and the practice of migrant integration. Primarily due to the formative role of national identities migration studies have relied in a particularly persistent way on the nation state as the exclusively frame of reference for comparative analyses (Wimmer 2008). In the following empirical study, I investigate how the increasingly significant subnational level of governance in Canada and Germany has challenged the traditional notion of 'national models' and how the decentralizing trend in managing migration plays out in both countries.

### **3. Governing migration and integration from below: empowering the subnational level in Canada and Germany**

As federal states, Canada and Germany are both shaped by the legacy of the constitutionally mandated division of authority between the federal and provincial/ *Länder* level. This division of authority has had a significant impact on how immigration policies have evolved in both countries. In this empirical section, three dimensions of a gradual empowerment of the subnational level of governance will be explored: 1) the increasingly important role of regions and cities in addressing issues of migration and integration in policy terms; 2) the subnational context as an arena for civil society engagement and place-based approaches to integration; and 3) the impact of the emerging European system of multi-level governance.

#### **3.1. Regions and cities as part of a comprehensive migration regime**

The political regulation of migration and integration is an intricate and at times controversial feature of Canada's federal system. Over the past twenty years there has been a persistent trend toward decentralizing policy and administrative competences in Canada's immigration and integration regime. While the federal government still holds the prime authority over recruiting migrants, the provision of services to newcomers and efforts to

integrate them into the fabric of society have been transferred decisively to the sub-national level of governance.

Two developments within the framework of federal-provincial relations are of critical importance when it comes to governing migration and integration: first, the transfer of authority over settlement services and integration programs to provincial and municipal governments, and second, the introduction of provincial migrant recruitment schemes that have allowed provinces to complement federal schemes of attracting newcomers. This decentralization trend and devolution of policy authority does not affect all subnational levels of governance equally; still the last two decades have seen a substantial shift toward provincial and municipal levels.

Since the 1990s, Canada has undergone a fundamental restructuring of the way that settlement services for newcomers are organized. Leo and August (2009) speak of “deep federalism” at work in the governance of migration and settlement, indicating how profound the transformation has been. Although there has been considerable variation in the degree to which provinces negotiated agreements with the federal government, provinces and municipalities have been empowered to take on the task of migrant integration by expanded funding schemes and greater degrees of autonomy in program development (for a comparison of different provinces see: Biles 2008; Seidle 2010).

As Hiebert and Sherrell (2009) argue in their study of the settlement industry in BC, the task of integrating newcomers to Canada has undergone a process of decentralization whereby responsibility has been handed down to the regional and local levels. Following a neoliberal logic in the new management tradition, this policy field has been transformed by the federal and provincial governments’ attempts to outsource responsibility for settlement services to community organizations, harness the involvement of community groups, and seek greater efficiency in the use of public resources. These changes have been coupled with an increase in provincial funding thereby creating new opportunities for the development of multicultural policies and integration programs.

The key component in empowering the sub-national level of government is the Provincial Nominee Program (PNP). The development of provincial and territorial nominee programs represents a change in Canada’s nearly century-old immigration practice under which the selection and admission of immigrants (except for those in Quebec) have been exercised almost exclusively through the federal immigration program. The Canadian Constitution (section 95) recognizes this multi-level approach by proclaiming immigration a matter of shared federal and provincial jurisdiction and

by institutionalizing a federal-provincial consultation process regarding the management of immigration. As of 2007 the federal government has signed agreements with eight provinces and one territory to facilitate the coordination and implementation of immigration policies and programs.

First introduced in Manitoba in 1998 (Carter & Amoyaw 2011), the PNP has since expanded to include all provinces and territories, except Nunavut and Quebec, which have their own economic class selection systems. In 2002, only 1.5 percent of all economic-stream migrants were provincial nominees, but this figure jumped to 15 percent in 2008. These programs are designed to allow provincial and territorial governments to operate their own immigrant selection systems. Under this scheme, migrants are nominated by a province; the nomination is based on the migrant's skills, language abilities, education, and Canadian work experience, with a view to an immediate fit with the labour market needs of the respective province. The PNP has effectively ended the federal monopoly over migrant recruitment; it has empowered provinces – notwithstanding the fact that the degree of autonomy over the selection varies substantially from province to province – to use migration as a policy tool for their economic development plans.

Depicting the devolution of authority over managing immigration in such generalized terms it is important to realize that this trend has not materialized uniformly across the country. In this respect, Reese (2011) accurately refers to an exceptional asymmetry in Canada's multi-level immigration and integration policy. The 1991 Canada-Quebec Accord that essentially handed over exclusive responsibility for governing immigration and integration to Quebec has not served as a blueprint for empowering other provinces. Rather, across the country provinces are faced with different (and to certain degree incoherent) arrangements of shared federal-provincial jurisdiction in this policy field. In addition, as Li (2012: 106) shows in his detailed study, provinces use the PNP for different socio-economic purposes creating a 'multi-tiered system of immigrant selection'. This development threatens to undermine Canada's immigrant recruitment system operating on stringent expectation regarding qualifications and professional expertise (provincial recruitment standards being considerably lower than federal ones).

#### *Cities and integration: The "sleeping giant"*

Next to the provinces, cities have emerged as sites in which the challenge of integrating newcomers is most pronounced. Canada's main metropolitan areas have become environments of what Steven Vertovec (2006) describes as "superdiversity," where the very notion of identifying minorities and



majorities becomes questionable. In cities like Toronto, Vancouver, and Montreal, “visible minorities” are predicted to become the majority of the population by 2017 (Belanger 2005). This fast-changing demographic reality has pushed city authorities to consider developing a more active, locally based approach to governing migration and diversity (see: Frideres 2006; Polese & Stren 2000; Seidle 2010; Siemiatycki 2011; Stasiulis, Hughes & Amery 2011). Still, in spite of widely shared challenges, particularly among Canada’s urban population – challenges linked to growing ethno-cultural diversity – there is a significant variation in municipal responsiveness to the issue (Good 2005).

Given the limited fiscal resources and municipal authorities’ informal status in the settlement and integration policy process, so far city governments have remained on the margins of this policy field.<sup>3</sup> Biles et al. (2011) use the term “sleeping giant” when they consider the centrality of the municipal leadership in the task of integrating newcomers and the relative absence of municipal government from this field of public policy thus far. Until recently, there has been a manifest disconnect between the recognition that, as it was put in the tradition of the Chicago School, cities are the primary ‘machine of integration’ and a reluctance to provide them with the authority and funding to play a leading role in this policy field. Furthermore, Biles and his colleagues have analyzed changes in the provision of migration and integration policy in Ontario over the past decade, in which a policy area that had long been dominated by the federal government was transformed into a complex multipartite process involving both provincial and municipal levels of government. Reflecting on the exceptionally innovative policy responses of urban centres like Winnipeg, Calgary, and Toronto, Biles (2008) notes how cities have come to play a more active role in the integration process (see also the comprehensive study by the Maytree Foundation, 2013). In his analysis, this development is rooted in the simple fact that new immigrants tend to settle and require services in metropolitan areas<sup>4</sup>. What Biles sees with respect to migrant integration is how the urban context constitutes not only the immediate environment in which the settlement of newcomers is addressed but also the site for facilitating partnerships and modes of cooperation between government agencies and civil society groups (Biles 2008: 163-66). Analyzing Ontario’s emergent multipartite immigration and settlement policy framework, Stasiulis, Hughes, and Amery (2011: 74) make a similar assessment: they find this policy framework emblematic of “a discernible movement in Ontario’s immigrant-receiving centres from *government* to multilevel, multisectoral *governance* in the policy area of immigrant settlement.”

Sensitivity to the specific challenges and opportunities in the community is also at the heart of delivering effective settlement and integration services in Canada. In a multi-city study, Tossutti (2012) looks at what kind of normative-conceptual ideas inform practices in urban centres. He finds a considerable degree of variation across the cases and significant deviations from Canada's state-level policy of multiculturalism. Decentralizing services and then relying on local alliances to deliver these services involves compromise in terms of the comprehensive recognition of cultural diversity and centralized strategies to address it. Currently, Canada seems to lack adequate coordinating initiatives and has not implemented appropriate collective learning processes. The result is – as Tossutti shows in his study – that approaches to accommodating diversity in the Greater Toronto Area, for example, are likely to look very different from such approaches in, say, Edmonton or Brampton. In the same vein, Tolley (2011) points to how recent legislative initiatives in immigrant settlement policy have set the stage for a “multilevel but somewhat ‘silo-like’ approach” (8). Thus, the diffusion of authority to lower levels of governance has led to both innovative, place-sensitive policy development and the deterioration of some of the ambitious claims associated with key multicultural principles (see Siemiatycki 2012).

These factors point to a persistent trend toward decentralizing authority over migration and integration by empowering provinces and cities. Yet, at the same time, there are limits to the federal government's willingness to see its prerogative in this policy field challenged. One critical issue is the constraint under which the sub-national levels of government must pursue their initiatives given their limited jurisdictional and fiscal powers. In this respect, this shift in policy authority could also be characterized as the federal government downloading responsibility onto provincial and municipal authorities without providing them with adequate funding to take on these new mandates.

Contrary to this decentralizing trend the Conservative government under the leadership of Prime Minister Stephen Harper has recently announced that the federal government will begin to reduce provincial authority in migration and settlement policy (the expansion of the Canada Experience Class Program is one example of strengthening federal authorities). One of the driving forces behind this reversal – re-instating federal authority over settlement programs and scaling back the PNPs – is the push by provinces such as Ontario to have similar privileges as other provinces.

### 3.2. Place-based approaches to integration and civil society engagement

Friction between the federal government and regional or local approaches to integration are more pronounced in Germany than in Canada. This has to do with, primarily, the political environment in which issues of migration and integration are addressed in the German (or, more broadly, European) context. In recent years, issues of integration have become central in what is at times a fiercely controversial debate about how and to what extent issues of religious and ethno-cultural difference should be addressed (Bauder 2008). In the post-9/11 world, this public discourse – reproduced by important parts of the political elite – has shifted decisively toward a top-down approach to security and the view that multiculturalism is a threat to the integrity of society. In the wake of the “backlash against multiculturalism” (Vertovec & Wessendorf 2010), integration policies have moved away from a public endorsement of cultural diversity and migrants’ entitlements toward a stronger emphasis on state-monitored processes of integration (Joppke 2007; Triadafilopoulos 2011) or the “return of assimilation” (Brubaker 2001). Persistent emphasis on security issues and concerns about the – allegedly menacing – challenges posed by cultural and religious diversity has prevented a comprehensive integration policy from taking shape. This lacuna has created new opportunities for sub-national levels of governance to establish themselves as significant actors, both with respect to the direction of the national debate on migration and in terms of policy developments in the field.

In an empirical study of the German *Land* (term for region in the German federal system) of North-Rhine Westphalia (see for detailed findings: Schmidtke & Zaslove 2014a, 2014b), we detected a distinct logic of deliberating and framing the issue of migration integration at the regional level. Conducting a frame analysis of elite discourse we found a predominantly pragmatic deliberation of migration issues across party lines. In stark contrast to the highly divisive national debate about alleged threats associated with cultural and religious diversity, the integration discussion in this region is framed in terms of the region’s interests and the need to provide migrants with equitable opportunities in the educational sector and the labour market. The logic of politicizing issues of migration and diversity and the move away from an overly dramatic discourse about threats toward a pragmatic, interest-driven discussion create significant opportunities for innovative policy development at the sub-national level.

Second, Germany’s national Integration Plan, launched in 2007, is designed to shift competence and responsibilities to regions and cities.

Both municipal and regional authorities were invited to join in a partnership with the federal government to address the policy issues of migration and diversity.<sup>5</sup> With the national Integration Plan, the federal government acknowledged a trend that had developed over the previous ten to fifteen years, during which local and regional governments had been more and more active in fostering initiatives targeted at migrants. The tendency on the part of the federal government to give more power to these regions in addressing migration-related issues also results from the nature of German federalism. In particular, integration policy improvements have been directly linked to wider concerns with the German educational system and the labour market - policy areas that are shared between central and state governments. Accordingly, with integration posing challenges for policy domains with a shared regional-federal competence, the sub-national level has gained considerable flexibility in defining integration on the ground and in developing its own policy approaches.

North-Rhine Westphalia (NRW) has been a pioneer in promoting its own integration policy and program development. A proactive approach in this field was developed under social-democratic rule before 2005 and continued under the Christian Democratic Prime Minister Jürgen Rüttgers (Korte 2009). NRW has actively taken advantage of the gradual empowerment of the regional and local levels of governance within the German federal state structure with regards to integration policy (The 2004 Immigration Law – *Zuwanderungsgesetz* – allows for a new form of collaboration between the federal and regional levels on integration matters, as well as providing a framework for new funding opportunities for regional and local authorities in this policy area.). Immigrant integration became a central political objective pursued by NRW's Ministry for Intergenerational Affairs, Family, Women and Integration. In this respect, NRW has been a trendsetter: similar ministries have been introduced in other, often CDU-governed, states (Lower Saxony, Hesse, Schleswig Holstein, and Berlin). NRW has also spearheaded the idea of a conference for integration ministers at the state level. It is remarkable how the CDU-led government and its integration minister, Armin Laschet, were able to address the challenge of incorporating migrants into regional society through a pragmatic policy approach – in stark contrast to the highly controversial and emotional debate in the national political arena.

Under both a centre-left and a centre-right administration, NRW has developed innovative approaches to promoting integration designed to attract and retain newcomers (one prominent example is a comprehensive language training program for pre-school children). The major thrust of

the legislative initiatives in this field is directed toward (equitable) access to the labour market and educational opportunities. It is indicative of the overall orientation of NRW's integration policies that the state secretary for integration has traditionally been incorporated into the Ministry for Labour and Social Affairs. In legislative terms, the 2001 *Integrationsoffensive Nordrhein-Westfalen* (Integration Offensive NRW) set the agenda for a comprehensive strategy for promoting the integration of newcomers, an initiative that in its design and scope was unique in Germany. The plan outlines how successful integration must involve all sectors of society (from the labour market and the educational sector to urban planning, civil society organizations, and the business community) and needs to be driven by concerns for equal opportunities (*Chancengleichheit*). There are no robust data available measuring the success and effectiveness of integration measures in NRW (relative to other *Länder*). Yet, the Ministry has started to measure the impact of its programs with regard to some key indicators focusing primarily on migrants' achievement in the labour market and educational institutions<sup>6</sup>. The results since micro census data on migration status became available in the mid-2000s are – in spite of the economic downturn – pointing toward more opportunities for migrants.

In 2011, the new Red-Green government in Düsseldorf and its current integration minister Guntram Schneider have begun the process of launching a new *Teilhabe- und Integrationsgesetz* (Participation and Integration Law), the goal of which is to create binding legal entitlements for immigrants. NRW is the first region to embark on such an ambitious legislative initiative, which could set the agenda for governments at various levels in Germany's federal system. While the region might be an outlier within the German context in terms of its legacy of social-democratic rule, its promotion of a regionally and locally specific approach to integration is indicative of the more structural origins of effective policy making in the German polity. At least partly due to innovative approaches in NRW, other regional governments and ministries needed to react with their own initiatives. What has evolved is a cycle of positive incentives and mutual learning at the subnational level of governance – at times, however, against the notable resistance from some of the *Länder* (most notably in the conference of integration ministers). In this respect, the sub-national level of governance – in partnership with the federal government – has become a policy entrepreneur, with its own pragmatic framing and resulting policy priorities.

*Civil society empowerment and immigrant integration*

State-centred multicultural policies have set in motion a dynamic that has far exceeded the expectations of the federal government. Yet, the Canadian multicultural project could not have been as successful as it has had it been undertaken solely with a state-centred, top-down approach. In recent decades, various civil society groups have increasingly played a role in defining the nature and limits of group-specific rights. In this respect, “multiculturalism” has become a kind of political umbrella under which civil rights activists, immigrant and minority advocacy groups, union organizations, political parties and business groups have engaged in determining how the abstract principles of fostering cultural diversity will play out on the ground (Falge, Ruzza & Schmidtke 2012). Particularly in the Canadian context, it is striking to see how advocacy groups representing different migrant communities have become an articulate and influential voice in the public arena. This voice is remarkably shaping political agendas in a far more sophisticated way than in a typical European context, where this type of vocal migrant advocacy is still in its infancy. Issues of migration and related questions of identity and equal inclusion have developed into an important political cleavage in contemporary Canadian society. These cleavages are most strongly articulated in urban governance settings.

The federal policy on multiculturalism has clearly had an impact on the mobilization of ethno-cultural communities. Particularly in the period after the 1970s and 1980s, federal multiculturalism policy was intended to increase the capacity of immigrant communities to take collective responsibility for dealing with the causes of inequality and for developing mobilization strategies, including judicial recourse, in order for immigrants to be able to exercise their rights at all levels of government (Bradford 2005). The activity of civil society groups has contributed critically to making diversity and cultural pluralism principal issues in public debate and, from a normative perspective, principles endorsed in Canadian society and politics. In this regard, multiculturalism no longer simply celebrated folkloristic differences but evolved to also address matters of power sharing and some of the deep political cleavages in Canadian society. In sum, we can observe in the Canadian context a somewhat self-reinforcing cycle of ethnic mobilization and political responsiveness within the political system – a cycle driven by civil society organizations in urban contexts.

This dynamic is also structurally sustained by the previously discussed “outsourcing” of settlement services to community organizations. Beyond simply attending to these tasks as administrative agencies, civil society organizations have also taken on the role of political advocate for migrants,

minorities, and influential agents in developing integration programs on the ground. The formation of integration policies at the local level is driven by a broader governance network, of which migrants' and minorities' organized interests have become a constitutive part. As Ley observes:

Bringing mainstream civil society closer to immigrant everyday life, these programs are delivered not by bureaucrats but by nongovernmental organizations (NGOs) with co-ethnic staff, and provide not only services but also jobs and volunteer positions to recent arrivals. The intent here is to create bridging social capital with immigrant groups through their NGOs and thereby aid the integration process (Ley 2007: 186).

At the same time, this community-based engagement unfolds in particular institutional and political-discursive contexts. It is worth highlighting that there are considerable differences in this respect between big urban centres, with well-organized migrant organizations, and smaller cities. In the latter, the task of representing these groups' interests and acting as agents of political advocacy is shaped by the prominence of a limited number of settlement agencies and the relative absence or weakness of smaller ethno-cultural community groups. Traditionally, political advocacy and (at least partial) access to the decision-making process in policy formation was afforded those organizations that provided settlement services in the community.

The German context provides further evidence for the critical role of the subnational and urban context for providing a space for effective political advocacy and inclusion: While conducting a policy process oriented toward pragmatic socio-economic priorities, state agencies in NRW have also been actively involved in nurturing the political engagement and participation of migrants themselves and their organizational bodies. At this level of government, commitment to political participation is geared toward grassroots involvement. Similarly, the inclusion of migrants in the political life and institutions of NRW has recently become more robust (Schönwälder 2013; Schönwälder & Kofri 2010). State agencies in this *Land* have been involved in nurturing an infrastructure – partly through the use of material incentives – to support the self-organization of migrants in their communities. For instance, throughout the state, so-called “integration agencies” (126 in total) have been created to provide basic services to newcomers. These agencies play a dual role as service providers and as an institutional context for collective decision-making and political advocacy. In a similar vein, a project at the regional level called *MigrantInnenselbsthilfe* (migrant self-support groups) assists migrant organizations with conceptual, legal, economic,

and financial issues, and in the area of public relations. In nurturing grass root engagement policy makers could rely on a well-developed network of civil society actors: organizations such as unions or church-based groups (for instance Caritas or *Arbeiterwohlfahrt*) had provided basic support for migrant integration long before this became slowly a policy priority in Germany in the 1990s (as in other countries cities and local actors have historically been the main promoters of migrant integration). These organizations have recently played a critical role in re-invigorating a bottom-up, place-sensitive approach to facilitating integration.

Comparing the regional to the national contexts, it is striking that in NRW the commitment to the political inclusion and participation of migrants has become key to this political practice in a substantive way. A number of migrant organizations and migrant representatives have been included in the policy process (at least in a consultative capacity). Local governance in particular is entrusted with promoting community partnerships, soliciting input from various civil society actors, and overseeing the implementation of new policies. This contrasts with the high-profile (albeit procedurally limited and contested) experience of the integration summits regularly organized by the federal government. Various institutional supports have also been created to further encourage political participation among migrants: In municipalities with more than 5,000 officially registered foreigners, it is mandatory to establish so-called integration councils (For instance, in February 2010, almost 100 of these integration councils were elected throughout NRW.). While these councils have only a limited, consultative role, they are still an important institutional vehicle for including migrants in the policy formation process. In addition, NRW has a rich history of civil society organizations that articulate the interests and concerns of migrants.<sup>7</sup> The inclusion of migrants and their organizations in processes of community outreach and policy deliberation is an explicit goal of NRW's integration plans.

Evidence from comparative trans-Atlantic studies suggests a strong link between the degree of migrant participation and the facilitation of innovative program development. Falge, Ruzza, and Schmidtke (2012) found an array of formal and informal modes of including migrants and their organizations in the political process. Even though it is difficult to stipulate what kind of impact migrant organizations have on this field of public policy, local and regional-level authorities have generated some marked opportunities for community input and initiatives. Indeed, in the case study of NRW there was a direct link between the pragmatic orientation and breadth of integration initiatives and the way in which community organizations have



become more firmly embedded in institutional practices and accepted by the wider policy community. Even though the formal inclusion of migrants and migrant organizations in the decision-making process in the policy community is rather limited, they are regularly brought into the political process, mainly in the form of community-based networks and consultative bodies. In this respect, a critical feature of the regional and local levels of governance is that they allow a greater degree of immigrant participation in public debates and thus encourage a different logic of societal and political incorporation. In their study on migration and development policies Hilber and Baraulina (2012) speak about a new policy paradigm which, in terms of the implementation process, is characterized by features similar to those highlighted in this article: the diffusion of policy authority across different levels of government (federal, regional and municipal) and the shift toward a more meaningful inclusion of non-state actors in decision process than in the past.

### 3.3. Europe as an enabling context for sub-national actors

In Europe, the emerging system of multi-level governance<sup>8</sup> has created new political opportunities for sub-national-level actors to become policy entrepreneurs rather than simply administrators of federal programs. The idea that governance in Europe is multi-layered, generating binding collective decisions beyond the exclusive authority of the nation-state, offers a valuable interpretative framework for the dynamic of this policy field in Germany. While the ambitious plan to move immigration and asylum into the first pillar under community competence has not materialized to the degree laid out in the Amsterdam Treaty, the EU has taken important legislative steps in these policy areas (including, for example, issuing directives on family reunification; returning illegal migrants; and instituting policy initiatives, such as the Blue Card, designed to attract highly skilled migrants to Europe) and has instituted important benchmarks for national integration policy making.<sup>9</sup>

It is in part due to this multi-layered European governance structures that regions and cities in Germany have successfully explored new avenues for program and policy development. There are two key opportunities: First, cities and *Länder* have been able to benefit from the programs developed by the European Union in its endeavour to play a more authoritative role in governing migration and integration. While limited in scope, these financial and organizational programs have proved to be instrumental for many local initiatives, administrations in municipalities, and civil society actors. Since the 1990s the EU's initiatives on social exclusion and racism (e.g. XENOS

projects) have provided non-state actors with a range of opportunities to become more active in the field of migrant integration. Second, related, but not limited to these funding schemes is the opportunity for international policy learning. The European Union has been instrumental in setting up research-driven networks of cities faced with the challenge of governing migration and diversity. Prominent research projects include “Multicultural Democracy and Immigrants Social Capital in Europe: Participation, Organisational Networks, and Public Policies at the Local Level”<sup>10</sup> and the “Cities for Local Integration Policies” (CLIP) project. These networks link cities across national borders and provide fora for exchange. In sharing common experiences and best practices in the field of local integration, city representatives can benefit by an international experience of policy learning. The coordination of local integration efforts across national borders promotes a collective learning process whose empowering effects on local and regional authorities cannot be overstated.

With the European Union creating incentives and the nation-states handing down responsibility in this policy area, the sub-national level of governance has taken on an increasingly important role in initiating horizontal and vertical forms of policy coordination. European authorities have also initiated a dynamic policy-learning process across different levels of governance. This has critical effects: Most importantly, it grants legitimacy and authority to the efforts of sub-national levels of government, whose actions are now, potentially, indirectly sanctioned by the European Union and its principles with respect to the integration of third-country nationals. This in turn has created commanding expectations for “laggards,” encouraging the development of more comprehensive initiatives in the field of integration. For instance, in the German context, *Länder* have become a driving force in promoting agendas for governing migration and integration at the federal level. They have taken on the role of pace-setters and primary agents of innovative policy development. While it could be argued that this dynamic is due primarily to domestic politics and divided policy competence within the German federal system, the EU also plays a critical role in assigning more authority to the efforts of sub-national governments. With EU’s funding schemes and benchmarks for successful integration of third-country nationals, Brussels has created new political opportunities emanating from the supranational governance level.

Yet, a word of caution is in order when assessing the role of the EU in promoting immigrant integration on the ground. The EU provides opportunities for subnational actors to pursue such policy initiatives. However, it takes an entrepreneurial administration and a favorable fiscal-political

climate to take advantage of these forms of support and cross-regional exchange. These contexts are extremely heterogeneous across the EU in terms of whether immigrant integration becomes a priority in public policy making and programs are effectively implemented. In addition the recent economic crisis has changed the overall climate for policy making in a way that in particular in Europe's southern periphery migration and integration policies have been compromised at all levels of governance (Koser 2010; Papademetriou & Terrazas 2009).

#### 4. Conclusion

In both Canada and Germany we have witnessed a substantial strengthening of place-based approaches to governing migration and integration at the regional and urban levels. Gradually, the site for developing new initiatives in this field of public policy has shifted from the federal to the sub-national level of governance. In general terms, this development has been driven by the need to respond to locally specific challenges in regulating migration and, under the auspices of a neoliberal reorganization of public policy, by the general downloading of responsibility to lower levels of governance and a more market-based management approach. At the same time this devolution of policy competence has created what Schönwälder (2013) calls 'uneven dynamics' in terms of how immigrant recruitment and integration services have been implemented on the ground: there is remarkable diversity of services provided across Canada and Germany with individual regions (NRW in the German case) and in particular metropolitan municipalities taking a lead while others do not assign priority to this public policy domain.

Yet, different factors drive this development in each country. In Canada, one of the decisive factors shaping the diffusion of policy authority has been the decentralization of the provision of settlement services to newcomers and the government's outsourcing of services to non-governmental organizations (NGOs). This in turn has contributed to the empowerment of civil society organizations, has strengthened political advocacy, and has shifted the balance toward a more localized approach to migrant integration. Nonetheless, while Canadian provinces and territories have been empowered by a decentralized recruitment practice (most prominently with the Provincial Nominee Program), the ability of cities to address challenges related to migration and diversity is constrained by their limited jurisdictional and fiscal powers.

In Canada, provinces and cities are dependent on a federal government that has embarked on a course of rolling back some of the decentralization measures taken in the arena of public policy making over the past two decades. Driven by concerns of the federal government as being challenged in its policy prerogative and by the demands of some provinces to have similar privileges as those that negotiated the most far-reaching agreements on developing and providing settlement services in the past, Prime Minister Stephen Harper has recently announced the move to reinstate federal authority in this policy domain. To what degree this decision will reverse the decentralization of settlement services and the empowerment of sub-national government levels in this public policy field remains to be seen. Without doubt, the environment in which provinces and municipalities seek to become more proactive in tackling the challenge of migrant integration will become more challenging.

In Germany, the structural features supporting regions and cities in their political ambitions differ from those in Canada and, though they derive from a considerably less robust policy of integration, arguably have undergone a more dynamic (and possibly more sustainable) development in recent years. The deciding factor is the lack of a coordinated and comprehensive integration policy at the national level. While the federal government has set the framework for a more vigorous approach to integration (committing regional and local governments as key partners in the national Integration Plan), implementation of the strategies on the ground is still sketchy and politically contested in competitive party politics. Sub-national actors have filled this political void. *Länder* and municipalities have started to develop their own, space-sensitive, approaches to integration. The lack of national leadership and the pragmatic challenges on the ground have propelled the sub-national level of governance into the role of policy entrepreneurs. Furthermore, unlike in Canada where federal politics plays a dominant role in this policy domain, in Germany immigrants' political inclusion is primarily promoted at the regional and municipal level. An additional key factor in the German context is Europe's system of multi-level governance and the international support network that this has created. By providing funding opportunities, setting benchmarks for migrant integration, and empowering civil society actors at the sub-national level of governance, the European Union has – indirectly – been instrumental in challenging the national governments in their exclusive authority over this policy level. Of critical importance in this respect is the EU's granting of legitimacy and authority to regions and cities.

Many cities in Canada have also developed ambitious programs to address challenges of integration. Yet, these initiatives often stay isolated: Canadian cities cannot rely on the sort of international collaboration and collective policy learning that has been established in the context of European integration. The decentralization of governing migration and integration might have started at a much lower level of policy development in Germany; currently, however, cities and regions are well on the path toward establishing themselves as vital governance arenas and policy entrepreneurs. It is an empirically open question to assess whether regions and municipalities will continue playing a pioneering role in promoting migrant integration. In the European context the polarized debate on immigration, populist-anti-immigrant actors in competitive party politics as well as the ramifications of the economic crisis are not likely to make this task any easier.

## Notes

1. See <http://www.guardian.co.uk/world/2010/oct/17/angela-merkel-german-multiculturalism-failed> (accessed October 2, 2013).
2. Two recent books have shed light on how instructive a Canadian-German comparative perspective promises to be if processes transforming both countries' migration policies and national identities are studied in a historic perspective (Bauder 2011; Triadafilopoulos 2012).
3. Canada's comprehensive 'settlement program' has traditionally been organized in form of a federal-provincial partnership. The current federal settlement budget of currently over \$600 million annually almost exclusively flows through the provinces that organize the services for immigrants on the ground. It is only over the past couple of years that more formal agreements with municipalities (mostly with limited responsibilities for housing and social services) have been established. Still the Federation of Canadian Municipalities has been adamant in its quest for a fuller inclusion of municipalities in the organization and funding of Canada's settlement services.
4. Similarly, the Federation of Canadian Municipalities (FCM 2011) highlights both the role of cities as the first point of contact and integration for newcomers to Canada and the challenges that Canadian cities face in fulfilling this important role, due to their limited fiscal resources and their informal status in the settlement and integration policy process. The report calls on the federal and provincial governments to create a formal role for municipalities, using the tripartite Canada-Ontario-Toronto Memorandum of Understanding on Settlement and Integration as a model.
5. The national Integration Plan states explicitly: "The immediate or residential environment has a key role to play in the integration process. This environment will decide on the success of integration in the everyday coexistence of people of different origins. Cities, counties and municipalities are aware of their crucial responsibility for integration." See [http://www.coe.int/t/dg4/youth/Source/Resources/Forum21/Issue\\_No10/N10\\_National\\_integration\\_plan\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/Resources/Forum21/Issue_No10/N10_National_integration_plan_en.pdf) (accessed September 28, 2013)

6. Available at: [http://www.integrationsmonitoring.nrw.de/integrationsberichterstattung\\_nrw/Grundlagen/Messung\\_integration/index.php](http://www.integrationsmonitoring.nrw.de/integrationsberichterstattung_nrw/Grundlagen/Messung_integration/index.php) (accessed September 30, 2013)
7. Ilgün & Jungk (2001) produced a list of 2,400 such migrant organizations in NRW.
8. The concept of multi-level governance has been developed as part of wider research on European integration (Hooghe & Marks 2001). The central goal of this research is to enable a better understanding of fundamental changes in the locus of political authority provoked by the deepening of European integration. Challenging a state-centric perspective, the model assumes that decision-making competences are increasingly shared by actors at different levels rather than monopolized by actors in the national domain.
9. See Justice and Home Affairs: [http://ec.europa.eu/justice\\_home/doc\\_centre/immigration/doc\\_immigration\\_intro\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/immigration/doc_immigration_intro_en.htm) (accessed September 19, 2013)
10. See <http://www.um.es/localmultidem/index.php> (accessed September 21, 2013).

## References

- Baraulina, T. (2007). Integration und Interkulturelle Konzepte in den Kommunen. *Aus Politik und Zeitgeschichte*, 22-23, 26-32.
- Bauder, H. (2008). Media discourse and the new German Immigration Law. *Journal of Ethnic and Migration Studies*, 34 (1), 95-112.
- Bauder, H. (2011). *Immigration Dialectic: Imagining Community, Economy, and Nation*. Toronto: University of Toronto Press.
- Belanger, A. (2005). *Population Projections of Visible Minority Groups, Canada, Provinces and Regions, 2001-2017*. Ottawa: Statistics Canada.
- Bertossi, C., & Duyvendak, J.W. (2012). National models of immigrant integration. The costs for comparative research. *Comparative European Politics*, 10 (3): 237-247.
- Biles, J. (2008). Integration policies in English-speaking Canada. In: J. Biles, M. Burstein & J. Frideres, (eds.). *Immigration and Integration in Canada in the Twenty-first Century*. Kingston: Queen's University, School of Policy Studies, 139-86.
- Biles, J., E. Tolley, C. Andrew, V. Esses & Burstein, M. (2011). Integration and inclusion in Ontario: The sleeping giant stirs. In: J. Biles, Burstein, M. & Frideres, J. (eds.). *Integration and Inclusion of Newcomers and Minorities Across Canada*. Montreal/ Kingston: McGill-Queen's University Press, 195-246.
- Bradford, N. (2005). *Place-based Public Policy: Towards a New Urban and Community Agenda for Canada*. Ottawa: Canadian Policy Research Networks.
- Brubaker, R. (2001). The return of assimilation? Changing perspectives on immigration and its sequels in France, Germany, and the United States. *Ethnic and Racial Studies*, 24 (4), 531-48.
- Caponio, T. & Borkert, M. (eds.) (2010). *The Local Dimension of Migration Policymaking*. Amsterdam: Amsterdam University Press.
- Carter, T. & Amoyaw, B. (2011). Manitoba: The struggle to attract and retain immigrants. In: J. Biles, Burstein, M. & Frideres, J. (eds.). *Integration and Inclusion of Newcomers and Minorities Across Canada*. Montreal and Kingston: McGill-Queen's University Press, 165-93.
- Duyvendak, J.W. & Scholten, P.W.A. (2011) Beyond the Dutch 'multicultural model: The coproduction of integration policy frames in the Netherlands. *International Migration and Integration*, 12 (3), 331-348.
- Entzinger, H. & Biezeveld, R. (2003). *Benchmarking in Immigrant Integration*. Rotterdam: European Research Centre on Migration and Ethnic Relations.
- Falge, C., Ruzza, C. & Schmidtke, O. (2012). *Giving New Subjects a Voice. Political and Institutional Responses to Cultural Diversity in the Health Care System*. Aldershot: Ashgate.

- FCM (2011). *Starting on Solid Ground: The Municipal Role in Immigrant Settlement*. [http://www.fcm.ca/Documents/backgrounders/Starting\\_on\\_solid\\_ground\\_the\\_municipal\\_role\\_in\\_immigrant\\_settlement\\_Report\\_Overview\\_EN.pdf](http://www.fcm.ca/Documents/backgrounders/Starting_on_solid_ground_the_municipal_role_in_immigrant_settlement_Report_Overview_EN.pdf) (accessed September 29, 2013).
- Frideres, J.S. (2006). *Cities and Immigrant Integration: The Future of Second- and Third-Tier Centres. Our Diverse Cities*. Metropolis: [http://www.metropolis.net/pdfs/ODC\\_2\\_Frideres\\_e.pdf](http://www.metropolis.net/pdfs/ODC_2_Frideres_e.pdf) (accessed September 21, 2013).
- Good, K. (2005). Patterns of politics in Canada's immigrant-receiving cities and suburbs: How immigrant settlement patterns shape the municipal role in multiculturalism policy. *Policy Studies*, 26 (3-4), 261-89.
- Green, S. (2000). Beyond ethnoculturalism? German citizenship in the New Millennium. *German Politics*, 9, 105-24.
- Hiebert, D. & Sherrell, K. (2009). The Integration and Inclusion of Newcomers in British Columbia. Working Paper No. 2009-11, Vancouver: Metropolis British Columbia.
- Hilber, D. & Baraulina, T. (2012). Migration and development. A new policy paradigm in Germany? *IMIS Beiträge*, 40, 89-113.
- Hooghe, L. & Marks, G. (2001). *European Integration and Multi-Level Governance*. Boulder, CO: Rowman and Littlefield.
- Ilgün, E.E. & Jungk, S. (2001). *Migration in NRW. Selbstorganisationen von Migranten und Migrantinnen. Landeszentrum für Zuwanderung* (<http://www.rk-essen.lvr.de/behandlungsangebote/ambulanzen/selbstorganisationenvonmigranteninnrw.pdf>) (accessed October 15, 2013).
- Joppke, C. (2007). Beyond national models: Civic integration policies for immigrants in Western Europe. *West European Politics*, 30 (1), 1-22.
- Korte, K.R. (2009). *Wahlen in NRW: Kommunalwahl – Landtagswahl – Bundestagswahl – Europawahl*. Schwalbach: Wochenschau-Verlag.
- Koser, K. (2010). The impact of the global financial crisis on international migration. *The Whitehead Journal of Diplomacy and International Relations*, XI (1), 13-20.
- Leo, C. & August, M. (2009). The multilevel governance of immigration and settlement: Making deep federalism work. *Canadian Journal of Political Science*, 42 (2), 491-510.
- Ley, D. (2007). Post multiculturalism? In: L. Hanley, B. Ruble & A. Garland (eds.). *Immigration and Integration in Urban Communities: Renegotiating the City*. Washington, DC: Woodrow Wilson International Center Press, 177-97.
- Li, P.S. (2012). Federal and provincial immigration arrangements in Canada: Policy changes and implications. In: Rodriguez-Garcia, D. (ed.). *Managing Immigration and Diversity in Canada. A Transatlantic Dialogue in the New Age of Migration*. Montreal/ Kingston: McGill-Queens University Press, 87-111.
- Maytree Foundation (2013). *Good Ideas from Successful Cities Municipal Leadership on Immigrant Integration*. ([http://www.citiesofmigration.ca/wp-content/uploads/2013/03/Municipal\\_Report\\_Canada.pdf](http://www.citiesofmigration.ca/wp-content/uploads/2013/03/Municipal_Report_Canada.pdf); accessed October 1, 2013.)
- Papademetriou, D. & Terrazas, A. (2009). *Immigrants and the Current Economic Crisis: Research Evidence, Policy Challenges, and Implications*. Washington DC: MPI.
- Parekh, B. (2006). *Rethinking Multiculturalism. Cultural Diversity and Political Theory*. Houndmills: Palgrave Macmillan.
- Polese, M. & Stren, R. (2000). *The Social Sustainability of Cities: Diversity and the Management of Change*. Toronto: University of Toronto Press.
- Poppelaars, C., & Scholten, P.W.A. (2008). Two worlds apart: The divergence of national and local immigrant integration policies in the Netherlands. *Administration & Society*, 40 (4), 335-57.
- Reese, I. (2011). Under Pressure – Atypical Asymmetry in Canadian Immigration Policy. Paper presented at the Canadian Political Science Association conference, Kitchener.

- Schmidtke, O. & Zaslove, A. (2014a). Multilevel party politics of immigration in Germany and Italy. In E. Hepburn, ed., *The Politics of Immigration in Multi-level States: Governance and Political Parties*. Edinburgh: Edinburgh University Press (in press).
- Schmidtke, O. & Zaslove, A. (2014b). Why regions matter in immigrant integration policies: North-Rhine Westphalia and Emilia-Romagna in comparative perspective. *Journal of Ethnic and Migration Studies* (in press).
- Schönwälder, K. (2013). Immigrant representation in Germany's regional states: The puzzle of uneven dynamics. *West European Politics*, 36 (3), 634-651.
- Schönwälder, K. & Kofri, C. (2010). Diversity in Germany's Political Life? Immigrants in City Councils. MMG Working Paper 10-17 (see <http://www.mmg.mpg.de/de/publikationen/all-publications/2010/>; accessed September 28, 2013).
- Scholten, P.W.A. (2013). Agenda dynamics and the multi-level governance of intractable policy controversies: The case of migrant integration policies in the Netherlands. *Policy Sciences*, 46 (3), 217-236.
- Seidle, F.L. (2010). *The Canada-Ontario Immigration Agreement: Assessment and Options for Renewal*. M.C.f.P. Innovation. Toronto: Mowat Centre for Policy Innovation.
- Siemiatycki, M. (2011). Governing immigrant city: Immigrant political representation in Toronto. *American Behavioral Scientist*, 55 (9), 1214-34.
- Siemiatycki, M. (2012). The place of immigrants: Citizenship, settlement, and socio-cultural integration in Canada. In: Rodriguez-Garcia, D. (ed.). *Managing Immigration and Diversity in Canada. A Transatlantic Dialogue in the New Age of Migration*. Montreal/ Kingston: McGill-Queens University Press, 223-247.
- Stasiulis, D., Hughes, C. & Amery, Z. (2011). From government to multilevel governance of immigrant settlement in Ontario's city-regions. In: Tolley, E. & Young, R. (eds.). *Immigrant Settlement Policy in Canadian Municipalities*. Montreal and Kingston: McGill-Queen's University Press, 73-147.
- Tolley, E. (2011). Introduction: Who invited them to the party? Federal-municipal relations in immigrant policy. In: Tolley, E. & Young, R. (eds.). *Immigrant Settlement Policy in Canadian Municipalities*. Montreal/ Kingston: McGill-Queen's University Press, 3-48.
- Tossutti, L.S. (2012). Municipal roles in immigrant settlement, integration and cultural diversity. *Canadian Journal of Political Science*, 45 (3), 607-33.
- Triadafilopoulos, T. (2011). Illiberal means to liberal ends? Understanding recent immigrant integration policies in Europe. *Journal of Ethnic and Migration Studies*, 37 (6), 861-80.
- Triadafilopoulos, T. (2012). *Becoming Multicultural: Immigration and the Politics of Membership in Canada and Germany*. Vancouver: UBC Press.
- Vasta, E. (2007). *Accommodating Diversity: Why Current Critiques of Multiculturalism Miss the Point*. COMPAS Working Paper Series 39. Oxford: University of Oxford, COMPAS.
- Vertovec, S. (2006), *The Emergence of Superdiversity in Britain, Centre on Migration, Policy and Society*. Working Paper no 25, University of Oxford: COMPAS.
- Vertovec, S. & Wessendorf, S. (2010). *The Multicultural Backlash: European Discourses, Policies and Practices*. London: Routledge.
- Wimmer, A. (2008). The making and unmaking of ethnic boundaries: A multilevel process theory. *American Journal of Sociology*, 113 (4), 970-1022.
- Wimmer, A. & Glick-Schiller, N. (2003). Methodological nationalism, the social sciences, and the study of migration: An essay in historical epistemology. *International Migration Review*, 37 (3), 576-610.



## About the author

**Oliver Schmidtke**, University of Victoria.

E-mail: [ofs@uvic.ca](mailto:ofs@uvic.ca)

Oliver Schmidtke is a Professor in the Departments of Political Science and History at the University of Victoria where he also holds the Jean Monnet Chair in European History and Politics. He currently serves as the director of the Centre for Global Studies in Victoria. His research interests are in the fields of the political sociology and politics of migration, citizenship, nationalism, and the governance of migration and integration in Europe and Canada.



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# Shifting Up and Back

## *The European Turn in Canadian Refugee Policy*

Dagmar Soennecken

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### **Abstract**

During the last decade, Canada's immigration and citizenship policies have been radically transformed. Hardly any aspect has been left untouched. That humanitarian migration has also been restricted and transformed has generally been linked to the worldwide "securitization" of migration. This paper argues that the timing and character of a number of key changes also represent a European turn of Canada's refugee policy, which has seen Canada change from a policy innovator and humanitarian leader to a student, follower and adaptor of a key set of restrictionist asylum policies practiced in Europe.

**Keywords:** refugee determinations, Canada, Europe, Europeanization, venue shopping, safe third country, safe country of origin

## **1. Introduction**

During the last decade, Canada's immigration and citizenship policies have been radically transformed. Aside from the reforms that culminated in the 2001 Immigration and Refugee Protection Act (IRPA), the last four years (2008 to 2012) have been particularly intense. Changes have been made to all three permanent immigration streams –family reunification, economic and humanitarian migration, as well as to citizenship and settlement policies (Alboim & Cohl October 2012), with even further announced changes soon to come. On the whole, this transformation has been interpreted as Canada tightening and restructuring its policies to remain competitive

in the globalized, economic “battle for the brains” (Shachar 2006), in the process excluding those who do not fit the neoliberal logic (Varsanyi 2008).

That humanitarian migration has also been restricted and transformed has generally been linked to the worldwide “securitization”<sup>1</sup> of migration (Dauvergne 2008; Watson 2009). While that is certainly correct, this paper will show that the timing and character of a number of key changes also represent a European turn in Canada’s refugee policy, which has seen Canada go from a policy innovator and humanitarian leader (whose people were awarded the United Nations High Commissioner for Refugees, UNHCR) Nansen medal in 1986, “in recognition of their essential and constant contribution to the cause of refugees within their country and around the world”<sup>2</sup>) to a student, follower and adaptor of a key set of restrictionist asylum policies practiced in Europe - most notably the Dublin agreement (which restricts freedom of movement for asylum seekers by preventing them from filing an asylum claim in their country of choice or in more than one state) and the “safe country of origin” list.<sup>3</sup> Applicants from countries on the latter list are deemed to not ordinarily generate refugees and as a result, their claims are assessed in an accelerated fashion, with tight procedural timelines and few appeal options.

To understand this evolution, I draw on one of the most prominent explanations regarding the way in which migration controls have tended to grow. The “venue shopping” explanation views the Europeanization of refugee policy as a side-effect of embattled nation states that are looking for the most favourable venue for their preferred policy outcomes – tighter migration controls. In the process, they shift control “up” to the intergovernmental and “down” to the local level, as well as “out” to private (non-state) actors - all in order to evade the growing significance of rights based regimes at the international and domestic level (Guiraudon 2000). Although this explanation is widely regarded as seminal even more than ten years later (Kaunert & Léonard 2012), most of the empirical research has thus far tended to focus on Europe.<sup>4</sup>

The Canadian case demonstrates that a state, once it adopts a migration control paradigm, may employ similar techniques to those used by other advanced industrialized states even though, objectively speaking, it is relatively less restrained or “threatened” by the courts and rights-based politics than other states (Anderson 2010: 942). The European turn in Canada’s refugee policy is thus an example of a state seeking more favourable policy outcomes by shifting policy “up” to the intergovernmental level and interestingly, also “back” to the executive level. The changes overall represent a regression or return to the backbone of Canadian humanitarianism: namely

executive control and discretion, with a hefty dose of bilateralism that ironically, represents a significant loss of control.

As we shall see, Canada is a latecomer to the securitarian world, having only joined the “control” club of nations in the 1990s. Although it tried to shift control “upwards” early on by, for instance, laying the groundwork for a safe third country agreement with the U.S. in the late 1980s, not only did the provisions prove controversial domestically (Abell 1997) but achieving such an agreement drew little interest on the US side and was thus not actually forged until after 9/11, when both countries’ positions had aligned, demonstrating that we need to pay attention to timing and sequencing when studying policy. Actors cannot change their institutional environment at will even though the paradigm may have shifted. They need to wait for a critical juncture to arise before they can do so (Guiraudon 2000: 258; Pierson 2000).

Overall, the comparison between the two sides of the Atlantic underlines that the similarities we find are not simply instances of uni-directional policy learning or borrowing. Although there is sufficient evidence to suggest that a number of the recent changes to Canada’s refugee policy were directly inspired by events in the EU, and indeed by EU policy changes (Abell 1997; Macklin 2005), the causal story for these changes is unquestionably more complex. Instead, as Thouez and Channac suggest, the changes should be conceptualized as cases from the “policy transfer continuum,” which involves multiple actors, ideas and institutional arrangements and range from mere lesson drawing to coercive transfers (Thouez & Channac 2006). This multifaceted understanding of policy transfers further places more emphasis on the transmission of knowledge, ideas and possibilities than on policy choices.

The remainder of the article is organized as follows. The next section opens with a select review of the venue shifting argument as it applies in the European case before moving onto the analysis of the Canadian changes. For space reasons, the comparison is centered on the shift “up” to the intergovernmental level in both regions. The European section begins by reviewing the key role of inter- and transgovernmental actors in the shaping of Europe’s common asylum “control” policy. Next, I briefly discuss perhaps *the* cornerstone achievement of their collaborative efforts - the safe third country or “Dublin” system, which came into effect in the European Union (EU) in 1997. Since it was introduced quite some time ago, the discussion includes a summary of critiques and shortcomings of the system. The European section closes with a brief review of a related and widely popular asylum control measure that has not (yet) been “up” shifted (not

to mention “communitarized”<sup>5</sup>) – the designated/safe countries of origin (SCO/DCO) list.

The Canadian section begins by discussing Canada’s “long-standing outlier” status before surveying the larger discursive and normative shifts from the mid-80s to the 1990s, which saw Canadian bureaucrats and politicians abandon the “protectionist” paradigm and finally embrace the prevailing security and control focus of the international migration policy community. This shift made possible the adoption of certain policies “that were previously deemed inappropriate under the protection paradigm” (Irvine 2011). Chief among them were legislative amendments (debated between 1988 and 1992) that eventually lead to the 2001 US-Canada Safe Third Country Agreement (STCA), which was modeled on the “Dublin” agreement and is discussed next. Third, the Canadian paradigm shift also opened the door for other policies previously unacceptable that would accelerate the hearing of certain refugee claims, which were deemed “manifestly unfounded” from the start. In this context, the last part of the Canadian section discusses the introduction of “designated country of origin” list in late 2012. This idea, widely found in Europe, was first put into law in Switzerland in 1990. All in all, my goal here is not to provide a detailed analysis of Canada vs. Europe but to show that outwardly similar choices in policies and venues, once planted in very different soil, are not likely to generate similar outcomes because of the constraining culture of existing ideas, interests and institutions.

## 2. Up-shifting and the Europeanization of asylum policy

The prevalent venue-shifting thesis argues that European migration and asylum policies in place today are the outcome not of EU policy initiatives, but rather of “vertical” or transnational co-operation between law and order officials subscribing to a migration control paradigm that began in the late 1970s to mid-1980s. Briefly, co-operation occurred because political actors sought new venues to maximize “control”-focused policy outcomes in light of growing constraints at the domestic level, in particular through legal norms and court rulings but also through NGO pressure and political compromises (Guiraudon 2000). Although EU institutions, legal norms and political bargaining eventually populated these vertical spaces and the EU formally committed to the creation of a common asylum policy with the 1997 Treaty of Amsterdam, the history of these networks, their membership, mode of operation and goals left an imprint on the institutional set-up

and policy options subsequently being pursued and ultimately controlled the rules of the game (Lavenex 2001). For instance, the European Court of Justice (ECJ) has long been kept away from reviewing migration and asylum policies. Similarly, the role of EU Parliament, generally perceived as friendlier toward migrants, has been strengthened only quite recently. Finally, it took NGOs a number of years until they built their own networks and access points to the EU officials and their policy-making apparatus relating to migration (Guiraudon 2001).

In the European context, national policies have generally been referred to as “Europeanized” when they are affected by the processes of EU integration, which is the political and economic coming together of participating member states in Europe (Olsen 2002). More specifically, Europeanization can occur either in a “bottom-up” or a “top-down” fashion, i.e. either the European level transforms domestic policies or member states are able to ‘upload’ their domestic policy preferences to the EU level and thereby shape EU policy (Graziano & Vink 2007). Interestingly, it has been formally extended to other countries beyond the EU member states, in particular for the purposes of controlling migration (Lavenex 1999). Some scholars argue that the process has further created a “European” style of governance, i.e. a set of beliefs, norms and identities, not to mention complex institutions and decision-making procedures (Lavenex 2001: 852). All in all, EU integration has been predominantly understood as a set of advances achieved primarily through intergovernmentalism, whereby powerful member states try to realize their policy preferences through bargaining and negotiation with one another at the EU level (Moravcsik 1998), although other scholars argue that the involvement of the EU’s supranational actors in one sector generates a momentum (or “spill-over”) that will lead to further integration of others (Guiraudon 2000).

In the area of immigration and asylum policy, Europeanization has been particularly late, slow in the coming and fraught with difficulties. Reluctance to give up control and state sovereignty assertions have been higher than in other policy areas. Although EU member states first formally committed to the establishment of a “Common European Asylum System” (CEAS) with the 1997 Treaty of Amsterdam (in force 1999) and the 1999 Tampere summit, the origins and direction of Europe’s now common asylum policies, as key contributions by Guiraudon and Lavenex have shown, are in fact much older and have been much more strongly determined by informal, opaque mechanisms of intergovernmental and transnational co-operation among ‘clubs,’ such as the 1975 TREVI group, which involved a network of

law enforcement and government bureaucrats across Europe collaborating to address cross-border terrorism (Guiraudon 2000: 254; Lavenex 2001).

During the second half of the 1970s and throughout the 1980s, a wide network of similar groups sprang up ranging from task forces and regional working groups to ad hoc committees (Thouez & Channac 2006). All blended asylum with border control, policing and crime prevention. These transnational networks have transformed into a multilevel governance regime and the domestic agendas of political players involved have been the driving force behind some of the EU's key migration control policies, notably the "country of first asylum" provisions that first accompanied the 1985 Schengen "open borders" agreement and which later became the 1990 Dublin "I" Convention already referred to earlier (Guiraudon 2000).

This co-operation or shift "up" to the intergovernmental and transnational level was attractive because these venues were until quite recently fairly void of enforceable human rights norms and political debate with regard to migration. Humanitarianism and human rights norms more generally have only very recently entered the debate at the EU level, having long been kept at bay by any absence of reference to them in the EU treaties more generally and through (at first) the deliberate exclusion of the European Court of Justice (ECJ) from reviewing immigration and asylum policy more specifically (Guild 2006). Guild further notes that the initial exclusion of any rights for refugees at the EU level - despite the ratification of the Geneva Convention for Refugees by all member states - was not an oversight but a deliberate choice based on what she calls a profound "antipathy" and "hostility" towards asylum seekers. Therefore, she adds, if refugees have been present in EU rules and norms, they have thus far been only objects or passive bodies (Guild 2006: 633-636).

Only with the 2009 Treaty of Lisbon has the EU finally committed itself to making the EU Charter of Rights binding EU law and decided to formally accede to the 1950 EU Convention of Human Rights (ECHR), both measures, which will expand the ECJ's oversight over the murky area of "freedom, security and justice," to which asylum policy was assigned (Carrera, De Somer, & Petkova 2012). These changes, together with the steadily growing influence and jurisprudence of the European Court of Human Rights (EUCtHR), have led to a steadily growing judicialization of asylum policy (Kaunert & Léonard 2012: 1409). This judicialization, together with a growing communitarization of EU asylum policy, whereby the EU Commission puts items on the agenda, which are then discussed and debated in the EU Council and consented to by the EU Parliament, represent the most



significant constraints on the “venue shopping” ability of EU policy makers going forward.

However, thus far, policy-making through the communitarian method has been slow and difficult. So far, three key directives and one important regulation have been passed through the ‘community’ method:<sup>6</sup> the 2003 Reception Conditions, 2004 Qualification and 2005 Asylum Procedures Directive as well as the 2003 Dublin (II) Regulation. After an evaluation process, amendments to all three directives and the Dublin II Regulation were proposed in 2008 (so called “recastings”) and a related directive - the 2008 Returns Directive – was also passed. However, amendments to the older directives and the Dublin II regulation were stalled for a long time and the majority have not been successfully passed yet, illustrating the sluggish and challenging process of the formal, ‘community’ method of Europeanization.<sup>7</sup> At the same time, the directives have been criticized for institutionalizing only the least common denominator, furthering the entrenchment of “fortress Europe.”<sup>8</sup>

### 3. Up and out: the Dublin system

The 2003 Dublin “II” system grew out of the 1990 Dublin “I” regulation, which was preceded by an even older version developed by Denmark in 1986 (Costello 2005: 40) and until 2013 determined EU-wide the country responsible for processing an asylum application based on the idea that an asylum seeker is not entitled to seek out (or “shop for”) the country in which they intend to reside but should claim asylum in only one country – namely the first, “safe” country.<sup>9</sup> What is remarkable about this system is how few of Europe’s asylum seekers it affects and how poorly it has worked. Yet it still remains in operation.<sup>10</sup> Existing court decisions and proposed changes thus far merely tinker with operational details of the system but have not questioned its basic rationale, even though it has been referred to as “an expensive waste of time” by some legal experts (Peers 2011: 362). Basically, despite claims to the contrary, it prolongs the time period during which refugees remain “in orbit” i.e. without status and even prevents some from filing a claim altogether, consumes considerable bureaucratic resources and in the end, does not lead to all that many transfers. Refugee advocates further note that it has also increased the practice of detentions in the EU and exacerbated the problems with refugee determinations in certain border countries, like Greece, that were already considered not to be a “safe” country by some human rights observers.<sup>11</sup>

These problems have been partly acknowledged by the EU Commission, which proposed a revised version of a number of asylum-related regulations, including of the Dublin and EURODAC regulations in 2008 and 2009,<sup>12</sup> which made only slow progress. In 2011, an amended proposal to Procedures Directive was tabled, which contains revisions relating to the safe country concept.<sup>13</sup> The EU Parliament, which is now a full co-legislator (through the formerly “co-decision”, now “ordinary” legislative procedure), also supported calls for a revision (but not abolition) of the safe third country concept. Most recently, a number of court cases by both, the EUCtHR and the ECJ, acknowledged the problems with operationalizing the safe third country concept, and criticized the dysfunctional nature of the Greek asylum system in particular, which was widely regarded as violating human rights standards. The courts ruled that member states who continue to send refugees back to Greece were violating the EU’s Human Rights Convention (Carrera et al. 2012).<sup>14</sup> The ECJ further underlined the need for a regular assessment of the actual human rights conditions in a third country, demonstrating that court decisions are unlikely to completely undo policy instruments that are the outcome of prior “vertical” policy-making, such as the Dublin system.

#### 4. An incomplete shift? Safe countries of origin lists

A concept related to the “safe *third*” country idea, which is the basis for the Dublin system, is the notion of a “safe country of *origin*.” This concept assumes that not all countries around the world ordinarily generate refugees – as judged based on various criteria ranging from their democratic to their human rights practices - and that claims for protection from those countries are therefore most likely unfounded and can be processed in an accelerated fashion, with fewer procedural safeguards. It was first put into asylum law in Switzerland in 1990 and was subsequently adopted by a wide range of EU member states (Costello 2005; Gurzu 2012). However, in contrast to the Dublin system, the safe country of origin concept has not yet been incorporated into EU law, although negotiations are ongoing. Interestingly, a number of EU states, among them Poland and Sweden, do not use such lists at all.

Although the 1992 London resolutions already endorsed the SCO concept in principle,<sup>15</sup> the first formal push for the mandatory establishment of an EU-wide list came only in 2003 through a proposal from Austria - roughly a decade after many EU states had begun operating their own, national-level lists. Peers notes that the real push at that time stemmed from “a group of

interior ministry civil servants” trying to control the development of the EU’s Justice and Home Affairs (JHA) policy by holding private meetings.<sup>16</sup> While these meetings are certainly evidence that political actors have tried to “up” shift and control the creation of EU-wide SCO lists in a fashion similar to the past, the fact that no such lists exist yet opens up intriguing questions regarding the venue shifting process in practice.

As Gurzu reports, although a preliminary list of countries was subsequently published as part of a draft Commission directive in 2004, negotiations revealed continuing disagreement among member states. Even countries with strong migration control preferences, like Germany, France and the UK objected to some of the country designations, which shows that there is more at play than more powerful member states failing to impose their policy preferences on weaker ones. But alternatively, the more powerful member states also do not seem to be content with leaving the SCOs at the national level, so it is likely too early to judge. The fact that states without such lists were unwilling to participate in these negotiations certainly indicates that an EU-wide solution will eventually be reached (Gurzu 2012).

Considering that a number of national courts have already ruled on the concept over time, though with varying results, the incentive to “up” shift the SCO list to the EU level certainly exists. A Belgian court ruled it unconstitutional in 1993. The Belgian government only successfully reintroduced such a list in 2012, a few years after the 2005 EU Procedures Directive endorsed the possibility of an SCO list.<sup>17</sup> The German Constitutional Court had declared the practice of such lists constitutional back in 1996. A UK court struck down the designation of Pakistan as an SCO in 2001, although courts have upheld the designation of India as an SCO (Costello 2005: 51). In 2012, the French Conseil D’Etat ruled unconstitutional the addition of Kosovo and Albania to the French list, two countries also on Belgium’s list of (presently) seven such countries.<sup>18</sup> Finally, the initial exclusion of the EU Parliament from the drafting of an EU-wide SCO list lead the ECJ to enter the fray and mandate its inclusion in a 2008 ruling (Gurzu 2012: 8), which promises to prolong the negotiation process. To sum up, although some of these judicial rulings certainly constrain national governments, their divergence reflects the different practices and opinions at the national level more generally but do not prevent the creation of EU-wide lists. Discussions are still ongoing and need to be closely observed in the future. So far, the delay and disagreement over the “up” shifting of the SCO lists to the EU level serve as an interesting contrast to the history of the Dublin or “safe third country” agreement.

## 5. The European “turn” in Canadian refugee policy

While the story of venue-shifting in Europe is very much driven by political actors choosing inter- or transgovernmental venues to avoid legal and political constraints in achieving control-centered migration policy outcomes, Canada was long considered a proponent of a “protectionist” paradigm, which translated to it being considered a “control laggard” by others.

Canada’s “outlier” status manifests itself along three primary axes: First, Canada’s inland refugee recognition system has been called “a model to be emulated” by UNHCR (Anderson 2010: 940). This is reflected in the fact that the primary body for determining inland refugee claims in Canada, the Immigration and Refugee Board (IRB) has consistently had the highest Geneva Convention recognition rate amongst advanced industrialized countries, typically ranging between 40 and 50 percent, while the average European recognition rate was only 20 percent (Dauvergne 2005: 123).<sup>19</sup> Second, under the Convention, the IRB has frequently interpreted the definition of a refugee expansively and lead the way internationally in policy development (e.g. by drafting guidelines regarding the recognition of gender-based persecution in 1993). Third, in addition to its inland determination system, Canada also operates an overseas resettlement program for refugees and others at risk that is relatively large considering its population.<sup>20</sup> Although still smaller than the inland counterpart, it is further notable, as Dauvergne observes, that the overseas program consists of both a government and a privately sponsored stream (Dauvergne 2005).<sup>21</sup>

Given this reputation, the details and timing of Canada’s transformation are particularly interesting. Researchers have identified the 1980s and the 1990s as the critical period in this regard. The 1980s are frequently heralded as the height of the protectionist paradigm, with the 1985 *Singh* decision (which granted refugee claimants physically present in Canada protection under and access to the 1982 *Charter of Rights and Freedoms* and mandated an oral hearing) often serving as a corner-stone because it was followed by a fundamental re-design of the refugee determination procedure that created an independent and quasi-judicial tribunal, the IRB, which became the main agency for overseeing refugee claims in Canada (Kelley & Trebilcock 1998).

Yet the 1980s also saw a number of perceived refugee “crises” lead to refugee policy becoming the subject of an intense and increasingly partisan dispute (Abu-Laban 1998: 191). In the late 1980s and early 1990s a new political party, Reform, rose in political power, which put immigration on the agenda for the 1993 election and, as Abu Laban notes, broke up the existing

elite consensus over immigration policy by opposing certain kinds of immigration (Abu-Laban 1998: 195). In response, the government tightened some policy aspects and slowly began to shift to a more ‘securitarian’ paradigm (Watson 2009). For instance, in 1988, the Canadian Immigration Act was amended to allow the government to designate certain countries as “safe” for the purposes of refugee determinations. However, there were discussions as to whether the United States could be considered “safe,” in particular because of the influence of U.S. foreign policy on refugee determinations involving Latin America. American law-makers at the time were also not particularly interested in incurring further costs on their side of the border. As a result, the provision was not implemented by cabinet at the time (Abell 1997: 575), i.e. no country was declared “safe” until 2004 (when the 2001 agreement came into force).

Still, the 1990s were critical in that they brought about a larger discursive shift towards securitization in Canada that was reflected in media coverage and in public opinion (Watson 2009). Anderson connects these securitizing moves to a much older and larger ‘control/rights’ struggle that he traces to Parliamentary debates over the nature of Canadian liberalism and democracy as far back as Confederation (Anderson 2010). Irvine details the critical role that immigration officials played in shifting Canada towards the “security-control” paradigm in the 1990s (Irvine 2011).

Although these officials became “transnationally active” in the same networks of bureaucrats and officials detailed by the European literature discussed earlier, they did not initially take a restrictionist stance when beginning to participate in these networks. However, officials gradually absorbed the security/control-centric discourse of their colleagues, especially when Canadian officials increased their participation in the 1990s. In the process, their views of Canada shifted from regarding it as a humanitarian leader to an outlier of a different sort – namely a “victim of increasing migration flows” and a control laggard, with a refugee system open to abuse. Eventually officials passed on the more ‘securitarian’ view already dominant in other countries, in particular Europe, when briefing politicians (Irvine 2011).

On the policy front, Canada’s larger immigration policy became increasingly subject to neoliberalist influences from the 1990s onward leading to a substantial shift in focus from family reunification to the economic value of immigrants. This resulted in an increased role on the part of the Canadian provinces in determining a significant share of these immigrants (Dobrowolsky 2011: 117). Despite all this, remarkably, the ‘mechanics’ of Canada’s inland refugee determination system remained relatively unscathed until

2001. Changes to Canada's refugee policy at this time occurred largely by "remote control," namely through the increasing use of interdiction measures and the posting of immigration officers overseas (Kernerman 2008).

Aside from some reforms in 1992-93, perhaps the most notable development at this time was a 1997 government commissioned report that proposed a dramatic reorganization to Canada's refugee policy and determination system, including the creation of a merged unit for assessing overseas and inland refugee claimants staffed entirely by civil servants (Review 1997: 77). Encountering heavy public criticism, it did not however result in any reforms (Kelley & Trebilcock 1998).

Worth highlighting separately is Canada's response to yet another perceived "crisis," namely the arrival of a substantial number of Roma from the Czech Republic in 1997 (almost all of whom were granted refugee status in Canada), because it symbolizes the government's growing attempts to "manage" the expansive IRB practices. First, the government imposed a visa requirement on Czech citizens, another classic "remote control" tool used to reduce the influx of unwanted migrants since the late 1970s (Dirks 1995), and second, it drew on a rarely used discretionary power to intervene in the practices of the IRB. This intervention entailed encouraging the IRB to establish a "lead case" practice by which government officials supplied additional information to the IRB for them to more efficiently adjudicate large numbers of similar cases. This practice was then used to adjudicate cases for a number of Roma subsequently arriving from Hungary. As a result, success rates for the latter claims plummeted (Kernerman 2008: 246). In a subsequent court challenge, critics argued that the government (more precisely, the Minister of Citizenship and Immigration) tried to influence the outcome of such cases by encouraging this process. Eventually, the Federal Court ruled that this particular practice violated the independence of the IRB members but noted this did not prevent the IRB more generally from developing tools to more efficiently manage its case load.<sup>22</sup> Even in Canada, where gaining access to the courts has been historically quite difficult for refugees and any ability to have the merits of the case reassessed has been formally unavailable until reforms in 2012, this example shows that government policy is not immune from judicial scrutiny. In fact, the Supreme Court of Canada, in particular, is regularly blamed for having "gummed up" the refugee determination process to the extent that access to judicial review is now considered problematic and even suspect.<sup>23</sup>

The most important reforms to Canada's refugee policy prior to the ones passed in the last four years though came arguably around 9/11, namely with the passing of the 2001 Immigration and Refugee Protection Act,

which was already drafted prior to attacks on the World Trade Centre. Although the legislation (again) left the fundamental ‘mechanics’ of the IRB essentially intact, it significantly expanded inadmissibility rules and strengthened detention, deportation, and interdiction provisions. Together, they furthered Canada’s shift towards securitization and ensured that more and more would-be refugees either could not reach Canada or were excluded from the procedure at the outset (Jimenez & Crépeau, 2002).<sup>24</sup> The most important institutional change concerning refugee determinations - the creation of a Refugee Appeals Division (RAD) at the IRB, which is now (only since December 2012) in charge of overseeing an administrative appeal on the merits of the case - was initially delayed for a number of years. In return for the establishment of the RAD, refugee advocates reportedly supported a reduction in the number of IRB members who would be hearing a case from a panel of two to a single member (Soennecken 2013b).

Over the decades, Canada’s refugee policy has been regularly denounced as too “liberal” by domestic conservative critics (Stoffman 2002) and international observers alike, in particular after 9/11 when the differences between the Canadian and U.S. refugee policies attracted the attention of U.S. academics and law-makers (Forest 2006: 62). Yet it was not until the mid-1990s that Canadian policy makers joined the “club” of like-minded, security and control focused states and subsequently began to align not just their outlook but also their policies with those states.

## 6. “From Dublin with love:” The Canada-US Safe Third Country Agreement (STCA)

Most importantly for our purposes, Canada and the United States finally entered into a “safe third country” agreement in December 2001. This bilateral agreement was part of a much broader and more comprehensive “Smart Border Action Plan” following the events of 9/11, that included a focus on the establishment of a “security perimeter” through securitization of not only the flow of people and goods, but also infrastructure, plus a commitment to coordination and information-sharing (Brunet-Jailly 2006; Salter 2007). The STCA was a key component of this plan but did not come into force until Nov 2004. Visa harmonization was also one of the goals (Macklin 2005). The “smart border” plan was further expanded with the recent “Beyond the Border Action Plan,” released in 2011.<sup>25</sup>

At present, the Canada-U.S. STCA only applies to refugee claims made at the land border.<sup>26</sup> In a similar manner to the Dublin system, claimants

who have previously been in the U.S. are essentially prevented from filing a claim in Canada. The portion of Canada's refugee claims made at the Canada-U.S. border has traditionally been substantial – from 2002 to 2004 it was around 32 percent of yearly inland claims (Canada 2006).<sup>27</sup> Aside from appeasing U.S. security concerns, the primary motivation for Canada to conclude the agreement was clearly therefore to reduce the number of claims (Arbel 2013).<sup>28</sup> Government figures show a drop of 55 percent in applications at the Canadian end from 2004 to 2005, the first year the agreement was implemented.<sup>29</sup>

However, as with the Dublin Convention, the few figures publicly available further indicate there is a significant gap between the number of claims screened and the number actually returned. The primary reason for this gap is the large number of claimants who qualify for an exception under the agreement.<sup>30</sup> In 2005, 80 percent of claims made at the border qualified for such an exception (3254 out of 4033 total claims). Only 303 or 13 percent did not.<sup>31</sup> Of those qualifying for an exception under Canadian rules in 2005, a little fewer than half were exempt based on family ties<sup>32</sup>, while the bulk of the remainder (37 percent) were exempt based on a criterion that is non-existent under the Dublin Convention – namely that applicants were nationals of a country to which Canada had temporarily suspended removal orders due to, for instance, war or an environmental disaster, e.g. as in Afghanistan, the Democratic Republic of Congo, Haiti, Iraq and Zimbabwe.<sup>33</sup> This STCA exemption was removed in 2009 – an action cited as being “another step toward improving Canada's asylum system,”<sup>34</sup> although it is hard to deny that numbers must have played a role in this decision. While this will lead to a further reduction in claims at the Canadian border, the more notable effect of such agreements may be their power of deterrence, although this is difficult to ascertain.<sup>35</sup>

Although the conclusion of the Canada-U.S. STCA agreement is certainly an example of “outward” shifting on behalf of the Canadian government, the substantial delay between the adoption of the 1988 enabling provisions and the conclusion of the agreement in 2001 (which did not come into force until 2004) illustrates how, political actors interested in migration control needed to wait for a critical juncture before changing public policy. Moreover, the Canadian case remains a bilateral agreement that, although unsuccessfully challenged in principle before the Canadian courts,<sup>36</sup> is not likely to be encroached upon by legal norms or political controversy due to the lack of any oversight mechanism or overarching North American integration process comparable to that in Europe (Clarkson 2008). Though the agreement provides for a dispute resolution mechanism, it is



not intended as an appeal process for refugee claimants but rather as an avenue for both governments to resolve potential policy disputes. Both governments have so far resisted suggestions by the UNHCR and others to institute a mechanism for reviewing decisions made under the STCA. Moreover, while the STCA provides for regular monitoring of the agreement through the UNHCR, bilateral working groups and NGOs, these reviews are considered ‘collaborations’ and ‘consultations’ and thus not comparable to an independent, judicial oversight.<sup>37</sup>

## 7. Shifting back up: the Designated Countries of Origin List

In a similar manner to European governments, the Canadian government began designating certain countries as “safe” from December of 2012 onwards. While first designations have already elicited comments regarding the manufactured image of the “true” refugee that is emerging (no Latin American or African countries have been designated as of yet, in contrast to all European countries),<sup>38</sup> more important for our purposes is the fact that these designations can be made solely by Ministerial Order, without public input. This is an indication that the Canadian government is returning to an old way of controlling migration policy – Executive discretion, which removes key migration control-related decisions from public and parliamentary scrutiny (Dauvergne 2005; Soennecken 2013a).

The Canadian criteria for designating a country as safe are somewhat broader than those used by EU member states and relate mainly to a country’s democratic and human rights record,<sup>39</sup> plus Canada also uses a set of quantitative indicators, which are based on a combination of rejection, withdrawal and abandonment rates of claims from this country before the IRB. A 60 to 75 percent rate can lead to a designation of a country as safe.<sup>40</sup>

While the adoption of the STCA and the DCO measures are indications that Canada’s refugee policy has indeed taken a European turn, the procedural consequences for claimants who are designated as being from such a safe country more generally resemble the EU’s accelerated policy regarding claims designated as “manifestly unfounded” in that they set up tight processing timelines, limit appeal mechanisms and speed up the removal process. Prior to the introduction of the DCO lists, this practice was only sporadically found in the Canadian system and was mainly applied to ineligible or already rejected claimants.

Given the wide discrepancy of practices in EU member states and the disagreement over a common list at the EU level, plus the fact that the designation of various countries has also been challenged in domestic EU courts, this practice is problematic enough that it may be vulnerable to a court challenge in Canada as well. However, Canadian courts have generally tended to be quite deferential in assessing immigration policy partly because it involves reviewing administrative actions and partly because, historically, until the mid-1960s, Canadian immigration law used to be protected against court challenges by a private clause (Soennecken 2013a).

## 8. Conclusion

To regain control over its refugee flows, Canada, after decades of delay, has finally joined the club of securitarian nations and in the process, become quite an eager student of the EU. In the process, it shifted policy “up,” “down” and “out” as posited by the ‘venue shopping’ explanation. For space reasons, only one, the “upwards” shift, was discussed here. Although we can observe similarities and even direct exchanges of ideas between Canada and the EU (notably between government bureaucrats at the transnational level), we should also underline a critical difference. The “upwards” shift in the Canadian case is quite distinct because power and control was deliberately shifted back “up” to the Executive, thereby returning Canada to the discretionary origins of its humanitarianism (Dauvergne 2005). As a recent review of the larger immigration and refugee policy changes has shown, the adoption and execution of the DCO provision is but one instance of a larger pattern of the Executive retaking control, away from Parliament or any venues that would remotely allow for any substantial degree of debate or discussion (Alboim & Cohl October 2012).

While it may seem that the Canadian case also constitutes an example of an upwards shift to the intergovernmental level similar to that of the EU, the STCA agreement forged between Canada and the United States is bilateral and not part of a larger process of North American integration. As a result, it is unlikely to eventually come at a “price” similar to the recent empowerment of more human rights-friendly actors in the EU, such as the EU Parliament and the ECJ that arose through the ongoing transformation of the asylum policy field as part of the processes of EU integration. That said, the first instances of EU migration control coordination also started out at as similarly closed agreements with limited oversight mechanisms and little transparency regarding the process. Not only that, the evolution of

the NAFTA and WTO dispute resolution mechanisms show that a transfer of authority to the international level can have domestic consequences for North American political actors as well, albeit decades later (Krikorian 2012). While the STCA dispute resolution mechanism is not likely to experience this kind of transformation any time soon, the consequences of the introduction of the long-delayed Refugee Appeals Division currently under way are far less certain.

At a macro level, this brief comparison has underlined that history and past policies matter. As shown by the gap between Canada's absorption by the securitarian club at the transnational level in the 1990s, the prior laying of the legislative groundwork for the adoption of the safe third country in 1988 and the forging of the STCA agreement in 2001, political actors cannot modify their institutional history and environment as they please, even if the overarching paradigm seems to have already shifted. They need to wait for a critical juncture to arise before they can do so (Guiraudon 2000: 258; Pierson 2000). Finally, although, it should already be clear from the preliminary analysis undertaken here that the recent Canadian changes are part of a larger, complex and multi-directional story of policy *transfers* between Canada, Europe and other "migration control" nations and not a simple case of uni-directional policy learning (Thouez & Channac 2006), more work needs to be done to untangle the detailed workings of these growing transnational transfers. What ideas were considered but rejected? Which modifications did Canadian officials undertake in light of the European experiences? What opportunities exist to disrupt the transfer of such control-centred policies and eventually re-frame them? These are but some of the questions that should guide future analyses.

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## Notes

1. There are of course many definitions for this phenomenon. At its most basic, it is about placing national security over individual rights.
2. The Nansen medal is awarded annually to "a person or a group for outstanding work on behalf of the forcibly displaced," see <http://www.unhcr.org/nansen/503743f86.html>

3. The Dublin “I” Convention was signed in 1990 by only a select number of EU countries (among them Germany) and came into force in 1997 (regulation 97/C254/0). The Dublin (“II”) Agreement - an EC Council Regulation, which replaced it and came into force in 2003 - is binding on all EU member states. Switzerland to Norway and Iceland have also joined.
4. For instance, Guiraudon has written about the growth of local and private (non-state) actors and on an increase in “remote control” policies in other regions. Although other works have detailed the expansion of inter- and transnational networks (e.g. Thouez and Channac, 2006), studies at the national level outside of Europe are limited (e.g. Garnier, 2010).
5. To “communitarize” something refers to exposing it to the “complete” EU decision-making machinery rather than keeping it at the intergovernmental level.
6. Three related directives that were also passed during this period are the 2001 Temporary Protection Directive, the 2003 Family Reunification Directive and the 2003 Third Country Nationals Directive.
7. The revised Qualification Directive was adopted in 2011. Its implementation deadline (Dec 21, 2013) is imminent. The Commission’s 2008 “recast” of the Asylum Procedures Directive failed to be adopted in 2009 and was subsequently revised and re-presented on June 1, 2011. It was finally passed on June 26, 2013. The UK, Ireland and Denmark have opted out of these recasts. (For the UK and Ireland the previous versions will continue to apply). The revised 2008 Reception Conditions Directive was also re-presented in 2011 and equally passed on June 26, 2013. The Dublin “III” regulation was also passed on the same day, together with a revised EURODAC regulation, both will come into force on Jan 1, 2014, while the three new directives need to be transposed into national law within two years.
8. These views are well summarized on the website of the European Council for Refugees at [www.ecre.org](http://www.ecre.org)
9. A safe country is fundamentally one that adheres to the 1951 Geneva Convention for Refugees and the UN Convention against Torture, which all EU countries formally do. Although it does promise refugees more procedural rights, the new Dublin “III” regulation does not fundamentally alter the previous system and will even expand it to include those seeking subsidiary protection.
10. Only 4.1 percent of asylum seekers were actually transferred according to the 2007 EU Commission report (see Peers 2011). This was already considered an increase from earlier periods.
11. See [www.ecre.org](http://www.ecre.org)
12. EURODAC, a central database for fingerprints of asylum seekers, was initially set up in 2000.
13. Refugee advocates have generally been disappointed by the latest revisions because they have stepped away from earlier proposals, which would have raised some standards. For a summary, see Peers 2011 at [www.statewatch.org](http://www.statewatch.org) and [www.ecre.org](http://www.ecre.org).
14. *Carrera, Hirshi and others vs. Italy*, EU CtHR, 2012 and *M.S.S. vs. Belgium and Greece*, ECJ, 2011.
15. These are Council of European Communities resolutions from 1992 (Costello, 2005:40).
16. See, “Statewatch: EU divided over list of “safe countries of origin” – Statewatch calls for the list to be scrapped,” Sept 2004, available at <http://www.statewatch.org/analyses/no-38-safe-countries.pdf>
17. Belgium just amended its laws to re-introduce the notion of a safe country of origin in June 2012. The change became possible because of the 2005 EU Procedures Directive, which endorsed the possibility of safe country or origin lists.
18. See <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/341-safe-countries-of-origin-an-inconvenient-truth.html>
19. In 2003: Canada’s in-land acceptance rate stood at 49.6 percent and in 2006, it was still at 47 percent. For 2011, it had dropped to 31.4 percent. See generally [www.unhcr.org](http://www.unhcr.org) for statistics.

20. The US, Canada and Australia provide over 90 percent of resettlements, while 16 EU make up about 8 percent, see UNHCR figures. Canada is particularly notable in this regard because such humanitarian admissions are factored into their overall, annual immigration planning,
21. The Canadian Council for Refugees recently showed that that the current overseas resettlement numbers are the second lowest in over 30 years. However 2010 legislation promised an increase of 500 spaces. The annual resettlement target was between 10,000 and 14,000 since the early 1990s. See <http://ccrweb.ca/en/bulletin/13/03/07>
22. *Geza v. Canada (Minister of Citizenship and Immigration)* (F.C.), 2004 FC 1039, [2005] 3 F.C.R. 3, discussed in Kernerman, 2008.
23. Jeffrey Simpson quoted in Soennecken, 2013b.
24. Canada did not officially have an accelerated procedure for manifestly unfounded refugee claims on the book by 2001. The only “expedited” procedure that did exist at the time was designed to speed up cases that clearly demonstrated a well-founded fear of persecution. This procedure has been on the books since 1993 although, lately, fewer and fewer cases have been processed using this avenue.
25. See [www.actionplan.gc.ca](http://www.actionplan.gc.ca)
26. Macklin reports that between 1995 and 1997, Canada unsuccessfully tried to extend the agreement’s applicability to inland claims but had to abandon the effort due to difficulties in establishing the travel patterns of would-be refugees (Macklin, 2005:372).
27. See <http://www.cic.gc.ca/english/department/laws-policy/partnership/index.asp>
28. Only a small number of claims are made at the U.S. border. See Canada, 2006: US chapter. Between 2000 and 2004, the U.S. reported an average of 58 claims annually. In return, Canada apparently agreed to resettle around 200 refugees a year chosen by the U.S. overseas (Macklin, 375).
29. Citizenship and Immigration Canada, *A Partnership for Protection: Year One Review* (Canada-United States Safe Third Country Review) Nov 2006, available at [http://www.cic.gc.ca/english/department/laws policy/partnership/chapter4.asp#canada\\_c\\_1](http://www.cic.gc.ca/english/department/laws%20policy/partnership/chapter4.asp#canada_c_1)
30. Both the Canada-US STCA and the Dublin Convention make concessions based on family ties (although their status matters as well), and for unaccompanied minors. Technically, there are also ‘public interest’ and humanitarian exceptions in both, although they rarely apply. There is also an exception based on the status of the applicant; sometimes individuals who do not require a visa to enter Canada or even U.S. or Canadian citizens file an application for protection, see Arbel, 2013.
31. Arbel obtained additional figures directly from CBSA. For 2009, 763 and for 2010, 761 and for 2011, 537 applicants were rejected based on the STCA, see *Ibid.*:7.
32. Canada, the US, and Europe all interpret ‘family ties’ differently. For instance, the U.S. does not include same sex partners in their definition, although this will change given the 2013 US Supreme Court ruling on the subject. The European definition of ‘family’ is limited to the nuclear family. The Canadian one is broader, including relatives ranging from grandparents to uncles.
33. Citizenship and Immigration Canada, “Notice - Measures for people affected by the lifting of the temporary suspension of removals to Burundi, Liberia and Rwanda,” available at <http://www.cic.gc.ca/english/department/media/notices/notice-removal.asp>
34. See [www.cic.gc.ca/English/department/media/releases/2009/2009-07—23.asp](http://www.cic.gc.ca/English/department/media/releases/2009/2009-07—23.asp)
35. While most scholars argue that STCAs encourage irregular entry – something that is hard to quantify – it is even harder to quantify the number of individuals who do not leave their home country or apply for status.
36. The Federal Court of Canada initially invalidated the STCA in 2007 because the presiding judge agreed with arguments made by human rights organizations who do not consider the

- U.S. a “safe” country. He also criticized the government for not continually reviewing the agreement. The Federal Court of Appeal overturned this decision in 2008 rejecting both his constitutional and procedural arguments. The Supreme Court of Canada refused to hear the final resulting appeal. *Canadian Council for Refugees v. Canada* 2007 FC 161 and *Canada v. Canadian Council for Refugees* 2008 FCA 229.
37. See [www.cic.gc.ca/English/department/laws-policy/partnership/chapter2.asp](http://www.cic.gc.ca/English/department/laws-policy/partnership/chapter2.asp)
  38. Chile is the only exception, having been added to the list in May 2013. For the problem regarding the quantitative indicators, see Puddicombe, W. (2012). “You say my country is safe?! Designated countries of origin under the immigration and refugee protection act”, Retrieved from [http://refugeelawyers.net/3a\\_Puddicombe.pdf](http://refugeelawyers.net/3a_Puddicombe.pdf) and for the choice of countries, see Liz, E. (2013). “Safe or unsafe: designated countries of origin”. Retrieved from <http://cynicsunlimited.com/2013/02/28/safe-or-unsafe-designated-countries-of-origin/>
  39. The criteria used in most EU member states more explicitly check the risk of persecution in a given country following the 1951 *Refugee Convention* criteria, including protection against torture and inhumane treatment. For an overview of national practices, see the study by the British Institute of International and Comparative Law for the EU Commission available at [http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/safe\\_countries\\_2004\\_en\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/safe_countries_2004_en_en.pdf).
  40. <http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-11-30.asp>

## References

- Abell, N. A. (1997). Safe Country Provisions in Canada and in the European Union: A Critical Assessment. *International Migration Review*, 31 (3): 569-590.
- Abu-Laban, Y. (1998). Welcome/STAY OUT: The Contradiction of Canadian Integration and Immigration Policies at the Millennium. *Canadian Ethnic Studies*, 20 (3): 190-211.
- Alboim, N., & Cohl, K. (October 2012). *Shaping the Future: Canada's Rapidly Changing Immigration Policies*. Toronto: Maytree Foundation.
- Anderson, C. G. (2010). Restricting Rights, Losing Control: The Politics of Control over Asylum Seekers in Liberal-Democratic States - Lessons from the Canadian Case, 1951-1989. *Canadian Journal of Political Science*, 43 (4): 937-959.
- Arbel, E. (2013). Shifting Borders and the Boundaries of Rights: Examining the Safe Third Country Agreement between Canada and the United States. *International Journal of Refugee Law*, 25 (1): forthcoming.
- Brunet-Jailly, E. (2006). Security and Border Security Policies: Perimeter or Smart Border? A Comparison of the European Union and Canadian-American Border Security Regimes. *Journal of Borderlands Studies*, 21 (1): 3-21.
- Canada, C. a. I. (2006). *Canada-United States Safe Third Country Agreement Review: A Partnership for Protection, Year One Review*.
- Carrera, S., De Somer, M., & Petkova, B. (2012). The Court of Justice of the European Union as a Fundamental Rights Tribunal: Challenges for the Effective Delivery of Fundamental Rights in the Area of Freedom, Security and Justice. *CEPS Paper in Liberty and Security in Europe*, No. 49 (August).
- Clarkson, S. (2008). *Does North America Exist? Governing the Continent After NAFTA and 9/11*. Toronto: University of Toronto Press.
- Costello, C. (2005). The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection? *European Journal of Migration and Law*, 7: 35-69.

- Dauvergne, C. (2005). *Humanitarianism, Identity and Nation: Migration Laws of Canada and Australia*. Vancouver: UBC Press.
- Dauvergne, C. (2008). *Making People Illegal: What Globalization Means for Migration and Law*. Cambridge: Cambridge University Press.
- Dirks, G. E. (1995). *Controversy and Complexity: Canadian Immigration Policy During the 1980s*. Montreal, Kingston: McGill-Queen's University Press.
- Dobrowolsky, A. (2011). The Intended and Unintended Effects of a New Immigration Strategy: Insights from Nova Scotia's Provincial Nominee Program. *Studies in Political Economy*, 87 (Spring): 109-142.
- Forest, J. J. F. (Ed.) (2006). *Homeland Security: Protecting America's Targets* (Vol. 1), Westport, CT: Praeger.
- Garnier, A. (2010). Are States in Control of their Borders? Testing the Venue-Shopping Approach in the Australian Context, *Working Paper Series: Graduate Centre Humanities and Social Science of the Research Academy Leipzig*.
- Graziano, P., & Vink, M. (Eds.). (2007). *Europeanization: New Research Agendas* Basingstoke: Palgrave
- Guild, E. (2006). The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law*, 18: 630-651.
- Guiraudon, V. (2000). European Integration and Migration Policy: Vertical Policy-making as Venue Shopping. *Journal of Common Market Studies*, 38 (2): 251-271.
- Guiraudon, V. (2001). Weak Weapons of the Weak? Transnational Mobilization around Migration in the European Union. In D. Imig & S. Tarrow (Eds.), *Contentious Europeans: Protest and Politics in an Emerging Polity*. Lanham, Md.: Rowman and Littlefield.
- Gurzu, A. (2012). Safe Country of Origin List at the EU Level: the Bargaining Process and the Implications. *Journal of European and Russian Affairs*, 7 (1): 1-14.
- Irvine, J. A. S. (2011). Canadian Refugee Policy: Understanding the Role of International Bureaucratic Networks in Domestic Paradigm Change. In G. Skogstad (Ed.), *Policy Paradigms, Transnationalism and Domestic Politics*. Toronto: University of Toronto Press.
- Jimenez, E., & Crépeau, F. (2002). The Immigration and Refugee Protection Act. *Horizons: Policy Research Initiative*, 5 (2): 18-20.
- Kaunert, C., & Léonard, S. (2012). The Development of the EU Asylum Policy: Venue-Shopping in Perspective. *Journal of European Public Policy*, 19 (9): 1396-1413.
- Kelley, N., & Trebilcock, M. (1998). *The Making of the Mosaic: a History of Canada's Immigration Policy*. Toronto: University of Toronto Press.
- Kernerman, G. (2008). Refugee Interdiction at Heaven's Gate. *Government and Opposition*, 43 (2): 230-248.
- Krikorian, J. D. (2012). *International Trade Law and Domestic Policy: Canada, the United States and the WTO*. Vancouver: UBC Press.
- Lavenex, S. (1999). *Safe Third Countries: Extending the EU Asylum and Immigration Policies to East and Central Europe*. Budapest: Central European University Press.
- Lavenex, S. (2001). The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies. *Journal of Common Market Studies*, 39 (5): 851-874.
- Macklin, A. (2005). Disappearing Refugees: Reflections of the Canada-U.S. Safe Third Country Agreement. *Columbia Human Rights Law Review*, 36: 365-426.
- Moravcsik, A. (1998). *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.
- Olsen, J. P. (2002). The Many Faces of Europeanization. *Journal of Common Market Studies*, 49 (5).
- Peers, S. (2011). *EU Justice and Home Affairs Law* (3rd ed.). Oxford: Oxford University Press.

- Pierson, P. (2000). Increasing Returns, Path Dependence, and the Study of Politics. *American Political Science Review*, 94 (2): 251-267.
- Review, I. L. (1997). *Not Just Numbers: A Canadian Framework for Future Immigration*. Ottawa: Minister of Public Works and Government Services Canada.
- Salter, M. B. (2007). Canadian Post 9/11 Border Security and Spillover Securitization: Smart, Safe, Sovereign? In M. Orsini & M. Smith (Eds.), *Critical Policy Studies*. Vancouver: UBC Press.
- Shachar, A. (2006). Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes. *New York University Law Review*, 81: 148-206.
- Soennecken, D. (2013a). Extending Hospitality: History, Courts and the Executive. *Studies in Law, Politics and Society*, 60: 85-109.
- Soennecken, D. (2013b). The Managerialization of Refugee Determinations in Canada. *Droit et Société*, 84 (2): 291-311.
- Stoffman, D. (2002). *Who Gets In: What's Wrong with Canada's Immigration Program – and How to Fix It*. Toronto: Macfarlane Walter and Ross.
- Thouez, C., & Channac, F. (2006). Shaping International Migration Policy: The Role of Regional Consultative Processes. *West European Politics*, 29 (2): 370-387.
- Varsanyi, M. W. (2008). Rescaling the "Alien," Rescaled Personhood: Neoliberalism, Immigration and the State. *Annals of the Association of American Geographers*, 98 (4): 877-896.
- Watson, S. (2009). *The Securitisation of Humanitarian Migration: Digging Moats and Sinking Boats*. London: Routledge.

## About the author

**Dagmar Soennecken**, School of Public Policy & Administration, York University.  
E-mail: [dsoennec@yorku.ca](mailto:dsoennec@yorku.ca)

Dagmar Soennecken is an Assistant Professor in the School of Public Policy at York University. Her most recent publications include: "Germany and the Janus Face of Immigration Federalism: Devolution vs. Centralization," in S. Baglay, D. Nakache, Immigration Regulation in Federal States: Challenges and Responses in Comparative Perspective (New York/Heidelberg, Springer, 2014) and "The Managerialization of Refugee Determinations in Canada," *Droit et Société* 84 (2013/2), 297-311.



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